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SAN MATEO COUNTY BOARD OF EDUCATION
14 and NANCY MAGEE in her official capacity as SAN
MATEO COUNTY SUPERINTENDENT OF
15 SCHOOLS

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19
20 **SAN MATEO COUNTY BOARD OF**
EDUCATION and NANCY MAGEE in her
21 **official capacity as SAN MATEO COUNTY**
SUPERINTENDENT OF SCHOOLS,

22 Plaintiffs,

23 v.

24 **JUUL LABS, INC and DOES 1-100.**

25 Defendants.
26

MDL Case No. 19-md-02913-WHO

Case No. 3:19-cv-8210

COMPLAINT AND
DEMAND FOR JURY TRIAL

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1 1. Plaintiffs San Mateo County Board of Education (“SMCBE”) and Nancy Magee, in her
2 official capacity as San Mateo County Superintendent of Schools (“SMC Superintendent”) (collectively
3 “Plaintiffs”), by and through their attorneys, respectfully submit this Complaint against Juul Labs, Inc.
4 (“JUUL”) and Does 1-100 (collectively “Defendants”) for their conduct marketing electronic cigarettes
5 (“e-cigarettes”) to minors.

6 2. Plaintiffs allege that Defendants’ marketing strategy, advertising, and product design targets
7 minors, especially preteens and teenagers, and has and will continue to increase the likelihood that minors,
8 like the students in Plaintiffs’ schools, will begin using e-cigarettes and become addicted to tobacco
9 products and this will cause further harm to Plaintiffs.

10 3. Plaintiffs allege the following upon personal knowledge as to themselves and their own acts
11 and upon information and belief as to all other matters based on the investigation of counsel.

I. NATURE OF THE CASE

12
13 4. E-cigarettes (also known as vaporizers, vape pens, vapes, or electronic nicotine delivery
14 system (“ENDS”)) are noncombustible tobacco products. E-cigarettes heat a liquid into an aerosol that
15 users inhale. Most e-cigarettes consist of four different components: (1) a cartridge or reservoir, which
16 holds a liquid solution containing varying amounts of nicotine, flavorings, and other chemicals; (2) a
17 heating element (atomizer); (3) a power source (usually a battery); and (4) a mouthpiece that the person
18 uses to inhale. Once a smoker has purchased the e-cigarette device (items 2–4 above, also known as a
19 starter kit), the smoker need only to buy replacement cartridges, also known as pods.

20 5. E-cigarettes often contain nicotine and for that reason are considered tobacco products.
21 Besides nicotine, the liquids in e-cigarettes contain other harmful ingredients, such as ultrafine particles
22 that can be inhaled deep into the lungs and heavy metals, such as lead, nickel, or tin. JUUL claims that
23 one pod of their patented nicotine juice contains the same amount of nicotine as twenty cigarettes, although
24 research has shown nicotine levels to be even higher.

25 6. E-cigarettes are subject to regulation pursuant to Section 901(b) of the Federal Food, Drug,
26 and Cosmetic Act, as amended by the Family Smoking and Prevention and Tobacco Control Act (“Tobacco
27
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Control Act”) of 2009.¹ The U.S. Food and Drug Administration (“FDA”) prohibits the sale and distribution of tobacco products to minors.²

7. At the end of 2018, JUUL controlled over 75% of the market for e-cigarettes.

8. JUUL is partially owned by Altria Group, Inc. (“Altria”), one of the world’s largest producers and marketers of tobacco products. Altria owns Philip Morris USA and is the maker of Marlboro cigarettes. JUUL and Altria have twin interests in creating a new generation of addicts. The sleek e-cigarette devices come in a variety of shapes and sizes to appeal to different aesthetics, and a variety of fruity flavors are designed to appeal to children and teens. The mint-flavored e-cigarette pods are the most popular flavor for high school users.³

9. On November 7, 2019, JUUL announced that it would stop selling its mint-flavored pods, which have been particularly popular among young users. JUUL made the decision in anticipation of a federal flavor ban by the FDA.⁴ Former FDA Commissioner Scott Gottlieb has called for the complete removal of JUUL products from the market.⁵

10. The U.S. Surgeon General has issued a warning about the dangers of e-cigarette use by young people. According the Surgeon General, in 2018, one in five high school students nationwide reported using e-cigarettes within the past month.

11. According to the Centers for Disease Control and Prevention (“CDC”), between 2017 and 2018, 1.5 million more youth began using e-cigarettes, while the use of other forms of tobacco by youth remained the same. The CDC now publishes a weekly update on the number of confirmed cases and deaths attributable to e-cigarette or vaping product associated lung injury (“EVALI”).⁶ As of December 10, 2019, 52 deaths have been confirmed in 26 states and the District of Columbia, including in California.

¹ The FDA has so far deferred the premarket review requirement for certain ENDS.

² 21 C.F.R. Part 1140 (2018).

³ See Adam Leventhal, et al., *Flavors of E-Cigarettes Used by Youths in the United States* (Nov. 5, 2019), <https://jamanetwork.com/journals/jama/fullarticle/2755264>.

⁴ Sheila Kaplan, *Juul Ends E-Cigarette Sales of Mint-Flavored Pods*, N.Y. TIMES (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

⁵ Jessica Busztynsky, *Juul’s Vaping Products Should Be Completely Pulled Off the Market, Says Ex-FDA Chief Gottlieb*, CNBC (Nov. 11, 2019), <https://www.cnbc.com/2019/11/11/scott-gottlieb-juul-vaping-products-should-be-pulled-off-the-market.html>.

⁶ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

1 12. The private sector has taken note of detrimental effects from the use of e-cigarettes. In
 2 September 2019, Walmart announced that it would sell its remaining inventory of e-cigarettes and
 3 thereafter would no longer carry the vaping devices.⁷ CBS, Viacom, and WarnerMedia have all decided
 4 to ban advertisements from e-cigarette makers in light of the scourge of recent vaping-related lung disease
 5 cases.⁸ In November 2019, Apple announced that it would ban vaping applications from its online store.⁹

6 13. The growing use of e-cigarettes among children and teens in San Mateo County is of great
 7 concern to County officials and leaders. JUUL's advertising and marketing scheme continues to harm the
 8 youth within Plaintiffs' schools who are now addicted to the harmful products, affecting not only their
 9 health, but also their learning outcomes while in school. Defendants' conduct has created a public nuisance
 10 of underage vaping across America, including within Plaintiffs' schools, and is forcing Plaintiffs to spend
 11 significant time, money, and human resources to combat this nuisance. This action seeks to hold
 12 Defendants accountable for their tortious and illegal conduct.

13 II. PARTIES

14 14. Plaintiff SMCBE is comprised of seven members who are elected to a four-year term.
 15 Among other essential tasks, the SMCBE approves policies, regulations, and curriculum for the schools
 16 and education programs operated by the County Superintendent of Schools. County boards of education
 17 are established by the California Constitution. The SMCBE meets at the offices of the San Mateo County
 18 Office of Education ("SMCOE"), which are located on Twin Dolphin Drive in Redwood City, San Mateo
 19 County, California.

20 15. Plaintiff SMC Superintendent oversees the SMCOE. The SMC Superintendent provides
 21 support to 23 school districts in San Mateo County and serves as an advocate and champion for public
 22 education. County superintendents of schools are established under the California Constitution and are
 23 considered county officers. Gov. Code § 24000.

