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8 Attorneys for Defendants
NJOY, INC. AND SOTTERA, INC.
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 ERIC MCGOVERN, individually, and
on behalf of himself and all aggrieved
14 consumers similarly situated,

15 Plaintiff,

16 v.

17 NJOY, INC.; and SOTTERA, INC.;
and DOES 1 to 100 inclusive,
18

19 Defendants.

CASE NO.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332, 1441, 1446,
1453**

(Diversity)

[Orange County Superior Court Case No.
30-2014-00705711-CU-FR-CXC]

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1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendants NJOY, Inc. and Sottera,
3 Inc. (collectively, “Defendants”) hereby remove to this Court the state court action
4 described below.

5 1. On February 11, 2014, an action was commenced in the Superior
6 Court of the State of California in and for the County of Orange, entitled *Eric*
7 *McGovern, individually, and on behalf of himself and all aggrieved consumers*
8 *similarly situated vs. NJOY, Inc.; and Sottera, Inc.; and Does 1 to 100 inclusive*, as
9 case number 30-2014-00705711-CU-FR-CXC. A copy of the Complaint is
10 attached as Exhibit A.

11 2. Defendants first received a copy of the Complaint on February 18,
12 2014, when Defendants’ agent was served with a copy of a Notice of CLRA
13 Violations Pursuant to Civil Code § 1782 (the “Notice”). The unfiled Complaint
14 was attached to the Notice. A copy of the Notice is attached as Exhibit B.

15 3. The Court has original jurisdiction over this civil action under 28
16 U.S.C. § 1332, and Defendants may remove the state court action to this Court
17 under 28 U.S.C. § 1441, because it is a class action between citizens of different
18 states and the aggregated amount in controversy exceeds the sum of \$5,000,000,
19 exclusive of interest and costs.

20 4. Under 28 U.S.C. § 1446(b), removal is timely because Defendants
21 have thirty days to remove after receiving the Complaint “through service or
22 otherwise” and fewer than thirty days have elapsed since February 18, 2014.

23 5. Diversity of citizenship exists under 28 U.S.C. § 1332(d)(2), because:
24 (1) on information and belief, Plaintiff Eric McGovern is a citizen of the State of
25 California; (2) Defendant NJOY, Inc. is a citizen of the State of Delaware and the
26 State of Arizona as it was and is incorporated under the laws of the State of
27 Delaware and its principal place of business is located in the State of Arizona; and
28 (3) Defendant Sottera, Inc. was a citizen of the State of Nevada and the State of

1 Arizona as it was incorporated in the State of Nevada and its principal place of
2 business was in the State of Arizona. (See Exhibit A, ¶¶ 2-4)

3 6. Under 28 U.S.C. §§ 1332(d)(2), 1446(c), the amount in controversy
4 requirement is satisfied because Plaintiff, individually and on behalf of “[a]ll
5 California consumers who purchased Defendants’ brand of e-cigarettes within” the
6 past four years, seeks to recover, *inter alia*, restitution of the monies spent to
7 purchase Defendants’ products. (See Exhibit A, ¶¶ 17, 100) As Defendants have
8 sold in excess of \$5,000,000 of e-cigarettes within California during the last four
9 years, the Complaint, on its face, states a claim for over \$5,000,000. Further,
10 Plaintiff seeks injunctive and other monetary relief (including actual,
11 compensatory, and punitive damages) that drives the amount in controversy even
12 further beyond the jurisdictional limit. (See Exhibit A, ¶ 100)

13 7. Under 28 U.S.C. § 1441(a), venue is proper in the Central District of
14 California because it is the federal judicial district encompassing the Superior
15 Court of the State of California, County of Orange, where this suit was originally
16 filed.

17 8. Pursuant to 28 U.S.C. §§ 1332, 1446(a), Defendants consent to
18 removal of this action, even though no consent is required as Defendants have not
19 yet been served. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th
20 Cir. 1988) (no consent required where defendant has not been properly served at
21 the time of removal). The unidentified Defendant DOES 1-100 are not required to
22 consent to removal. *Id.* (nominal and unknown parties need not consent); *see also*
23 *Hewitt v. Stanton*, 798 F.2d 1230, 1232-33 (9th Cir. 1986) (nominal parties are not
24 required to consent to removal).

25 9. Pursuant to 28 U.S.C. § 1446(d), Defendants will provide Plaintiff
26 with written notice of the filing of this Notice of Removal and file a copy of this
27 Notice of Removal with the Clerk of the Superior Court of California, County of
28 Orange.

1 10. Pursuant to 28 U.S.C. § 1446(a), Defendants have attached all copies
2 of pleading, process, and orders they received as Exhibit A and B.

3 11. Defendants remove this case subject to and without waiver of any
4 challenges that they may have as to personal jurisdiction, proper venue, or any
5 other claims or defenses that may be available, all of which are expressly reserved.

6 12. Defendants respectfully reserve the right to amend or supplement this
7 Notice of Removal as may be appropriate.

8 Dated: March 19, 2014

LATHAM & WATKINS LLP

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10 By: /s/ Jennifer L. Barry
Perry J. Viscountry
Jennifer L. Barry

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12 Attorneys for Defendants
NJOY, INC. and SOTTERA, INC.
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Exhibit A

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11 Attorneys for Plaintiff and Putative Class

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF ORANGE

14 ERIC MCGOVERN, individually, and on
15 behalf himself and all aggrieved
16 consumers similarly situated,

17 Plaintiff,

18 vs.

19 NJOY, INC.; and SOTTERA, INC; and
20 DOES 1 to 100 inclusive,

21 Defendants.

Case No.:

**CONSUMER CLASS ACTION COMPLAINT
FOR COMPENSATORY DAMAGES,
RESTITUTION, INJUNTIVE/
DECLARATORY RELEIF AND PUNITIVE
DAMAGES:**

- 1) Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*) (the "CLRA");
- 2) Unfair Competition or Deceptive Business Practices (Cal. Bus & Prof. Code §§ 17200 *et seq.*) (the "UCL");
- 3) Deceptive, False and Misleading Advertising (Cal. Bus. & Prof. Code §§ 17500 *et seq.*) (the "FAL");
- 4) Consumer Fraud;
- 5) Unjust Enrichment; and
- 6) Conversion.

