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FILED
 ALAMEDA COUNTY

AUG 28 2015

CLERK OF THE SUPERIOR COURT
 By  Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 COUNTY OF ALAMEDA
 13 NORTHERN BRANCH
 14

15 **PEOPLE OF THE STATE OF**
 16 **CALIFORNIA, EX REL. KAMALA D.**
 17 **HARRIS, CALIFORNIA ATTORNEY**
GENERAL,

Case No. RG10528522

MODIFIED STIPULATED CONSENT
JUDGMENT

18 Plaintiff,

19 v.

20 **SOTTERA, INC. d.b.a. NJOY,**

21 Defendant.
 22

23 The Plaintiffs, the People of the State of California, *ex rel.* Kamala D. Harris, California
 24 Attorney General (“Attorney General” or “People”), and Defendant Sottera, Inc. d.b.a. NJOY
 25 (“Defendant”; collectively, “Parties”), enter into this Modified Stipulated Consent Judgment
 26 (“Consent Judgment”) to resolve the allegations set forth in the Complaint filed by the People in
 27 the captioned case.
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I. INTRODUCTION

1. The Parties enter into this Consent Judgment without a trial. It does not constitute evidence of an admission by the Defendant regarding any issue of law or fact alleged in the Complaint. This Consent Judgment sets forth the obligations of the Defendant and the People and constitutes the complete, final and exclusive agreement between the Parties and supersedes any prior agreements between the Parties except as specifically provided below.

2. By entering into this Consent Judgment, the Defendant does not admit any violation of law, and the People do not admit that Covered Products (as defined in Section 4) are safe. The People expressly reserve the right to bring an enforcement action based on violations of law not covered in the Claims Covered section (Section 20), and to seek whatever fines, costs, attorneys' fees, penalties, or remedies provided by law, including, but not limited to, an injunction against the sale of Covered Products in the State of California.

3. For purposes of this Consent Judgment, (i) the Alameda County Superior Court ("Court") has jurisdiction over the Parties to and the subject matter of this action; (ii) venue is proper in this Court; (iii) Defendant has employed ten or more persons for some period of time relevant to the allegations of the Complaint; and (iv) the Court has personal jurisdiction over Defendant for the purposes of enforcing the terms of the Consent Judgment.

4. For purposes of the Consent Judgment, "Covered Products" shall mean electronic cigarettes, also known as "e-cigarettes," and cartridges and any other similar product or accessory manufactured, distributed, offered for sale, or sold by Defendant in California for the purpose of creating a vapor that the user inhales through a device designed to look like a cigarette, cigar, pipe, or other smoking device.

5. For purposes of the Consent Judgment, "Effective Date" shall mean the date on which the Court enters the Consent Judgment.

6. For the purposes of the modified Consent Judgment, "Operative Date" shall mean the date on which the Court enters the Stipulation and Modified Consent Judgment.

1 **II. INJUNCTIVE RELIEF**

2 7. Quality Control. Defendant shall have and maintain a system for quality control of
3 Covered Products to ensure that they are manufactured to appropriate specifications. The
4 specifications shall provide that the Covered Products do not contain any impurities at levels that
5 reasonably could be anticipated to present a risk of injury to humans (defined, for a carcinogen, to
6 be a level that would cause the exposure of the average user to be at a level that poses greater than
7 a 1 in 100,000 risk of excess cancer as determined pursuant to Health and Safety Code section
8 25249.10, subdivision (c), and its implementing regulations). The system shall include, but not
9 be limited to audits at regular intervals, not to exceed 12 months, of each facility where Covered
10 Products are manufactured and testing to demonstrate to a high level of certainty that the Covered
11 Products comply with specifications. The audits shall be conducted by an independent auditor
12 not having direct responsibility for the matters being audited. Defendant will only sell E-liquids
13 in containers that meet the requirements of the Poison Prevention Packaging Act as per the
14 current Code of Federal Regulations (C.F.R.) Title 16, Part 1700.20 or of any subsequently
15 enacted federal law or regulation that is specifically applicable to E-liquids. Defendant shall
16 provide to the Attorney General a detailed description of the quality control system within 90
17 days after the Effective Date.