24
 25 ⁷ Sarah Nassauer, *Walmart to Stop Selling All E-Cigarettes*, WALL STREET JOURNAL (Sept. 20, 2019),
<https://www.wsj.com/articles/walmart-to-stop-selling-all-e-cigarettes-11569003925>.

26 ⁸ Nick Statt, *CBS, Viacom, and WarnerMedia Ban E-Cigarette Advertisements Amid Vaping Health*
 27 *Crisis*, THE VERGE (Sept. 18, 2019), <https://www.theverge.com/2019/9/18/20873049/cbs-warnermedia-juul-e-cigarettes-ads-vape-ban-health-crisis>.

28 ⁹ Amie Tsang, *Apple to Ban Vaping Apps from Its Store*, N.Y. TIMES (Nov. 15, 2019),
<https://www.nytimes.com/2019/11/15/business/apple-vaping-apps.html>.

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1 16. Education Code Section 48645.2 states that the “county board shall provide for the
2 administration and operation of juvenile court schools” either “by the county superintendent” or “by
3 contract with the respective governing boards of the school districts in which the juvenile court school is
4 located.” Court schools are to be conducted in a manner prescribed by the county board of education to
5 best accomplish the statutory purpose. The board adopts the curriculum and evaluates the educational
6 program. Ed. Code § 48645.3.

7 17. County community schools generally serve those students who have been removed from
8 school districts, whether by expulsion or referral. The county board has the discretionary authority to
9 establish these community schools (Ed. Code § 1980). Once established, the county superintendent
10 administers the schools, and the county board adopts the curriculum (Ed. Code §§ 1983, 1984).

11 18. Thus, both the SMCBE and the SMC Superintendent are responsible for the Court and
12 Community Schools.

13 19. The Court Schools Program operates two programs (Hillcrest School and Margaret J. Kemp
14 Girls Camp) in partnership with the San Mateo County Probation Department. Court Schools serve
15 students who have been ordered by the Court to Probation Department programs. The Community Schools
16 program operates Gateway Community School and Canyon Oaks Youth Center, serving at risk-students
17 from across the county. The Community Schools Program is designed for students who can benefit from
18 an alternative school setting.

19 20. Defendant JUUL is a Delaware corporation, having its principal place of business in San
20 Francisco, California. JUUL originally operated under the name PAX Labs, Inc. In 2017, it was renamed
21 JUUL Labs, Inc. JUUL manufactures, designs, sells, markets, promotes, and distributes JUUL e-cigarettes,
22 JUULpods, and accessories.

23 21. Plaintiffs are ignorant of the names and capacities of defendants Does 1 through 100, but
24 upon information and belief, Does 1 through 100 are the servants, consultants, contractors, employees, or
25 agents of JUUL and acted within the scope therein.

26 **III. JURISDICTION AND VENUE**

27 22. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
28

1 23. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §
2 1367.

3 24. This Court has personal jurisdiction over the Defendants because they do business in the
4 Northern District of California and have sufficient minimum contacts with this judicial district. Defendants
5 intentionally avail themselves of the markets in this State through the promotion, marketing, and sale of
6 the products at issue in this lawsuit and thus renders the exercise of jurisdiction by this Court permissible
7 under California law and the U.S. Constitution.

8 25. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
9 part of the events giving rise to the claims occurred in this judicial district.

10 IV. FACTUAL ALLEGATIONS

11 JUUL is Created to Bring Tobacco Use to a New Level of Accessibility

12 26. In 2004, Adam Bowen and James Monsees were graduate students pursuing master's
13 degrees in product design at Stanford. Both were smokers at the time. One night, during a smoke break,
14 an idea was born for the pair's thesis presentation. After interviewing fellow smokers on what they liked
15 and disliked about smoking traditional combustible cigarettes, Bowen and Monsees presented on, what
16 they called, "the national future of smoking." That presentation would ultimately lead to the formation
17 of JUUL and the pair's now multi-billion-dollar success in the e-cigarette industry. Bowen and Monsees
18 are Chief Technology Officer and Chief Product Officer, respectively, at JUUL.

19 27. In later discussing his motivations behind developing vaporizers and e-cigarettes,
20 Monsees said he felt there was a "large opportunity for technology to ... *deliver solutions that refresh*
21 *the magic and luxury of the tobacco category.*" Monsees saw opportunity "for products that speak
22 directly to those consumers who aren't perfectly aligned with traditional tobacco products," *i.e.*,
23 consumers who were not current smokers. The goal was to "recreate the ritual and elegance that
24 smoking once exemplified [and] remove tobacco's social stigma and public adversity while *bringing*
25 *tobacco use to a new level of accessibility.*" Monsees saw the development of "great new offerings in
26 the tobacco space" as "new experiences that preserve the wonder and elegance of smoking." "As
27
28

1 smokers, [Bowen and Monsees] knew a true alternative to cigarettes would have to *offer a nicotine level*
 2 *found in no other alternative on the market.*”

3 28. Bowen and Monsees founded Ploom in 2007, and then sold the Ploom name to Japan
 4 Tobacco Inc.—the world’s third largest tobacco company—in 2015. The pair renamed their company
 5 Pax Labs Inc. In 2017, the company was renamed Juul Labs, Inc.

6 29. From inception, JUUL has exploited regulatory inaction to design, manufacture, market,
 7 and sell highly-addictive nicotine products to youth through its youth-oriented marketing campaign and
 8 its parade of misstatements and omissions (*see infra*, ¶¶47-140).

9
 10 **Regulatory Landscape for E-Cigarettes**

11 30. In 2009, Congress enacted the Tobacco Control Act as an amendment to the Federal Food,
 12 Drug, and Cosmetic Act. That amendment put oversight of the manufacture, marketing, distribution, and
 13 sale of cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products within the
 14 FDA’s purview. The Tobacco Control Act also gave the FDA the authority to “deem” other “tobacco
 15 products” within its authority.

16 31. In May 2016, the FDA issued a final deeming rule, effective August 8, 2016, that deemed
 17 ENDS—which includes e-cigarettes and the nicotine juices they use—subject to the FDA’s regulatory
 18 authority. Under the rule, years of regulatory and legislative requirements in place for combustible
 19 cigarettes became applicable to e-cigarettes. Those regulations included, among other things, that new
 20 tobacco products could be marketed only after FDA review.

21 32. However, as acting director of the FDA Dr. Norman Sharpless recently testified:

22
 23
 24 FDA’s initial compliance policy for premarket review stated that the Agency did
 25 not intend to enforce the requirements of premarket review against manufacturers
 26 of newly-regulated new tobacco products that were on the market as of August 8,
 27 2016, as long as they submitted applications seeking marketing authorization
 28 within specific timeframes. As a result, FDA anticipated that many ENDS
 products would remain on the market without premarket authorization for up to
 three years.”

1 33. The FDA gave JUUL and other e-cigarette manufacturers until 2022 to submit a
2 premarket tobacco application (“PMTA”). After public health and medical groups, including the
3 American Academy of Pediatrics, filed suit, Judge Grimm in the United States District Court for the
4 District of Maryland ordered the FDA to move up the deadline to May 2020.