DEMAND FOR JURY TRIAL

**[Declaration of Eric McGovern Filed
Concurrently Herewith]**

22 Plaintiff Eric McGovern ("Plaintiff"), on behalf of himself and all aggrieved consumers,
23 files this Consumer Class Action Complaint ("Complaint") against Defendants allege the
24 following:
25

1 I.

2 INTRODUCTION

3 1. This is a consumer class action brought under both Code of Civil Procedure
4 (“CCP”) § 382 and Civil Code (“CC”) § 1781 by Plaintiff, on behalf of himself and all aggrieved
5 consumers similarly situated, against Njoy, Inc., Sottera, Inc., subsidiaries or affiliated
6 companies, and/or DOES 1 through 100 (collectively “Defendants”) for violating the CLRA,
7 UCL and FAL and for engaging in fraud, unjust enrichment and conversion.

8 II.

9 THE PARTIES

10 2. Plaintiff is a resident of Orange County, California who purchased Defendants’
11 electronic cigarettes (“e-cigarettes”) within Orange County, California and therefore has standing
12 to bring the causes of action alleged in this Complaint.

13 3. Sottera, Inc. is a former corporation which was incorporated in the State of Nevada
14 and had its corporate headquarters at 15211 North Kierland Boulevard, Ste. 200, Scottsdale,
15 Arizona 85254. Upon information and belief, Sottera was a parent company to NJOY and in
16 July 2012 merged into Njoy.

17 4. Njoy was and is, upon information and belief, an Arizona corporation,
18 incorporated in Delaware, doing business in California and intentionally availing itself of the
19 laws and markets of California. Njoy’s corporate headquarters are found at 15211 North
20 Kierland Boulevard, Ste. 200, Scottsdale, Arizona 85254 and also has an address at 5455 N.
21 Greenway Hayden, #15, Scottsdale, AZ 85260.

22 5. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint
23 were licensed to do business and/or actually doing substantial business and are principally
24 located in the State of California. Plaintiff does not know the true names or capacities, whether
25 individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100
26 are sued under such fictitious names pursuant to CCP § 474. Plaintiff will seek leave of court to
27 amend this Complaint to allege such names and capacities as soon as they are ascertained.
28

1 6. Defendants, and each of them, are now, and/or at all times mentioned in this
2 Complaint were in some manner legally responsible for the events, happenings and
3 circumstances alleged in this Complaint. Defendants proximately caused Plaintiff and all others
4 similarly situated to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
5 damages alleged in this Complaint.

6 7. Defendants, and each of them, are now, and/or at all times mentioned in this
7 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
8 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
9 mentioned in this Complaint were acting within the course-and-scope of that agency, servitude
10 and/or employment.

11 8. Defendants, and each of them, are now, and/or at all times mentioned in this
12 Complaint were members of, and/or engaged in, a joint venture, partnership and common
13 enterprise, and acting within the course-and-scope of, and in pursuance of said joint venture,
14 partnership and common enterprise. Furthermore, Defendants, and each of them, may have been
15 the alter ego and acting in the same or similar capacity, such that it would be unjust to provide
16 separate legal treatment of said Defendants and DOES 1 to 100, who, at all relevant times acted
17 jointly and severally to deprive Plaintiff of his rights under California's laws and common-law
18 principles.

19 9. Defendants, and each of them, at all times mentioned in this Complaint concurred
20 and contributed to the various acts and omissions of each and every one of the other Defendants
21 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

22 10. Defendants, and each of them, at all times mentioned in this Complaint approved
23 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
24 this Complaint.

25 11. Defendants, and each of them, at all times mentioned in this Complaint aided and
26 abetted the acts and omissions of each and every one of the other Defendants thereby
27 proximately causing the damages alleged in this Complaint.
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III.

JURISDICTION AND VENUE

12. The California Superior Court has jurisdiction in this matter due to Defendants' violations of California law and related common law principles.

13. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

14. The California Superior Court has jurisdiction over the claims of Plaintiff and the members of the class herein alleged because there is no federal question at issue, as the issues herein are based solely on California statutes and California common law. Furthermore, there is no diversity of parties as to all parties, since Plaintiff and possibly some Defendants are residents of the State of California. Therefore, any removal would be improper and fail to implicate federal subject matter jurisdiction.

15. Venue as to Defendants is proper in this judicial district, pursuant to CCP § 395(a) and 395.5 and CC § 1780(c) because: (a) liability arose therein; (b) many of the acts or transactions that are the subject of this Complaint occurred therein (as confirmed by Plaintiff's declaration filed concurrently with this Complaint); and/or (c) Defendants either are found, maintain facilities, transact business, and/or have a registered agent located therein. As such, venue is proper in this county or judicial district.

16. Pursuant to CC § 1782, and before Plaintiff files a CLRA action for damages, Plaintiff will provide notice to Defendants "of the particular alleged violations of Section 1770" and demand that Defendants "correct, repair, replace or otherwise rectify the goods or services alleged to be in violation of Section 1770." A true and correct copy of the notice correspondence showing compliance with CC § 1782 will be attached as an exhibit to an amended complaint seeking damages if Defendants fail to adequately and appropriately correct or cure the alleged violations in the notice within the statutorily proscribed 30-day period.

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IV.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of himself and all aggrieved consumers similarly situated and will seek certification under CCP § 382 and/or CC 1781. Plaintiff seeks to represent a class of consumers within four years prior to the filing of this Complaint until the date of certification (the "Proposed Class Period"). The proposed "Consumer Class" is composed of and defined as follows: "All California consumers who purchased Defendants' brand of e-cigarettes within the Proposed Class Period."

18. Plaintiff reserves the right under Rule 3.765, subdivision (b), of the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

19. This action has been brought and may properly be maintained as a class action under the provisions of CCP § 382 (because there is a well-defined community of interest in the litigation and the proposed Consumer Class is easily ascertainable) and CC § 1781.

A. Numerosity/Impracticability of Joinder

20. The potential members of the Consumer Class are so numerous that joinder of all the members of the class before the Court is impracticable. While the precise number of the Consumer Class has not been determined at this time, Plaintiff is informed and believes that tens of thousands of consumers purchased Defendants' e-cigarettes during the Proposed Class Period throughout California. Upon information and belief, Plaintiff alleges Defendants' accounting and/or business records or client lists would provide sufficient information relative to ascertaining the number and location of all members of the Consumer Class.

B. Commonality/Common Questions of Law and Fact Predominate

21. There are questions of law and fact common to the Consumer Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a) Whether Defendants engaged in consumer fraud, deceptive trade

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- practices, or other unlawful acts in violation of the CLRA;
- b) Whether Defendants engaged in “unlawful,” “unfair,” or “fraudulent” business acts or practices in violation of the UCL;
- c) Whether Defendants engaged in “unfair, deceptive, untrue or misleading advertising” in violation of the UCL;
- d) Whether Defendants engaged in false or misleading advertising in violation of the FAL;
- e) Whether Defendants are guilty of consumer fraud;
- f) Whether Defendants were unjustly enriched by virtue of their unlawful business practices; and
- g) Whether Defendants unlawfully converted the monies of the members of the Consumer Class whom they deceived.