18 8. Sales to Minors. Defendant shall not sell Covered Products to persons younger
19 than 18 years of age and shall take reasonable steps to prevent the sale of Covered Products to
20 such persons, including but not limited to the following measures:

21 a. Defendant shall implement one or more systems for checking the age of
22 persons who purchase Covered Products on the Internet or in person. The system shall
23 include age verification by requiring and checking an official government identification
24 card or verifying through a reputable credit agency the age of anyone who purchases
25 Covered Products on the Internet, or of anyone under twenty-six (26) years old who
26 purchases in person. Defendant will at all times engage and oversee an independent third-
27 party service provider to verify the age of each direct online purchaser from Defendant-
28 controlled Internet sites. On all Defendant-controlled Internet sites, Defendant will adopt

1 appropriate procedures to ensure that all direct online purchases of Covered Products are
2 described to the credit card holder on billing statements as an e-vapor product (or the
3 like), to deter unauthorized use of the credit card by minors (i.e., the children of the adult
4 credit card holder). The system shall be put into place as soon as practical after entry of
5 this Consent Judgment, but before the Effective Date.

6 b. Defendant shall not sell flavored cartridges or any substance to use with
7 Covered Products or other e-cigarettes that are targeted to appeal to minors including, but
8 not limited to, strawberry, banana, chocolate, cookies and cream, or mint.

9 c. Defendant shall not use advertisements that target minors. Specifically,
10 Defendant will not use models or images of people that appear to be younger than twenty-
11 eight (28) years of age, cartoons, art, fashion, or music that is intended and designed to
12 appeal to people under the legal smoking age in advertisements or promotional materials
13 that appear in California, including on the Internet. This subsection shall not apply to
14 advertisements or promotional materials intended for audiences outside the United States,
15 provided such advertisements or promotional materials conspicuously state that the
16 products are not intended for use by minors, and any sales to a delivery address in
17 California comply with paragraph 8.a, above. Defendant will take the following actions
18 regarding marketing on social media within 30 days from the Operative Date:

19 (i) As to California viewers only (determined by IP address, zip code,
20 or other commercially reasonable means), Defendant will age-gate its'
21 YouTube channels, Facebook page, Google+ page, Twitter page, Tumblr
22 account and Instagram page to persons of legal age in California (currently
23 18 years).

24 (ii) As to California viewers only (determined by IP address, zip code,
25 or other commercially reasonable means), Defendant shall take
26 commercially reasonable measures to age-gate access to future social
27 media platforms controlled by Defendant to persons of legal age in
28 California (currently 18 years); and

1 (iii) Regarding video reviews of Covered Products, Defendant will not
2 facilitate, supply Covered Products, promote, condone, or provide a
3 hyperlink to any online reviewer of Covered Products unless the reviewer
4 appears to be and has been age-verified to be twenty-eight years old or
5 older.

6 d. Defendant shall continue to state on all displays and products that Covered
7 Products may not be sold to minors, and shall ensure that future displays and products
8 state that identification of all persons under 26 years of age will be required before
9 purchase. This message on future displays and products shall be prominently placed with
10 such conspicuousness, as compared with other words, statements, designs, or devices on
11 the display or product, as to render it likely to be read and understood by an ordinary
12 individual under customary conditions of purchase or use.

13 e. Defendant shall not allow self-service displays of Covered Products that
14 are accessible to minors. Covered Products shall be put where assistance from a clerk
15 who can check identification is necessary for access to the product.

16 f. Defendant shall not sell Covered Products in vending machines.

17 g. Defendant's broadcast and print advertising shall be restricted to media
18 where at least 85% of the audience is reasonably expected to be of legal age in California
19 (currently 18 years) or older, as measured by Nielsen or a comparable commercially
20 reliable demographic analytical service where available. Defendant shall not advertise in
21 the Sports Illustrated Swimsuit, or the ESPN Body edition, or any print media special
22 edition where Nielsen or a comparable commercially reliable demographic analytical
23 service measures that less than 85% of the audience is reasonably expected to be of legal
24 age in California (currently 18 years) or older.

25 h. Defendant shall not display billboard or public transit advertising in
26 California. Product placements: Defendant shall not pay to have Covered Products
27 featured, used, or placed in motion pictures, theatrical performances, live performances,
28 video games or other games or in television shows unless the event is restricted to persons

1 of legal age or the motion picture or other performance/game is rated "R" or above (or the
2 equivalent). Defendant shall take commercially reasonable steps to prevent third parties
3 from placing Covered Products in any of these ways.