5
6 34. JUUL has not submitted a PMTA for its e-cigarettes or JUULpods. Because federal
7 regulation requires FDA approval prior to the marketing of any e-cigarette, as Dr. Sharpless recently
8 testified: “All ENDS products currently on the market are illegal. They have not been reviewed by the
9 FDA.”

10 **E-Cigarette Use Presents Severe Physical and Mental Health Risks, Particularly to Youth**

11 35. All leading health authorities support the three major conclusions of a 1988 report by the
12 Surgeon General of the United States regarding nicotine and tobacco:

- 13
14 a. Cigarettes and other forms of tobacco are addictive;
15 b. Nicotine is the drug in tobacco that causes addiction; and
16 c. The physiological and behavioral processes that determine tobacco addiction are
17 similar to those that determine heroin and cocaine addiction.

18 36. Nicotine fosters addiction through the brain’s “reward” pathway. A stimulant and a
19 relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and metabolic rate;
20 constricts blood vessels of the heart and skin and causes muscle relaxation. When nicotine is inhaled it
21 enters the bloodstream through membranes in the mouth and upper respiratory tract and through the
22 lungs. Once nicotine in the bloodstream reaches the brain, it binds to receptors, triggering a series of
23 physiologic effects in the user that are perceived as a “buzz” that includes pleasure, happiness, arousal,
24 and relaxation of stress and anxiety. These effects are caused by the release of dopamine, acetylcholine,
25 epinephrine, norepinephrine, vasopressin, serotonin, and beta endorphin. With regular nicotine use,
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1 however, these feelings diminish and the user must consume increasing amounts of nicotine to achieve
2 the same pleasurable effects.¹⁰

3
4 37. The neurological changes caused by nicotine create addiction. Repeated exposure to
5 nicotine causes neurons in the brain to adapt to the action of the drug and return brain function to normal.
6 This process, called neuroadaptation, leads to the development of tolerance in which a given level of
7 nicotine begins to have less of an effect on the user.¹¹

8
9 38. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive drug-
10 seeking behavior, which, if not satisfied, results in withdrawal symptoms including anxiety, tension,
11 depression, irritability, difficulty in concentrating, disorientation, increased eating, restlessness,
12 headaches, sweating, insomnia, heart palpitations and tremors, and intense cravings for nicotine. Though
13 smokers commonly report pleasure and reduced anger, tension, depression and stress after smoking a
14 cigarette, many of these effects are actually due to the relief of unpleasant withdrawal symptoms that
15 occur when a person stops smoking and deprives the brain and body of nicotine. Studies have found that
16 most smokers do not like smoking most of the time but do so to avoid withdrawal symptoms.¹²

17
18 39. JUUL e-cigarettes and JUULpods deliver toxins and carcinogens that are dangerous to
19 their users. Those dangers are particularly pronounced for teenage and preteen users. As former FDA
20 Commissioner David Kessler aptly put it: “A long and tragic history has taught us that nicotine addiction
21 often begins as a pediatric disease.” One peer-reviewed study found that “[y]oung adults who use
22
23

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25 ¹⁰ Benowitz, *Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and Therapeutics*, *Annu. Rev. Pharmacol. Toxicol.* 49: 57–71 (2009), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2946180/.

26 ¹¹ *Id.*

27 ¹² Rigotti, *Strategies to Help a Smoker Who is Struggling to Quit*, *JAMA* 308 (15): 1573–1580 (2012),
28 available at www.ncbi.nlm.nih.gov/pmc/articles/PMC4562427/; Paolini & De Biasi, *Mechanistic insights into nicotine withdrawal*, *Biochem. Pharmacol.* 82(8): 996–1007 (2011), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC3312005/.

1 electronic cigarettes are more than four times as likely to begin smoking tobacco cigarettes within 18
2 months as their peers who do not vape.”¹³

3
4 40. Nicotine is a toxic chemical associated with cardiovascular, reproductive, and
5 immunosuppressive problems. Nicotine adversely affects the heart, eyes, reproductive system, lungs,
6 and kidneys. Exposure to nicotine produces an increased risk of Coronary Vascular Disease, which
7 occurs when the major blood vessels that supply your heart with blood, oxygen and nutrients become
8 damaged or diseased, by producing acute myocardial ischemia; as well as an increased risk of peripheral
9 arterial disorders, in which narrowed arteries reduce blood flow to your limbs.

10
11 41. Research has also shown that e-cigarette users are at an increased risk of strokes and heart
12 attacks,¹⁴ including blood pressure and arterial stiffness, which increases the risk for strokes and heart
13 attacks.¹⁵ Other than its use as a stimulant, nicotine’s only other known use is as an insecticide.¹⁶
14 Ironically, nicotine has been banned as a pesticide in the U.S. since 2014.¹⁷

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16
17 ¹³ Primack *et al.*, *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, *Am. J. Med.* Vol. 131, Issue 4, 443.e1-443.e9 (Apr. 2018), available at [www.amjmed.com/article/S0002-9343\(17\)31185-3/fulltext](http://www.amjmed.com/article/S0002-9343(17)31185-3/fulltext).

18 ¹⁴ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries*, *American Stroke Association News Release*, Abstract 9, Session A2, (Jan. 30, 2019), <http://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries>; Vindhya *et al.*, *Impact on cardiovascular outcomes among e-cigarette users: a review from National Health Interview Surveys*, *Journal of the American College of Cardiology*, Vol. 73, Iss. 9, Suppl. 2, (March 2019), available at www.onlinejacc.org/content/73/9_Supplement_2/11; Ndunda & Muutu, *International Stroke Conference, 2019 Oral Abstracts, Community/Risk Factors: Electronic cigarette use is associated with a higher risk of stroke*, Vol. 50, Suppl. 1, Abst. 9 (2019), available at www.ahajournals.org/doi/10.1161/str.50.suppl_1.9; Bhatta & Glantz, *Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population Assessment of Tobacco and Health*, *Journal of the American Heart Association*, Vol. 8, No. 12 (2019), available at www.ahajournals.org/doi/10.1161/JAHA.119.012317.

24 ¹⁵ Vlachopoulos *et al.*, *Electronic Cigarette Smoking Increases Aortic Stiffness and Blood Pressure in Young Smokers*, *J. Am. Col.1 Cardiol.* 67:2802-2803 (Sep. 10, 2017), available at www.sciencedaily.com/releases/2017/09/170910232512.htm; Thompson, *Vaping May Hurt the Lining of Your Blood Vessels*, *WebMD HealthDay Reporter* (May 28, 2019), www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-the-lining-of-your-blood-vessels#1 (last visited Sep. 12, 2019).

27 ¹⁶ Mishra *et al.*, *Harmful Effects of Nicotine*, *Indian J. Med. Paediatr. Oncol.* 2016 Jan-Mar 36(1): 24-31 (2015).