C. Typicality

22. The claims of Plaintiff are typical of the claims of the Consumer Class. Plaintiff and members of the Consumer Class sustained damages arising out of and caused by Defendants' common course of conduct in violation of the California laws and common law causes of action alleged herein.

D. Adequacy of Representation

23. Plaintiff will fairly and adequately represent and protect the interests of the members of the Consumer Class. The firm who represents Plaintiff is competent and experienced in litigating large class actions and representative actions.

E. Superiority of Class Action

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable, and questions of law and fact common to the Consumer Class predominate over any questions affecting only individual members. Each member of the Consumer Class has been damaged and is entitled to recovery by reason of Defendants' misleading and deceptive sales and advertising

1 practices, which were intended to induce consumers to purchase their brand e-cigarettes. As
2 such, the class action device would provide the most efficient and economical procedures to
3 remedy, protect and deter Defendants from engaging in such unfair and deceptive practices in the
4 future.

5 V.

6 **FACTUAL ALLEGATIONS COMMON TO THE ENTIRE CLASS**

7 25. Defendants sell e-cigarettes throughout the United States, including the State of
8 California. An e-cigarette is a battery-operated device that contains a cartridge filled with
9 nicotine and other chemicals which turn into a vapor to be inhaled by the user. A person inhales
10 vapors from the e-cigarette as he or she would inhale smoke from a normal cigarette. When the
11 liquid in the cartridge has been depleted, it can either be refilled by the user or replaced with
12 another pre-filled cartridge. E-cigarettes are designed to look like and be used in the same
13 manner as conventional cigarettes.

14 26. Defendants' website describes its product as "America's #1 E-Cigarette" with the
15 "look, feel, and flavor of the real thing, but without the tobacco smoke."¹ Defendants go on to
16 tout that "it provides everything you like about smoking without the things you don't."²
17 Defendants represent that the primary ingredients, glycerin and propylene glycol, have been
18 determined by the FDA to be "generally recognized as safe for use in food ..."³ Importantly,
19 Defendants' website claims that all of the ingredients in its product are "determined to be safe for
20 use in food products."⁴ Thus, Defendants represent to consumers, including Plaintiff and the
21 Consumer Class, that their product is a safer and healthier alternative to smoking and that it
22 contains no harmful ingredients.
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24 ¹ <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html>.

25 ² *Id.*

26 ³ <http://www.njoy.com/faqs>.

27 ⁴ *Id.*
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1 27. Defendants market one of its products, the “NJOY King,” as:

2 [P]remium electronic cigarette with the look, feel, and flavor of the
3 real thing, but without the tobacco smoke. Instead it emits a
4 flavorful but odorless vapor. It provides everything you like about
5 smoking without the things you don’t. No tobacco smoke or
6 cigarette smell.⁵

7 28. This representation that Defendants’ product provides “everything you like about
8 smoking without the things you don’t” is a clear strategy to convince the consumer that
9 Defendants’ product is safer than conventional cigarette smoking and will not cause serious side
10 effects like cancer.

11 29. Defendants’ website states that its product contains nicotine, which is “found in
12 certain plants, predominately tobacco, and in lower quantities, tomatoes, potatoes, eggplants,
13 cauliflower, bell-peppers, and some teas.”⁶ This representation implies that Defendants’ product
14 is just as safe as vegetables that most consumers believe are healthy and that the nicotine in
15 Defendants’ product is not harmful. In reality, a typical consumer would need to ingest, as an
16 example, 244 grams of tomatoes to equal the amount of nicotine a *passive* smoker would absorb
17 in about three hours in a room with a minimal amount of tobacco smoke.⁷ Thus, Defendants’
18 comparison of the nicotine content of its product to that of common vegetables is misleading and
19 designed to induce the consumer, including Plaintiff and the members of the Consumer Class, to
20 purchase Defendants’ product.

21 30. Although represented to be safe and healthy, Defendants’ labels and warns that e-
22 cigarettes are “intended for use by adults.” Yet, Defendants sells the e-cigarettes from its
23 website, www.njoy.com, and locations throughout the United States, including gas stations and
24 convenience stores. In addition, on Defendants’ website it states, “This New Year, return the

25 ⁵ <http://www.njoy.com/njoy-kings/njoy-king-3-pack.html>.

26 ⁶ <http://www.njoy.com/faqs>.

27 ⁷ *New England Journal of Medicine*, “The Nicotine Content of Common Vegetables,
28 8/5/1993, 329:437.

1 favor, friends don't let friends smoke."⁸ This statement refers smokers to a New Year's
 2 resolutions to quit smoking and implies that Defendants' e-cigarettes are a smoking cessation
 3 product. Yet in multiple places, including extremely small print on the back of Defendants'
 4 container, Defendants states that it is not a smoking cessation product. Undoubtedly the reason
 5 Defendants state elsewhere that it is not a smoking cessation product is to avoid regulation under
 6 the Food, Drug and Cosmetic Act, which has been found, in a lawsuit to which NJOY was a
 7 party, to grant the FDA the power to regulate smoking cessation devices. *See Smoking*
 8 *Everywhere, Inc. v. United States FDA*, 680 F.Supp.2d 62 (D.D.C. 2010).

9 31. Defendants' claim on its website to sell "America's top-selling brand of e-
 10 cigarettes."⁹ Defendants also claim, "Over 3 million sold."¹⁰ According to Defendants' CEO,
 11 Craig Weiss, Defendants controls about 40 percent of the U.S. electronic cigarette market.¹¹

12 32. On information and belief, Plaintiff and most members of the Consumer Class
 13 have bought more than one of Defendants' products.

14 33. Dr. Margaret A. Hamberg, commissioner of the FDA, stated, "The FDA is
 15 concerned about the safety of these products and how they are marketed to the public."¹²

16 34. In July 2009, the FDA announced that tests on e-cigarettes, including Defendants'
 17 product, found that they contain carcinogens and other toxic chemicals dangerous to humans.¹³

18 35. Information on the FDA's website note numerous concerns voiced by public health
 19 experts:

20
 21 Makers and retailers of these products have been making unproven

22 ⁸ <http://www.njoy.com>.

23 ⁹ <http://www.njoy.com/how-it-works>.