4 9. Defendant shall not send direct advertisements about Covered Products or coupons
5 for Covered Products to any potential new customer who has not solicited the materials unless
6 Defendant has verified as set forth in paragraph 8.a that the customer is of legal smoking age or
7 older. Defendant shall not send samples of Covered Products or Covered Products to any person
8 who has not solicited the materials unless Defendant has verified as set forth in paragraph 8.a that
9 the customer is 18 years old or older.

10 10. Marketing Claims. Defendant shall not make false or misleading claims about
11 Covered Products in its advertising or promotional materials, including on Internet websites. It
12 shall take the following, non-exclusive measures:

13 a. Defendant shall not advertise Covered Products as smoking-cessation
14 devices unless or until they have been approved by the Federal Food and Drug
15 Administration as such under its authority to regulate drugs, devices, or tobacco products.
16 This prohibition includes any claims or testimonials about quitting smoking, using e-
17 cigarettes as a treatment for tobacco dependence or addiction, including for example,
18 making claims such as "cut smoking in half." This prohibition does not prohibit
19 Defendant from advertising that e-cigarettes are an alternative to smoking traditional
20 cigarettes, provided that any such advertisement states conspicuously that e-cigarettes are
21 sold for purely recreational purposes and not for treating nicotine addiction, and that
22 nicotine causes addiction.

23 b. Defendant shall not sell Covered Products containing vitamins or other
24 substances intended to portray that using Covered Products will improve one's health,
25 without competent, reliable scientific evidence to support the implied health claim.

26 c. Defendant shall not make claims about Covered Products being safer than
27 cigarettes without competent, reliable scientific evidence to support the claims. Defendant
28 may describe differences between Covered Products and cigarettes that are supported by

1 competent, reliable scientific evidence. Defendant agrees to provide such evidence to the
2 Attorney General upon request without undue delay.

3 d. Defendant shall not make claims about Covered Products having no tar
4 without competent reliable scientific evidence to prove the claims.

5 e. Defendant shall not make claims about Covered Products having no first-
6 or second-hand smoke without competent reliable scientific evidence to prove that the
7 vapor from e-cigarettes contains no chemicals associated with first- or second-hand smoke
8 from traditional cigarettes and known to the State of California to cause cancer or
9 reproductive toxicity.

10 f. Defendant shall not make claims about Covered Products containing no
11 tobacco without competent reliable scientific evidence to prove the claims.

12 g. Defendant shall not make claims about Covered Products containing no
13 carcinogens without competent reliable scientific evidence to prove the claims.

14 11. Warnings. Defendant shall provide clear and reasonable warnings that Covered
15 Products contain nicotine, which is a chemical known by the State of California to cause birth
16 defects or reproductive harm. The warnings will be in the form and locations described in
17 Attachment A. Defendant shall have 90 days after the Effective Date to put warnings on the
18 outside of packaging, provided that during the interim the warning is available to customers prior
19 to use of the product. Defendant shall not sell cartridges directly to the consumer without
20 packaging. Defendant shall instruct customers (other than the consumer) to whom it sells loose
21 cartridges to provide warnings in compliance with this Section of the Consent Judgment.

22 12. Agents, Distributors and Retail Sellers. Defendant shall use reasonable efforts to
23 ensure that other entities, whether or not affiliated with Defendant, do not take actions that are
24 inconsistent with the terms of this Consent Judgment, or that prevent or interfere with
25 Defendant's compliance with the Consent Judgment. Specifically, Defendant shall take the
26 following, non-exclusive measures:

27 a. Within 30 days after the Effective Date and once every year thereafter,
28 Defendant shall provide the requirements of this Consent Judgment and signs and other

1 materials needed to comply with the Consent Judgment to all of its agents, distributors,
2 and retailers involved in sales of Covered Products. Defendant shall do the same at the
3 time it sells Covered Products to an agent, distributor, or retailer for the first time.

4 Defendant shall require each recipient to confirm at the time of purchase or delivery that
5 they understand and will implement the requirements of the Consent Judgment.

6 Defendant shall stop selling Covered Products to any agent, distributor, or retailer that
7 does not provide such confirmation in a timely manner, but in no event more than 30 days
8 after delivery of the product.