28 ¹⁷ *Id.*

1 42. Nicotine exposure during adolescence is associated with “deficits in working memory,
2 attention, and auditory processing, as well as increased impulsivity and anxiety [and] increase[ed]
3 addiction liability for other drugs.”¹⁸ The same research paper noted:

4
5 Peters et al. examined neural responses to anticipation of financial reward in adolescent
6 smokers (age 14 years) and found that they had smaller neural responses in the ventral
7 striatum and midbrain compared to matched non-smoking controls. Moreover, the
8 reduced response showed a clear-cut relationship with the frequency of smoking. These
9 findings suggest that adolescent smokers display a hypo-responsivity to the anticipation
10 of non-drug reward (i.e., financial reward) relative to non-smokers, and this hypo-
11 responsivity becomes more severe with increased smoking. There is also evidence that
12 adolescents who smoke ≤ 5 cigarettes per day display attenuated responses to other non-
13 drug rewards, including pleasurable food images, relative to non-smokers, in areas
14 including the insula and inferior frontal region. ***The implication of both these studies is
15 that the use of extremely rewarding drugs, such as nicotine, may decrease the
16 perception of the pleasure obtained from non-drug rewards. Furthermore, the fact that
17 this was demonstrated in young- and light-smoking teens indicates that such changes
18 in the brain occur in early phases of smoking.***¹⁹

19 43. Additional evidence suggests that nicotine can affect an adolescent’s neurological
20 development and that adolescents are more vulnerable to nicotine addiction.²⁰ “[N]icotine exposure
21 during vulnerable periods of brain and lung development can have lasting detrimental effects....”²¹ In
22 particular, “[s]moking cigarettes during adolescence has been associated with lasting cognitive and
23 behavioral impairments, including effects on working memory and attention and reduced prefrontal
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25
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¹⁸ England et al., *Developmental toxicity of nicotine: A transdisciplinary synthesis and implications for emerging tobacco products*, *Neurosci Biobehav Rev.* 2017 Jan.; 72: 176-189, available at <https://ncbi.nlm.nih.gov/pmc/articles/PMC5965681/pdf/nihms837061.pdf>.

¹⁹ *Id.* (internal citations omitted; emphasis added).

²⁰ Arain et al., *Maturation Of The Adolescent Brain*, *Neuropsychiatric Disease and Treatment*, 9:449-461 (Apr. 25, 2013) available at <https://doi.org/10.2147.NDT.S39776>; England et al., *Nicotine and the Developing Human: A Neglected Element in the Electronic Cigarette Debate*, *Am J Prev Med.* 2015 August; 49(2): 286-293, available at <https://ncbi.nlm.nih.gov/pmc/articles/PMC4594223>.

²¹ England et al., *Nicotine and the Developing Human: A Neglected Element in the Electronic Cigarette Debate*, *Am J Prev Med.* 2015 August; 49(2): 286-293, available at <https://ncbi.nlm.nih.gov/pmc/articles/PMC4594223>.

1 cortex activation....”²² There is “compelling ... evidence that nicotine exposure during adolescence
 2 causes both long-term structural and functional changes in the brain.”²³
 3

4 44. JUUL’s defective design also puts e-cigarette users, particularly adolescents or young
 5 adults with developing brains, at an increased risk of experiencing seizures, and presents a risk of users
 6 inadvertently swallowing the nicotine juice in the JUULpods.²⁴ The FDA is currently investigating
 7 reports of youth and young adults who are experiencing seizures following the use of e-cigarettes.
 8

9 45. Moreover, because vaping introduces foreign substances into the lungs, prolonged use of
 10 vaping products is believed to produce chronic obstructive pulmonary disease—a chronic inflammatory
 11 lung disease that causes obstructed airflow from the lungs, with symptoms including difficulty breathing
 12 and wheezing—just like traditional cigarette smoking. Vaping also triggers immune responses
 13 associated with inflammatory lung diseases.

14 46. Public health authorities have concluded that e-cigarettes are particularly unsafe for
 15 anyone under age 26.²⁵
 16

17 **JUUL’s E-Cigarette and Nicotine Juice “JUULpods”**

18 47. Although big tobacco companies had sought to replicate their success with traditional,
 19 combustible cigarettes in an electronic cigarette for years, the e-cigarette market began to take substance
 20 in 2010. In 2010, NJoy, an Arizona based company, became the industry’s first darling. By 2013, e-
 21 cigarettes had grown to a \$1.7-billion-a-year business. NJoy’s mistake, however, was marketing an e-
 22
 23

24 ²² *Id.*

25 ²³ *Id.*

26 ²⁴ As discussed below, *see infra* ¶¶52-53. JUULpods are the component that contains JUUL’s patented
 27 nicotine juice and are inserted into the e-cigarette device, which heats the liquid to create the aerosol that
 28 the user inhales.

²⁵ U.S Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on Smoking and
 Health, *Know The Risks: E-cigarettes and Young People*, <https://e-cigarettes.surgeongeneral.gov/> (last
 visited September 30, 2019).

1 cigarette product that looked nearly identical to a traditional cigarette. The stigma that came with being a
2 smoker at the time stymied NJoy's sales and the company filed for bankruptcy in 2016.

3 48. JUUL, operating as Ploom at the time, had also launched an e-cigarette product in 2010.
4 JUUL's product resembled a fountain pen. JUUL's design failed to take off and drew only modest
5 revenues: \$30 million by 2015. To attain the multi-billion-dollar success of traditional cigarettes, which
6 Monsees has described as an "amazing product" and "the most successful consumer product of all time,"
7 JUUL knew it had to switch gears. The gear JUUL chose was not new. Rather, JUUL sought to
8 replicate the financial success of traditional cigarettes by using the same playbook big tobacco used:
9 design a product attractive to youth, market it directly to youth, and misrepresent or conceal its adverse
10 health effects, thereby gaining customers for life.

11
12 49. To do that, JUUL went straight to the source: tobacco industry product and marketing
13 documents made public under big tobacco's landmark settlements with government officials and injured
14 smokers. According to Monsees, tobacco industry documents "became a very intriguing space for us to
15 investigate because we had so much information that you wouldn't normally be able to get in most
16 industries. And we were able to catch up, right, to a huge, huge industry in no time. And then we started
17 building prototypes."

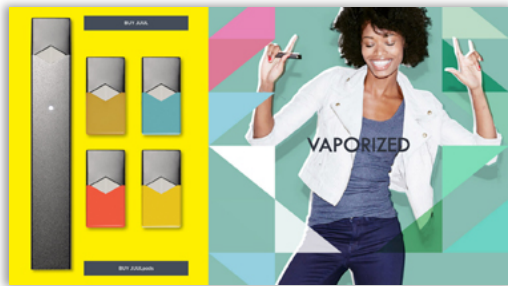
18
19 50. Among those tobacco industry documents were documents concerning the process to
20 manipulate nicotine pH to maximize the delivery of nicotine while minimizing "throat hit," *i.e.*, irritation,
21 to appeal to youth and non-smokers. JUUL also hired former big tobacco research and design personnel
22 to help develop JUUL's products.

23
24 51. With the help of the big tobacco playbook on addicting young consumers to nicotine in
25 hand, JUUL, then Pax Labs, launched its current design in 2015. Knowing it needed a product design
26 that would avoid the stigma associated with smoking traditional cigarettes and ultimately appeal to youth,
27 JUUL's revamped product resembled a device commonly found at schools and in backpacks across the
28

country: a USB flash drive. A user can even charge it in a computer USB drive. JUUL's e-cigarettes are small enough to fit in the user's hand—making it easier for students to conceal their use—and come in stylish designs and colors.