24 ¹⁰ *Id.*

25 ¹¹ Burrirt, Chris *E-Cigarette Maker NJOY Seen as Takeover Target Amid Innovation*,
 26 Bloomberg, Dec. 5, 2012, <http://www.bloomberg.com/news/2012-12-05>

27 ¹² <http://www.cnn.com/2009/HEALTH/07/22/ecigarettes.fda/index.html>

28 ¹³ *Id.*

1 health claims about their products, claiming that they are safer than
2 normal cigarettes and asserting that they can help people quit
3 smoking. Absent scientific evidence, these claims are in blatant
4 violation of FDA rules. In fact, no studies have been done on e-
5 cigarettes to date regarding their health effects or their
6 effectiveness as cessation aids.¹⁴

7 36. On July 22, 2009, the FDA held a press conference warning of the potential health
8 risks posed by the use of e-cigarettes. The FDA representatives from the Office on Smoking and
9 Health at the Centers for Disease Control and Prevention, the American Academy of Pediatrics
10 Tobacco Consortium, and the University of Southern California Institute for Global Health,
11 warned that e-cigarettes, including those sold by Defendants, contain known human carcinogens
12 and other tobacco specific impurities harmful to humans, lack verifiable substantiation for
13 represented health benefits, exhibit material variability from the amount of nicotine represented
14 to be delivered due to a lack of product quality control, and are sold without legal restrictions.¹⁵

15 37. The FDA analyzed the ingredients of two brands of e-cigarettes, including
16 Defendants' brand. In one sample, diethylene glycol, a toxic chemical used in antifreeze, was
17 detected. Other samples had dangerous carcinogens.¹⁶

18 38. Thus, Defendants' e-cigarettes are potentially as toxic, as carcinogenic, and as
19 unhealthy as traditional cigarettes.

20 39. Therefore, the e-cigarettes are unreasonably dangerous because they contain some
21 of the same impurities and the same cancer-causing agents as traditional cigarettes.

22 40. Defendants knew or should have known that the e-cigarettes are unreasonably
23 dangerous, harmful, and/or contain toxins, carcinogens, or other harmful chemicals and nicotine
24 levels that vary from the labeled amounts. Nevertheless, Defendants failed to disclose and
25 actively concealed this fact from Plaintiff and the members of the Consumer Class at the time of

26 ¹⁴ <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm1173175.htm>

27 ¹⁵ FTS-HHS FDA, *Transcript for FDA's Media Briefing on Electronic Cigarettes*,
28 <http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM173405.pdf>

¹⁶ <http://www.fda.gov/forconsumers/consumerupdates/ucm173401.htm>

1 purchase and thereafter. Had Plaintiff and the members of the Consumer Class known that the e-
2 cigarettes are unreasonably dangerous, harmful, and/or contain toxins, carcinogens, or other
3 harmful chemicals and nicotine levels that vary from the labeled amounts, they would not have
4 purchased the e-cigarettes.

5 41. Defendants had access to information about the significant health risks posed by
6 smoking e-cigarettes through its internal testing, consumer complaints, FDA investigations
7 and/or inquiries, as well as other sources of aggregate information. Through these sources
8 Defendants also knew that the e-cigarettes are unreasonably dangerous, harmful and/or contain
9 toxins, carcinogens, or other harmful chemicals and nicotine levels that vary from the labeled
10 amounts, but failed to disclose this fact to consumers at the time of purchase and thereafter. Had
11 Plaintiff and members of the Consumer Class known that the e-cigarettes are unreasonably
12 dangerous, harmful, and/or contain toxins, carcinogens, or other harmful chemicals and nicotine
13 levels that vary from the labeled amounts, they would not have purchased the e-cigarettes.

14 42. Therefore, Plaintiff and tens of thousands of consumers have purchased
15 Defendants' e-cigarettes. They have purchased Defendants' e-cigarettes with no disclosure or
16 warning from Defendants that the e-cigarettes are harmful and/or contain toxins, carcinogens,
17 other harmful chemicals and nicotine levels that vary from labeled amounts.

18 43. Even though as the importer, marketer, and distributor of the e-cigarettes,
19 Defendants knew, or should have known that its e-cigarettes contained the same toxins and
20 carcinogens that conventional cigarettes contain, Defendants mislead consumers by affirmatively
21 representing on its e-cigarette packages, its website, and other advertising materials and media
22 that its e-cigarettes are safe and healthy. As a result, Plaintiff and members of the Consumer
23 Class who purchased Defendants' e-cigarettes have been harmed in the amount they paid to
24 purchase the e-cigarettes.

25 44. Defendants, in contrast, have profited from its misrepresentations and material
26 omissions to Plaintiff and members of the Consumer Class.

27 45. In or around December 2013, Plaintiff purchased Defendants' e-cigarettes in the
28

1 County of Orange, State of California.

2 46. Plaintiff has read the representations on Defendants' website as well as the
3 packaging of the device he purchased, including, among other things, the representation that
4 because e-cigarettes are smoke free, they do not contain the harmful chemicals found in tobacco
5 smoke. Plaintiff reasonably relied on Defendants' representations because Defendants
6 represented that the e-cigarettes had been scientifically tested and determined to be free from
7 harmful chemicals.

8 47. Plaintiff used Defendants' e-cigarettes as directed by Defendants.

9 48. In January 2014, Plaintiff discontinued use of the e-cigarettes because he was
10 experiencing various symptoms, including nausea, dizziness, and persistent pain in his chest
11 resulting from his use of the e-cigarettes.

12 49. Plaintiff and members of the Consumer Class have suffered injury as a result of
13 Defendants' alleged misconduct. They have been injured in the amount they paid for the e-
14 cigarettes.

15 VI.

16 CAUSES OF ACTIONS

17 **FIRST CAUSE OF ACTION**

18 **Violation of the CLRA (CC §§ 1750 et seq.)**

19 **(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All Defendants)**

20 50. Plaintiff incorporates by reference and realleges as if fully stated herein the
21 material allegations set out in paragraphs 1 through 49.

