EDMUND G. BROWN JR.
Attorney General of California
DENNIS ECKHART
Senior Assistant Attorney General
JEANNE FINBERG (SBN 88333)
HARRISON POLLAK (SBN 200879)
Deputy Attorneys General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2147
Fax: (510) 622-2121
E-mail: Jeanne.Finberg@doj.ca.gov
Attorneys for Attorney General, State of California

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL EDMUND G. BROWN, JR, Plaintiff, v. **SOTTERA, INC., D.B.A. NJOY,** Defendant.	Case No. RG10528522 **STIPULATED CONSENT JUDGMENT**

The Plaintiffs, the People of the State of California, *ex rel.* Edmund G. Brown Jr., California Attorney General ("Attorney General" or "People"), and Defendant Sottera, Inc. d.b.a. NJOY ("Defendant"; collectively, "Parties"), enter into this Stipulated Consent Judgment ("Consent Judgment") to resolve the allegations set forth in the Complaint filed by the People in the captioned case.

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 17), 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.

II. INJUNCTIVE RELIEF

6. Quality Control. Defendant shall have and maintain a system for quality control of Covered Products to ensure that they are manufactured to appropriate specifications. The specifications shall provide that the Covered Products do not contain any impurities at levels that

reasonably could be anticipated to present a risk of injury to humans (defined, for a carcinogen, to be a level that would cause the exposure of the average user to be at a level that poses greater than a 1 in 100,000 risk of excess cancer as determined pursuant to Health and Safety Code section 25249.10, subdivision (c), and its implementing regulations). The system shall include, but not be limited to audits at regular intervals, not to exceed 12 months, of each facility where Covered Products are manufactured and testing to demonstrate to a high level of certainty that the Covered Products comply with specifications. The audits shall be conducted by an independent auditor not having direct responsibility for the matters being audited. Defendant shall provide to the Attorney General a detailed description of the quality control system within 90 days after the Effective Date.

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

a. Defendant shall implement one or more systems for checking the age of persons who purchase Covered Products on the Internet or in person. The system shall include age verification by requiring and checking an official government identification card or verifying through a reputable credit agency the age of anyone who purchases Covered Products on the Internet, or of anyone under twenty-six (26) years old who purchases in person. The system shall be put into place as soon as practical after entry of this Consent Judgment, but before the Effective Date.

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

c. Defendant shall not use advertisements that target minors. Specifically, Defendant will not use models or images of people that appear to be younger than twenty-eight (28) years of age, cartoons, art, fashion, or music that is intended and designed to appeal to people under the legal smoking age in advertisements or promotional materials that appear in California, including on the Internet. This

subsection shall not apply to advertisements or promotional materials intended for audiences outside the United States, provided such advertisements or promotional materials conspicuously state that the products are not intended for use by minors, and any sales to a delivery address in California comply with paragraph 7.a, above.

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

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

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

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

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

a. Defendant shall not advertise Covered Products as smoking-cessation devices unless or until they have been approved by the Federal Food and Drug Administration as such under its authority to regulate drugs, devices, or tobacco products. This prohibition includes any claims or testimonials about quitting smoking, using e-cigarettes as a

treatment for tobacco dependence or addiction, including for example, making claims such as "cut smoking in half." This prohibition does not prohibit Defendant from advertising that e-cigarettes are an alternative to smoking traditional cigarettes, provided that any such advertisement states conspicuously that e-cigarettes are sold for purely recreational purposes and not for treating nicotine addiction, and that nicotine causes addiction.

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

c. Defendant shall not make claims about Covered Products being safer than cigarettes without competent, reliable scientific evidence to support the claims. Defendant may describe differences between Covered Products and cigarettes that are supported by competent, reliable scientific evidence. Defendant agrees to provide such evidence to the Attorney General upon request without undue delay.