9 b. Defendant shall implement a system to monitor compliance by its agents,
10 distributors and retailers authorized by Defendant to sell Covered Products, including its
11 employees, representatives, successors, assigns, and all persons acting by, through, under
12 or on behalf of any of them ("Authorized Sellers") comply with the injunctive
13 requirements in Sections 8, 9, 10, and 11 of this Consent Judgment. The monitoring
14 system shall include progressive enforcement of violations, such as notice, probation, and
15 termination of the business relationship, if applicable, with the violators if they do not
16 abide by the terms.

17 (i): Defendant will hire an independent third party to conduct testing of
18 its California retailers selling Covered Products for compliance with the
19 Consent Judgment. Defendant shall implement the following compliance
20 testing protocols within 90 days of the Operative Date:

- 21 • All compliance checks must be random and unannounced;
- 22 • All compliance checks must include an attempt to purchase
23 Covered Products;
- 24 • All compliance checks must record whether the sales clerk
25 asked the purchaser for a government-issued driver's license or
26 identification card to verify that the purchaser is of legal age
27 and whether the sale was consummated if the driver's license or
28 identification card does not establish that the purchaser is of

1 legal age; and

- 2 • All compliance checks must inspect for compliance with other
3 applicable provisions of the Consent Judgment.

4 (ii) Within each six month compliance period, the independent third
5 party shall test 10% of all retailers in California that have purchased
6 Covered Products (directly or through a distributor) within one year of the
7 beginning of the relevant compliance period that: (a) have entered into an
8 Assurance of Voluntary Compliance (“AVC”) or judgment with the
9 California Attorney General, and (b) have either amended the AVC or
10 judgment or have adopted policies to require that its provisions apply to the
11 sale of electronic cigarettes and vaping products. Within each six month
12 compliance period, the independent third party shall test 15% of all such
13 retailers in California that have not entered into such commitments with the
14 California Attorney General.

15 (iii) If the compliance rate for tested retailers in California in two
16 successive six month compliance periods exceeds 90%, the testing in the
17 subsequent six month compliance period may be reduced by 25%. If the
18 compliance rate thereafter falls below 90% in any six month compliance
19 period, the testing in the subsequent six month compliance period shall
20 revert to the prior testing level;

21 (iv) All non-compliant California retailers selling Covered Products
22 must be retested within 60 days of the first non-compliant event and within
23 30 days of a second or subsequent non-compliant event. Non-compliant
24 retailers will be subject to the enforcement measures detailed in Section
25 11(b)(v) provided such retailers are still selling Covered Products;

26 (v) Defendant shall provide each of its California retailers (or, where it
27 does not have a direct sales relationship with California retailers, to the
28 distributor(s) with such direct sales relationship) with modified sales terms

1 stating: all Grocery Stores, Gas Stations, Convenience Stores, and Drug
2 Stores that have agreed to Assurance of Voluntary Compliance protocols
3 (“AVCs”) with the California Attorney General with respect to the sale of
4 combustion cigarettes must also extend the application of the same AVCs
5 to the sale of electronic cigarettes and vaping products;

6 (vi) Defendant shall provide each of its California retailers that purchase
7 Covered Products directly from Defendant (or, where it does not have a
8 direct sales relationship with California retailers, to the distributor(s) with
9 such direct sales relationship) with modified sales terms stating: Effective
10 immediately, all California retailers selling Covered Products are subject
11 to the following compliance protocols concerning to the unlawful sale of
12 Covered Products to minors:

- 13 • 1st Failure (All Partners): Defendant will immediately transmit
14 written notice and warning to the violating store from
15 Defendant with the date and time of the violation including
16 language regarding the importance of not selling to underage
17 persons and with direction to resources with tools for staff
18 training;
- 19 • 2nd Failure (Vape Shops): Within 30 days of notification of 2nd
20 failure, Defendant will provide youth access prevention training
21 at the violating store location;
- 22 • 2nd Failure (Grocery Stores, Gas Stations, Convenience Stores,
23 and Drug Stores): Defendant will promptly transmit written
24 notice and warning to the violating store and to its headquarters
25 with the date and time of the violation including language
26 regarding the importance of not selling to minors and with
27 directions regarding where to access (e.g., a URL) resources
28 with affordable tools for staff training;

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- 3rd Failure (Vape Shops): Defendant will immediately suspend access to ordering Covered Products for 30 days and until after receipt by Defendant of a written reaffirmation by the violating store of its commitment to adhere to policy against sales to minors;
- 3rd Failure (Grocery Stores, Gas Stations, Convenience Stores, and Drug Stores): Defendant will immediately transmit second written notice and warning to violating store's headquarters with the date and time of the violation and will provide training materials and tools for preventing underage sales directly to the violating store; and
- 4th Failure (Vape Shops): Defendant will terminate sales of all Covered Products to the violating store location for at least one year, and until violating store location has demonstrated to Defendant's satisfaction that permanent and sufficient new measures have been implemented to prevent youth access (including, as necessary, termination of violating employees).