22 51. CC § 1770(a)(1)-(24) of the CLRA prohibits the following *24 unfair or deceptive*
23 *acts or practices* undertaken by any person in a transaction *intended to result or which results in*
24 *the sale of goods to any consumer*: (1) passing off goods or services as those of another; (2)
25 misrepresenting the source, sponsorship, approval, or certification of goods or services; (3)
26 misrepresenting the affiliation, connection, or association with, or certification by, another; (4)
27 using deceptive representations or designations of geographic origin in connection with goods or
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1 services; (5) representing that goods or services have sponsorship, approval, characteristics,
2 ingredients, uses, benefits, or quantities which they do not have or that a person has a
3 sponsorship, approval, status, affiliation, or connection which he or she does not have; (6)
4 representing that goods are original or new if they have deteriorated unreasonably or are altered,
5 reconditioned, reclaimed, used, or secondhand; (7) representing that goods or services are of a
6 particular standard, quality, or grade, or that goods are of a particular style or model, if they are
7 of another; (8) disparaging the goods, services, or business of another by false or misleading
8 representation of fact; (9) advertising goods or services with intent not to sell them as advertised;
9 (10) advertising goods or services with intent not to supply reasonably expectable demand,
10 unless the advertisement discloses a limitation of quantity; (11) advertising furniture without
11 clearly indicating that it is unassembled if that is the case; (12) advertising the price of
12 unassembled furniture without clearly indicating the assembled price of that furniture if the same
13 furniture is available assembled from the seller; (13) making false or misleading statements of
14 fact concerning reasons for, existence of, or amounts of price reductions; (14) representing that a
15 transaction confers or involves rights, remedies, or obligations which it does not have or involve,
16 or which are prohibited by law; (15) representing that a part, replacement, or repair service is
17 needed when it is not; (16) representing that the subject of a transaction has been supplied in
18 accordance with a previous representation when it has not; (17) representing that the consumer
19 will receive a rebate, discount, or other economic benefit, if the earning of the benefit is
20 contingent on an event to occur subsequent to the consummation of the transaction; (18)
21 misrepresenting the authority of a salesperson, representative, or agent to negotiate the final
22 terms of a transaction with a consumer; (19) inserting an unconscionable provision in the
23 contract; (20) advertising that a product is being offered at a specific price plus a specific
24 percentage of that price unless (A) the total price is set forth in the advertisement, which may
25 include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any
26 other price in that advertisement, and (B) the specific price plus a specific percentage of that
27 price represents a markup from the seller's costs or from the wholesale price of the product; (21)

1 selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title
2 1.7.; (22) disseminating an unsolicited prerecorded message by telephone without an unrecorded,
3 natural voice first informing the person answering the telephone of the name of the caller or the
4 organization being represented, and either the address or the telephone number of the caller, and
5 without obtaining the consent of that person to listen to the prerecorded message; (23) the home
6 solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen
7 where a loan is made encumbering the primary residence of that consumer for the purposes of
8 paying for home improvements and where the transaction is part of a pattern or practice in
9 violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or
10 paragraph (e) of Section 226.32 of Title 12 of the Code of Federal Regulations; (24) charging or
11 receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or
12 recipient in the procurement, maintenance, or securing of public social services.

13 52. By failing to disclose and concealing the harmful effects of e-cigarettes as alleged
14 in this Complaint, Defendants violated CC § 1770(a)(5,7), because Defendants have misled and
15 deceived the public into believing that their e-cigarettes have *characteristics, ingredients, uses,*
16 *benefits, or qualities which they do not have* and that their e-cigarettes *are of a particular*
17 *standard, quality, or grade,* when they were of another to induce, and which caused, the
18 consuming public to purchase Defendants' brand of e-cigarettes.

19 53. Defendants' unfair or deceptive acts or practices occurred repeatedly in
20 Defendants' trade or business, specifically through internet ads and television commercials and
21 statements made by Defendants' corporate executives during publicly aired television interviews.
22 These unfair and deceptive acts and practices were capable and did deceive a substantial portion
23 of California's purchasing public, which resulted in substantial gain to Defendants, but at the
24 same time deceive California consumers and potentially impose serious health risks.

25 54. Defendants knew or should have known that their e-cigarettes did not have the
26 *characteristics, ingredients, uses, benefits, or qualities which they do not have* and that the e-
27 cigarettes *are not of a particular standard, quality, or grade* that Defendants represent to the
28

1 consuming public.

2 55. Defendants were and are under a duty to Plaintiff and the Consumer Class to
3 disclose the true nature and effects of the e-cigarettes because:

- 4 a) Defendants are in a superior position to know the true facts about the
5 inherent health risks that can result from smoking e-cigarettes;
- 6 b) Plaintiff and the prospective class members could not reasonably have been
7 expected to learn or discover the inherent health risks that can result from
8 smoking e-cigarettes until after they purchased the product;
- 9 c) Defendants have exclusive knowledge of material facts not known or
10 reasonably accessible to Plaintiff and the Consumer Class;
- 11 d) Defendants are actively concealing material facts from Plaintiff and the
12 Consumer Class; and
- 13 e) Defendants are making partial representations that are misleading because
14 other material facts have not been disclosed. *Collins v. eMachines, Inc.*,
15 202 Cal.App.4th 249, 255 (2011) [citing *Daugherty v. American Honda*
16 *Motor Co., Inc.*, 144 Cal.App.4th 824 (2006)].

17 56. As a result of Defendants' false and deceptive acts and practices as alleged above,
18 Plaintiff and the Consumer Class relied on those false and deceptive acts and practices and were
19 induced and did alter their positions to their detriment by purchasing Defendants' brand of e-
20 cigarettes. Therefore Plaintiff and the Consumer Class were damaged.

21 57. As a direct and legal result of the aforementioned conduct of Defendants and their
22 officers, directors and/or managing agents, and employees an award of exemplary and punitive
23 damages against Defendants is proper and appropriate to punish and to deter them from such
24 future conduct as permitted by CC § 1780(a)(4).

25 58. WHEREFORE, Plaintiff and the Consumer Class he seeks to represent request
26 relief as described below.

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SECOND CAUSE OF ACTION
Violation of the UCL (Cal. Bus & Prof. Code §§ 17200 et seq.)
(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All Defendants)

59. Plaintiff incorporates by reference and realleges as if fully stated herein the material allegations set out in paragraphs 1 through 58.

60. The major purpose of Bus. & Prof. Code § 17200 is to preserve fair business competition and to protect the public from fraud, deceit, and unlawful conduct. Section 17200 states that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with § 17500) of Part 3 of Division 7 of the Business and Professions Code.”

61. Section 17200 prohibits five different types of wrongful conduct: (1) unlawful business act or practice; (2) unfair business act or practice; (3) fraudulent business act or practice; (4) unfair, deceptive, untrue or misleading advertising; and (5) any act prohibited by Cal. Bus. & Prof. Code §§ 17500–17577.5. “The statute [section 17200] imposes strict liability. It is not necessary to show that the defendant intended to injure anyone.” *Community Assisting Recovery, Inc. v. Aegis Ins. Co.*, 92 Cal.App.4th 886, 891 (2001); *Rothschild v. Tyco Int’l (US), Inc.*, 83 Cal.App.4th 488, 494 (2000). As the California Supreme Court has said, § 17200 “borrows” violations of other laws and treats them as unlawful practices independently actionable under § 17200. *Farmers Ins. Exch. v. Sup.Ct.*, 2 Cal.4th 377, 383 (1992).