52. Each JUUL product has two components: the e-cigarette and the pod. First, the e-cigarette holds the battery and temperature regulation system. The thin, rectangular e-cigarette is made up of an aluminum shell, a battery, a magnet for the USB-charger, a circuit board, an LED light, and a pressure sensor.

53. Second, there's the pod, marketed as "JUULpods." JUUL claims that each pod contains 0.7 milliliters of JUUL's patented juice made up of nicotine, glycerol and propylene glycol, benzoic acid, and flavorants. JUULpods come in sweet flavors including mango, fruit medley, "cool" mint, "cool" cucumber, and crème brulee. The pod is inserted into the end of the e-cigarette device. When the device senses the movement of air, *i.e.*, the user sucking air through it, the liquid is then heated up, creating a vapor, which quickly dissolves into the air. JUUL describes the e-cigarette as an "easy to use vaporizer." Unlike the distinct odor produced by cigarette smoke, the odor emitted from a JUUL e-cigarette is a reduced aerosol with little or no odor.



JUUL Designed Its E-Cigarette and Nicotine Juice to Target Youth

54. JUUL e-cigarettes' physical design is sleek, stylish, and easily concealed. In combination with JUUL's deceptive marketing, discussed below, the e-cigarette's design portrayed the device as a

1 “must have” tech product, not a life-threatening nicotine-delivery device. The small USB-shaped design
 2 enables users to conceal the e-cigarette or, if not concealed, the device is often mistaken for a USB flash
 3 drive. The JUUL’s battery indicator light also gratuitously flashes in “party mode” when the user shakes
 4 the device. That feature is not necessary to the proper functioning of the device and intended solely to
 5 make the product appeal to youth.
 6

7 55. In addition to a design that would appeal to youth, JUUL developed a proprietary way of
 8 delivering nicotine, by mixing nicotine with a chemical called benzoic acid to produce nicotine salts.
 9 JUUL also increased the nicotine “kick” by purportedly using up to 5% nicotine, compared to previous e-
 10 cigarette products containing 1%-2% of nicotine that had not been treated with acids. The result is a
 11 quicker, stronger, and more palatable delivery of nicotine. The cigarette industry has long known that
 12 “nicotine is the addicting agent in cigarettes” and that “nicotine satisfaction is the dominant desire” of
 13 nicotine addicts.²⁶
 14

15 56. Indeed, cigarette companies spent decades manipulating nicotine in order to foster and
 16 maintain addiction in their customers. For example, R.J. Reynolds Tobacco Company (“RJR”)
 17 developed and patented nicotine salt additives such as nicotine benzoate to increase nicotine delivery in
 18 cigarette smoke. As detailed in an RJR memorandum titled “Cigarette concept to assure RJR a larger
 19 segment of the youth market,” manipulating the pH of nicotine was expected to give cigarettes an
 20 “additional nicotine ‘kick.’”²⁷ This kick was attributed to increased nicotine absorption associated with
 21 lower pH.²⁸
 22
 23
 24

25 ²⁶ Tobacco Industry Quotes on Nicotine Addiction,
 26 <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf> (last visited Sep. 12, 2019).

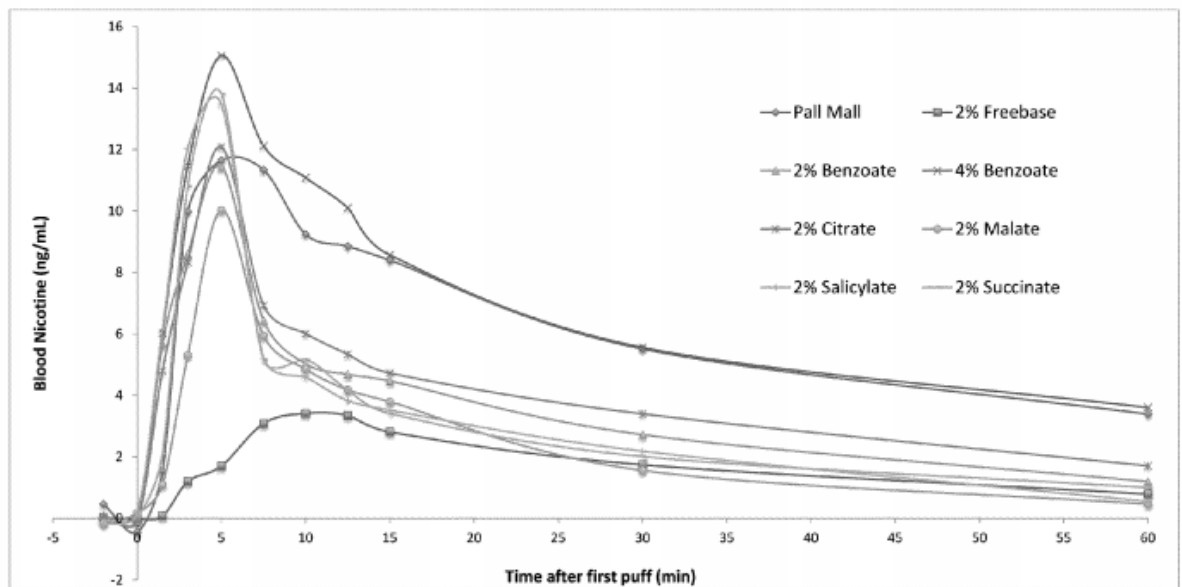
27 ²⁷ *Id.*

28 ²⁸ Benowitz *et al.*, *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, Nicotine Psychopharmacology*, *Handb Exp Pharmacol* 192:29–60 (Oct. 13, 2010), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/.

57. JUUL leveraged the RJR research and conclusions to produce an increased nicotine kick, and thereby fueling increased use and sales of JUUL e-cigarettes. JUUL’s U.S. patent No. 9,215,895 (the “895 patent”) details how “certain nicotine salt formulations provide satisfaction in an individual superior to that of free base[, *i.e.*, non-salt form,] nicotine, and more comparable to the satisfaction in an individual smoking a traditional cigarette.”²⁹ The patent states: “the peak concentration of the nicotine in the blood and total amount of nicotine delivered appears comparable to a traditional cigarette.”

58. To illustrate its claims, JUUL submitted charts with its ‘895 patent to show that its nicotine salts with a 4% benzoic acid solution closely match the amount of nicotine delivered into the bloodstream by a Pall Mall cigarette. As the chart indicates, a 4% solution of benzoic acid nicotine salt causes a higher (15 ng/mL) peak nicotine-blood concentration than a Pall Mall Cigarette (11 ng/mL).

FIG. 4



59. JUUL’s manipulation of the concentration of benzoic acid and use of nicotine salts allows JUUL to increase the potency of the nicotine in its JUULpods while reducing “throat-hit” or irritation. Benzoic acid reduces the pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated,

²⁹ U.S. Patent No. 9,215,895 (filed Oct. 10, 2014), <https://patents.google.com/patent/US9215895B2/en> (last visited September 5, 2019).

