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14  
15 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
16 **SOUTHERN DIVISION – SANTA ANA**

17 IN RE FONTEM US, INC.  
18 CONSUMER CLASS ACTION  
LITIGATION

Case No.: 8:15-cv-01026-JVS-RAO

**Class Action**

19 **SECOND CONSOLIDATED**  
20 **AMENDED COMPLAINT FOR**  
21 **VIOLATIONS OF: (1) CAL.**  
22 **CONSUMERS LEGAL**  
23 **REMEDIES ACT; (2) CAL.**  
24 **UNFAIR COMPETITION LAW;**  
25 **(3) CAL. DECEPTIVE, FALSE**  
26 **AND MISLEADING**  
27 **ADVERTISING; (4) N.Y. GEN.**  
28 **BUS. LAW; (5) FRAUDULENT**  
**CONCEALMENT UNDER**  
**ILLINOIS LAW; AND (6) IL.**  
**CONSUMER FRAUD AND**  
**DECEPTIVE BUSINESS**  
**PRACTICES ACT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs Larry Diek, Frank Perez and Michael Whitney (the “California  
2 Plaintiffs”), Paul Pisciotto (the “New York Plaintiff”), and Tanya Mullins (the  
3 “Illinois Plaintiff”) (collectively referred to herein as “Plaintiffs”), by and through  
4 their undersigned attorneys, file this Second Consolidated Amended Complaint  
5 (“SCAC”), joining two actions, one originally filed in Orange County Superior  
6 Court (the “*Diek* Action”), and one filed in the Northern District of California (the  
7 “*Whitney* Action”). Together Plaintiffs bring this action on behalf of themselves  
8 and all others similarly situated, based upon personal knowledge as to themselves  
9 and their activities, and on information and belief as to all other matters, against  
10 Defendants LOEC, Inc., Lorillard, Inc., Reynolds American, Inc. ITG Brands, LLC,  
11 Fontem US, Inc., and Fontem Holdings 4 B.V. (collectively “Defendants”),<sup>1</sup> and  
12 allege as follows:

13 **I. NATURE OF THE ACTION**

14 1. Defendants, the manufacturers, sellers, and distributors of the BLU  
15 brand of electronic cigarettes (collectively, “BLU E-Cigarettes” or “BLUs”), have a  
16 uniform and long-standing pattern of employing unfair and deceptive practices with  
17 respect to the sale of their products through material omissions and partial  
18 misrepresentations concerning the potential health risks thereof.

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23 <sup>1</sup> LOEC, Inc. was previously responsible for the development, manufacture,  
24 marketing and sale of Blu electronic cigarettes. In or about April 2012, Lorillard,  
25 Inc. acquired LOEC, Inc. In or about June 2015, Reynolds American, Inc.  
26 completed its acquisition of Lorillard, Inc. and in the related divestiture transactions,  
27 Blu was sold to ITG Brands, LLC (a subsidiary of Imperial Tobacco Group, PLC).  
28 LOEC, Inc. is still in existence, however, its assets and operations were transferred  
to Fontem US, Inc. Lorillard, Inc. is also still in existence, however, its assets and  
operations were transferred to Fontem Holdings 4 B.V.

1           2. Throughout the class period,<sup>2</sup> Defendants actively concealed and failed  
2 to disclose to consumers that the aerosol produced by BLU E-Cigarettes contains  
3 dangerous carcinogens including, but not limited to, formaldehyde and also actively  
4 concealed and failed to disclose serious and dangerous respiratory issues that may  
5 be caused by smoking BLU E-Cigarettes. In fact, packages in which BLU E-  
6 Cigarettes have been sold during the Class Period omitted information about certain  
7 material health risks associated with the use of BLU E-Cigarettes and their  
8 ingredients, despite stating other potential dangers of the products regarding nicotine

9           3. Defendants’ material omissions and partial misrepresentations on their  
10 packages are deceptive, false and misleading.

11           4. Studies have shown that electronic cigarettes, including BLU E-  
12 Cigarettes, contain disease-causing substances that are dangerous to human health.  
13 As early as 2009, the United States Food and Drug Administration (“FDA”)  
14 concluded that two leading brands of e-cigarettes contained detectable levels of  
15 known carcinogens and toxic chemicals including tobacco-specific nitrosamines.  
16 More recently, as expressly determined by the California Department of Public  
17 Health, the vapor in e-cigarettes like BLU E-Cigarettes is an aerosol that contains  
18 carcinogens and toxins that pose harm to the user and to people exposed to these  
19 carcinogenic materials second-hand:

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22 <sup>2</sup> As set forth in ¶¶ 112, 128, and 146, the class period for the California Class is  
23 from April 22, 2011 until the date of notice. As set forth in ¶ 180, the class period  
24 for the New York Class is October 2, 2012 until the date of notice. As set forth in  
25 ¶¶ 192 and 202, the class period for the Illinois Class based on the fraudulent  
26 concealment claim is October 2, 2010 until the date of notice, and the class period  
27 for the Illinois Class based on the Illinois Consumer Fraud and Deceptive Business  
28 Practices Act, 815 ILCS 505/1, *et seq.* (“ICFA”) is October 2, 2012 until the date of  
notice. Unless stated otherwise, the four class periods are collectively referenced as  
the “Class Period.”

1           5.       Studies also show that certain electronic cigarettes, including BLU E-  
2 Cigarettes, require users to take deeper puffs to produce vapor than the puffs  
3 required for a traditional tobacco cigarette, and that this could be harmful to the  
4 users' health.

5           6.       Furthermore, there is widespread agreement in the scientific  
6 community that further research is necessary before the full negative effects of  
7 electronic cigarette use on users' health can be known and that until then,  
8 manufacturers, sellers, and distributors of electronic cigarettes should not make any  
9 representation relating to the safety, health, or benefits, if any, of e-cigarettes.  
10 Therefore, Defendants' failure to disclose all of the known dangerous carcinogens  
11 and toxins emitted by BLU E-Cigarettes, and harmful health effects of taking deeper  
12 puffs to produce vapor is deceptive, false and misleading.

13           7.       Defendants' warning label is misleading and deceptive because while it  
14 identifies nicotine as a chemical component, it does not provide a full list of other  
15 carcinogenic ingredients and other disease-causing substances, including those noted  
16 by the California Department of Public Health, or the risks other than nicotine of  
17 inhaling BLU E-Cigarettes as shown by studies described herein below. For  
18 example, when heated, the aerosol produced by BLU E-Cigarettes and inhaled by  
19 BLU users contains formaldehyde, a chemical known to the State of California and  
20 other entities to cause cancer. Nevertheless, and despite California's statutory  
21 requirement that sellers of consumer products causing exposure to known  
22 carcinogens provide clear and reasonable warnings regarding such hazards,  
23 Defendants utterly fail to warn consumers and users of BLU E-Cigarettes that use of  
24 such products will expose them to a chemical known to cause cancer. Defendants'  
25 listing of the ingredients on the package but failure to disclose to users the hidden  
26 ingredients of carcinogens and toxins caused by the heating of certain such  
27 ingredients was also a material omission and false partial misrepresentation. This  
28

1 failure to disclose was an intentional act designed to hide the potential dangers of  
2 the use of BLU E-Cigarettes from consumers.

3 8. Defendants actively concealed and failed to disclose what they knew  
4 about the contents of their own products, including that BLU E-Cigarettes contain  
5 carcinogens, toxins, and other impurities (including some of those also found in  
6 tobacco cigarettes) in order to deceive the consuming public to buy their product.  
7 Defendants knew that had they been truthful and fully informed the consuming  
8 public that their products emitted known carcinogens, such as formaldehyde,  
9 consumers would not have purchased their products or would have paid less than the  
10 retail price.

11 9. As a result of Defendants' material omissions and partial  
12 misrepresentations on their packages, consumers – including Plaintiffs and the other  
13 members of the proposed Classes – purchased BLU E-Cigarettes without being  
14 advised that they contain a variety of toxins, impurities, and related potential health  
15 hazards as found by various studies, and do not have the particular standard or  
16 quality as represented in their packaging. Had Defendants disclosed these material  
17 facts, Plaintiffs would not have purchase, or would have paid less for, Defendants'  
18 BLU E-Cigarettes. Defendants were able to charge more than what their BLU E-  
19 Cigarettes would have been worth had they disclosed the truth about them.

20 10. Plaintiffs bring this lawsuit against Defendants, on behalf of themselves  
21 and the proposed Classes, in order to: (a) require Defendants to disclose the risks  
22 associated with inhaling BLU E-Cigarettes as discussed herein below, in order to  
23 ensure that consumers are fully informed when they make their purchasing decision;  
24 and (b) secure redress for consumers who purchased one or more BLU E-Cigarettes  
25 through Defendants' material omissions and partial misrepresentations. Plaintiffs,  
26 on behalf of themselves and the proposed Classes, allege violations of the California  
27 Consumers Legal Remedies Act, Civil Code § 1750, *et seq.* ("CLRA"), California's  
28 Unfair Competition Law, Business & Professions Code § 17200, *et seq.* ("UCL"),

1 California’s False Advertising Law, Business & Professions Code § 17500, *et seq.*  
2 (“FAL”), New York General Business Law § 349 (“GBL”), and fraudulent  
3 concealment under Illinois law, and ICFA.

4 **II. JURISDICTION AND VENUE**

5 11. This is a consolidated action against Defendants for violations of: (1)  
6 California’s CLRA, Civil Code § 1750, *et seq.*; (2) California’s UCL, Business &  
7 Professions Code § 17200, *et seq.*; (3) California’s FAL, Business & Professions  
8 Code § 17500, *et seq.*; (4) New York GBL § 349; (5) fraudulent concealment under  
9 Illinois law; and (6) Illinois ICFA, 815 ILCS 505/1.

10 12. On June 26, 2015, Defendants removed the *Diek* Action to federal court  
11 which was eventually assigned to this Court. Dkt. No. 1 (Notice of Removal of  
12 Action (the “Notice”). According to the Notice, the *Diek* Action is within the  
13 original jurisdiction of this Court under the Class Action Fairness Act of 2005  
14 (“CAFA”), 28 U.S.C. § 1332(d), which grants district courts original jurisdiction  
15 over class actions in which the amount in controversy exceeds \$5,000,000 and any  
16 member of the class of plaintiffs is a citizen of a State different from any defendant.  
17 *Id.* at ¶ 12. The Notice states that the *Diek* Action satisfies each of the requirements  
18 of Section 1332(d)(2) for original jurisdiction under CAFA for the following  
19 reasons: (1) the *Diek* action purportedly meets the CAFA definition of a class action,  
20 which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure  
21 or similar statute or rule of judicial procedure”; (2) the aggregate number of class  
22 members is greater than 100 persons; (3) there is diversity between Plaintiffs and  
23 Defendants; and (4) Defendants have sold in excess of \$5,000,000 of e-cigarettes  
24 within California alone during the last four years. *Id.* at ¶¶ 13-16. Accordingly, this  
25 Court has jurisdiction of the *Diek* Action pursuant to 28 U.S.C. § 1332(d) based on  
26 the Notice.

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1           13. On September 1, 2015, Plaintiff Whitney filed a complaint in the  
2 Northern District of California. On that same date, Plaintiff Whitney served a 60-  
3 day notice of intent to sue under California’s Proposition 65, Cal. Health and Safety  
4 Code §§ 25249.5, *et seq.* Following expiration of the notice period, Plaintiff  
5 Whitney filed a First Amended Complaint on November 13, 2015. Given the  
6 potential overlap between issues in the *Whitney* and *Diek* Actions, Plaintiff Whitney  
7 agreed to transfer his complaint to the Central District of California in order to  
8 consolidate his case with the *Diek* Action. The *Whitney* Action was transferred on  
9 November 25, 2015 and the request to consolidate the *Whitney* and *Diek* Actions  
10 was granted on December 8, 2015.

11           14. This Court has personal jurisdiction over Defendants because  
12 Defendants have purposefully availed themselves of the privilege of conducting  
13 business in the State of California by advertising and selling their brand of  
14 electronic cigarettes to retailers and consumers in California. Defendants and their  
15 agents have prepared, disseminated, or made available print advertisements, Internet  
16 advertisements and related materials through their website,<sup>3</sup> all of which are at issue  
17 here, in California.

18           15. Jurisdiction over the New York and Illinois Plaintiffs is proper pursuant  
19 to 28 U.S.C. § 1367, which provides, in relevant part, that: (a) “in any action of  
20 which the district courts have original jurisdiction, the district courts shall have  
21 supplemental jurisdiction over all other claims that are so related to claims in the  
22 action within such original jurisdiction that they form part of the same case or  
23 controversy under Article III of the United States Constitution ... includ[ing] claims  
24 that involve the joinder ... of additional parties.”

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<sup>3</sup> BLU’s website is located and can be viewed at <http://blucigs.com/>.





1 BLU E-Cigarettes, Plaintiff Diek would not have purchased, or would have paid less  
2 for, Defendants' BLUs.

3 18. In addition, Plaintiff Diek saw Defendants' fraudulent partial  
4 misrepresentations contained on the BLU packages before he purchased them in  
5 California. Plaintiff Diek, relying on the warning on the packages and the  
6 ingredient list, purchased BLU E-Cigarettes believing that the only material health  
7 risks associated with using them were those that were disclosed on the package  
8 relating to nicotine. Plaintiff Diek would not have purchased, or would have paid  
9 less for, BLU E-Cigarettes had he known that studies have found, including studies  
10 performed on BLU E-Cigarettes, that they contain detectable levels of known  
11 carcinogens, toxic chemicals and other contaminants and impurities that are, or  
12 potentially are, disease-causing. Plaintiff Diek would not have purchased, or would  
13 have paid less for, BLU E-Cigarettes had he known that they may have potentially  
14 harmful respiratory and other side effects other than those related to nicotine, and  
15 that the full range and long-term health effects of BLUs are not yet known, as  
16 confirmed in the studies referenced in this SCAC. Thus, as a result of Defendants'  
17 active concealment and omission of material facts and fraudulent partial  
18 misrepresentations, Plaintiff Diek suffered injury in fact and lost money when he  
19 purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC, from  
20 approximately mid to late 2014, Plaintiff Diek regularly purchased BLU E-  
21 Cigarettes from gas stations in Orange County and A-1 Smoke & Cigar Shop,  
22 located at 22359 El Toro Road, Lake Forest, California 92630. Plaintiff Diek paid  
23 the retail market price for BLUs, which ranged between \$10 and \$12.

23 **Plaintiff Perez**

24 19. Plaintiff Perez is an individual who resides in Merced, California and is  
25 a citizen and resident of the State of California. During the relevant period, Plaintiff  
26 Perez, while in the State of California, was fraudulently misled and deceived by  
27 Defendants in two ways: first, Defendants actively concealed material facts from  
28 Plaintiff Perez, depriving him of an opportunity to make a fully informed decision

1 on whether to purchase BLU E-Cigarettes; and second, Defendants made fraudulent  
2 partial misrepresentations on the packaging in which they sold BLU E-Cigarettes to  
3 Plaintiffs and members of the Classes. As a result of Defendants' active  
4 concealment of material facts and fraudulent partial misrepresentations contained on  
5 the packaging, Plaintiff Perez purchased BLU E-Cigarettes while in the State of  
6 California. Had Defendants disclosed that BLUs contain a variety of toxins,  
7 impurities, carcinogens (such as formaldehyde) and other potential health hazards  
8 which were or should have been known to Defendants as confirmed by various  
9 studies discussed in more detail below, including studies performed on Defendants'  
10 BLU E-Cigarettes, Plaintiff Perez would not have purchased, or would have paid  
11 less for, Defendants' BLUs.

12 20. In addition, Plaintiff Perez saw Defendants' fraudulent partial  
13 misrepresentations contained on the BLU packages before he purchased them in  
14 California. Plaintiff Perez, relying on the warning on the packages and the  
15 ingredient list, purchased BLU E-Cigarettes believing that the only material health  
16 risks associated with using them were those that were disclosed on the package  
17 relating to nicotine. Plaintiff Perez would not have purchased, or would have paid  
18 less for, BLU E-Cigarettes had he known that studies have found, including studies  
19 performed on BLU E-Cigarettes, that they contain detectable levels of known  
20 carcinogens, toxic chemicals and other contaminants and impurities that are, or  
21 potentially are, disease-causing. Plaintiff Perez would not have purchased, or would  
22 have paid less for, BLU E-Cigarettes had he known that they may have potentially  
23 harmful respiratory and other side effects other than those related to nicotine, and  
24 that the full range and long-term health effects of BLUs are not yet known, as  
25 confirmed in the studies referenced in this SCAC. Thus, as a result of Defendants'  
26 active concealment and omission of material facts and fraudulent partial  
27 misrepresentations, Plaintiff Perez suffered injury in fact and lost money when he  
28 purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC, in

1 approximately November 2012, Plaintiff Perez purchased BLU E-Cigarettes from  
2 Walmart located at 3055 Loughborough Drive, Merced, California 95348. Plaintiff  
3 Perez purchased a kit and cartridges, and paid the retail market price for BLUs.