(vii) Defendant will require that all California retailers that purchase Covered Products directly from Defendant display age verification signage at point of entry and/or purchase stating prominently that identification and age verification will be required of all persons appearing to be under 28 years of age as a condition of selling Covered Products; and

(viii) Defendant will require that all California retailers that purchase Covered Products directly from Defendant incorporate into their point-of-sale system, where feasible, coding that provides an automatic prompt to the store clerk when a Covered Product's SKU is scanned (where such scanning technology is used) stating that Defendant's Covered Product is an age-restricted item.

1 c. Defendant shall use reasonable efforts to ensure that entities that offer for
2 sale or sell Covered Products that are not Authorized Sellers comply with the injunctive
3 requirements in Sections 8, 9, 10, and 11 of this Consent Judgment. Defendant shall
4 implement a system to monitor sales practices and marketing claims being made about
5 Covered Products by Unauthorized Sellers. If Defendant discovers that an Unauthorized
6 Seller is acting in a manner that is not consistent with the Consent Judgment, then within
7 seven calendar days it shall (i) inform the Unauthorized Seller in writing to stop the
8 practice and verify that it has stopped the practice, or (ii) if that is not effective, within 30
9 days after discovering the practice report it to the Attorney General, along with the
10 identity of the Unauthorized Seller, contact information, and a description of Defendant's
11 communications with the Unauthorized Seller concerning the practice.

12 13. Reporting Requirement. Defendant will file with the Court and serve on the
13 Attorney General annual reports describing in detail its actions to comply with the modified
14 Consent Judgment for a period of four years from the Operative Date. The time period for
15 reporting may be extended by agreement of the Parties or by order of the Court for good cause
16 shown.

- 17 • Defendant also shall submit semi-annual reports to the California Attorney
18 General which shall contain detailed information on Defendant's
19 compliance with each provision in the modified Consent Judgment during
20 the reporting period. Each report shall contain, at a minimum: A list of the
21 social media Defendant used during the relevant period and a description of
22 how they were age-restricted;
- 23 • A report on all media placements, the youth audience of its placements,
24 and other measures taken to comply with the advertising and marketing
25 restrictions in the modified Consent Judgment during the relevant period;
26 and
- 27 • A report on all retail compliance checks during the relevant period, which
28 shall include the number of all retailers tested, the checks conducted in

1 each store, the results of checks including the number of stores found
2 passing and in violation, and any remedial measures taken by Defendant in
3 response to non-compliant retailers. This section shall not require
4 Defendant to identify any retailer by name or other identifying information.
5 Beginning on the Operative Date, Defendant shall be required to retain all
6 records created under this section for a period of four years after creation.

7 14. Director of Compliance: Defendant will create and fill the position of Director of
8 Compliance, whose responsibilities include overseeing all marketing, advertising, product
9 development, and legal review, as well as youth access prevention and auditing. The Director of
10 Compliance will be entirely familiar with, and responsible for implementation of, the Consent
11 Judgment, among other things.

12 III. SETTLEMENT PAYMENT

13 15. Within 90 days after the Operative Date, Defendant shall pay a total settlement
14 amount of \$284,250 as reimbursement of the Attorney General's attorneys' fees and costs.

15 16. Settlement Payment. Within 10 business days after the Effective Date, or by
16 September 15, 2010, whichever is later, Defendant shall pay a total settlement amount of \$85,000.
17 This shall be allocated as follows:

18 a. \$75,000 as a civil penalty pursuant to Health and Safety Code section
19 25249.7, subd. (b).

20 b. \$10,000 as partial reimbursement of the Attorney General's attorneys' fees
21 and costs.