1 freebase form. This reduction in pH converts naturally-occurring unprotonated nicotine, which causes
 2 irritation in the throat and respiratory tract, to protonated nicotine, which is not absorbed in the throat or
 3 upper respiratory tract and, therefore, does not irritate the throat. A recent study found that JUUL's e-
 4 liquid had a pH of under 6.0, suggesting that JUUL's nicotine juice contains almost no freebase (*i.e.*,
 5 non-salt form) nicotine.³⁰

6
 7 60. JUUL's creation of a product with low levels of harshness and minimal "throat hit" is
 8 consistent with the goal of producing a product for young non-smokers. The non-irritating vapor product
 9 is easier for non-smokers to consume without negative side effects like coughing or irritation. The
 10 design also shows that JUUL's intention was to recruit non-smokers, not current smokers, because
 11 smokers are already tolerant of the "throat hit" and have even been habituated into associating the "throat
 12 hit" with getting their nicotine fix. Minimizing the "throat hit" of JUUL e-cigarettes is therefore
 13 unnecessary to providing an alternative for adult smokers but is crucial to luring a new generation of
 14 users.

15
 16 61. JUUL's lack of "throat hit" increases the risk of using the product, because it masks the
 17 amount of nicotine being delivered by eliminating the throat sensory feedback normally associated with a
 18 large dose of nicotine. The "throat hit" is part of the body's alert system, letting a person know he or she
 19 is inhaling something harmful. Eventually, the irritation to the throat will cause even the most
 20 compulsive addict to wait before the next inhalation. Reducing or removing this feedback impairs the
 21 user's ability to ascertain that he or she is consuming a toxin. As a result, the cravings for nicotine can be
 22 satisfied nonstop, fostering addiction or aggravating an existing addiction, and repeatedly exposing the
 23 user to the health risks associated with the product, such as significantly increased blood pressure.
 24
 25

26
 27 ³⁰ Lauterbach, *One More Time: Unprotonated Nicotine in E-Cigarette Aerosols: Is It Really There?*
 28 (2018), available at www.coresta.org/sites/default/files/abstracts/2018_TSRC83_Lauterbach.pdf. Other studies have confirmed the low ratio of freebase nicotine in JUUL products. See Duell *et al.*, *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431-434, 431 (2018) ("Duell Study").

1 62. The physical design of the JUUL device (including its circuit board) and JUULpod
 2 determines the amount of aerosolized nicotine the JUUL product emits. By altering the temperature,
 3 maximum puff duration, or airflow, among other things, JUUL precisely controls the amount of nicotine
 4 vapor delivered. JUUL's product design sought to reduce the amount of physical irritation a user
 5 experienced while maximizing the amount of nicotine that enters the users' bloodstream. One study
 6 found that the "reduced harshness ... may well contribute to the current use prevalence of JUUL products
 7 among youth" and that "harshness of the inhaled aerosol," or lack thereof for JUUL, is "relevant regarding
 8 abuse liability."³¹ The Duell Study's findings indicated that JUUL's harshness is comparable to a nearly
 9 nicotine-free 3 mg/mL e-liquid.³²

10
 11
 12 63. The result is a nicotine product that is easier to ingest and is more likely to harm than
 13 traditional cigarettes. Former FDA Commissioner David Kessler referred to this as "facilitating
 14 initiation," noting that JUUL's "fundamental design appears to ease young people into using these e-
 15 cigarettes and ultimately, addiction." James Pankow, a chemistry and engineering professor at Portland
 16 State University, said: "If you think Marlboros are bad because they're addictive, then this is like a
 17 Marlboro on steroids."

18
 19 64. A question and response during recent testimony before the House Committee on Energy
 20 & Commerce directly implicates JUUL's actions described herein as causing the youth-vaping epidemic:

21 Representative Kuster of New Hampshire: "Based on CDC surveillance and
 22 research, what do you believe are the reasons that young people are smoking e-
 cigarettes at such alarming rates?"

23 Dr. Schuchat, Principal Deputy Director of the CDC: "We know that flavors are a
 24 principle attractant to young people. Um, the latest generation of e-cigarettes,
 25 also, um, are extremely high in nicotine content, they, um, often include nicotine
 26 salts which are a little bit more palatable or um less bitter and the flavors are, you
 know, really targeted at youth. So we think the addictiveness of the high nicotine

27
 28 ³¹ Duell Study at 431, 433.

³² *Id.*, Figure 3.

1 level and the appeal of the flavors are key. We also think some of the companies
2 have had, um, youth-targeting ads.”

3 ***JUUL Misrepresented and Concealed the True Design of its E-Cigarettes and JUULpods,
4 Including Their Highly-Addictive Nature and the Amount of Nicotine Delivered***

5 65. From JUUL’s 2015 product launch through today, JUUL has made repeated
6 misstatements and omissions concerning the design and operation of its e-cigarettes and JUULpods, and
7 their impact on users.

8 66. First, JUUL understates the concentration of nicotine its product delivers. Studies have
9 shown that JUUL e-cigarettes contain higher levels of benzoic acid and nicotine than JUUL represents.
10 Rather than the 4% benzoic acid solution disclosed in JUUL’s patent paperwork, JUUL products have
11 been found to have a benzoic acid solution upwards of 4.5%.³³ That same study found that a single
12 JUULpod contains 6.2% nicotine or 60 mg/mL of nicotine per JUULpod. Other studies, such as the
13 Reilly Study, have reported even higher actual concentrations of nicotine in JUULpods. By contrast,
14 JUUL represents that each JUULpod contains “5% nicotine by weight at the time of manufacture.”

15 67. Second, JUUL deviates from the ‘895 patent formulation and manufactures a product that
16 causes dangerously high amounts of nicotine to be absorbed into the bloodstream. This results in a
17 product that creates an unprecedented risk for nicotine addiction. Indeed, the “amount and speed of
18 nicotine delivery ... plays a critical role in the potential for abuse of tobacco products.”³⁴
19

20 68. Third, contrary to JUUL’s repeated representations that each JUULpod contains nicotine
21 “approximately equivalent to 1 pack of cigarettes or 200 puffs,” JUUL’s products actually deliver doses
22 of nicotine that are materially higher than combustible cigarettes. The United Kingdom Medicines and
23

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26 ³³ Pankow, *et al.*, *Benzene formation in electronic cigarettes*, PLoS ONE 2017;12(3):e0173055 (March
27 8, 2017), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0173055> (last visited
28 September 12, 2019).

³⁴ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable
Disease: A report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and Present (2010),
available at https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf.

1 Healthcare Products Regulatory Agency notes: “an e-cigarette with a concentration of 20 mg/ml delivers
 2 approximately 1 milligram of nicotine in 5 minutes (the time needed to smoke a traditional cigarette, for
 3 which the maximum allowable delivery is 1 mg of nicotine).” JUUL’s nicotine concentration has been
 4 found to be 60 mg/ml, and JUUL’s salt form increases the rate and efficiency of nicotine delivery. A
 5 study from the Roswell Park Comprehensive Cancer Center and Stony Brook University in New York found
 6 that nicotine indicators in the urine of young e-cigarette users were nearly 60% greater than the same
 7 indicators in young cigarette smokers. A survey of 1,600 Boston-area high school students found that 17%
 8 of teenagers who had ever used cigarettes continued to use them, but that 58% of teenagers who had used
 9 JUUL products or similar devices continued using them. JUULpods substantially exceed the nicotine dose
 10 of a traditional cigarette.