4 **Plaintiff Whitney**

5 21. Plaintiff Whitney is an individual consumer who, at all times material  
6 hereto, was a citizen of San Diego County, California. During the relevant period,  
7 Plaintiff Whitney, while in the State of California, was fraudulently misled and  
8 deceived by Defendants in two ways: first, Defendants actively concealed material  
9 facts from Plaintiff Whitney, depriving him of an opportunity to make a fully  
10 informed decision on whether to purchase BLU E-Cigarettes; and second,  
11 Defendants made fraudulent partial misrepresentations on the packaging in which  
12 they sold BLU E-Cigarettes to Plaintiffs and members of the Classes. As a result  
13 of Defendants' active concealment and omission of material facts and fraudulent  
14 partial misrepresentations contained on the packaging, Plaintiff Whitney purchased  
15 BLU E-Cigarettes at various locations in Oceanside, California and San Diego  
16 County throughout the Class Period, as defined below. More specifically, in early  
17 2015, Whitney purchased the Blu Starter Pack in the cherry flavor numerous times  
18 at Mike's Liquor in Oceanside, California. The packaging for the BLU E-Cigarettes  
19 he purchased did not disclose that the user would be or could be exposed to  
20 formaldehyde, other chemicals known to the State of California and other entities to  
21 cause cancer, or other potential toxins, carcinogens, impurities or health hazards.

22 22. Plaintiff Whitney relied on Defendants' deceptive material omissions  
23 and fraudulent partial misrepresentations concerning the nature of the BLU E-  
24 Cigarettes. Plaintiff Whitney would not have purchased, or would have paid less  
25 for, the BLU E-Cigarettes had he known the material facts omitted by Defendants:  
26 that BLU E-Cigarettes will expose users to the carcinogenic toxin formaldehyde. If  
27 Defendants were to manufacture BLUs in a manner that BLU E-Cigarettes did not  
28 expose users to harmful chemicals such that Plaintiff Whitney knew that labels on

1 Defendants' BLU E-Cigarettes were truthful and not misleading, he would consider  
2 purchasing the BLU E-Cigarettes in the future. At present, however, Plaintiff  
3 Whitney cannot be confident that the labeling of the BLU E-Cigarettes is, and will  
4 be, truthful and non-misleading. Plaintiff Whitney is very concerned regarding the  
5 adverse health effects of using the BLU E-Cigarettes and is thus interested in  
6 learning all of the facts known to Defendants regarding the toxic exposures resulting  
7 from their use.

8 **Plaintiff Pisciotto**

9 23. Plaintiff Pisciotto is an individual who resides in Suffolk County, New  
10 York and is a resident and citizen of the State of New York. During the relevant  
11 period, Plaintiff Pisciotto, while in the State of New York, was fraudulently misled  
12 and deceived by Defendants in two ways: first, Defendants actively concealed  
13 material facts from Plaintiff Pisciotto, depriving him of an opportunity to make a  
14 fully informed decision on whether to purchase BLU E-Cigarettes; and second,  
15 Defendants made fraudulent partial misrepresentations on the packaging in which  
16 they sold BLU E-Cigarettes to Plaintiffs and members of the Classes. As a result of  
17 Defendants' active concealment and omission of material facts and fraudulent  
18 partial misrepresentations contained in the packaging, Plaintiff Pisciotto purchased  
19 BLU E-Cigarettes while in the State of New York. Had Defendants disclosed that  
20 BLUs contain a variety of toxins, impurities, carcinogens (such as formaldehyde)  
21 and other potential health hazards which were or should have been known to  
22 Defendants as confirmed by various studies discussed in more detail below,  
23 including studies performed on Defendants' BLU E-Cigarettes, Plaintiff Pisciotto  
24 would not have purchased, or would have paid less for, Defendants' BLUs.

25 24. In addition, Plaintiff Pisciotto saw Defendants' fraudulent partial  
26 misrepresentations contained on the BLU packages before he purchased them in  
27 New York. Plaintiff Pisciotto, relying on the warning on the packages and the  
28 ingredient list, purchased BLU E-Cigarettes believing that the only material health

1 risks associated with using them were those that were disclosed on the package  
2 relating to nicotine. Plaintiff Pisciotto would not have purchased, or would have  
3 paid less for, BLU E-Cigarettes had he known that studies have found, including  
4 studies performed on BLU E-Cigarettes, that they contain detectable levels of  
5 known carcinogens, toxic chemicals and other contaminants and impurities that are,  
6 or potentially are, disease-causing. Plaintiff Pisciotto would not have purchased, or  
7 would have paid less for, BLU E-Cigarettes had he known that they may have  
8 potentially harmful respiratory and other side effects other than those related to  
9 nicotine, and that the full range and long-term health effects of BLUs are not yet  
10 known, as confirmed in the studies referenced in this SCAC. Thus, as a result of  
11 Defendants' active concealment and omission of material facts and fraudulent  
12 partial misrepresentations, Plaintiff Pisciotto suffered injury in fact and lost money  
13 when he purchased Defendants' BLU E-Cigarettes. Prior to the filing of this SCAC,  
14 Plaintiff Pisciotto purchased BLU E-Cigarettes from a 7-11 store, located at 1733  
15 Old Country Road in Riverhead, New York, 11901. Plaintiff Pisciotto first  
16 purchased a disposable BLU E-Cigarette between approximately mid-July and mid-  
17 August of 2013, and believes he purchased approximately one dozen additional  
18 disposable BLU E-Cigarettes thereafter. Plaintiff Pisciotto purchased BLUs in the  
19 tobacco flavor, and paid the retail market price for BLUs, which he believes to be  
20 approximately \$10.

21 **Plaintiff Mullins**

22 25. Plaintiff Mullins is an individual who resides in Cook County, Illinois  
23 and is a resident and citizen of Illinois. During the relevant period, Plaintiff  
24 Mullins, while in the State of Illinois, was misled and deceived by Defendants'  
25 active concealment of material facts, which if disclosed, would have influenced her  
26 decision to buy Defendants' BLU E-Cigarettes. As a result of Defendants'  
27 intentional and active concealment of material facts, Plaintiff Mullins purchased  
28 BLU E-Cigarettes while in the State of Illinois. Had Defendants disclosed that

1 BLUs contain a variety of toxins, impurities, carcinogens (such as formaldehyde)  
2 and other potential health hazards which were or should have been known to  
3 Defendants as confirmed by various studies discussed in more detail below,  
4 including studies performed on Defendants' BLU E-Cigarettes, Plaintiff Mullins  
5 would not have purchased, or would have paid less for, Defendants' BLUs.

6 26. In addition, Plaintiff Mullins saw Defendants' fraudulent partial  
7 misrepresentations contained on the BLU packages before she purchased them in  
8 Illinois. Plaintiff Mullins, relying on the warning on the packages and the ingredient  
9 list, purchased BLU E-Cigarettes believing that the only material health risks  
10 associated with using them were those that were disclosed on the package relating to  
11 nicotine. Plaintiff Mullins would not have purchased, or would have paid less for,  
12 BLU E-Cigarettes had she known that studies have found, including studies  
13 performed on BLU E-Cigarettes, that they contain detectable levels of known  
14 carcinogens, toxic chemicals and other contaminants and impurities that are, or  
15 potentially are, disease-causing. Plaintiff Mullins would not have purchased, or  
16 would have paid less for, BLU E-Cigarettes had she known that they may have  
17 potentially harmful respiratory and other side effects other than those related to  
18 nicotine, and that the full range and long-term health effects of BLUs are not yet  
19 known, as confirmed in the studies referenced in this SCAC. Thus, as a result of  
20 Defendants' intentional and active concealment of these material facts and  
21 fraudulent partial misrepresentations, Plaintiff Mullins suffered injury in fact and  
22 lost money when she purchased Defendants' BLU E-Cigarettes. Prior to the filing  
23 of this SCAC, from approximately March 2013 through approximately August  
24 2013, Plaintiff Mullins regularly purchased BLU E-Cigarettes from convenience  
25 stores and gas stations in and around the Chicago area, including the Mobil gas  
26 station in River Grove, IL. She purchased multiple rechargeable kits with USB  
27 ports, and refills for the kits, as well as several single pack disposables. Plaintiff  
28 Mullins paid the retail market price for BLUs. On information and belief, she paid

1 approximately \$14.99 for the kits, under \$14.99 for the refills, and approximately  
2 \$9.99 for the disposables.

3 **B. Defendants**

4 27. LOEC, Inc. is a corporation with its corporate headquarters located at  
5 9101 Southern Pine Boulevard, Charlotte, NC 28273.

6 28. Lorillard, Inc. is a corporation with its corporate headquarters located at  
7 300 North Greene Street, Suite 1601, Greensboro, NC 27401.

8 29. Reynolds American, Inc. is a corporation with its corporate  
9 headquarters located at 401 North Main Street, Winston-Salem, NC 27101-3804

10 30. ITG Brands, LLC is a limited liability company with its corporate  
11 headquarters located at 5900 North Andrews Avenue, Suite 1100, Fort Lauderdale,  
12 FL 33309.

13 31. Fontem US, Inc. is a corporation with its corporate headquarters  
14 located at 5900 N. Andrews Avenue, Suite 1100, Fort Lauderdale, FL 33309.

15 32. Fontem Holdings 4 B.V. is a business venture based in the Netherlands.

16 33. Plaintiffs allege, on information and belief, that at all times herein,  
17 Defendants' agents, employees, representatives, executives, directors, partners,  
18 and/or subsidiaries were acting within the course and scope of such agency,  
19 employment, and representation, on behalf of Defendants.

20 34. DOES 1 to 10, inclusive are now, and/or at all times mentioned in this  
21 Complaint were licensed to do business and/or actually doing business in the State  
22 of California. Plaintiffs do not know the true names or capacities, whether  
23 individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason,  
24 DOES 1 to 10 are sued under such fictitious names. Plaintiffs will seek leave of  
25 court to amend this Complaint to allege such names and capacities as soon as they are  
26 ascertained.

27 35. Defendants, and each of them, are now, and/or at all times mentioned in  
28 this SCAC were in some manner legally responsible for the events, happenings and



1 circumstances alleged in this SCAC. Defendants proximately caused Plaintiffs, all  
2 others similarly situated and the general public to be subjected to the unlawful  
3 practices, wrongs, complaints, injuries, and/or damages alleged in this SCAC.  
4 Defendants, and each of them, are now, and/or at all times mentioned in this SCAC  
5 were the agents, servants, and/or employees of some or all other Defendants, and  
6 vice-versa, and in doing the things alleged in this SCAC, Defendants are now and/or  
7 at all times mentioned in this SCAC were acting within the course and scope of that  
8 agency, servitude, and/or employment.

9 36. Defendants, and each of them, are now, and/or at all times mentioned in  
10 this Complaint were members of, and/or engaged in, a joint venture, partnership and  
11 common enterprise, and acting within the course and scope of, and in pursuance of  
12 said joint venture, partnership, and common enterprise. Furthermore, each  
13 defendant, may have been the alter ego and acting in the same or similar capacity as  
14 Defendants, in the treatment of Plaintiffs, such that it would be unjust to provide  
15 separate legal treatment of said Defendants and DOES 1-10, who, at all relevant  
16 times, acted jointly and severally to deprive Plaintiffs of their rights under the laws  
17 of California, New York, and Illinois. Defendants, and each of them, at all times  
18 mentioned in this Complaint concurred and contributed to the various acts and  
19 omissions of each and every one of the other Defendants in proximately causing the  
20 complaints, injuries, and/or damages alleged in this Complaint. Defendants, and  
21 each of them, at all times mentioned in this Complaint approved of, condoned  
22 and/or otherwise ratified each and every one of the acts and/or omissions alleged in  
23 this Complaint.

24 37. Defendants, and each of them, at all times mentioned in this Complaint  
25 aided and abetted the acts and omissions of each and every one of the other  
26 Defendants thereby proximately causing the damages alleged in this Complaint.  
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40. As a result of aggressive and unrestricted marketing, increased restrictions on the use of traditional cigarettes, and a perception that e-cigarettes are “healthy” alternatives to traditional smoking, e-cigarette use has exploded since their introduction in the U.S. in 2007.<sup>5</sup> Despite the perception of these devices as a “healthy” alternative, studies reveal multiple problems with e-cigarette device use including health risks to the user, the adverse impact on the health and safety of children, teens, and young adults, and a lack of scientific evidence showing that e-cigarettes are effective smoking cessation devices or that they reduce cigarette consumption.

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<sup>5</sup> See Ron Chapman, MD, MPH, California Department of Public Health, California Tobacco Control Program, State Health Officer’s Report on E-Cigarettes: A Community Health Threat, (January 2015), at 6, <http://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf>.

1           41. Defendants mislead their consumers by omitting material facts and  
2 making fraudulent partial misrepresentations on their packaging. Defendants failed  
3 to disclose to consumers that they are inhaling a concoction of chemicals (including  
4 formaldehyde) toxic to humans in the form of an aerosol. Unlike vapor—which is  
5 the natural gaseous state of a substance, element, or compound—users of BLU E-  
6 Cigarettes inhale an aerosol containing suspended particulate matter, and then  
7 exhale them into the environment, potentially causing second hand harm to  
8 bystanders. Mainstream and second hand e-cigarette aerosol has been found to  
9 contain a number of harmful chemicals.<sup>6</sup> These harmful chemicals are inhaled by  
10 the consumers and then are released into the environment causing significant  
11 second-hand harm to those exposed. The National Center for Biotechnological  
12 Information published in-depth studies that prove the existence of these harmful  
13 additives in e-cig products like BLUs, and condensed their data into numerous  
14 charts so it can be accurately understood that these products exist in aerosol  
15 generated by e-cigarettes and pose a significant threat to human health.<sup>7</sup>

16           42. According to a 2011 study by the Centers for Disease Control and  
17 Prevention (“CDC”), as of that year, more than one fifth of smokers in the United  
18 States had tried electronic cigarettes, and 6% of all adults had tried them.<sup>8</sup>  
19 According to a subsequent study by the CDC, nearly 1.8 million middle and high  
20 school students tried e-cigarettes in 2011 and 2012, including approximately

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21  
22 <sup>6</sup> California Department of Public Health, California Tobacco Control Program,  
23 *State Health Officer’s Report on E-Cigarettes: A Community Health Threat*,  
Sacramento, CA 2015.

24 <sup>7</sup> Cheng, Tianrong. National Center for Biotechnology Information, U.S. National  
25 Library of Medicine, *Chemical Evaluation of Electronic Cigarettes*, Bethesda, MD  
2014.

26 <sup>8</sup> Press Release, Centers for Disease Control and Prevention, *About one in five U.S.*  
27 *adult smokers have tried an electronic cigarette* (Feb. 28, 2013),  
28 [http://www.cdc.gov/media/releases/2013/p0228\\_electronic\\_cigarettes.html](http://www.cdc.gov/media/releases/2013/p0228_electronic_cigarettes.html).

1 160,000 students who had never used conventional cigarettes.<sup>9</sup> The study also  
2 found that the number of U.S. middle and high school student e-smokers doubled  
3 between 2011 and 2012.<sup>10</sup> Due to Defendants' failure to disclose the true negative  
4 health effects related to smoking BLU E-Cigarettes, the youth of today feel safe  
5 smoking BLUs and are widely unaware of the risks associated with them due to the  
6 lack of disclosures and fraudulent partial misrepresentations in their labelling.  
7 Defendants and other electronic cigarette companies are using very similar  
8 marketing tactics as Big Tobacco companies did before the negative health effects  
9 of their products became widely known and tobacco regulations became strictly  
10 enforced. The aim of Defendants by concealing these material facts and making  
11 these partial representations is to deliberately undermine the smoke free social  
12 norms that took years to establish.

13 43. However, one can reasonably infer from scientific evidence of the  
14 effects of the harmful ingredients these products contain, that these products are not  
15 safe or healthy. By misbranding this carcinogenic liquid as a juice, people are  
16 misled into believing that Defendants' e-cig juice is healthy, and Defendants are  
17 able to make their products more appealing toward teens and young people who  
18 tend to be the most allured by flavor. Although non-flavored e-cigarettes pose a  
19 significant human health risk, flavored e-cigarettes have been scientifically linked to  
20 even higher health risks than traditional tobacco flavorings, yet these types of e-  
21 cigarettes are being used most by the youth of today. Defendants and other e-  
22 cigarette companies have engineered and ramped up a large-scale marketing  
23 campaign for flavored e-cigarettes and an alarming amount of kids and teenagers

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25 <sup>9</sup> Morbidity and Mortality Weekly Report, Centers for Disease Control and  
26 Prevention, *Notes from the Field: Electronic Cigarette Use Among Middle and High  
27 School Students — United States, 2011–2012* (Sept. 6, 2013),  
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm>.

28 <sup>10</sup> *Id.*

1 have been experimenting with these potentially dangerous and addictive products as  
2 a result.