62. Defendants' violations of the CLRA as alleged above and the FAL and common law causes of action alleged below constitute “unlawful” business acts or practices prohibited by § 17200 et seq. *Falk v. General Motors Corp.*, 496 F.Supp.2d 1088, 1095–1096 (N.D. Cal. 2007); *Wang v. Massey Chevrolet*, 97 Cal.App.4th 856 (2002); *Massachusetts Mutual Life Ins. Co. v. Sup.Ct.*, 97 Cal.App.4th 1282 (2002); *Podolsky v. First Healthcare Corp.*, 50 Cal.App.4th 632, 649 (1996); *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1107 (9th Cir. 2007).

63. Defendants failure to disclose the true characteristics, effects and ingredients of

1 their e-cigarettes have misled purchasers into believing that Defendants' brand of e-cigarettes
2 have uses, benefits, or qualities which they do not have. Defendants' acts or practices are
3 therefore "unfair," "fraudulent" and "deceptive or misleading advertising" within the meaning of
4 § 17200 *et seq* because consumers are likely to be deceived by Defendants' deceptive business
5 practices and advertisements that portray the e-cigarettes as a healthier alternative to traditional
6 smoking when testing has not been completed and show otherwise.

7 64. Bus. & Prof. Code § 17203 authorizes the Court to make "such orders or
8 judgments ... as may be necessary to prevent the use or employment by any person of any
9 practice which constitutes unfair competition ... or as may be necessary to restore to any person
10 ... any money or property ... which may have been acquired by means of such unfair
11 competition." As to restitutionary relief, the California Supreme Court has held that "a court of
12 equity may exercise the full range of its inherent powers in order to accomplish complete justice
13 between the parties, restoring if necessary the status quo ante as nearly as may be achieved."
14 *People v. Sup.Ct. (Jayhill Corp.)*, 9 Cal.3d 283, 286 (1973) ("A trial court has the inherent power
15 to order, as a form of ancillary relief, that the defendants make or offer to make restitution to the
16 customers found to have been defrauded.") As a result of their unlawful acts as alleged above,
17 Defendants have reaped and continue to reap unfair benefits at the expense of Plaintiff and the
18 Consumer Class he seeks to represent. Defendants should be made to disgorge these ill-gotten
19 gains and to pay over a monetary restitutionary award to Plaintiff and the Consumer Class in the
20 amount wrongfully gained by Defendants in profits. *People v. Parkmerced Co.*, (1988) 198
21 Cal.App.3d 683, 244 (1988); *People v. Thomas Shelton Powers, M.D., Inc.*, 2 Cal.App.4th 330
22 (1992).

23
24 65. As to injunctive relief, the Legislature "intended ... to permit courts to enjoin
25 ongoing wrongful business conduct in whatever context such activity might occur." *Barquis v.*
26 *Merchants Collection Ass'n*, 7 Cal.3d 94, 111 (1972). Plaintiff and the Consumer Class are
27 entitled to an injunction in order to prevent future damage and to prevent unfair competition.
28 Plaintiff brings this cause individually and as a member of the general public actually harmed

1 and as a representative of all others subject to Defendants' unlawful business acts and practices.

2 66. As a direct and proximate result of the unfair business practices of Defendants,
3 Plaintiff, individually and on behalf of the Consumer Class, are entitled to equitable and
4 injunctive relief, including full restitution and/or disgorgement of all monetary amounts
5 deceptively stolen as a result of the business acts and practices described herein and enjoining
6 Defendants from engaging in the practices described herein.

7 67. The illegal conduct alleged herein is continuing, and there is no indication that
8 Defendants will cease and desist from such activity in the future. Plaintiff alleges that if
9 Defendants are not enjoined from the conduct set forth in this Complaint, they will continue to
10 commit the unfair and unlawful business practices alleged herein.

11 68. WHEREFORE, Plaintiff and the Consumer Class he seeks to represent request
12 relief as described below.

13
14 **THIRD CAUSE OF ACTION**
15 **Violation of the FAL (Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**
16 **(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All**
17 **Defendants)**

18 69. Plaintiff incorporates by reference and realleges as if fully stated herein the
19 material allegations set out in paragraphs 1 through 68.

20 70. Bus. & Prof. Code § 17500 states:

21 It is unlawful for any person, firm, corporation or association, or
22 any employee thereof with intent directly or indirectly to dispose
23 of real or personal property or to perform services, professional or
24 otherwise, or anything of any nature whatsoever or to induce the
25 public to enter, into any obligation relating thereto, to make or
26 disseminate or cause to be made or disseminated before the public
27 in this state, or to make or disseminate or cause to be made or
28 disseminated from this state before the public in any state, in any
newspaper or other publication, or any advertising device, or by
public outcry or proclamation, or in any other manner or means
whatever, including over the Internet, any statement, concerning
such real or personal property or services, professional or
otherwise, or concerning any circumstance or matter of fact
connected with the proposed performance or disposition thereof,
which is untrue or misleading, and which is known, or which by
the exercise of reasonable care should be known, to be untrue or
misleading, or for any such person, firm, or corporation to so make
or disseminated or cause to be so made or disseminated any such

1 statement as part of a plan or scheme with the intent not to sell
2 such personal property or services, professional or otherwise, so
3 advertised at the price stated therein, or as so advertised

4 71. To establish a violation of § 17500, Plaintiff must show the following elements:

5 (1) Defendants intended to dispose of personal property; and (2) Defendants publicly
6 disseminated advertising which: (a) contained a statement which was untrue or misleading, and
7 (b) which Defendants knew, or in the exercise of reasonable care should have known, was untrue
8 or misleading, and (3) which concerned the personal property.

9 72. Defendants publicly disseminated advertising through public media (i.e., internet,
10 product labels, and television interviews and commercial) that their brand of e-cigarettes are
11 safer and a healthier alternative than traditional cigarettes. Defendants also failed to disclose
12 material negative facts about their brand of e-cigarettes which would have materially affected a
13 consumer's decision to use or buy their product. These misleading advertisements reasonably
14 deceived Plaintiff and the Consumer Class to purchase Defendants' brand of e-cigarettes.