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

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

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

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

10. Warnings. Defendant shall provide clear and reasonable warnings that Covered Products contain nicotine, which is a chemical known by the State of California to cause birth defects or reproductive harm. The warnings will be in the form and locations described in

Attachment A. Defendant shall have 90 days after the Effective Date to put warnings on the outside of packaging, provided that during the interim the warning is available to customers prior to use of the product. Defendant shall not sell cartridges directly to the consumer without packaging. Defendant shall instruct customers (other than the consumer) to whom it sells loose cartridges to provide warnings in compliance with this Section of the Consent Judgment.

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

a. Within 30 days after the Effective Date and once every year thereafter, Defendant shall provide the requirements of this Consent Judgment and signs and other materials needed to comply with the Consent Judgment to all of its agents, distributors, and retailers involved in sales of Covered Products. Defendant shall do the same at the time it sells Covered Products to an agent, distributor, or retailer for the first time. Defendant shall require each recipient to confirm at the time of purchase or delivery that they understand and will implement the requirements of the Consent Judgment. Defendant shall stop selling Covered Products to any agent, distributor, or retailer that does not provide such confirmation in a timely manner, but in no event more than 30 days after delivery of the product.

b. Defendant shall implement a system to monitor compliance by its agents, distributors and retailers authorized by Defendant to sell Covered Products, including its employees, representatives, successors, assigns, and all persons acting by, through, under or on behalf of any of them ("Authorized Sellers") comply with the injunctive requirements in Sections 7, 8, 9, and 10 of this Consent Judgment. The monitoring system shall include progressive enforcement of violations, such as notice, probation, and termination of the business relationship, if applicable, with the violators if they do not abide by the terms.

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

12. Reporting Requirement. Defendant will file with the Court and submit to the Attorney General a report describing its implementation of the Consent Judgment within 90 days after the Effective Date, as well as quarterly reports for the first year and annual reports thereafter, for a period of three years. The time period for reporting may be extended by agreement of the Parties or by order of the Court for good cause shown.

III. SETTLEMENT PAYMENT

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

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

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

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

Robert Thomas
Legal Analyst
Office of the Attorney General
1515 Clay St., 20th Floor

Post Office Box 70550
Oakland, California 94612

15. Funds paid to the Attorney General pursuant to Section 13(a) shall be allocated as set forth in Health and Safety Code section 25249.12, subdivisions (c) and (d).

16. Of the funds paid to the Attorney General pursuant to Section 13(b),

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

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

IV. ADDITIONAL PROVISIONS

17. 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.

18. 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.

19. 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. Before filing an application with the Court for a modification to the Consent Judgment, the Parties shall meet and confer to determine whether they can agree on the proposed modification. If a proposed modification is agreed upon, then the parties will present the modification to the Court by means of a stipulated modification to the Consent Judgment as set forth in the first sentence of this

paragraph.

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

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

IT IS SO STIPULATED.

Dated: _____

EDMUND G. BROWN JR.
Attorney General of California
DENNIS ECKHART
Senior Assistant Attorney General
JEANNE FINBERG
HARRISON POLLAK
Deputy Attorneys General

_____
By: JEANNE FINBERG
Attorneys for Plaintiffs People of the State of California

Dated: 7/29/2010

_____
CRAIG WEISS, President
Sottera, Inc.

IT IS SO ORDERED.

Dated: _____

_____
JUDGE OF THE SUPERIOR COURT

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paragraph.

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

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

IT IS SO STIPULATED.

Dated: July 30, 2010

EDMUND G. BROWN JR.
Attorney General of California
DENNIS ECKHART
Senior Assistant Attorney General
JEANNE FINBERG
HARRISON POLLAK
Deputy Attorneys General

By: JEANNE FINBERG
Attorneys for Plaintiffs People of the State of California

Dated: _____

CRAIG WEISS, President
Sottera, Inc.

IT IS SO ORDERED.

Dated: Sept 10, 2010

JUDGE OF THE SUPERIOR COURT
Robert B. Freedman

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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.