22 17. Payment shall be made by check, payable to "Office of the California Attorney
23 General," and sent to:

24 Robert Thomas
25 Legal Analyst
26 Office of the Attorney General
27 1515 Clay St, 20th Floor
28 Post Office Box 70550
Oakland, California 94612

1 18. Funds paid to the Attorney General pursuant to Section 16(a) shall be allocated as
2 set forth in Health and Safety Code section 25249.12, subdivisions (c) and (d).

3 19. Of the funds paid to the Attorney General pursuant to Section 16(b),

4 a. The sum of \$5,000 shall be placed in an interest bearing Special Deposit
5 Fund established by the Attorney General. Those funds, including any interest derived
6 therefrom, shall be used by the Attorney General, until all funds are exhausted, for the
7 costs and expenses associated with the enforcement and implementation of Proposition
8 65, including investigations, enforcement actions, other litigation or activities as
9 determined by the Attorney General to be reasonably necessary to carry out his duties and
10 authority under Proposition 65. Such funding may be used for the costs of the Attorney
11 General's investigation, filing fees and other court costs, payment to expert witnesses and
12 technical consultants, purchase of equipment, travel, purchase of written materials,
13 laboratory testing, sample collection or any other cost associated with the Attorney
14 General's duties or authority under Proposition 65. Funding placed in the Special Deposit
15 Fund pursuant to this Section, and any interest derived therefrom, shall solely and
16 exclusively augment the budget of the Attorney General's Office and in no manner shall
17 supplant or cause any reduction of any portion of the Attorney General's budget.

18 b. The sum of \$5,000 shall be deposited in the Litigation Deposit Fund
19 established by the Attorney General for use by the Attorney General in carrying out the
20 duties and responsibilities entrusted by the Attorney General to the Tobacco Litigation
21 and Enforcement Section of the Public Rights Division, or to its successor, if any. Those
22 funds, including any interest derived therefrom, shall be used by the Attorney General,
23 until all funds are exhausted, for costs and expenses associated with the enforcement and
24 implementation of state laws, including but not limited to Business and Professions Code
25 sections 17200 et seq. and 17500 et seq., including investigations, enforcement actions,
26 and other litigation or activities as determined by the Attorney General to be reasonably
27 necessary to carry out his duties and authority.

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IV. ADDITIONAL PROVISIONS

20. Claims Covered. The Consent Judgment is a full, final, and binding resolution between the People and Defendant and its successors and assigns (“Defendant Releasees”) of the claims that were raised or that could have been asserted by the Attorney General on behalf of the People of the State of California against the Defendant Releasees regarding untruthful or misleading claims about Covered Products or the failure to warn about nicotine in Covered Products prior to the Effective Date.

21. Enforcement. In an action to enforce this Consent Judgment, the People may seek whatever fines, costs, attorneys’ fees, penalties or remedies are provided by law for failure to comply with this Consent Judgment. Where said failure to comply constitutes a violation of Proposition 65 or other laws, independent of this Consent Judgment and/or the allegations in the Complaint, the People are not limited to enforcement of this Consent Judgment, but may seek in another action, subject to satisfaction of any procedural requirements, including notice requirements, whatever fines, costs, attorneys’ fees, penalties or remedies are provided by law for any future failure to comply with Proposition 65 or other laws. In any such other action, however, the requirements of this Consent Judgment shall not limit or impair any defense, arising at law or in equity, that the Defendant may assert; except that the Defendant shall not contest its obligation to comply with the terms of this Consent Judgment as set forth herein in any proceeding to enforce this Consent Judgment. In exchange for the modifications made to this Consent Judgment on the Operative Date, the Attorney General shall forgo any challenge under the Consent Judgment to the following existing flavors: double espresso, peach tea, blood orange, pomegranate, butter crunch, black and blue berry, single malt scotch, and vanilla bean, Dragonscape, Hedon’s Bite, Paramour, Sacré Coeur, and Samba Sun.

22. Modification. This Consent Judgment may be modified from time to time by written stipulation of the Parties and the Court’s entry of such stipulation. The Consent Judgment may also be modified upon entry of an order of this Court in accordance with law. Grounds for considering modification shall include any that are permitted by law, including that any part of this Consent Judgment is or has become preempted by federal law or regulation. As to the

1 modifications made to this Consent Judgment, and only the modifications, if Defendant moves
2 this Court or another court to assert that preemption invalidates the modified sections on grounds
3 that the federal government has fully occupied the field regulated by those Sections (i.e., field
4 preemption), then the Attorney General may move to challenge Defendant's sale of flavored
5 products as violative of the Consent Judgment. Both parties agree that any federal law or
6 regulation that expressly preempts or conflicts with any provision set forth in the Consent
7 Judgment shall invalidate and sever such provision from the Consent Judgment. Before filing an
8 application with the Court for a modification to the Consent Judgment, the Parties shall meet and
9 confer to determine whether they can agree on the proposed modification. If a proposed
10 modification is agreed upon, then the parties will present the modification to the Court by means
11 of a stipulated modification to the Consent Judgment as set forth in the first sentence of this
12 paragraph.