3 44. According to analysts, sales of e-cigarettes in America in 2012 were  
4 between \$300 million and \$500 million.<sup>11</sup> This was approximately double what they  
5 were in the preceding year,<sup>12</sup> and sales more than doubled to \$1.5 billion in 2013.<sup>13</sup>  
6 In 2014, sales reached \$7 billion.<sup>14</sup>

7 45. BLUs (including related paraphernalia) sell for a range of prices. As of  
8 the filing of the original complaint, BLUs and related paraphernalia can be  
9 purchased at stores throughout the United States, including California, New York,  
10 and Illinois, as well as on Defendants' website.

11 46. On information and belief, most members of the proposed Classes have  
12 bought more than one of Defendants' BLUs.

13 **B. The Food And Drug Administration ("FDA") Recently Enacted**  
14 **Regulations Governing E-Cigarettes, But The FDA Expressly**  
15 **Stated That Its New Regulations Do Not Preempt State Law,**  
16 **Including Proposition 65.**

17 47. On May 10, 2016, the FDA published its Final Rule Deeming Tobacco  
18 Products To Be Subject to the Federal Food, Drug, and Cosmetic Act ("FD&C  
19 Act"), as Amended by the Family Smoking Prevention and Tobacco Control Act;  
20 Restrictions on the Sale and Distribution of Tobacco Products and Required  
21 Warning Statements for Tobacco Products (the "Rule"), and published public

22 \_\_\_\_\_  
23 <sup>11</sup> See *E-cigarettes: Vape 'Em if You Got 'Em*, The Economist, Mar. 23, 2013.

24 <sup>12</sup> *Id.*

25 <sup>13</sup> Horizon Investments, *E-Cigarettes: Proposed Regulations Could Prove To Be A*  
*Game Changer*, Seeking Alpha, May 25, 2014.

26 <sup>14</sup> Peter Evans, *E-Cigarette Makers Face Rise of Fakes*, Wall Street Journal (Feb.  
27 20, 2015), <http://www.wsj.com/articles/e-cigarette-makers-face-rise-of-counterfeits-1424441348>.

1 comment and response. (Available at <http://federalregister.gov/a/2016-10685>.)

2 According to the Executive Summary (at 28975):

3 This final rule has two purposes: (1) To deem all products that meet  
4 the definition of “tobacco product” under the law and subject them to  
5 the tobacco control authorities in chapter IX of the FD&C Act and  
6 FDA’s implementing regulations; and (2) to establish specific  
7 restrictions that are appropriate for the protection of the public health  
8 for the newly deemed tobacco products. ... Such products include e-  
9 cigarettes.

10 Rule at 28975, 28976.

11 48. The document further states: “Once deemed, tobacco products become  
12 subject to the FD&C Act and its implementing regulations. The FD&C Act  
13 requirements that will apply to newly deemed products include establishment  
14 registration and product listing, ingredient listing, HPHC testing and reporting,  
15 premarket submissions prior to the introduction of new products, and labeling  
16 requirements. Free samples of newly deemed tobacco products will also be  
17 prohibited. The additional provisions of this final rule include minimum age and  
18 identification requirements, vending machine restrictions, and required warning  
19 statements for packages and advertisements [regarding nicotine].” *Id.* at 28980.

20 49. The Rule expressly states that it does not preempt existing state  
21 requirements: “No State or local laws in effect at the close of the comment period  
22 were identified that FDA determined would be preempted by this final rule.” *Id.* at  
23 28989. The heading of the applicable section, Part 1143, was specifically changed  
24 from “Required Warning Statements” to “Minimum Required Warning Statements”  
25 to make it clear that the Rule does not preempt any state law requirements. *Id.*  
26 These non-preempted state laws specifically include Proposition 65. *Id.*

27 **C. Despite Knowing That The Aerosol Emitted By BLU E-Cigarettes**  
28 **Contains Formaldehyde And Other Harmful Carcinogens,**

1                   **Defendants Intentionally Concealed These Dangers From**  
2                   **Consumers.**

3                   **1. Defendants Are, And Have Been, Well Aware That**  
4                   **Formaldehyde And Other Harmful Chemicals Are Present in**  
5                   **The Aerosol Produced by BLU E-Cigarettes.**

6           50. In August 2014, Defendant Lorillard submitted comments on the  
7 FDA’s proposed Deeming Rule which discussed in detail the presence of  
8 formaldehyde and other harmful chemicals in e-cigarette aerosol. *See* FDA Docket  
9 No. FDA-2014-N-0189-75849 (August 7, 2014), at 38-49 *available at*  
10 <https://www.regulations.gov/#!documentDetail;D=FDA-2014-N-0189-75849>. In its  
11 comments, Lorillard acknowledged its awareness of the FDA’s 2009 report  
12 (referenced below, ¶ 56) showing that e-cigarette aerosol contains known  
13 carcinogens and other toxic chemicals. *See id.* 24 n. 43; *see also id.* at 14 n. 16.  
14 Lorillard further stated that it acquired the BLU E-Cigarette brand in 2012, and  
15 thereafter it took certain steps to address the health and safety concerns raised by the  
16 FDA. Specifically, Lorillard stated that it took on the responsibility of ensuring the  
17 safety of its BLU E-Cigarettes, including the safety of constituents in the aerosol  
18 produced by such products. *Id.* at 9-12.

19           51. As part of Lorillard’s alleged “stewardship program” with respect to  
20 the BLU E-Cigarettes, Lorillard admitted that it had “conducted various  
21 toxicological, environmental and clinical testing of [BLU E-Cigarettes] to assess  
22 product safety,” including conducting the following:

- 23           • “a toxicology assessment of the e-liquid and aerosol of certain [BLU E-  
24 Cigarettes]”; and
- 25           • “aerosol testing using a modified smoking machine to measure the  
26 level of certain smoke constituents in the aerosol of certain [BLU E-  
27 Cigarettes].”

28



1 *Id.* at 10-11. Lorillard stated that it intended to publish the results of this research  
2 (*id.* at 12) but, nearly two years later, neither Lorillard nor any other Defendant has  
3 done so.

4 52. Lorillard’s comment included reviews of a host of studies that were  
5 published in the several years preceding its filing, many of which found potential  
6 risks associated with e-cigarette use. Lorillard’s conclusion concerning these  
7 studies was that there are “level[s] of toxicants in electronic cigarettes” but such  
8 levels are lower than the toxicants found in the smoke of conventional cigarettes.  
9 E.g. *id.* at 14. Defendants apparently believe that although BLU E-Cigarettes  
10 expose users to harmful chemicals, Defendants have no obligation to inform users of  
11 the risks or exposure. Tobacco, however, is the single greatest cause of preventable  
12 illness and premature death in the United States. A product may be less risky than  
13 tobacco and still pose material risks of which a consumer would want, and has a  
14 right, to be informed.

15 53. Defendants are also well aware of the presence of formaldehyde in the  
16 aerosol produced by BLU E-Cigarettes through their membership and participation  
17 in the Cooperation Centre for Scientific Research Relative to Tobacco  
18 (“CORESTA”). CORESTA is a membership organization consisting of a number of  
19 major tobacco and e-cigarette companies that was formed to conduct and respond to  
20 scientific research relating to tobacco products and health. Defendant Fontem’s  
21 parent company, Imperial Tobacco Ltd., is one of CORESTA’s thirteen Board  
22 Member Organizations which are responsible for governing the organization. In  
23 2013, CORESTA formed an E-Cigarette Task Force (“Task Force”) in order to,  
24 among other things, “gather and share preliminary data on analysis relevant to e-  
25 cigarettes with a view to making recommendations for product testing.”  
26 <https://www.coresta.org/groups/e-cigarettes>. Indeed, one of the principal aims of  
27 the Task Force was to develop a methodology for testing the aerosol produced by e-  
28 cigarettes. *Id.* Defendant Lorillard is not only a member of the Task Force, but one

1 of its employees was the Task Force Secretary. Although the Task Force has  
2 published a technical report and recommended test protocol regarding the collection  
3 of data on constituents in e-cigarette aerosol, Defendants have never published any  
4 of the results of the testing on e-cigarette aerosol performed by CORESTA pursuant  
5 to the Task Force's test protocol.

6 54. Clearly, based on these facts alone, Defendants are fully aware that  
7 their BLU E-Cigarettes are emitting aerosol that contains harmful and toxic  
8 carcinogens, have admittedly performed studies to confirm those findings, but have  
9 failed to disclose those findings to the consuming public. Defendants are  
10 intentionally and actively concealing the results of these studies because they know  
11 that if those studies were disclosed to the public, they would affect their sales,  
12 putting profits over safety.

13 **2. Independent Studies Published by Other Reliable Sources**  
14 **Have Confirmed That E-Cigarettes, Specifically BLU E-**  
15 **Cigarettes, Emit Harmful, Cancer Causing Carcinogens.**

16 55. Because of the rapid growth in the use of electronic cigarettes by  
17 consumers in recent years, an increasing number of government agencies and  
18 research facilities have begun to conduct studies concerning the potential health  
19 impact and risks of these devices. These studies have found, *inter alia*: (a)  
20 measurable amounts of carcinogens, toxins, and other contaminants in e-cigarettes  
21 that are, or potentially are, disease-causing; (b) harmful potential side effects of e-  
22 cigarettes; and (c) that more study is needed to determine the full range of health  
23 dangers of e-cigarettes.

1           56. In 2009, the United States Food and Drug Administration (“FDA”)  
2 conducted a study of two brands of cigarettes.<sup>15</sup> The FDA issued a summary of the  
3 results of that study,<sup>16</sup> making, *inter alia*, the statements in the following block  
4 quotes (language in brackets added):

- 5           • [the] FDA’s Center for Drug Evaluation, Office of Compliance  
6 purchased two samples of electronic cigarettes and components from  
7 two leading brands. These samples included 18 of the various  
8 flavored, nicotine, and no-nicotine cartridges offered for use with  
9 these products. These cartridges were obtained in order to test some  
10 of the ingredients contained in them and inhaled by users of electronic  
11 cigarettes.
- 12           • FDA’s Center for Drug Evaluation, Division of Pharmaceutical  
13 Analysis (DPA) analyzed the cartridges from these electronic  
14 cigarettes for nicotine content and for the presence of other tobacco  
15 constituents, some of which are known to be harmful to humans,  
16 including those that are potentially carcinogenic or mutagenic.
- 17           • DPA’s analysis of the electronic cigarette samples ***showed that the***  
18 ***product contained detectable levels of known carcinogens and toxic***  
19 ***chemicals to which users could potentially be exposed.*** [Emphasis  
20 added.]
- 21           • DPA’s testing also suggested that ***quality control processes used to***  
22 ***manufacture these products are inconsistent or non-existent.***  
23 [Emphasis added.]

24  
25  
26 <sup>15</sup> See FDA Evaluation of E-cigarettes, DPATR-FY-09-23, available at  
27 <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>. The brands  
28 tested were not BLUs but contain similar primary ingredients to BLUs.

<sup>16</sup> <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146>.

- 1           • Specifically, DPA’s analysis of the electronic cigarette cartridges  
2           from the two leading brands revealed the following:
- 3           • *Certain tobacco-specific nitrosamines which are human*  
4           *carcinogens were detected in half of the samples tested.*
  - 5           • *Tobacco-specific impurities suspected of being harmful to*  
6           *humans—anabasine, myosmine, and β-nicotyrine—were*  
7           *detected in a majority of the samples tested.*
  - 8           • Three different electronic cigarette cartridges with the same  
9           label were tested and each cartridge emitted a markedly  
10          different amount of nicotine with each puff. The nicotine  
11          levels per puff ranged from 26.8 to 43.2 mcg nicotine/100  
12          mL puff. [Emphasis added.]

13           57. The FDA issued a contemporaneous consumer health brochure titled,  
14 “FDA Warns of Health Risks Posed by E-Cigarettes,”<sup>17</sup> in which Margaret A.  
15 Hamburg, M.D., commissioner of food and drugs, stated, “The FDA is concerned  
16 about the safety of these products and how they are marketed to the public.” The  
17 FDA also issued a safety alert<sup>18</sup> repeating the risks and noting that “[t]hese products  
18 do not contain any health warnings comparable to FDA-approved nicotine  
19 replacement products or conventional cigarettes.”

20           58. Indeed, in the FDA’s 2009 study, all four of the major tobacco-specific  
21 nitrosamines, N-nitrosonicotine (NNN), N-nitrosoanabasine (NAB), N-  
22 nitrosoanatabine (NAT) and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone  
23 (NNK), were found in e-cigarette cartridges.

24 \_\_\_\_\_  
25 <sup>17</sup>Retrievable at  
<http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>.

26 <sup>18</sup> Retrievable at  
27 [http://www.fda.gov/20NewsEvents/Newsroom/PressAnnouncements/ucm173222.](http://www.fda.gov/20NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm)  
28 htm.

1           59. Since the FDA released the results of its 2009 study and its  
2 concomitant warning concerning e-cigarettes generally, new studies have been  
3 emerging discussing the risks and dangers of e-cigarettes. These studies have  
4 concerned a variety of brands and products, including Defendants' BLU E-  
5 Cigarettes; however, because e-cigarettes generally operate in a similar manner, and  
6 contain similar primary ingredients, even those studies which are not identified  
7 below as directly having reviewed BLUs are relevant hereto.

8           60. The health risks and unknowns concerning e-cigarettes are  
9 compounded by the reality that e-cigarette users smoke differently than traditional  
10 smokers. For example, a study of eight traditional and four e-cigarettes found, *inter*  
11 *alia*, that, e-cigarettes “***required a stronger vacuum [inhalation strength] to smoke***  
12 ***than conventional [tobacco] brands.***” Trtchounian, A., *Conventional and*  
13 *Electronic cigarettes (e-cigarettes) have different smoking characteristics*, Nic. &  
14 Tob. Res., Vol. 12, No. 9 (Sept. 2010), at 911.<sup>19</sup> (Emphasis added.) The study  
15 states, “the effects of this on human health could be adverse.” *Id.* at 905. According  
16 to researchers, as a general matter, stronger puffing has the potential for “leading to  
17 cancer in the deeper lung regions.” *Lung Deposition Analyses of Inhaled Toxic*  
18 *Aerosols in Conventional and Less Harmful Cigarette Smoke: A Review*,  
19 *International Journal of Environmental Research and Public Health*, September 23,  
20 2013.<sup>20</sup>

21           61. Another 2010 study found various kinds of carbonyls, including  
22 acrolein and formaldehyde, in e-cigarette samples, and found that “High  
23 concentrations of hazardous pollutants such as formaldehyde, acetaldehyde and  
24

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25 <sup>19</sup> Retrieval at  
26 [http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.p](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf)  
27 [df.](http://edge.rit.edu/content/P12056/public/e%20cig%20vs%20conventional%20cig.pdf)

28 <sup>20</sup> Retrieval at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799535/>

1 acrolein were detected by using the” testing system that those researchers had  
2 developed.<sup>21</sup>

3 62. E-cigarettes are a subject of concern to major international entities.  
4 According to a presentation given by the World Health Organization (“WHO”) to  
5 the European Parliament at a Workshop on Electronic Cigarettes on May 7, 2013,  
6 “electronic cigarettes are a controversial issue for which additional studies and  
7 evidence are needed.” That presentation referenced recent findings from Turkey  
8 that:

9 *indicate that propylene glycol and tobacco specific N-nitrosamines,*  
10 *a powerful carcinogen, were found in the majority of samples.*

11 Toxins from the e-cigarette averaged around 20% of those of a regular  
12 cigarette. It was also found that similarly labeled ENDS [Electronic  
13 Nicotine Delivery Systems] cartridges emit different amounts of  
14 nicotine, and a nicotine overdose may occur which can have serious  
15 side effects. *There are currently no studies available on safety and*  
16 *efficacy of long-term e-cigarettes use.* (Emphasis added).

17 63. A study conducted by The National Center for Biotechnological  
18 Information found that nicotine levels in END devices like BLU E-Cigarettes vary  
19 and are often mislabeled. Thus the efficacy and consistency of nicotine yields and  
20 the delivery of nicotine is not uniform in products across the brand and labels on  
21 these products do not adequately reflect the actual quantity of nicotine levels found  
22 in these products. As a result of these studies, this Center recommended that e-  
23 cigarette manufacturers like Defendants enforce greater quality standards in their  
24 products.

25 \_\_\_\_\_  
26 <sup>21</sup> S. Uchiyama, Y. Inaba and N. Kunugita, Determination of acrolein and other  
27 carbonyls in cigarette smoke using coupled silica cartridges impregnated with  
28 hydroquinone and 2,4-dinitrophenylhydrazine, Journal of Chromatography. 1217  
(2010) 4383-4388.

1           64. Scientists from the University of Athens, Greece also conducted a study  
2 using 32 participants that found **“using an e-cigarette caused an instant increase**  
3 **in airway resistance that lasted for 10 minutes** in the majority of the participants.”  
4 Christian Nordqvist, *Electronic Cigarettes Harm The Lungs*,  
5 MedicalNewsToday.com (Sept. 3, 2012) (emphasis in original).