15 73. Defendants knew that their advertisements are misleading because they have
16 exclusive control of the manufacture of both the cartridge and liquid that comprises the e-
17 cigarette. In addition, Defendant cannot stand idly, cover their eyes and ears, and not conduct an
18 investigation as to prevent false advertising. *People v. Forest E. Olson, Inc.*, 137 Cal.App.3d
19 137, 139 (1982); *Khan v. Medical Bd.*, 12 Cal.App.4th 1834, 1846 (1993); *Feather River Trailer*
20 *Sales, Inc. v. Sillas*, 96 Cal.App.3d 234 (1979). Defendants owe Plaintiff and the Consumer
21 Class a duty to exercise reasonable care to prevent the public dissemination of misleading
22 advertisements. Had Defendants exercised reasonable care, Defendants could have prevented
23 the public disclosure of misleading advertisements relating to their brand of e-cigarettes, and
24 therefore could have accurately informed Plaintiff and the Consumer Class of their product, so
25 they can make an informed decision on whether to use or purchase Defendants' brand of e-
26 cigarettes. Because Defendants publicly disseminated advertising of their product which was
27 misleading, Defendants violated § 17500.
28

1 74. Bus & Prof. Code § 17535 authorizes courts to enter injunctive relief against
2 deceptive advertising and to award restitution:

3 Any person, corporation, firm, partnership, joint stock company, or
4 any other association, or organization which violates or proposes
5 to violate this chapter may be enjoined by any court of competent
6 jurisdiction. The court may make such orders or judgments,
7 including the appointment of a receiver, as may be necessary to
8 prevent the use or employment by any person, corporation, firm,
9 partnership, joint stock company, or any other association or
10 organization of any practices which violate this chapter, or which
11 may be necessary to restore to any person in interest any money or
12 property, real or personal, which may have been acquired by
 means of any practice in this chapter declared to be unlawful.
 Actions for injunction under this section may be prosecuted by the
 Attorney General or any district attorney, county counsel, city
 attorney, or city prosecutor in this state in the name of the people
 of the State of California upon their own complaint or upon the
 complaint of any board, officer, person, corporation or association
 or by any person acting for the interests of itself, its members or
 the general public.

13 75. Plaintiff and the Consumer Class are entitled to injunctive relief and therefore
14 request the Court to issue an order enjoining Defendants from continuing to publicly disseminate
15 their misleading advertisements. Plaintiff and the Consumer Class are also entitled to a
16 restitutionary award in the amount of monies deceptively acquired by Defendants through their
17 misleading advertisements.

18 76. WHEREFORE, Plaintiff and the Consumer Class he seeks to represent request
19 relief as described below.

20 **FOURTH CAUSE OF ACTION**
21 **Consumer Fraud**
22 **(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All Defendants)**

23 77. Plaintiff incorporates by reference and realleges as if fully stated herein the
24 material allegations set out in paragraphs 1 through 76.

25 78. Common law fraud requires proof of five elements: (a) misrepresentation (either a
26 false representation, concealment, or nondisclosure); (b) knowledge of falsity, or scienter, (c)
27 intent to defraud or to induce reliance, (d) justifiable reliance, and (e) resulting damage. CC §
28 1709; *see also Seeger v. Odell*, 18 Cal.2d 409, 414 (1941).

1 79. During the Proposed Class Period, and as alleged above, Defendants engaged in a
2 systematic pattern and practice of publicly disseminating misleading information and facts about
3 their brand of e-cigarettes and concealing and not disclosing material information which would
4 have reasonably affected the decision of Plaintiff and members of the Consumer Class to use or
5 purchase Defendants' brand of e-cigarettes. As alleged above, Defendants knew or through
6 reasonably diligence, should have known, that their advertisements were false and misleading.
7 As a result of Defendants' deceptive and misleading advertisements, Plaintiff and members of
8 the Consumer Class reasonably relied on said misrepresentation and purchased, to their
9 detriment, Defendants' brand of e-cigarettes.

10 80. As a result of this justifiable reliance on Defendants' fraudulent representations,
11 Plaintiff and the Consumer Class suffered damages in an amount to be proven at the time of
12 trial.

13 81. As a further direct and legal result of the aforementioned conduct of Defendants
14 and their officers, directors and/or managing agents, and employees an award of exemplary and
15 punitive damages against Defendants is proper and appropriate to punish and to deter them from
16 such future conduct.

17 82. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
18 described below.

19
20 **FIFTH CAUSE OF ACTION**
21 **Unjust Enrichment**
22 **(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All**
23 **Defendants)**

24 83. Plaintiff incorporates by reference and realleges as if fully stated herein the
25 material allegations set out in paragraphs 1 through 82.

26 84. During the Proposed Class Period, Defendants were unjustly benefitted through
27 their deceptive and misleading business acts, practices and advertisements in an amount equal to
28 the profits Defendants made by illegally inducing Plaintiff and the Consumer Class to purchase
Defendants' brand of e-cigarettes.

1 85. During the Proposed Class Period, and as alleged above, Defendants were under a
2 legal duty to not publicly disseminate false and misleading advertisements to California’s
3 citizens. Defendants wrongfully violated that duty; thereby violating the rights of Plaintiff and
4 members of the Consumer Class.

5 86. During the Proposed Class Period, Defendants received and unjustly retained ill-
6 gotten gains acquired from Plaintiff and the Consumer Class. Those ill-gotten gains and profits
7 unlawfully acquired by Defendant belong to Plaintiff and the Consumer Class.

8 87. During the Proposed Class Period, and as alleged above, Defendants breached their
9 obligation to follow California's laws in regards to how they conduct their business in California.
10 Defendants’ conduct was conscious, deliberate, intentional and/or malicious; thus warranting an
11 award of punitive damages.

12 88. As a direct result of Defendants' unlawful business practices and acts, Plaintiff and
13 the Consumer Class have suffered damage in an amount to be proven at time of trial.

14 89. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
15 described below.

16
17 **SIXTH CAUSE OF ACTION**
18 **Conversion**
(On Behalf of Plaintiff, Individually, and on Behalf of the Consumer Class Against All
Defendants)

19 90. Plaintiff incorporates by reference and realleges as if fully stated herein the
20 material allegations set out in paragraphs 1 through 89.

21 91. During the Proposed Class Period, Plaintiff and the Consumer Class he seeks to
22 represent have an ownership interest in the monetary amounts taken by Defendants through the
23 use of unlawful, unfair, deceptive and misleading business practices and advertisements.

24 92. Defendants have not returned to Plaintiff and the Consumer Class the monetary
25 amounts misappropriated by Defendants.

26 93. During the Proposed Class Period, Plaintiff and the Consumer Class he seeks to
27 represent would not have used or purchased Defendants’ brand of e-cigarettes if they had known
28

1 that Defendants representations were false and omitted material information which would have
2 affected their decision not to buy Defendants' brand of e-cigarettes.

3 94. During the Proposed Class Period, Plaintiff and the Consumer Class he seeks to
4 represent were harmed by Defendants' unlawful conduct.

5 95. During the Proposed Class Period, Defendants wrongfully converted the monies
6 they unlawfully acquired from Plaintiff and the Consumer Class to their own use.