11
 12 69. As of May 2016, the European Union had banned e-cigarettes with a concentration
 13 exceeding 20 mg/ml nicotine. Israel banned the import and sale of JUUL’s e-cigarettes in August 2018,
 14 calling JUUL’s high nicotine concentration levels “a danger to public health.”

15
 16 70. Comparison of available data regarding per puff nicotine intake further indicates that
 17 JUUL products deliver about 30% more nicotine per puff. A recent study of JUULpods found that “[t]he
 18 nicotine levels delivered by the JUUL are similar to or even higher than those delivered by cigarettes.”³⁵

19
 20 The Reilly Study tested JUUL’s Tobacco, Crème Brulee, Fruit Punch, and Mint flavors and found that,
 21 based on a puff volume of 75 mL, a puff of JUUL delivered 164 ± 41 micrograms of nicotine per puff.

22
 23 71. By comparison, a 2014 study using larger 100 mL puffs found that a Marlboro cigarette
 24 delivered 152—193 $\mu\text{g}/\text{puff}$.³⁶ Correcting to account for the different puff sizes between the Reilly and
 25 Schroeder studies, this suggests that, at 75mL/puff, a Marlboro would deliver between 114 and 144

26
 27 ³⁵ Reilly *et al.*, *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*,
 Nicotine Tob. Res. 3 (Oct 20, 2018), available at <https://www.ncbi.nlm.nih.gov/pubmed/30346584> (the
 “Reilly Study”).

28 ³⁶ Schroeder & Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology*, Tobacco Control
 2014: 23:ii30-ii35 (May 2014), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/.

1 µg/puff. In other words, empirical data suggests that JUUL delivers up to 36% more nicotine per puff
2 than a Marlboro.

3 72. Because “nicotine yield is strongly correlated with tobacco consumption,”³⁷ a JUULpod
4 with more nicotine will strongly correlate with higher rates of consumption of JUULpods. For example,
5 a historic cigarette industry study looking at employees who smoked found: “the number of cigarettes the
6 employees smoked per day was directly correlated to the nicotine levels.” In other words, the more
7 nicotine in the cigarettes, the more cigarettes a person smoked.

8 73. By delivering such potent doses of nicotine, JUUL products magnify the health risks
9 posed by nicotine, significantly increase blood pressure, and place users at a heightened (and concealed)
10 risk for stroke, heart attacks and other cardiovascular events.

11 74. Further, because JUUL’s nicotine salts actually increase the rate and magnitude of blood
12 plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse is higher for
13 JUUL e-cigarettes than traditional cigarettes. Thus, JUULpods are foreseeably exceptionally addictive
14 when used by persons without prior exposure to nicotine—a fact not disclosed by Defendants.

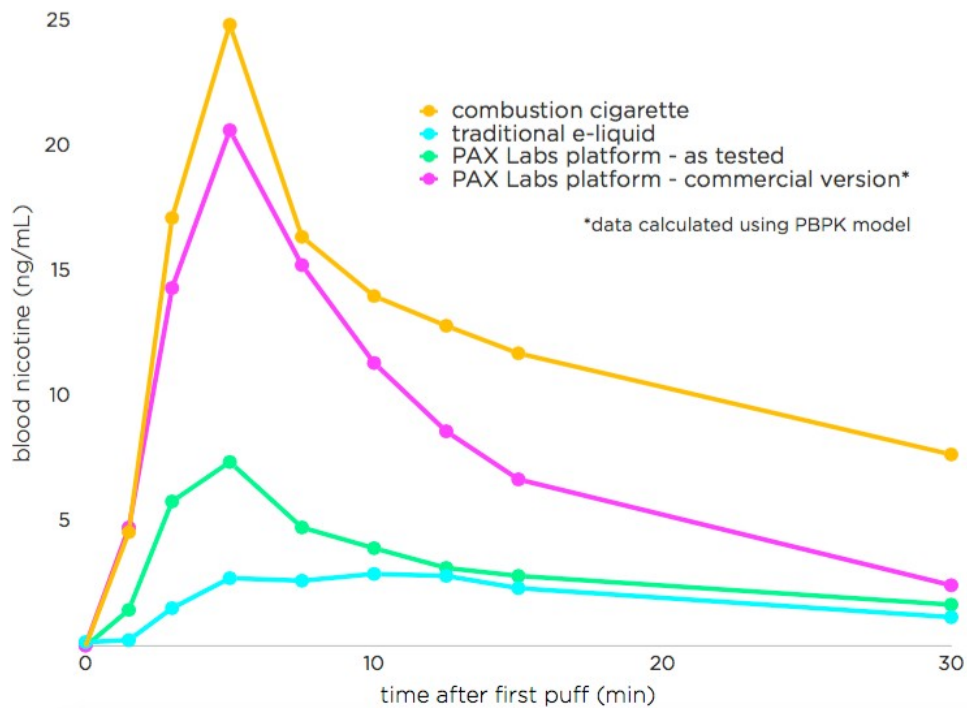
15 75. At the same time, as discussed above, the “throat hit” from nicotine salts is much lower
16 than that for combustible tobacco products, making it easier to inhale. Indeed, one study found that “[e]-
17 liquids designed to combine high total nicotine level (addictive delivery) with ... ease of inhalation[] are
18 likely to be particularly problematic for public health.³⁸

19 76. Despite the above data, Defendants have failed to disclose to consumers that the
20 JUULpods’ nicotine salt formulation delivers an exceptionally potent dose of nicotine.
21

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27 ³⁷ Jarvis *et al.*, *Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey*, JNCI Vol. 93, Issue 2, 134–138 (Jan 2001),
28 available at <https://academic.oup.com/jnci/article/93/2/134/2906355>.

³⁸ Duell Study at 431.

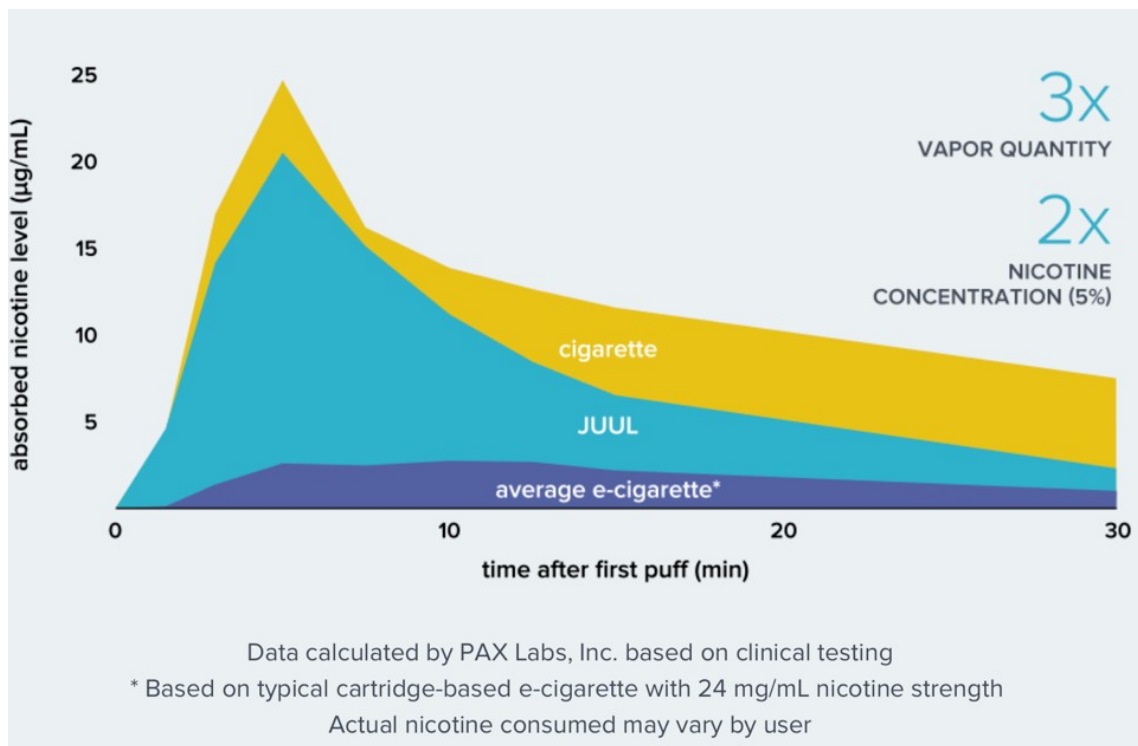
77. For example, prior to releasing its new version of c-cigarette and JUULpods in 2015, JUUL provided press outlets with information regarding the products, as well as free JUUL products. Among other websites that posted articles about JUUL prior to the product release, technology website TechCrunch posted a chart JUUL provided it that compares the results for two versions of the JUUL device: a generic “combustion cigarette” and a generic “traditional e-liquid.”