6           65. Preliminary studies conducted by the California Department of Public  
7 Health have also shown that smoking e-cigarettes containing nicotine for just five  
8 minutes can cause similar lung irritation, inflammation, and effect on blood vessels  
9 as smoking a traditional cigarette, which poses a significant risk of heart attacks and  
10 cardiac problems. *See* State Health Officer’s Report on E-Cigarettes: *A Community*  
11 *Health Threat*, published by the California Department of Public Health on January  
12 28, 2015, p. 5.

13           66. In July 2013, the WHO stated that “[m]ost ENDS [Electronic Nicotine  
14 Delivery Systems] contain large concentrations of propylene glycol, which is a  
15 known irritant when inhaled,” that “[t]he testing of some of these products also  
16 suggests the presence of other toxic chemicals, aside from nicotine,” and that the  
17 safety of these devices “has not been scientifically demonstrated.”<sup>22</sup>

18           67. Numerous other studies have been performed by universities and other  
19 research centers, and have reported similar concerns about the potential for health  
20 risks associated with electronic cigarettes.

21  
22 <sup>22</sup> Available at [http://www.who.int/tobacco/communications/statements/](http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/)  
23 [electronic\\_cigarettes/en/](http://www.who.int/tobacco/communications/statements/electronic_cigarettes/en/). *See also* Wieslander G., *Experimental exposure to*  
24 *propylene glycol mist in aviation emergency training: acute ocular and respiratory*  
25 *effects*, *Occup Environ Med* 58: 649-655, Choi H, (2010), *Common household*  
26 *chemicals and the allergy risks in pre-school age children*, *PLoS One* 5: e13423, and  
27 Moline JM, *Health effects evaluation of theatrical smoke, haze and pyrotechnics*  
28 (2000). *See also* New Hampshire Department of Environmental Services, *Ethylene*  
*Glycol and Propylene Glycol: Health Information Summary*, Environmental Fact  
Sheet,

1           68. For example, a 2013 report titled *Electronic Cigarettes – an Overview*,  
2 by the German Cancer Research Center,<sup>23</sup> which was based on a comprehensive  
3 review of literature in the field, found in summary as to “Product characteristics”  
4 (the following bullet pointed paragraphs are block quoted text):

- 5           • E-cigarettes cannot be rated as safe at the present time.
- 6           • Consumers do not have reliable information on product quality.
- 7           • Electronic cigarettes have various technical flaws (leaking  
8           cartridges, accidental intake of nicotine when replacing cartridges,  
9           possibility of unintended overdose.)
- 10          • Some manufacturers provide insufficient and partly wrong  
11          information about their liquids.

12 As to “Health Effects,” the summary stated (the following bullet pointed paragraphs  
13 are block quoted text):

- 14          • The liquids contain ingredients that on short-term irritate air- ways  
15          and may lead to allergic reactions and which may be harmful to  
16          health when inhaled repeatedly over a prolonged period of time.
- 17          • The aerosol of some liquids contains harmful substances  
18          (formaldehyde, acetaldehyde, acrolein, diethylene glycol, nickel,  
19          chromium, lead).
- 20          • The functionality of electronic cigarettes can vary considerably  
21          (aerosol production, nicotine delivery into aerosols).
- 22          • Adverse health effects for third parties exposed cannot be excluded  
23          because the use of electronic cigarettes leads to emission of fine and  
24          ultrafine inhalable liquid particles [otherwise known as volatile  
25

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26 <sup>23</sup> Published in Red Series, Tobacco Prevention and Tobacco Control, Vol. 19:  
27 *Electronic Cigarettes – An Overview* (Heidelberg 2013), available at  
28 <http://www.dkfz.de/en/presse/download/RS-Vol.19-E-Cigarettes-EN/pdf>.



1 organic compounds (VOCs) that can travel deep into the lungs and  
2 cause severe inflammation]. These products also emit nicotine and  
3 cancer-causing substances into indoor air.

4 69. Among the more specific risks identified by the German Cancer  
5 Research Center are that, *inter alia* (the following bullet pointed paragraphs are  
6 block quoted text, the language in brackets has been added, and all internal citations  
7 are omitted):

- 8 • Electronic cigarettes do not extinguish naturally after about ten  
9 puffs like conventional cigarettes, but can be used for hundreds of  
10 puffs without a break. When using them as intended, consumers  
11 may therefore get a dangerous amount of nicotine by taking too  
12 many puffs, which may even result in serious symptoms of nicotine  
13 poisoning. [*Id.* at 4-5.]
- 14 • Not even nicotine-free liquids are necessarily harmless. Their main  
15 ingredients (propylene glycol, glycerine, flavours) have been  
16 approved for use in food, but this does not necessarily mean that  
17 they are also safe when they are repeatedly inhaled over a prolonged  
18 period of time – as they are when used in electronic cigarettes.  
19 There are currently no studies available on the effects of long-term  
20 use of e-cigarettes. [*Id.* at 7.]
- 21 • To date, only [a] few studies have been conducted on potential  
22 health risks associated with inhaling propylene glycol – as one does  
23 when using electronic cigarettes as intended. According to these  
24 studies, inhaling propylene glycol may affect airways. Short-term  
25 exposure to propylene glycol in indoor air (309 mg/m<sup>3</sup> for one  
26 minute) already causes irritations in the eyes, throat, and airways.  
27 Long-term exposure to propylene glycol in indoor air may raise  
28 children’s risk of developing asthma. People who have frequently

1           been exposed to theatrical fogs containing propylene glycol are  
2           more likely to suffer from respiratory, throat, and nose irritations  
3           than do unexposed people. We may therefore assume that the use of  
4           e-cigarettes, which involves inhaling propylene glycol vapours  
5           several times daily, may cause respiratory irritations. This applies,  
6           in particular, to individuals with impaired airways and to smokers  
7           who switch to e-cigarettes or use them additionally, because  
8           smokers usually already have impaired airways. [*Id.*]

- 9           • Glycerine is considered generally safe for oral intake and is used in  
10          food production as a humectant and as a solution carrier in flavors.  
11          However, this does not necessarily mean that it is also safe for  
12          inhalation – as in e-cigarettes if used as intended. These concerns  
13          are not unfounded. The specialist journal *Chest* reports about a case  
14          study of a patient with lipoid pneumonia caused by glycerine-based  
15          oils from the aerosol of electronic cigarettes. The link appears to be  
16          clear, since symptoms disappeared when the patient stopped using  
17          electronic cigarettes. [*Id.* at 7-8.]
- 18          • Individual liquids were found to contain small amounts of  
19          nitrosamines. In addition, formaldehyde, acetaldehyde and acrolein  
20          were measured in the aerosol of various e-cigarettes, although  
21          considerably less than in cigarette smoke. Formaldehyde and  
22          acrolein were only found in glycerine-containing liquids; they  
23          probably form upon heating of glycerine. Acrolein is absorbed by  
24          the user: A decomposition product of acrolein was detected in the  
25          urine of e-cigarettes users, although considerably less than after  
26          smoking conventional cigarettes. In addition, nickel and chromium  
27          were detected in the aerosol, with higher levels of nickel measured  
28          than it is known to be present in cigarette smoke. The

1           aforementioned substances have been classified by the German  
2           Research Foundation (Deutsche Forschungsge-meinschaft, DFG)  
3           and the International Agency for Research on Cancer (IARC) as  
4           carcinogenic. Since there is no safe threshold value for these  
5           substances, it cannot be excluded that using electronic cigarettes  
6           increases cancer risk, even though these substances may be present  
7           in very small amounts. [*Id.*]

- 8           • Data on the impact of e-cigarette use on pulmonary function are not  
9           conclusive. A study involving 30 participants reports adverse  
10          effects on pulmonary function after using an electronic cigarette for  
11          five minutes; however, the long-term pulmonary effects of e-  
12          cigarette use are unknown at the present time. [*Id.*]
- 13          • There are currently no studies available on the effects of long-term  
14          use of e-cigarettes. [*Id.* at 7.]

15          70. Some of the many studies considered in the above-referenced Red  
16          Series review are among those discussed in more detail in the individual study  
17          references below. One such study was *Short-term Pulmonary Effects of Using an*  
18          *Electronic Cigarette*, published in June 2012 in *Chest*, the journal of the American  
19          College of Chest Physicians. That study expressly found both that e-cigarettes had  
20          adverse health effects and the need for further research:

21                 *E-cigarettes assessed in the context of this study were found to have*  
22                 *immediate adverse physiologic effects after short-term use that are*  
23                 *similar to some of the effects seen with tobacco smoking*; however,  
24                 the long-term health effects of e-cigarette use are unknown but  
25                 potentially adverse and worthy of further investigation. [Emphasis  
26                 added.]

27          ///

28          ///

1           71. A French article published in the consumer publication *60 millions de*  
2 *consommateurs* on August 26, 2013, reported that e-cigarettes are potentially  
3 carcinogenic. It based its findings upon testing 10 different models of e-cigarettes.<sup>24</sup>  
4 It found “carcinogenic molecules in a significant amount” in the vapor produced in  
5 the products. It further determined that “[i]n three cases out of 10, for products with  
6 or without nicotine, the content of formaldehyde was as much as the levels found in  
7 some conventional cigarettes.” It found acrolein, a toxic molecule emitted in  
8 quantities “that exceeded the amount found in the smoke of some cigarettes.”  
9 “Potentially toxic” trace metals were also discovered in some of the models.

10           72. A study by scientists at the University of California Riverside,  
11 published on March 20, 2013 in the journal PLoS One, found that:

12           one [unidentified] brand of e-cigarettes generates aerosols containing  
13 micron particles comprised of tin, silver, iron, nickel, aluminum and  
14 silicate, as well as nanoparticles containing tin, chromium and nickel,  
15 which are elements that cause respiratory distress and disease. Those  
16 metals come from the wires inside the cartridge, while silicate  
17 particles may originate from the fiber glass [*sic*] wicks.

18 Williams, M., *et al.*, *Metal and Silicate Particles Including Nanoparticles Are*  
19 *Present in Electronic Cigarette Cartomizer Fluid and Aerosol*, PLoS ONE 8(3):  
20 e57987 (2013).

21           73. Also, according to that study by the University of California at  
22 Riverside:

23           A total of 22 elements were identified in EC [electronic cigarette]  
24 aerosol, and three of these elements (lead, nickel, and chromium)

25  
26 <sup>24</sup> Quotes in this paragraph are derived from B. McPartland, “Report: e-cigarettes are  
27 ‘potentially carcinogenic’” an article published in *The Local*, a source for “France’s  
28 News in English,” on August 26, 2013, describing this study.

1 appear on the FDA’s “harmful and potentially harmful chemicals”  
2 list. Lead and chromium concentrations in EC aerosols were within  
3 the range of conventional cigarettes, while nickel was about 2–100  
4 times higher in concentration in EC aerosol than in Marlboro brand  
5 cigarettes (Table 1). Adverse health effects in the respiratory and  
6 nervous systems can be produced by many of the elements in Table 1,  
7 and many of the respiratory and ocular symptoms caused by these  
8 elements have been reported by EC users in the Health and Safety  
9 Forum on the Electronic Cigarette Forum website ([http://www.e-](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)  
10 [cigarette-forum.com/forum/health-safety-e-smoking/](http://www.e-cigarette-forum.com/forum/health-safety-e-smoking/)). Although [a  
11 table reflecting this research] was constructed to emphasize the effects  
12 of the elements found in aerosol on the respiratory system, other  
13 systems, such as the cardiovascular and reproductive systems, can be  
14 affected by most of the elements in EC aerosol. ***EC consumers***  
15 ***should be aware of the metal and silicate particles in EC aerosol and***  
16 ***the potential health risks associated with their inhalation.***

17 [Emphasis added.]

18 74. A study published on September 23, 2013 in the International Journal  
19 of Environmental Research and Public Health titled, *Lung Deposition Analyses of*  
20 *Inhaled Toxic Aerosols in Conventional and Less Harmful Cigarette Smoke: A*  
21 *Review*, found that there were potential risks associated with e-cigarettes that were  
22 not a factor in traditional cigarettes, including “compensatory smoking (*i.e.*, stronger  
23 puffing) leading to cancer in the deeper lung regions,” and that “[u]nknown  
24 reactions between some components in newly designed filters (or other new  
25 additives) may lead to the production of carcinogens or other toxicants.”

26 75. On December 15, 2013, the American Society for Cell Biology issued a  
27 press release concerning the findings of researchers at Brown University, who  
28 determined that, “Nicotine, the major addictive substance in cigarette smoke,

1 contributes to smokers’ higher risk of developing atherosclerosis, the primary cause  
 2 of heart attacks,” and that, as such, e-cigarettes, which contain nicotine, as BLUs do,  
 3 “may not significantly reduce risk for heart disease.”<sup>25</sup>

4 76. In an article published in the Contemporary Reviews in Cardiovascular  
 5 Medicine titled, *E-Cigarettes A Scientific Review*, on May 13, 2014, the authors  
 6 emphasized the importance of “assess[ing] e-cigarette toxicant exposure and ...  
 7 health effects” to “protect[] the entire population—children and adults, smokers and  
 8 nonsmokers—in the context of how the tobacco industry is marketing and  
 9 promoting these products.” The authors noted based on empirical studies that  
 10 “[c]onsumer perceptions of the risks and benefits and decisions to use e-cigarettes  
 11 are heavily influenced by how they are marketed.” The authors also discussed the  
 12 secondhand exposure of e-cigarettes (the following bullet pointed paragraphs are  
 13 block quoted text, the language in brackets has been added, and all internal citations  
 14 are omitted):

- 15 • E-cigarettes do not burn or smolder the way conventional  
 16 cigarettes do, so they do not emit side-stream smoke; however,  
 17 bystanders are exposed to aerosol exhaled by the user.
- 18 • [While] [t]oxins in the e-cigarette aerosol were at much lower  
 19 levels compared with the conventional cigarette emissions[,] [the  
 20 studies] found ... levels of formaldehyde, acetaldehyde, isoprene,  
 21 acetic acid, 2-butanodione, acetone, propanol, propylene glycol,  
 22 and diacetyl (from flavoring), traces of apple oil (3-methylbutyl-3-

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25 <sup>25</sup> American Society for Cell Biology, “Nicotine drives cell invasion that contributes  
 26 to plaque formation in coronary arteries, Research indicates e-cigarettes may not  
 27 significantly reduce risk for heart disease,” Dec. 15, 2013, available at  
 28 [http://www.eurekalert.org/pub\\_releases/2013-12/asfc-ndc112613.php](http://www.eurekalert.org/pub_releases/2013-12/asfc-ndc112613.php) (last accessed  
 Jan. 7, 2014).

1 methylbutanoate), and nicotine (with differing levels depending on  
2 the specific protocols) emitted into the air.

- 3 • [While the toxicity level was lower in e-cigarettes studied,] the  
4 particle size distribution and number of particles delivered by e-  
5 cigarettes are similar to those of conventional cigarettes ...  
6 Smokers exhale some of these particles, which exposes bystanders  
7 to “passive vaping.” Like cigarettes, e-cigarette particles are small  
8 enough to reach deep into the lungs and cross into the systemic  
9 circulation. At a minimum, these studies show that e-cigarette  
10 aerosol is not merely “water vapor” as is often claimed in the  
11 marketing for these products. Tests on e-cigarettes show much  
12 lower levels of most toxicants, but not particles, than conventional  
13 cigarettes. The thresholds for human toxicity of potential toxicants  
14 in e-cigarette vapor are not known, and the possibility of health  
15 risks to primary users of the products and those exposed passively  
16 to their emissions must be considered.

17 77. According to a May 18, 2014 article,<sup>26</sup> researchers at the VA San Diego  
18 Healthcare System and the University of California, San Diego, tested the effects of  
19 e-cigarette vapor on live methicillin-resistant *Staphylococcus aureus* and human  
20 epithelial cells. The researchers found that while e-cigarette vapor increases  
21 bacterial virulence, the vapor decreases the ability of human epithelial cells to kill  
22 pathogens. Thus, it was concluded that “even if e-cigarettes may not be as bad as  
23 tobacco, they still have measurable detrimental effects on health.”

24 78. Studies conducted by the Public Library of Science provided an in-  
25 depth study on additional adverse health effects of e-cigarettes and specifically used

26 \_\_\_\_\_  
27 <sup>26</sup> *E-cigarettes may boost resistance of drug-resistant pathogens*, Eurekalert! (May  
28 14, 2014).