13 23. Execution in Counterparts. This Consent Judgment may be executed in
14 counterparts, which taken together shall be deemed to constitute one and the same document.

15 24. This Consent Judgment shall be binding and effective on the Effective Date, and
16 the clerk is ordered to enter this Consent Judgment forthwith.

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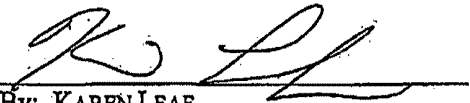
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25. Except as modified herein, the Consent Judgment shall continue unmodified and in full force and effect.

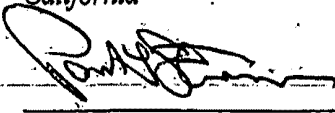
IT IS SO STIPULATED.

Dated: August 17, 2015

KAMALA D. HARRIS
Attorney General of California
KAREN LEAF
Senior Assistant Attorney General
JEANNE FINBERG
HARRISON POLLAK
Deputy Attorneys General

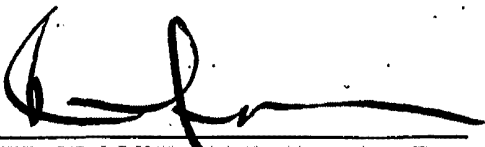

By: KAREN LEAF
Attorneys for Plaintiffs People of the State of California

Dated: August 17, 2015


By: PAUL STURMAN, CEO
Sottera, Inc. d.b.a. NJOY

IT IS SO ORDERED.

Dated: August 27, 2015


JUDGE OF THE SUPERIOR COURT
ROBERT FREEDMAN

ATTACHMENT A

Warning Content

The warning required by this Consent Judgment shall state that:

- This product is [*or*, NJOY products are] intended for use by persons 18 or older, and not by children, women who are pregnant or breast feeding, or persons with or at risk of heart disease, high blood pressure, diabetes, or taking medicine for depression or asthma;
- This product is [*or*, NJOY products are] not a smoking cessation product and has [*or*, have] not been tested as such;
- Ingestion of the non-vaporized concentrated ingredients in the cartridges can be poisonous;
- Nicotine is addictive and habit forming, and it is very toxic by inhalation, in contact with the skin, or if swallowed.
- This product contains [*or*, NJOY products contain] nicotine, a chemical known to the State of California to cause birth defects or other reproductive harm.

These warnings may appear in conjunction with additional statements about risks associated with Covered Products and/or steps to take in the event of unintended exposures to Covered Products or their contents.

Form and Location of Warning

The warning shall be placed (1) on displays used to advertise or to sell Covered Products; (2) on the outside packaging of Covered Products in such a manner as to be visible without opening the package; (3) on websites where Covered Products are sold in a manner that persons ordering Covered Products for shipment to California receive the warning; and (4) in print catalogs where Covered Products are sold in a manner that persons ordering Covered Products for shipment to California receive the warning.

The warning shall be placed prominently and with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People of the State of California v. Sottera, Inc., d.b.a. NJOY**
No.: **California Superior Court, County of Alameda, Case No. RG10528522**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

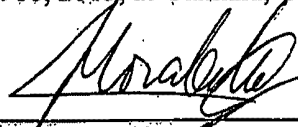
On August 18, 2015, I served the attached **STIPULATION TO MODIFY CONSENT JUDGMENT AND [PROPOSED] ORDER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

GEORGE GIGOUNAS
DLA Piper US LLP - San Francisco
555 Mission Street, Suite 2400
San Francisco, CA 94105
Counsel for Defendant

ALEC CIERNY
DLA Piper US LLP - San Francisco
555 Mission Street, Suite 2400
San Francisco, CA 94105-2933
Counsel for Defendant

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 18, 2015, at Oakland, California.

Florabelle Gochayna
Declarant


Signature