7 96. During the Proposed Class Period, Defendants fully realized what they were doing.
8 Defendants fully realized that they were stealing money from Plaintiff and the Consumer Class.

9 97. Defendants fully realized that Plaintiff and the Consumer Class were not
10 knowledgeable as to the contents and makeup of Defendants' brand of e-cigarettes and not likely
11 to appreciate, understand and/or comprehend its chemical makeup or safety hazards. Defendants
12 fully realized that Plaintiff and the Consumer Class were in a relatively disadvantaged situation.
13 Defendants preyed on Plaintiff and the Consumer Class by misleading, misrepresenting and not
14 disclosing information which would have been vital to their decision to use or purchase
15 Defendants' brand of e-cigarettes. At all times mentioned herein, said violations were conscious,
16 deliberate, intentional and/or malicious. At all times mentioned herein, said conversion was
17 conscious, deliberate, intentional and/or malicious. At all times mentioned herein, Defendants
18 knew that they could take advantage of Plaintiff and the Consumer Class because Defendants
19 knew they could prey on the relative unsophistication of Plaintiff and the Consumer Class as to
20 makeup of their product and the resulting effects of their products. At all times mentioned
21 herein, the acts, omissions and/or conduct on the part of Defendants were downright malice. At
22 all times mentioned herein, Defendants fully realized that they were stealing the money from
23 innocent and relatively helpless consumers of California.
24

25 98. As a direct result of Defendants' conversion, Plaintiff and the Consumer Class
26 were damaged in an amount to be proven at time of trial.

27 99. As a further direct and legal result of the aforementioned conduct of Defendants
28 and their officers, directors and/or managing agents, and employees an award of exemplary and

1 punitive damages against Defendants is proper and appropriate to punish and to deter them from
2 such future conduct.

3 100. WHEREFORE, Plaintiff and the Class he seeks to represent requests relief as
4 described below.

5 **VII.**

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually, and behalf of the Consumer Class, pray for relief
8 as follows:

- 9 1) For an Order certifying the proposed Consumer Class pursuant to CCP § 382
10 and/or CC § 1781, appointing Plaintiff as Class Representative of all aggrieved
11 consumers similarly situated, and appointing the law firm representing Plaintiff as
12 Class Counsel for the members of the Consumer Class;
- 13 2) For an Order requiring Defendants to identify the members of the Consumer Class
14 by name, home address, and home telephone number;
- 15 3) For all actual and compensatory damages according to proof at trial;
- 16 4) For exemplary or punitive damages under CC § 1780(a)(4) and the common law
17 causes of action pled in this Complaint;
- 18 5) For restitution or restoration of the monies spent by Plaintiff and aggrieved
19 consumers to purchase Defendants' e-cigarettes due to unlawful, misleading and
20 deceptive practices pursuant to B&PC §§ 17203, 17204, and 17500;
- 21 6) For an accounting, under administration of Plaintiff and/or the receiver and subject
22 to Court review, to determine the amount to be returned by Defendants, and the
23 amounts to be refunded to members of the Consumer Class who are owed monies
24 by Defendants
- 25 7) A declaratory judgment that the practices complained of herein are unlawful under
26 California law;
- 27 8) Appropriate equitable relief to remedy Defendants' violations of California law
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including, but not necessarily limited to, an order enjoining Defendants from continuing its unlawful practices or restricting Defendants' future disclosures under CC § 1780(a)(2);

- 9) Pre-and-post judgment interest, as provided by law;
- 10) Such other equitable relief as this Court may deem just and proper;
- 11) For attorneys' fees and costs of suit, including expert fees, pursuant to CC § 1780(e), CCP § 1021.5, and other applicable state laws; and
- 12) Any other relief that the Court deems proper under CC § 1780(a)(5).

VI.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: February 12, 2014 February 11, 2014

BISNAR CHASE LLP

By:



BRIAN D. CHASE
JERUSALEM F. BELIGAN
TRAVIS K. SIEGEL

Attorneys for Plaintiff and Putative Class

Exhibit B

February 14, 2014

NOTICE OF CLRA VIOLATIONS PURSUANT TO
CIVIL CODE § 1782

To: NJOY, Inc., SOTTERA, Inc. (“Respondents”) and the Secretary of State of California

From: Eric McGovern (“Claimant”), on behalf of himself, the general public and on behalf of all aggrieved consumers of Respondents who were victims of Respondents’ violations of the CLRA [Civil Code (“CC”) § 1770(a)(5), (7)] and other California statutes and common-law claims alleged in the Consumer Class Action Complaint (the “Complaint,” a true and correct copy of which is attached hereto as Exhibit 1)

Factual and Procedural Statement:

Claimant, on behalf of himself, the general public and similarly situated California-based consumers of Respondents (the “Aggrieved Consumers”), hereby give notice, pursuant to CC § 1782, of their intent to seek damages for violation of the CLRA and their intent to amend the Complaint to seek damages if Respondents fail to “correct, repair, ... or otherwise rectify the goods ... alleged to be in violation of Section 1770.” CC § 1782. As alleged in detail in the Complaint, the Aggrieved Consumers contend Respondents violated CC § 1770(a)(5), (7) of the CLRA during the relevant time period:

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another

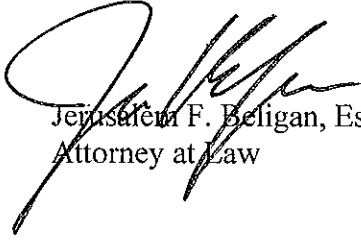
The Complaint was electronically submitted to the Orange County Superior Court—Complex Civil for filing on February 11, 2014.

Theories of CLRA Violations and Remedies:

Claimant is an aggrieved consumer of Respondents and therefore has standing to bring the action and will serve as an adequate class representative because his interests are aligned with the class. The theories of liability and relief requested are delineated in the Complaint. To avoid redundancy, Claimant refers Respondents to the Complaint. If, within the next 30-days, Respondents do not provide appropriate correction, repair, remedy or does not make any effort to resolve the CLRA violations outlined in the Complaint, our office will amend the Complaint to include a request for damages under the CLRA.

Thank you for your attention to this matter. We look forward to your response.

Respectfully submitted,



Jerusalem F. Beligan, Esq.
Attorney at Law

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

**California Secretary of State
Business Programs Division**
1500 11th Street
Sacramento, CA 95814

NJOY, Inc.
15211 N. Kierland Blvd.
Scottsdale, AZ 85254

NJOY, Inc.
Corporate Trust Center
1209 Orange St.
Wilmington, DE 19801

NJOY, Inc.
c/o Craig Weiss, Agent
15211 N. Kierland Blvd.
Scottsdale, AZ 85254