1 BLUs as a part of their research.<sup>27</sup> These studies linked these products to cellular  
2 oxidative stress and inflammation of cells exposed to aerosol emissions released by  
3 electronic cigarettes. E-Cigarettes have been significantly linked to the production  
4 of reactive oxidative species (OX/ROS), especially in flavored cartridges like the  
5 ones sold by Defendants. These studies found that consumption of e-cigarette  
6 aerosols increased the fluorescence intensity levels in exposed cells which have  
7 been linked to increased levels of OX/ROS. OX/ROS has been shown to cause  
8 oxidative stress within cells and produces an injurious response in bodily processes.  
9 E-cigarette aerosols have also affected cell viability and the high levels of  
10 fluorescent substances found in these aerosols produce an inflammatory response in  
11 human bronchial epithelial airway cells because they cause secretions of Il-8 and Il-  
12 6 which contributes to the bodily inflammatory response. This condition has been  
13 proven to be further exacerbated by nicotine consumption. When e-liquids were  
14 applied directly to lung fibroblasts there were significant signs of epithelial cell  
15 inflammation, cell stress, and other phenotypic abnormalities. Studies were  
16 conducted on mice to produce evidence of pulmonary inflammation as well by  
17 measuring their bronchoalveolar lavage fluid levels after 3 days of exposure to e-  
18 cigarette aerosols. After the exposure the Il-6 levels in mice significantly increased  
19 and the increase of this interleukin has been strongly correlated with an increase in  
20 pulmonary inflammation. Because BLUs were specifically among the brands tested  
21 in these studies, strong connections can be legitimized between smoking BLUs and  
22 experiencing these serious health issues. Defendants' failure to disclose these  
23 material facts to the consuming public and lack of completely truthful labels on their  
24 products are deliberate and widely successful attempts to mislead consumers.

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25  
26 <sup>27</sup> See Qun Wu, et al., *Electronic Cigarette Liquid Increases Inflammation and Virus*  
27 *Infestation in Primary Human Airway Epithelial Cells*, PLoS ONE 9(9) (Sept. 22,  
28 2014); see also Sussan TE, et al., fn. 30, *infra*.



1 Defendants and other major e-cigarette companies justify these unethical business  
2 practices by using unreliable studies that are conducted by private institutions by  
3 people who have a stake in the e-cigarette industry. This opens up the possibility of  
4 an existing bias that has a significant effect on the results and interpretations of the  
5 findings of these studies, putting the validity of the tests conducted into question.

6 79. On May 15, 2014, the Nicotine & Tobacco Research published a study  
7 titled, *Carbonyl Compounds in Electronic Cigarette Vapors – Effects of Nicotine*  
8 *Solvent and Battery Output Voltage*. Although BLUs were not one of the brands  
9 studied, the study has significant implications on BLUs because the brands studied  
10 contained the same primary ingredients used in BLUs (*i.e.*, glycerin and/or  
11 propylene glycol). The study performed by the Roswell Park Cancer Institute in  
12 Buffalo, NY found that (the following bullet pointed paragraphs are block quoted  
13 text):

- 14 • **Introduction:** Glycerin (VG) and propylene glycol (PG) are the  
15 most common nicotine solvents used in e-cigarettes (ECs). It has  
16 been shown that at high temperatures both VG and PG undergo  
17 decomposition to low molecular carbonyl compounds, including  
18 the carcinogens: formaldehyde and acetaldehyde. The aim of the  
19 study was to evaluate how various product characteristics,  
20 including nicotine solvent and battery output voltage, affect the  
21 levels of carbonyls in EC vapor.
- 22 • **Methods:** Twelve carbonyl compounds were measured in vapors  
23 from 10 commercially available nicotine solutions and from three  
24 control solutions composed of pure glycerin, pure propylene  
25 glycol, or a mixture of both solvents (50:50). EC battery output  
26 voltage was gradually modified from 3.2 to 4.8 V. Carbonyl  
27 compounds were determined using HPLC/DAD method.

- 1       • **Results:** Formaldehyde and acetaldehyde were found in 8 of 13  
2       samples. The amounts of formaldehyde and acetaldehyde in  
3       vapors from lower voltage EC were on average 13- and 807-fold  
4       lower than in tobacco smoke, respectively. The highest levels of  
5       carbonyls were observed in vapors generated from PG-based  
6       solutions. Increasing voltage from 3.2 to 4.8 V resulted in 4 to  
7       over 200 times increase in formaldehyde, acetaldehyde, and  
8       acetone levels. The levels of formaldehyde in vapors from high-  
9       voltage device were in the range of levels reported in tobacco  
10      smoke.
- 11      • **Conclusions:** Vapors from EC contain toxic and carcinogenic  
12      carbonyl compounds. Both solvent and battery output voltage  
13      significantly affect levels of carbonyl compounds in EC vapors.  
14      High-voltage EC may expose users to high levels of carbonyl  
15      compounds.

16       80. A 2014 study also noted the dangers of e-cigarettes and the formation  
17      of formaldehyde. Published in Archives of Toxicology, this study found that e-  
18      cigarette vapor contained “similar levels of formaldehyde . . . compared to  
19      conventional cigarettes.”<sup>28</sup>

20       81. On January 28, 2015, the California Department of Public Health  
21      issued a Health Advisory summarizing the public health risks associated with  
22      electronic cigarettes and making recommendations for health care professionals.  
23      Under “Toxicity of E-cigarettes and Exposure to Emissions” the advisory states, in  
24      part:

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<sup>28</sup> Christoph Hutzler et al., *Chemical hazards present in liquids and vapors of electronic cigarettes*, Arch Toxicol 88:1295-1308 (June 11, 2014).

- 1           • **The heated e-liquid forms an aerosol that contains high**  
2           **concentrations of ultrafine particles that are inhaled and**  
3           **become trapped in the lungs.** Chemicals in the aerosol are  
4           absorbed through the blood stream and delivered directly to the  
5           brain and all body organs. [Footnote omitted.]
- 6           • While several studies found lower levels of carcinogens in the  
7           e-cigarette aerosol compared to smoke emitted by traditional  
8           cigarettes, **both the mainstream and secondhand e-cigarette**  
9           **aerosol have been found to contain at least ten chemicals**  
10          **that are on California’ Proposition 65 list of chemicals**  
11          **known to cause cancer, birth defects or other reproductive**  
12          **harm,** including acetaldehyde, benzene, cadmium,  
13          formaldehyde, isoprene, lead, nickel, nicotine, n-  
14          nitrosonornicotine, and toluene. [Emphasis added.]
- 15          • E-cigarette emissions are also a health concern for those  
16          exposed to secondhand aerosol. Although not as dangerous as  
17          secondhand smoke from combustible tobacco products, people  
18          exposed to e-cigarette aerosol absorb nicotine at levels  
19          comparable to people exposed to secondhand smoke. **E-**  
20          **cigarette emissions also contain volatile organic compounds**  
21          **(VOCs) and fine/ultrafine particles. These ultrafine**  
22          **particles can travel deep into the lungs where they get**  
23          **trapped and may lead to tissue inflammation.** [Emphasis  
24          added.] [Footnote omitted.]

25           82. The advisory also notes that “[p]reliminary studies show that using a  
26           nicotine-containing e-cigarette for just five minutes causes similar lung irritation,  
27           inflammation and effect on blood vessels as smoking a traditional cigarette, which  
28           may increase the risk of a heart attack.” With respect to cessation claims, the

1 advisory explains that “[t]here is no scientific evidence that e-cigarettes help  
2 smokers to successfully quit traditional cigarettes or that they reduce consumption  
3 of traditional cigarettes.” In fact, the advisory points out that the contrary is true:

4 One study found that 89 percent of e-cigarette users are still using  
5 [regular cigarettes] one year later and another study found that e-  
6 cigarette users are a third less likely to quit cigarettes. These studies  
7 suggest that e-cigarettes are effectively inhibiting people from  
8 successfully kicking their nicotine addiction. In addition, dual use of  
9 cigarettes and e-cigarettes is continuing to rise, which may diminish  
10 any potential benefits of cutting back on traditional cigarettes.  
11 Continuing to smoke traditional cigarettes, while also using e-  
12 cigarettes, does not reduce the cardiovascular health risks. [Footnotes  
13 omitted.]

14 83. In the recommendations to health care providers section, the advisory  
15 recommends that health care professionals “[a]dvice and warn e-cigarette users  
16 about toxicity of these products to themselves and those subjected to secondhand  
17 emissions.”

18 84. In January of 2015, a study demonstrated that e-cigarettes produce  
19 formaldehyde, which is present in the aerosol inhaled by users.<sup>29</sup> The study  
20 explained that “[f]ormaldehyde is a known degradation product of propylene glycol  
21 that reacts with propylene glycol and glycerol during vaporization to produce  
22 hemiacetals [ ].” The study found “more than 2% of the total solvent molecules  
23 have converted to formaldehyde-releasing agents, reaching concentrations higher  
24 than concentrations of nicotine. This happens when propylene glycol and glycerol  
25 are heated in the presence of oxygen to temperatures reached by commercially

26 \_\_\_\_\_  
27 <sup>29</sup> R. Paul Jensen, et al., *Hidden Formaldehyde in E-Cigarette Aerosols*, New  
28 England Journal of Medicine, 372:392-394 (Jan. 22, 2015).

1 available e-cigarettes operating at high voltage.” The study notes that  
2 “formaldehyde is an International Agency for Research on Cancer group 1  
3 carcinogen.”

4 85. A 2015 study conducted on mice published in the Journal of the Public  
5 Library of Science found that nicotine could also be delivered to humans through  
6 second hand smoke, that inhalation of nicotine through e-cigarettes caused increases  
7 in cotinine levels in the blood similar to levels caused by tobacco smoke, and that  
8 the e-cigarette exposure caused an influx “in macrophages ... similar to the  
9 inflammatory response after exposure to cigarette smoke.”<sup>30</sup>

10 86. Recently, a 2015-published study conducted by the Rochester Medical  
11 Center and the Rochester Institute of Technology specifically examined the health  
12 effects of BLU E-Cigarettes and one other e-cigarette brand on mice and concluded  
13 that “ENDS may be harmful and injurious by chronic consumption” and the “data  
14 clearly demonstrate[s] the lung toxicity and hazards of exposure to ENDS/e-  
15 cigarettes.”<sup>31</sup> Specifically, the authors found that:

- 16 • “[i]nhalation of nicotine [from e-cigarettes] is sufficient to  
17 increase cotinine levels in the blood which has been associated  
18 with tobacco smoke induced emphysema in mice,”
- 19 • e-liquids can mediate effects on lung cell morphology and  
20 affect viability,

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21  
22 <sup>30</sup> Sussan TE, *et al.* (2015) “Exposure to Electronic Cigarettes Impairs Pulmonary  
23 Anti-Bacterial and Anti-Viral Defenses in a Mouse Model,” PLoS ONE 10(2):  
24 e0116861, available at  
25 <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0116861#pone.0116861.ref018>.

26 <sup>31</sup> Lerner A.A, *et al.*, *Vapors Produced by Electronic Cigarettes and E-Juices with*  
27 *Flavorings Induce Toxicity, Oxidate Stress, and Inflammatory Response in Lung*  
28 *Epithelial Cells and in Mouse Lung*, PLoS ONE, Feb. 6, 2015, at 23.

- 1 • e-cig aerosols can modulate levels of oxidative stress and
- 2 inflammation markets in both lung cells and mouse lungs, and
- 3 • e-cig aerosols affect in vivo in lung glutathione redox
- 4 physiology implicating oxidative stress.

5 87. On May 15, 2015, the American Physiological Society published a  
6 study,<sup>32</sup> finding that the “results suggest that soluble components of e-Cig, including  
7 nicotine causing dose-dependent loss of lung endothelial barrier function, associated  
8 with oxidative stress and brisk inflammation.” The study showed that “nicotine and  
9 e-cig solutions or vapor condensates cause dose-dependent cell injury manifested by  
10 decreased barrier function and decreased cell proliferation *via* specific signaling  
11 pathways.” *Id.*

12 88. Recent independent testing of Defendants’ BLU E-Cigarettes revealed  
13 what Defendants had already known: the presence of significant amounts of  
14 formaldehyde in the aerosol produced by BLUs. Center for Environmental Health,  
15 *A Smoking Gun, Cancer-causing chemicals in e-cigarettes* (2015),  
16 [http://www.ceh.org/wp-content/uploads/CEH-2015-report\\_A-Smoking-Gun-](http://www.ceh.org/wp-content/uploads/CEH-2015-report_A-Smoking-Gun-Cancer-Causing-Chemicals-in-E-Cigarettes.pdf)  
17 [Cancer-Causing-Chemicals-in-E-Cigarettes.pdf](http://www.ceh.org/wp-content/uploads/CEH-2015-report_A-Smoking-Gun-Cancer-Causing-Chemicals-in-E-Cigarettes.pdf).

18 89. Because formaldehyde is present in the aerosol produced by BLUs,  
19 users of such products are exposed to formaldehyde by inhaling and/or ingesting the  
20 aerosol produced by the products, which is how the BLUs are ordinarily and  
21 intended to be used.

22 90. As of May 27, 2015, researchers were still concluding that “[o]verall,  
23 the limited toxicology data on e-cigarettes in the public domain is insufficient to  
24

25  
26  
27 <sup>32</sup> *Endothelial disruptive pro-inflammatory effects of nicotine and e-cigarette vapor*  
28 *exposures*, Am. J. Physiol. Lung Cell Mol. Physiol. (May 15, 2015).

1 allow a thorough toxicological evaluation of this new type of tobacco product  
2 [electronic cigarettes].”<sup>33</sup>

3 91. While some of the adverse health effects and harmful exposures  
4 resulting from the use of BLU E-Cigarettes are known to a handful of researchers,  
5 such information is not available or known to ordinary consumers. Defendants, on  
6 the other hand, were aware based on studies available to them that were performed  
7 as early as 2009-2010 as described above that BLU E-Cigarettes can cause  
8 dangerous respiratory issues and emit aerosol that contains harmful carcinogens, but  
9 failed to disclose those material facts to consumers because they knew if those facts  
10 were disclosed, consumers would either not buy their product or not pay the retail  
11 price charged by Defendants. Instead, Defendants made partial misrepresentations  
12 about the health effects related to the use of their products, including that  
13 Defendants warned consumers about the health effects related to nicotine, but not  
14 about the other dangers and harmful effects related to the use of their products, and  
15 disclosed the ingredients without disclosing the hidden ingredients caused by the  
16 heating of those ingredients or other harmful effects. Therefore, Defendants have  
17 fraudulently misled and deceived Plaintiffs and members of the Classes by actively  
18 concealing material facts and making fraudulent partial misrepresentations and  
19 omissions.

20 **D. Defendants’ Packaging Contains Material Omissions and**  
21 **Fraudulent Partial Misrepresentations**

22 92. During the Class Period, the packaging for BLU products, through  
23 warnings and labelling fraught with material omissions and fraudulent partial  
24 misrepresentations, conveys the impression that the product contains no meaningful  
25 health risks other than possibly those that are a direct result of nicotine. The

26 \_\_\_\_\_  
27 <sup>33</sup> Michael S. Orr, *Electronic cigarettes in the USA: a summary of available*  
28 *toxicology data and suggestions for the future*, Tob. Control (May 27, 2015).

1 warning on BLUs' packaging only states that:

2           blu eCigs® electronic cigarettes are not a smoking cessation  
3           product and have not been evaluated by the Food and Drug  
4           Administration, nor are they intended to treat, prevent or cure  
5           any disease or condition. For their protection, please keep out  
6           of the reach of children and pets.

7           **CALIFORNIA PROPOSITION 65**

8           **Warning:** This product contains nicotine, a chemical known to  
9           the state of California to cause birth defects or other  
10          reproductive harm.

11          93. During the Class Period, packages for BLUs contained the same or  
12          substantively similar warnings.

13          94. Defendants utilized very small print on the back of the packaging  
14          which made it difficult for many people to read. While Defendants did include  
15          some ingredients contained in BLUs, they did not disclose all material risks relating  
16          to the hidden ingredients in BLUs caused by heating those ingredients, which  
17          creates formaldehyde and other toxins, as described in detail above. Defendants  
18          thus denied consumers at the point of sale the opportunity to decide for themselves  
19          whether the product was something they were willing to risk inhaling.

20          95. By warning of certain risks relating to nicotine, this packaging implied  
21          that those are the only significant health-related risks related to BLU E-Cigarettes,  
22          as described above. This is deceptive and misleading, as the package omitted  
23          reference to the other carcinogens, including formaldehyde and other toxins and  
24          impurities found in BLU E-Cigarettes.

25          96. The package also did not reference the difference in inhalation behavior  
26          between vaping and traditional smoking that may cause additional problems for  
27          persons who use e-cigarettes, including BLU E-Cigarettes, as described above.

28          97. On their official website, Defendants promise consumers to remain



1 transparent, ethical, and honest in all of their business, sales, and marketing tactics.  
2 However, incomplete and deceptive labels and warnings contradict this notion  
3 because Defendants knowingly listed the ingredients and a nicotine warning but left  
4 out key facts about their products that can pose significant threats to human health  
5 as described hereinabove.

6 98. As further evidence of Defendants’ attempts to actively conceal the  
7 risks of their BLU E-Cigarettes, Defendants’ website tells consumers to ignore  
8 negative studies about E-Cigarettes as nothing more than media hype. BLU’s  
9 founder, Jason Healy, states<sup>34</sup>:

10 A lot of people get misinformed. Readers “share” or “like” a story,  
11 inaccuracies spread like wildfire, and correcting the information  
12 becomes nearly impossible. Even after people find out the truth, the  
13 damage has already been done. Imagine what happens in the minds of  
14 the public when news reports, on an almost daily basis, have headlines  
15 like the following:

- 16 • “9 Terribly Disturbing Things About Electronic Cigarettes”
- 17 • “Electronic Cigarette Safety Clouded”
- 18 • “Fire Marshal: E-Cigarette Batteries Cause Fires”
- 19 • “E-Cigs Carry Harmful Side Effects For Smokers,  
20 Nonsmokers”
- 21 • “Dangers Of E-Cigarettes, What’s Really In The Vapor?”

22 You get the idea ... sensationalism sells. You capture attention with a  
23 “shock and awe” headline. Some of the headlines above are from  
24 major media outlets, and others are from local news affiliates and  
25

26 \_\_\_\_\_  
27 <sup>34</sup> <http://www.blucigs.com/media-e-cigarettes/>

1 blogs. But they are all blatantly anti-electronic cigarette, and the  
2 subject matter of the articles is often seriously flawed.

3 I say this because each article contains much speculation passed on as  
4 fact, misinformation falsely construed as science and logical fallacies  
5 presented as sound argument. The result is gross miseducation of the  
6 public, which is relying on these articles to contain accurate  
7 information.

8 I am sure many of you are aware of other scientific studies that treat  
9 electronic cigarettes in a more even-handed manner. Unfortunately,  
10 these studies don't generate the same attention-grabbing headlines as  
11 those I mention above. The recurrent major messages and themes are  
12 far more anti-electronic cigarette. So again, the general message the  
13 public is given about e-cigarettes is, in short, that they're "bad."

14 99. For the reasons set forth *supra*, the material facts actively concealed by  
15 Defendants and misleading partial representations contained in BLUs packaging  
16 constitute an illegal and fraudulent pattern and practice by Defendants to deceive  
17 consumers into purchasing their BLU E-Cigarettes.

18 **V. CLASS DEFINITIONS AND ALLEGATIONS**

19 100. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and  
20 (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure. Plaintiffs bring this  
21 action on behalf of themselves and all members of the following classes (the  
22 "Classes") comprised of:

- 23 a. **All persons, exclusive of Defendants and their employees,**  
24 **who purchased in or from California one or more BLU**  
25 **E-Cigarettes sold by Defendants during the Class Period**  
26 **(the "California Class").**

1           **b. All persons, exclusive of Defendants and their employees,**  
2           **who purchased in or from New York one or more BLU**  
3           **E-Cigarettes sold by Defendants during the Class Period**  
4           **(the “New York Class”)**

5           **c. All persons, exclusive of Defendants and their employees,**  
6           **who purchased in or from Illinois one or more BLU E-**  
7           **Cigarettes sold by Defendants during the Class Period**  
8           **(the “Illinois Class”).**

9           101. Plaintiffs reserve the right to modify or amend the definitions of the  
10 Classes after they have had an opportunity to conduct discovery.

11           102. The Class Period for the California Class is from April 22, 2011 until  
12 the date of notice.

13           103. The Class Period for the New York is from October 2, 2012 until the  
14 date of notice.

15           104. The Class Period for the Illinois Class based on fraudulent concealment  
16 is from October 2, 2010 until the date of notice, and the Class Period for Illinois  
17 Class based on violation of the ICFA is October 2, 2012.

18           105. *Numerosity. Rule 23(a)(1).* The members of the Classes are so  
19 numerous that their individual joinder is impracticable. Plaintiffs are informed and  
20 believe that the proposed Classes contain at least thousands of purchasers of the  
21 BLUs who have been damaged by Defendants’ conduct as alleged herein. The  
22 number of members of the proposed Classes is unknown to Plaintiffs but can be  
23 discerned from the records maintained by Defendants and retailers.

24           106. *Existence of Common Questions of Law and Fact. Rule 23(a)(2).*  
25 This action involves common questions of law and fact, which include, but are not  
26 limited to, the following:

27           a. Whether Defendants’ labeling for BLUs discussed herein is true, or is  
28 reasonably likely to deceive, given the omissions of material fact and

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- partial misrepresentations described above;
- b. Whether Defendants’ warnings on the packages of BLU E-Cigarettes are misleading or are reasonably likely to deceive, given the omissions of material fact and partial misrepresentations described above;
- c. Whether Defendants’ conduct described herein constitutes a deceptive act or practice in violation of the CLRA (California Class);
- d. Whether Defendants’ conduct described herein constitutes an unlawful, unfair, and/or fraudulent business practice in violation of the UCL (California Class);
- e. Whether Defendants’ conduct described herein constitutes unfair, deceptive, untrue or misleading advertising in violation of the UCL (California Class);
- f. Whether Defendants’ conduct described herein constitutes unfair, deceptive, untrue or misleading advertising in violation of the FAL (California Class);
- g. Whether Defendants’ conduct described herein constitutes a violation of California’s Proposition 65 (California Class);
- h. Whether Defendants’ conduct described herein constitutes unfair or deceptive acts or practices in violation of the GBL (New York Class);
- i. Whether Defendants’ conduct described herein constitutes fraudulent concealment in violation of Illinois law (Illinois Class);
- j. Whether Defendants’ conduct described herein constitutes a violation of the ICFA (Illinois Class);
- k. Whether Plaintiffs and the other members of the Classes are entitled to damages; and
- l. Whether Plaintiffs and the Classes are entitled to injunctive relief, restitution or other equitable relief and/or other relief as may be proper.

1           107. **Typicality. Rule 23(a)(3).** All members of the Classes have been  
2 subject to and affected by the same conduct and omissions by Defendants. The  
3 claims alleged herein are based on the same violations by Defendants that harmed  
4 Plaintiffs and members of the Classes. By purchasing BLUs during the relevant  
5 time period, all members of the Classes were subjected to the same wrongful  
6 conduct. Plaintiffs' claims are typical of the Classes' claims and do not conflict  
7 with the interests of any other members of the Classes. Defendants' unlawful,  
8 unfair, deceptive, and/or fraudulent actions concern the same business practices  
9 described herein irrespective of where they occurred or were experienced.

10           108. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect  
11 the interests of the members of the Classes. Plaintiffs have retained counsel  
12 experienced in complex consumer class action litigation, and Plaintiffs intend to  
13 prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests  
14 to those of the Classes.

15           109. **Predominance and Superiority of Class Action. Rule 23(b)(3).**  
16 Questions of law or fact common to the Classes predominate over any questions  
17 affecting only individual members and a class action is superior to other methods for  
18 the fast and efficient adjudication of this controversy, for at least the following  
19 reasons:

- 20           a. Absent a class action, members of the Classes as a practical matter will  
21 be unable to obtain redress, Defendants' violations of their legal  
22 obligations will continue without remedy, additional consumers will be  
23 harmed, and Defendants will continue to retain their ill-gotten gains;
- 24           b. It would be a substantial hardship for most individual members of the  
25 Classes if they were forced to prosecute individual actions;
- 26           c. When the liability of Defendants has been adjudicated, the Court will  
27 be able to determine the claims of all members of the Classes;
- 28

- 1 d. A class action will permit an orderly and expeditious administration of
- 2 each Class member’s claims and foster economies of time, effort, and
- 3 expense;
- 4 e. A class action regarding the issues in this case does not create any
- 5 problems of manageability; and
- 6 f. Defendants have acted on grounds generally applicable to the members
- 7 of the California, New York and Illinois Classes, making class-wide
- 8 monetary relief appropriate.

9 110. Notice to members of the putative Classes may be accomplished  
 10 through publication, signs or placards at the point-of-sale, or other forms of  
 11 distribution, if necessary, if the Classes are certified or if the Court otherwise  
 12 determines class notice is required. Plaintiffs will, if notice is so required, confer  
 13 with Defendants and seek to present the Court with a stipulation and proposed order  
 14 on the details of a class notice program.

15 **VI. CAUSES OF ACTION**

16 **COUNT I**

17 **Injunctive Relief And Damages For Violations of The Consumers Legal**  
 18 **Remedies Act**  
 19 **(Cal. Civil Code §§ 1750, *et seq.*)**  
 20 **(On Behalf of the California Plaintiffs and the California Class and Against**  
 21 **Defendants)**

22 111. The California Plaintiffs repeat and reallege the allegations contained in  
 23 the paragraphs above, as if fully set forth herein.

24 112. The relevant period for this cause of action is four years from the date  
 25 of filing of this Complaint until judgment is entered.

26 113. This cause of action is brought pursuant to the Consumers Legal  
 27 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA” or the “Act”), which  
 28 provides that enumerated listed “unfair methods of competition and unfair or  
 deceptive acts or practices undertaken by any person in a transaction intended to

1 result or which results in the sale or lease of goods or services to any consumer are  
2 unlawful,” CLRA § 1770, and that “[a]ny consumer who suffers any damage as a  
3 result of the use or employment by any person of a method, act, or practice declared  
4 to be unlawful by Section 1770 may bring an action against such person to recover  
5 or obtain,” various forms of relief, including injunction and damages. Cal. Civ.  
6 Code § 1780.

7 114. This cause of action seeks injunctive relief and now also monetary  
8 damages. On April 16, 2015, Plaintiff Diek sent Defendants a CLRA notice letter  
9 providing the notice required by California Civil Code § 1782(a). Plaintiff Diek  
10 sent the letter via certified mail, return receipt requested, to the location in Lake  
11 Forest where Plaintiff Diek purchased some of his BLUs, as well as to Defendants’  
12 principal place of business in Greensboro, NC, and to the Secretary of State of  
13 California, advising Defendants that they are in violation of the CLRA and must  
14 correct, replace or otherwise rectify the goods and/or services alleged to be in  
15 violation of § 1770. Defendants were further advised that in the event the relief  
16 requested has not been provided within 30 days, Plaintiff Diek would amend his  
17 Complaint to include a request for monetary damages pursuant to the CLRA.  
18 Similarly, Plaintiff Whitney sent a notice of his intent to seek damages under the  
19 CLRA on September 2, 2015. Defendants have not corrected, replaced, or  
20 otherwise rectified the goods and/or services alleged in either the CLRA letters or  
21 this Complaint within the statutorily proscribed 30-day period. Therefore,  
22 California Plaintiffs seek both injunctive relief and monetary damages against  
23 Defendants pursuant to the CLRA, California Civil Code §§ 1781 and 1782.

24 115. California Plaintiffs were deceived by Defendants’ unlawful practices  
25 as described more fully above by actively concealing from consumers that BLU E-  
26 Cigarettes emit aerosol with known carcinogens, toxins, and other potentially  
27 harmful impurities (such as, among other things, formaldehyde), California  
28 Plaintiffs were also deceived by Defendants’ omissions and fraudulent partial

1 representations relating to harm associated with the use of nicotine, and suppression  
2 of the other dangers and harm associated with the use of BLU E-Cigarettes. Also  
3 undisclosed was the lack of additional research which such studies have determined  
4 is required to assess the full potential danger of electronic cigarettes, especially in  
5 long term users, and the serious dangerous respiratory issues associated with using  
6 BLU E-Cigarettes.

7 116. Defendants’ actions, omissions and conduct have violated, and  
8 continue to violate the CLRA, because they extend to transactions that are intended  
9 to result, or which have resulted, in the sale of goods to consumers.

10 117. Defendants marketed, sold and distributed BLUs in California during  
11 the relevant period.

12 118. California Plaintiffs and members of the California Class are  
13 “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

14 119. Defendants’ BLUs were and are “good[s]” within the meaning of Cal.  
15 Civ. Code §§ 1761(a) & (b).

16 120. Defendants violated the CLRA by engaging in at least the following  
17 practices proscribed by California Civil Code § 1770(a) in transactions with the  
18 California Plaintiffs and the California Class which were intended to result, and did  
19 result, in the sale of BLUs:

20 (5) Representing that [BLUs have] . . . approval, characteristics . . .  
21 uses [or] benefits . . . which [they do] not have . . . .

22 \*\*\*

23 (7) Representing that [BLUs are] of a particular standard, quality or  
24 grade . . . if [they are] of another.

25 \*\*\*

26 (9) Advertising goods . . . with intent not to sell them as advertised.

27 121. As such, Defendants’ conduct constitutes unfair methods of  
28 competition and unfair or fraudulent acts or practices because they have and



1 continue to omit material facts which they knew, or should have known, would have  
2 a material impact on a consumers' purchasing decision.

3 122. The omitted information would have been material to a reasonable  
4 consumer in his or her decision as to whether to purchase BLUs and/or purchase the  
5 BLUs at the price at which they were offered.

6 123. Defendants had a duty to disclose this information to California  
7 Plaintiffs and the members of the California Class for several reasons. First,  
8 Defendants have a statutory obligation under Proposition 65 to provide clear and  
9 reasonable warnings regarding the carcinogens contained in their products. Second,  
10 Defendants were aware at least as early as 2009, based on published studies  
11 referenced *supra*, that their BLU E-Cigarettes emitted aerosol with known  
12 carcinogens, toxins, and other impurities, while consumers were not reasonably in a  
13 position to be aware of such studies. Despite this knowledge, Defendants actively  
14 concealed these material facts from the California Plaintiffs and the California  
15 Class. Third, while Defendants made certain specific representation about the risks  
16 associated with nicotine, that representation is a misleading half-truth because it  
17 implies that is the only risk relating to the product, when, in fact, it is not.  
18 Moreover, disclosure of the ingredients without disclosing the hidden ingredients  
19 and harmful effects of heating such ingredients is misleading and deceptive.

20 124. Defendants provided the California Plaintiffs and the other California  
21 Class members with BLUs that did not match the quality portrayed by their  
22 marketing.

23 125. As a result, the California Plaintiffs and members of the California  
24 Class have suffered irreparable harm. The California Plaintiffs and the other  
25 California Class members' injuries were proximately caused by Defendants'  
26 conduct as alleged herein. The California Plaintiffs, individually and on behalf of all  
27 other California Class members, seek entry of an order enjoining Defendants from  
28 continuing to employ the unlawful methods, acts and practices alleged herein

1 pursuant to California Civil Code section 1780(a)(2), awarding exemplary and  
2 punitive damages against Defendants pursuant to California Civil Code §§  
3 1780(a)(1) and (a)(4), and ordering the payment of damages, costs and attorneys’  
4 fees, and such other relief as deemed appropriate and proper by the Court under  
5 California Civil Code section 1780(a)(2). If Defendants are not restrained from  
6 engaging in these practices in the future, the California Plaintiffs and the California  
7 Class will continue to suffer harm.

8 126. Pursuant to section 1780(d) of the CLRA, the California Plaintiffs  
9 previously filed affidavits showing that this action has been commenced in the  
10 proper forum.

11 **COUNT II**  
12 **Injunctive And Equitable Relief For Violations of Unfair Competition Law**  
13 **(Cal. Business & Professions Code §§ 17200, *et seq.*)**  
14 **(On Behalf of the California Plaintiffs and the California Class and Against**  
15 **Defendants)**

16 127. The California Plaintiffs repeat and reallege the allegations contained in  
17 the paragraphs above, as if fully set forth herein.

18 128. The relevant period for this cause of action is four years from the filing  
19 of this Complaint until judgment is entered.

20 129. The Unfair Competition Law, Cal. Business & Professions Code §  
21 17200, *et seq.* (“UCL”), prohibits any “unlawful,” “unfair,” or fraudulent business  
22 act or practice and any false or misleading advertising.

23 130. In the course of conducting business, Defendants committed unlawful  
24 business practices by, *inter alia*, actively concealing and omitting material facts, as  
25 set forth more fully herein, and violating Cal. Civil Code § 1750, *et seq.* and making  
26 fraudulent partial misrepresentations.

27 131. The California Plaintiffs, individually and on behalf of the California  
28 Class members, reserve the right to allege other violations of law which constitute  
other unlawful business acts or practices. Such conduct is ongoing and continues to

1 this date.

2 132. Defendants’ actions constitute “unfair” business acts or practices  
3 because, as alleged above, *inter alia*, Defendants have engaged and continue to  
4 engage in fraudulent partial misrepresentations and actively concealment of material  
5 facts regarding their BLUs, and thereby offended an established public policy, and  
6 engaged in immoral, unethical, oppressive, and unscrupulous activities that are  
7 substantially injurious to consumers. This conduct constitutes violations of the  
8 unfair prong of Business & Professions Code § 17200, *et seq.*

9 133. Further, Defendants’ failure to warn of the carcinogenic exposures  
10 resulting from use of the BLUs is contrary to California law and policy, which  
11 obligates Defendants to provide such information to consumers.

12 134. Business & Professions Code § 17200, *et seq.*, also prohibits any  
13 “fraudulent business act or practice.”

14 135. Defendants’ actions, omissions, and partial misrepresentations, as  
15 alleged herein, also constitute “fraudulent” business practices in violation of the  
16 UCL because, among other things, they are false, misleading, and/or likely to  
17 deceive reasonable consumers within the meaning of Business & Professions Code  
18 § 17200, *et seq.*

19 136. Defendants’ failure to disclose that the BLU E-Cigarettes expose users  
20 to formaldehyde violates the UCL’s proscription against engaging in fraudulent  
21 conduct.

22 137. As more fully described above, Defendants’ failure to warn the  
23 California Plaintiffs and the California Class members that use of the BLU E-  
24 Cigarettes would expose them to formaldehyde a hidden ingredient formed through  
25 heating as the product is used, which is known to cause cancer, as well as other  
26 toxins, is likely to deceive reasonable consumers. Indeed, the California Plaintiffs  
27 and the other members of the California Class were unquestionably deceived, as  
28 Defendants’ packaging and labeling of the BLU E-Cigarettes misrepresent and omit

1 the true facts about BLU E-Cigarettes, as described hereinabove, including listing  
2 ingredients but not including the hidden ingredients such as formaldehyde that are  
3 created when the product is heated during use, and falsely representing that the only  
4 negative health effects related to the use of BLU E-Cigarettes are certain ones  
5 caused by nicotine. This includes the omissions and partial representations  
6 described in this complaint regarding serious respiratory issues. Also undisclosed  
7 was the lack of additional research which such studies have determined is required  
8 to assess the full potential danger of electronic cigarettes, especially in long term  
9 users. These acts constitute fraudulent and unfair business practices.

10 138. There were reasonably available alternatives to further Defendants'  
11 legitimate business interests, other than the conduct described herein.

12 139. As a result of Defendants' fraudulent partial misrepresentations and  
13 omissions as detailed herein, the California Plaintiffs and other members of the  
14 California Class have in fact been harmed as described above. If Defendants had  
15 disclosed the information discussed above about BLUs and otherwise been truthful  
16 about their safety, the California Plaintiffs would not have purchased, or would have  
17 paid less for, Defendants' products. Defendants were also able to charge more than  
18 what their BLUs would have been worth had they disclosed the truth about them.

19 140. As a result of Defendants' unlawful, unfair, and fraudulent practices,  
20 the California Plaintiffs and the other California Class members have suffered injury  
21 in fact and lost money. Had the California Plaintiffs and the California Class  
22 members known the true nature of the BLU E-Cigarettes, they would not have  
23 purchased them or they would have paid less for them.

24 141. As a result of their deception, Defendants have been able to reap unjust  
25 revenue and profit in violation of the UCL.

26 142. Unless restrained and enjoined, Defendants will continue to engage in  
27 the above-described conduct. Accordingly, injunctive relief is appropriate for the  
28 California Plaintiffs and the California Class.

1 143. As a result of Defendants' conduct in violation of the UCL, the  
2 California Plaintiffs and members of the California Class have been injured as  
3 alleged herein in amounts to be proven at trial because they purchased BLUs  
4 without full disclosure of the material facts discussed above.

5 144. As a result, the California Plaintiffs, individually, and on behalf of the  
6 California Class, and the general public, seek restitution and disgorgement of all  
7 money obtained from the California Plaintiffs and the members of the California  
8 Class collected by Defendants as a result of unlawful, unfair, and/or fraudulent  
9 conduct, and seek injunctive relief, and all other relief this Court deems appropriate,  
10 consistent with Business & Professions Code § 17203.

11 **COUNT III**

12 **Injunctive Relief And Damages For Violation of False Advertising Law for**  
13 **Deceptive, False And Misleading Advertising**  
14 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**  
15 **(On Behalf of the California Plaintiffs and the California Class and Against**  
16 **Defendants)**

17 145. The California Plaintiffs repeat and reallege the allegations contained in  
18 the paragraphs above, as if fully set forth herein.

19 146. The relevant period for this cause of action is four years from the filing  
20 of this Complaint until judgment is entered.

21 147. Bus. & Prof. Code § 17500 states:

22 It is unlawful for any person, firm, corporation or association, or any  
23 employee thereof with intent directly or indirectly to dispose of real or  
24 personal property or to perform services, professional or otherwise, or  
25 anything of any nature whatsoever or to induce the public to enter,  
26 into any obligation relating thereto, to make or disseminate or cause to  
27 be made or disseminated before the public in this state, or to make or  
28 disseminate or cause to be made or disseminated from this state before  
the public in any state, in any newspaper or other publication, or any

1 advertising device, or by public outcry or proclamation, or in any  
2 other manner or means whatever, including over the Internet, any  
3 statement, concerning such real or personal property or services,  
4 professional or otherwise, or concerning any circumstance or matter  
5 of fact connected with the proposed performance or disposition  
6 thereof, *which is untrue or misleading, and which is known, or which*  
7 *by the exercise of reasonable care should be known, to be untrue or*  
8 *misleading, or for any such person, firm, or corporation to so make or*  
9 *disseminated or cause to be so made or disseminated any such*  
10 *statement as part of a plan or scheme with the intent not to sell such*  
11 *personal property or services, professional or otherwise, so advertised*  
12 at the price stated therein, or as so advertised.

13 148. To establish a violation of § 17500, the California Plaintiffs must show  
14 the following elements: (1) Defendants intended to dispose of personal property; and  
15 (2) Defendants publicly disseminated advertising which: (a) contained a statement  
16 which was untrue or misleading, and (b) which Defendants knew, or in the exercise  
17 of reasonable care should have known, was untrue or misleading, and (3) which  
18 concerned the personal property.

19 149. Defendants disseminated through their product labeling and packaging  
20 that the only negative health affects related to the use of BLU E-Cigarettes is  
21 nicotine. Defendants, however, failed to disclose all of the other material negative  
22 facts related to the use of BLU E-Cigarettes (such as the inhalation of formaldehyde  
23 and other carcinogens and toxins known to be emitted in the aerosol of BLUs).  
24 Defendants also failed to disclose the serious respiratory issues associated with using  
25 BLU E-Cigarettes. Moreover, Defendants listed ingredients on the package but  
26 failure to disclose to users the hidden ingredients, such as formaldehyde, caused by  
27 heating of certain of the listed ingredients. Also undisclosed was the lack of  
28 additional research which such studies have determined is required to assess the full

1 potential danger of electronic cigarettes, especially in long term users. Clearly, the  
2 disclosure of these other dangers and adverse health effects would have influenced a  
3 consumer's decision to use or buy their product. Defendants' omissions and  
4 fraudulent partial misrepresentation(s) reasonably deceived the California Plaintiffs  
5 and the California Class to purchase Defendants' BLUs.

6 150. Defendants knew their labelling and packaging of BLU E-Cigarettes  
7 were misleading because of studies available to them as described herein above  
8 which revealed e-cigarettes emitted aerosol with known carcinogens and toxins and  
9 presented other respiratory dangers. Defendants owe the California Plaintiffs and  
10 the California Class a duty to exercise reasonable care to prevent the public  
11 dissemination of misleading and fraudulent misrepresentations contained on their  
12 packaging and labelling. Had Defendants exercised reasonable care, they could have  
13 prevented the public disclosure of false and misleading misrepresentations contained  
14 in their labelling and package of their BLUs, and therefore could have accurately  
15 and fully informed the California Plaintiffs and the California Class of their product,  
16 so they could make an informed decision on whether to use or purchase BLUs.  
17 Because Defendants publicly disseminated fraudulent and misleading  
18 representations in the labelling and packaging of their products, Defendants violated  
19 § 17500.

20 151. Bus & Prof. Code § 17535 authorizes courts to enter injunctive relief  
21 against deceptive advertising and to award restitution:

22 Any person, corporation, firm, partnership, joint stock company, or  
23 any other association, or organization which violates or proposes to  
24 violate this chapter may be enjoined by any court of competent  
25 jurisdiction. The court may make such orders or judgments, including  
26 the appointment of a receiver, as may be necessary to prevent the use  
27 or employment by any person, corporation, firm, partnership, joint  
28 stock company, or any other association or organization of any

1 practices which violate this chapter, or which may be necessary to  
2 restore to any person in interest any money or property, real or  
3 personal, which may have been acquired by means of any practice in  
4 this chapter declared to be unlawful. Actions for injunction under this  
5 section may be prosecuted by the Attorney General or any district  
6 attorney, county counsel, city attorney, or city prosecutor in this state  
7 in the name of the people of the State of California upon their own  
8 complaint or upon the complaint of any board, officer, person,  
9 corporation or association or by any person acting for the interests of  
10 itself, its members or the general public.

11 152. The California Plaintiffs and the California Class are entitled to  
12 injunctive relief and therefore request the Court to issue an order enjoining  
13 Defendants from continuing to publicly disseminate their misleading representations  
14 in their labelling and packaging. The California Plaintiffs and the California Class  
15 are also entitled to a restitutionary award for monies deceptively acquired by  
16 Defendants through their misleading partial representations.

17 153. The injuries suffered by the California Plaintiffs and the California  
18 Class were directly and proximately caused by the unfair and deceptive acts and  
19 practices of Defendants, as more fully described herein.

20 154. The California Plaintiffs and the California Class seek a declaratory  
21 judgment and a court order enjoining the above-described wrongful acts and  
22 practices of Defendants.

23 155. Additionally, the California Plaintiffs and the California Class make  
24 claims for damages, attorneys' fees and costs.  
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**COUNT IV**

**Injunctive And Equitable Relief For Violations of Unfair Competition Law  
(Cal. Business & Professions Code §§ 17200, *et seq.* based on Violations of  
Proposition 65)**

**(On Behalf Plaintiff Whitney and the California Class and Against Defendants)**

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

157. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects, or other reproductive harm without a “clear and reasonable warning” unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent part:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . .

158. On January 1, 1988, the State of California officially listed formaldehyde as a chemical known to cause cancer. 27 Cal. Code Regs. (“C.C.R.”) § 27001(b). On January 1, 1989, one year after it was listed as a chemical known to cause cancer, formaldehyde became subject to the clear and reasonable warning requirement regarding carcinogenicity under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

159. The BLU E-Cigarettes, when used as directed, produce significant amounts of formaldehyde in the aerosol inhaled by users. Thus, the intended use of the BLU E-Cigarettes results in consumer exposures to formaldehyde.

160. Any person acting in the public interest has standing to enforce violations of Proposition 65, provided that such person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such public enforcers

1 are not diligently prosecuting the action within such time. Health & Safety Code §  
2 25249.7(d).

3 161. On September 2, 2015, Plaintiff Whitney provided a 60-Day “Notice of  
4 Violation of Proposition 65” to the California Attorney General, the District  
5 Attorneys of every county in California, the City Attorneys of every California city  
6 with a population greater than 750,000 and to Defendants. In compliance with  
7 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included  
8 the following information: (1) the name and address of each violator; (2) the statute  
9 violated; (3) the time period during which violations occurred; (4) specific  
10 descriptions of the violations, including (a) the routes of exposure to formaldehyde  
11 from the BLU E-Cigarettes, and (b) the specific type of BLU E-Cigarettes sold and  
12 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-  
13 listed chemical that is the subject of the violations described in the Notice.

14 162. Plaintiff Whitney also sent a Certificate of Merit for the Notice to the  
15 California Attorney General, the District Attorneys of every county in California,  
16 the City Attorneys of every California city with a population greater than 750,000  
17 and to the named Defendants. In compliance with Health & Safety Code §  
18 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that Plaintiffs’  
19 counsel: (1) has consulted with one or more persons with relevant and appropriate  
20 experience or expertise who reviewed facts, studies or other data regarding the  
21 exposures to formaldehyde alleged in the Notices; and (2) based on the information  
22 obtained through such consultations, believes that there is a reasonable and  
23 meritorious case for a citizen enforcement action based on the facts alleged in the  
24 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §  
25 3102, the Certificate served on the Attorney General included factual information –  
26 provided on a confidential basis – sufficient to establish the basis for the Certificate,  
27 including the identity of the person(s) consulted by Plaintiffs’ counsel and the facts,  
28 studies, or other data reviewed by such persons.

1           163. None of the public prosecutors with the authority to prosecute  
2 Proposition 65 violations has commenced and/or is diligently prosecuting a cause of  
3 action against Defendants under Health & Safety Code § 25249.5, *et seq.*, based on  
4 the claims asserted in Plaintiff Whitney’s Notice.

5           164. Under Proposition 65, an exposure is “knowing” where the party  
6 responsible for such exposure has:

7                     knowledge of the fact that a[n] . . . exposure to a  
8                     chemical listed pursuant to [Health and Safety Code  
9                     §25249.8(a)] is occurring. No knowledge that the . .  
10                    . exposure is unlawful is required.

11           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See,*  
12 *e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former  
13 22 C.C.R. Division 2, § 12201).

14           165. Throughout the relevant time period, Defendants had either actual  
15 knowledge of the fact that use of the BLU E-Cigarettes exposes users to  
16 formaldehyde, or they were reckless in not knowing. In any event, Defendants have  
17 been informed of the formaldehyde in their BLU E-Cigarettes by the 60-Day Notice  
18 of Violation and accompanying Certificate of Merit served on them by Plaintiff  
19 Whitney.

20           166. Defendants manufacture, distribute, and sell the BLU E-Cigarettes in  
21 California. The Products, when used as directed and intended, expose users to  
22 significant quantities of formaldehyde.

23           167. Proposition 65 requires that businesses such as Defendants that cause  
24 exposures to known carcinogens such as formaldehyde, must first provide a clear  
25 and reasonable warning to those exposed regarding the carcinogenic danger.

26           168. Despite the fact that Defendants expose consumers of the BLU E-  
27 Cigarettes to formaldehyde, Defendants provide no clear and reasonable warnings  
28 regarding such exposures. In fact, Defendants fail to provide any warnings

1 whatsoever about the carcinogenic hazards associated with such exposures.

2 169. Defendants' BLU E-Cigarettes expose Plaintiffs and the members of  
3 the Classes to hazardous and toxic carcinogens. The exposure to carcinogenic  
4 toxins is information that is material to a reasonable consumer.

5 170. Defendants' failure to tell consumers that they are buying BLU E-  
6 Cigarettes that will expose them to the carcinogenic toxin formaldehyde is a  
7 material omission.

8 171. Defendants knowingly fail to disclose to consumers the presence of the  
9 carcinogenic toxin formaldehyde in the BLU E-Cigarettes.

10 172. Plaintiffs and the members of the Classes do or did not know that use  
11 of the BLU E-Cigarettes would expose them to formaldehyde or any chemicals  
12 known to cause cancer.

13 173. Plaintiffs and the members of the Classes would not have purchased or  
14 paid as much for the BLU E-Cigarettes had they known the BLU E-Cigarettes  
15 would expose them to formaldehyde and had included the cancer warnings required  
16 by Proposition 65.

17 174. Defendants' material omissions are likely to deceive a reasonable  
18 consumer.

19 175. The BLU E-Cigarettes have been sold by Defendants for use in  
20 California since at least 2009.

21 176. Defendants continue to manufacture, distribute, and sell the BLU E-  
22 Cigarettes to consumers in California while knowingly failing to disclose the  
23 presence of the toxin formaldehyde in the BLU E-Cigarettes.

24 177. By committing the acts above, Defendants have violated Proposition 65  
25 by knowingly and intentionally exposing individuals in California to a chemical  
26 known to cause cancer without first giving clear and reasonable warnings to such  
27 individuals regarding the carcinogenicity of formaldehyde.

28 178. Violations of Proposition 65 constitute unlawful acts and practices

1 under the UCL.

2 **COUNT V**  
3 **Injunctive Relief And Damages For Violation of New York General Business**  
4 **Law**  
5 **(N.Y. GBL Law § 349)**  
6 **(On Behalf of The New York Plaintiff And The New York Class And Against**  
7 **Defendants)**

8 179. The New York Plaintiff repeats and realleges the allegations contained  
9 in the paragraphs above, as if fully set forth herein.

10 180. The relevant period for this cause of action is three years from the date  
11 of filing of this Complaint until judgment is entered.

12 181. This cause of action is brought pursuant to New York General Business  
13 Law § 349 (“GBL § 349”), which prohibits deceptive acts or practices in the  
14 conduct of any business, trade or commerce or in the furnishing of any service in  
15 New York State.

16 182. The conduct of Defendants alleged herein violates GBL § 349 in that  
17 Defendants engaged in the unfair acts and deceptive practices by actively concealing  
18 and failing to disclose to consumers, as alleged herein above, that BLU E-Cigarettes  
19 emit aerosol with known carcinogens, toxins, and other potentially harmful  
20 impurities and pose other respiratory dangers. Defendants stated the ingredients and  
21 a nicotine warning on their packages while failing to disclose other dangers and  
22 risks about BLU E-Cigarettes as explained more fully in this complaint (including  
23 the hidden ingredients such as formaldehyde created when the product is heated  
24 during use). Also undisclosed was the lack of additional research which such  
25 studies have determined is required to assess the full potential danger of electronic  
26 cigarettes, especially in long term users, which offend public policies and are  
27 immoral, unethical, unscrupulous and substantially injurious to consumers. Such  
28 conduct is inherently and materially deceptive and misleading in a material respect  
which was known, or by the exercise of reasonable care, should have been known,  
to be untrue, deceptive or misleading by Defendants.

1           183. The conduct of Defendants alleged herein also violates GBL § 349 in  
2 that while Defendants made certain specific representations about the risks  
3 associated with BLU E-Cigarettes, including on their packages, those  
4 representations were misleading half-truths because they implied that those are all of  
5 the material or significant risks relating to the use of the product, when, in fact, they  
6 are not.

7           184. The materially misleading conduct of Defendants alleged herein was  
8 directed at the public at large.

9           185. Defendants' acts and practices described above are likely to mislead a  
10 reasonable consumer acting reasonably under the circumstances.

11           186. Defendants have willfully and knowingly violated GBL § 349 because,  
12 in order to increase their own profits, Defendants intentionally engaged in omitting  
13 material facts regarding their BLU E-Cigarettes as discussed above and by making  
14 fraudulent partial misrepresentations.

15           187. As a result of Defendants' deceptive and misleading acts, the New  
16 York Plaintiff and the members of the New York Class have been injured because  
17 they purchased BLU E-Cigarettes without full disclosure of the material facts  
18 discussed above.

19           188. As a result of Defendants' conduct in violation of GBL § 349, the New  
20 York Plaintiff and the members of the New York Class have been injured as alleged  
21 herein in amounts to be proven at trial because if Defendants had disclosed the  
22 information discussed above about BLU E-Cigarettes and otherwise been truthful  
23 about their safety, the New York Plaintiff would not have purchased Defendants'  
24 products. Defendants were also able to charge more than what their BLU E-  
25 Cigarettes would have been worth had they disclosed the truth about them.

26           189. As a result, pursuant to GBL § 349, the New York Plaintiff and the  
27 New York Class are entitled to make claims against Defendants for actual or  
28 statutory damages to be determined at trial, but not less than 50 dollars per member

1 of the New York Class, such damages to be trebled.

2 190. Additionally, pursuant to GBL § 349, the New York Plaintiff and the  
3 New York Class make claims for attorneys' fees, costs, and injunctive relief  
4 requiring Defendants to adequately disclose the omitted information described  
5 above.

6 **COUNT VI**  
7 **Damages For Fraudulent Concealment Under Illinois Law**  
8 **(On Behalf of the Illinois Plaintiff And The Illinois Class And Against**  
9 **Defendants)**

10 191. The Illinois Plaintiff realleges and incorporates by reference the  
11 allegations contained in the paragraphs above, as if fully set forth herein.

12 192. The relevant period for this cause of action is five years from the filing  
13 of the original complaint until judgment is entered.

14 193. The Illinois Plaintiff brings this claim individually and on behalf of the  
15 Illinois Class.

16 194. As alleged herein, the Illinois Plaintiff has suffered injury in fact and  
17 lost money or property as a result of Defendants' conduct because she purchased  
18 BLU E-Cigarettes in reliance on Defendants' active concealment and omission of  
19 material facts and false and misleading partial misrepresentations, as detailed above.

20 195. Specifically, the Illinois Plaintiff relied on the warning on the packages  
21 and the ingredient list as being the full truth, and purchased BLU E-Cigarettes  
22 believing that the only material health risks associated with using them were those  
23 that were disclosed on the package relating to nicotine. In fact, those  
24 representations omitted the fact that studies have found, including studies performed  
25 on BLU E-Cigarettes, that they contain detectable levels of known carcinogens,  
26 toxic chemicals and other contaminants and impurities that are, or potentially are,  
27 disease-causing. Defendants' listing of the ingredients on the package but failure to  
28 disclose to users the hidden ingredients of carcinogens and toxins caused by heating  
of certain such ingredients was a material omission and false and misleading partial

1 misrepresentation. Defendants also concealed the serious respiratory effects of  
2 smoking BLUs and the fact that there are no long term studies done on their safety,  
3 as described *supra*.

4 196. Defendants knew of the false and misleading nature of their partial  
5 misrepresentations and omissions prior to the Illinois Plaintiff's purchases because  
6 Defendants knew that their BLU E-Cigarettes were emitting aerosol with known  
7 carcinogens and other toxins as early as 2009, when the FDA publicized a study it  
8 had conducted with this conclusion and advised that it was concerned about the  
9 safety of E-Cigarettes and the manner in which the products were being marketed.  
10 Defendants also knew that their BLU E-Cigarettes could cause dangerous  
11 respiratory problems, as described in the studies cited herein, many of which were  
12 published prior to the Illinois Plaintiff's purchases from approximately March  
13 through August 2013. Defendants also knew that there was a lack of additional  
14 research which such studies have determined is required to assess the full potential  
15 danger of electronic cigarettes, especially in long term users. Specifically evidencing  
16 Defendants' knowledge of the falsity of their omissions and partial  
17 misrepresentations is Defendant Lorillard's participation at least by 2013 in  
18 CORESTA, an organization formed in part to respond to scientific research relating  
19 to tobacco products, including E-Cigarettes, as described above. In addition, as  
20 described *supra*, Lorillard admitted in comments to the FDA that it took steps after  
21 it acquired BLU in 2012 to study the safety of BLU and its aerosol and that BLU's  
22 contain toxins and other unhealthy substances and there are no long-term studies on  
23 their safety. Despite this knowledge, Defendants failed to disclose to and actively  
24 concealed these material facts from the Illinois Plaintiff and the members of the  
25 Illinois Class. By representing on the package that the only known negative health  
26 effects related to the use of BLU E-Cigarettes was nicotine, and listing the  
27 ingredients but failing to disclose the hidden ingredients of carcinogens and toxins  
28 caused by heating such ingredients when smoked as intended, Defendants misled the



1 Illinois Plaintiff and concealed material facts that would have influenced her  
2 decision to buy Defendants' BLU E-Cigarettes.

3 197. As further evidence of Defendants' continuing attempts to actively  
4 conceal the risks of their BLU E-Cigarettes, Defendants' website deceptively tells  
5 consumers to ignore negative studies, which conclude E-Cigarettes are harmful and  
6 not proven safe, as nothing more than media hype, as discussed *supra*.

7 198. Defendants intended that the Illinois Plaintiff and the Illinois Class rely  
8 on their deceptive acts or practices described *supra*. Defendants' intent is evidenced  
9 by their actions, claims, nondisclosures, and misleading statements as alleged in this  
10 SCAC, that were false, misleading, and likely to deceive the consuming public, *inter*  
11 *alia*, their knowledge that their material misrepresentations or omissions were  
12 unlawful in Illinois, and their continuation of such activity in the face of their own  
13 testing and other independent studies that confirm that their BLU E-Cigarettes emit  
14 harmful carcinogens and have other dangers other than those related to nicotine.  
15 Specifically, Defendants intended consumers, including the Illinois Plaintiff and  
16 members of the Illinois Class, to rely on Defendants' representations because  
17 Defendants knew that had they been truthful and fully informed the consuming  
18 public that their products emitted known carcinogens, such as formaldehyde, and  
19 other toxins, consumers would not have purchased their products or would have  
20 paid less than the retail price. Defendants intentionally omitted these facts for the  
21 same reason, putting profits over safety. Defendants had a duty to disclose the  
22 omitted facts because their representations were actually false and therefore had a  
23 duty to correct consumers' misapprehension regarding the safety of BLU E-  
24 Cigarettes that Defendants themselves created and/or because once Defendants  
25 spoke they had a duty to disclose the full truth, and not make false and misleading  
26 partial representations. In short, Defendants' duty to disclose arises from their  
27 deceptive conduct and active suppression of material facts.

28 ///



1           205. Specifically, the Illinois Plaintiff relied on the warning on the packages  
2 and the ingredient list as being the full truth, and purchased BLU E-Cigarettes  
3 believing that the only material health risks associated with using them were those  
4 that were disclosed on the package relating to nicotine. In fact, those  
5 representations omitted the fact that studies have found, including studies performed  
6 on BLU E-Cigarettes, that they contain detectable levels of known carcinogens,  
7 toxic chemicals and other contaminants and impurities that are, or potentially are,  
8 disease-causing. Defendants' listing of the ingredients on the package but failure to  
9 disclose to users the hidden ingredients of carcinogens and toxins caused by heating  
10 of certain such ingredients was a material omission and false and misleading partial  
11 misrepresentation. Defendants also concealed the serious respiratory effects of  
12 smoking BLUs and the fact that there are no long term studies done on their safety,  
13 as described *supra*.

14           206. Defendants knew of the false and misleading nature of their omissions  
15 and partial misrepresentations prior to the Illinois Plaintiff's purchases because  
16 Defendants knew that their BLU E-Cigarettes were emitting aerosol with known  
17 carcinogens and other toxins as early as 2009, when the FDA publicized a study it  
18 had conducted with this conclusion and advised that it was concerned about the  
19 safety of E-Cigarettes and the manner in which the products were being marketed.  
20 Defendants also knew that their BLU E-Cigarettes could cause dangerous  
21 respiratory problems, as described in the studies cited herein, many of which were  
22 published prior to the Illinois Plaintiff's purchases from approximately March  
23 through August 2013. Defendants also knew that there was a lack of additional  
24 research which such studies have determined is required to assess the full potential  
25 danger of electronic cigarettes, especially in long term users. Specifically evidencing  
26 Defendants' knowledge of the falsity of omissions and partial misrepresentations is  
27 Defendant Lorillard's participation at least by 2013 in CORESTA, an organization  
28 formed in part to respond to scientific research relating to tobacco products,

1 including E-Cigarettes as described above. In addition, as described *supra*, Lorillard  
2 admitted in comments to the FDA that it took steps after it acquired BLU in 2012 to  
3 study the safety of BLU and its aerosol and that BLU's contain toxins and other  
4 unhealthy substances and there are no long-term studies on their safety. Despite this  
5 knowledge, Defendants failed to disclose to and actively concealed these material  
6 facts from the Illinois Plaintiff and the members of the Illinois Class. By  
7 representing on the package that the only known negative health effects related to  
8 the use of BLU E-Cigarettes was nicotine, and listing the ingredients but failing to  
9 disclose the hidden ingredients of carcinogens and toxins caused by heating such  
10 ingredients when smoked as intended, Defendants misled the Illinois Plaintiff and  
11 concealed material facts that would have influenced her decision to buy Defendants'  
12 BLU E-Cigarettes.

13 207. At all times relevant hereto, there was in full force and effect the ICFA,  
14 815 ILCS 505/1, *et seq.*

15 208. The ICFA is a regulatory and remedial statute intended to protect  
16 consumers, including the Illinois Plaintiff and the Illinois Class, against unfair or  
17 deceptive acts or practices. Specifically, Section 2 of the ICFA prohibits deceptive  
18 acts or practices, which are committed in the course of trade or commerce and with  
19 the intent that others rely upon them. 815 ILCS 505/2.

20 209. Section 2 provides, in full: "Unfair methods of competition and unfair  
21 or deceptive acts or practices, including but not limited to the use or employment of  
22 any deception, fraud, false pretense, false promise, misrepresentation or the  
23 concealment, suppression or omission of any material fact, with intent that others  
24 rely upon the concealment, suppression or omission of such material fact, or the use  
25 or employment of any practice described in Section 2 of the 'Uniform Deceptive  
26 Trade Practices Act,' approved August 5, 1965, in the conduct of any trade or  
27 commerce are hereby declared unlawful whether any person has in fact been misled,  
28 deceived or damaged thereby. In construing this section, consideration shall be

1 given to the interpretations of the Federal Trade Commission and the federal courts  
2 relating to Section 5(a) of the Federal Trade Commission Act.” 815 ILCS 505/2.

3 210. Section 2 of the Uniform Deceptive Trade Practices Act states in  
4 relevant part that: “A person engages in a deceptive trade practice when, in the  
5 course of his or her business, vocation, or occupation, the person ... represents that  
6 goods or services have . . . characteristics, . . . uses, [or] benefits . . . that they do not  
7 have . . . .” 815 ILCS 510/2(a)(5).

8 211. The Illinois Plaintiff and the Illinois Class reserve the right to allege  
9 other violations of law, which constitute other unlawful business acts or practices.

10 212. Such conduct is ongoing and continues to this date. As evidence of  
11 Defendants’ continuing attempts to actively conceal the risks of their BLU E-  
12 Cigarettes, Defendants’ website deceptively tells consumers to ignore negative  
13 studies, which conclude E-Cigarettes are harmful and not proven safe, as nothing  
14 more than media hype, as described *supra*.

15 213. The above-described unfair or deceptive acts or practices occurred in  
16 the course of conduct involving trade or commerce, namely, the sale of goods to the  
17 Illinois Plaintiff and the Illinois Class.

18 214. Defendants’ practice of knowingly and unlawfully engaging in the  
19 activity described above also constitutes “unfair” business acts or practices because,  
20 *inter alia*, Defendants engaged in false advertising, which misrepresents and omits  
21 material facts regarding BLU E-Cigarettes. Defendants’ business acts or practices  
22 therefore offend an established public policy, and Defendants engage in immoral,  
23 unethical, oppressive, and unscrupulous activities that are substantially injurious to  
24 consumers, as alleged in detail *supra*, and therefore, Defendants’ actions are unfair  
25 or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

26 215. Defendants intended that the Illinois Plaintiff and the Illinois Class rely  
27 on their deceptive acts or practices described *supra*. Defendants’ intent is evidenced  
28 by their actions, claims, nondisclosures, and misleading statements as alleged in this

1 SCAC, that were false, misleading, and likely to deceive the consuming public, *inter*  
2 *alia*, their knowledge that their material misrepresentations or omissions were  
3 unlawful in Illinois and their continuation of such activity in the face their own  
4 testing and other independent studies that confirm that their BLU E-Cigarettes emit  
5 harmful carcinogens and have other dangers other than those related to nicotine.  
6 Specifically, Defendants intended consumers, including the Illinois Plaintiff and  
7 members of the Illinois Class, to rely on Defendants' representations because  
8 Defendants knew that had they been truthful and fully informed the consuming  
9 public that their products emitted known carcinogens, such as formaldehyde, and  
10 other toxins, consumers would not have purchased their products or would have  
11 paid less than the retail price. Defendants intentionally omitted these facts for the  
12 same reason, putting profits over safety. Defendants had a duty to disclose the  
13 omitted facts because their representations were actually false and therefore had a  
14 duty to correct consumers' misapprehension regarding the safety of BLU E-  
15 Cigarettes that Defendants themselves created and/or because once Defendants  
16 spoke they had a duty to disclose the full truth, and not make false and misleading  
17 partial representations. In short, Defendants' duty to disclose arises from their  
18 deceptive conduct and active suppression of material facts.

19 216. The Illinois Plaintiff has in fact been deceived as a result of her reliance  
20 on Defendants' material omissions and false and misleading partial representations,  
21 which are described above. Defendants omitted and misrepresented facts that were  
22 material to the Illinois Plaintiff in that those facts were relevant to her health, and  
23 therefore, influenced her decision to purchase BLU E-Cigarettes.

24 217. Defendants' material omissions and false and misleading partial  
25 misrepresentations described above have caused harm to the Illinois Plaintiff and  
26 other members of the Illinois Class who each purchased Defendants' BLU E-  
27 Cigarettes. The Illinois Plaintiff and the other Illinois Class members have suffered  
28 injury in fact and lost money as a result of these unlawful, unfair, and fraudulent

1 practices.

2 **VII. PRAYER FOR RELIEF**

3 Wherefore, Plaintiffs, on behalf of themselves and the Classes, pray for a  
4 judgment:

- 5 a. Certifying the California, New York, and Illinois Classes as requested  
6 herein, appointing Plaintiffs as class representatives for the respective  
7 Classes they seek to represent, and appointing Plaintiffs' attorneys as  
8 counsel for the Classes;
- 9 b. Requiring Defendants to disgorge or return all monies, revenues and  
10 profits obtained by means of any wrongful act or practice to Plaintiffs  
11 and the members of the Classes under Cal. Bus. & Prof. Code § 17200,  
12 *et seq.*, and each other cause of action where such relief is permitted;
- 13 c. Enjoining Defendants from continuing the unlawful practices as set  
14 forth herein, including marketing or selling BLUs without disclosing  
15 the potential health and safety risks relating thereto, and directing  
16 Defendants to engage in corrective action, or providing other injunctive  
17 or equitable relief;
- 18 d. Awarding exemplary and punitive damages pursuant to Cal. Civ. Code  
19 § 1780 to prevent and deter Defendants from future unlawful conduct;
- 20 e. Awarding damages or restitution as appropriate to Plaintiffs and each  
21 member of the California, New York, and Illinois Classes pursuant to  
22 the CLRA, UCL, FAL, GBL, ICFA and Illinois fraudulent concealment  
23 claim;
- 24 f. Awarding all equitable remedies available pursuant to Cal. Civ. Code §  
25 1780 and other applicable law;
- 26 g. Awarding attorneys' fees and costs;
- 27 h. Awarding pre-judgment and post-judgment interest at the legal rate;  
28 and

1 i. Providing such further relief as may be just and proper.

2 Dated: May 23, 2016

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**VIII. DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: May 23, 2016

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