78. JUUL posted a similar chart on its own website when it debuted the new products.

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79. Both charts, provided to TechCrunch and others prior to JUUL’s 2015 product release and published by TechCrunch and others at that time, claim that, at its peak, JUUL products deliver approximately 25% less nicotine to the blood than a combustible cigarette. As discussed herein, that is false. The statements in JUUL’s 2015 charts misrepresented the true nicotine delivered by JUUL’s products and the resulting increased risk of nicotine addiction and severe health consequences resulting from high levels of nicotine consumption.

80. JUUL further misrepresents the amount of nicotine delivered by its products, including JUUL’s comparisons of JUULpods to “1 pack of cigarettes or 200 puffs,” because JUUL’s nicotine salt proprietary formula delivers higher concentrations of nicotine to a user’s bloodstream.

81. Assuming a concentration of 59 mg/mL, JUUL’s reported nicotine content corresponds to about 40 mg of nicotine per 0.7 mL JUULpod. If, as JUUL claims, this is equivalent to a single 20-cigarette pack, that implies 2 mg of nicotine per cigarette.

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1 82. JUUL’s equivalency claim further assumes 10 puffs per cigarette (*i.e.*, 200 puffs per
2 pack), or 0.2 mg (200 µg) of nicotine per puff.

3 83. “Typically, a cigarette that delivers approximately one milligram of nicotine in smoke ...
4 retains ‘about 14-20 milligrams of nicotine in the unsmoked rod,’” *USA v. Philip Morris USA, Inc.*, 449
5 F. Supp. 2d 1, 337 (D.D.C. 2006), for an overall delivery of 5-7% of the cigarette’s actual nicotine
6 content. A study by the CDC found that in “commercial cigarette brands, nicotine concentrations ranged
7 from 16.2 to 26.3 mg nicotine/g tobacco (mean 19.2 mg/g; median 19.4 mg/g).”³⁹ Assuming an average
8 of 19 milligrams of nicotine per cigarette, a pack of cigarettes contains on average 380 milligrams of
9 nicotine, or six times as much nicotine as the 62 milligrams reported for each JUULpod. And the
10 average pack would be expected to deliver only 5-7% (19-27 mg) of its nicotine content to the user. In
11 line with this expectation, a study of thousands of smokers found smokers intaking between 1.07 to 1.39
12 milligrams per cigarette (21.4-27.8 mg per pack).⁴⁰ This is less than half of the amount of nicotine
13 contained in a JUULpod (*i.e.*, 2 mg per “cigarette” based on JUUL’s stated concentration, or 200 µg per
14 puff assuming 100% delivery). Even with the slightly lower efficiency of delivery demonstrated in
15 studies like the Reilly Study (about 82%, for averages of 164 µg per puff), this amounts to a substantially
16 higher amount of nicotine that a human will absorb from a JUULpod than from smoking a pack of
17 cigarettes.
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21 84. JUUL’s statement in its advertisements that each JUULpod contains about as much
22 nicotine as a pack of cigarettes is, thus, false and misleading because the actual amount of nicotine
23 consumed via JUULpods is as much as twice as high as that consumed through combustible cigarettes.
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27 ³⁹ Lawler *et al.*, *Surveillance of Nicotine and pH in Cigarette and Cigar Filler*, *Tob. Regul. Sci.* 3(Suppl
1): 101–116 (Apr 1, 2018), available at www.ncbi.nlm.nih.gov/pmc/articles/PMC5628511/.

28 ⁴⁰ Jarvis *et al.*, *Nicotine Yield From Machine-Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey*, *JNCI*, Vol. 93, 2:134–138 (Jan 17, 2001), available at www.ncbi.nlm.nih.gov/pubmed/11208883.

1 85. Further, while a pack of cigarettes contains 20 cigarettes that a smoker must separately
 2 remove from the pack and light, a JUULpod can be inhaled without interruption. JUUL e-cigarettes do
 3 not have a manual or automatic “off” switch, unlike a combustible cigarette that self-extinguishes when
 4 finished. Indeed, because JUUL’s products deliver nicotine so effectively, JUUL engineers explored
 5 features to prevent users from ingesting too much too quickly. Those features were not adopted. And
 6 JUUL products often can be used indoors without detection by others, a feature that JUUL promoted
 7 heavily in its advertisements, eliminating the need for smoking breaks. Thus, the device design
 8 facilitates and results in consumption of far more nicotine than would occur with cigarettes.
 9

10 86. Finally, JUUL failed to disclose additional risks posed by JUUL’s “Cool” Mint and
 11 Menthol pods. The FDA’s Tobacco Products Scientific Advisory Committee in March 2011 issued a
 12 report on menthol cigarettes, concluding that the minty additive was not just a flavoring agent but had
 13 drug-like effects, including “cooling and anesthetic effects that reduce the harshness of cigarette
 14 smoke.”⁴¹ Mint and menthol could also “facilitate deeper and more prolonged inhalation,” resulting in
 15 “greater smoke intake per cigarette.”⁴²
 16

17 JUUL’s Marketing Campaign

18 *JUUL Learns from Big Tobacco and Employs Youth-Oriented Marketing Tactics Prohibited* 19 *for Manufacturers of Combustible Cigarettes*

20 87. With a physical design that appealed to youth and a more powerful and addictive nicotine
 21 delivery system, all JUUL was missing was a plan to attract its target audience. Again, JUUL took a
 22 page out of the big tobacco playbook. According to Monsees, JUUL aimed to “deliver[] solutions that
 23 refresh the magic and luxury of the tobacco category.” Indeed, Monsees has admitted that JUUL studied
 24 tobacco industry documents. In a 2018 interview, “Monsees indicated that the design of JUUL’s
 25

26
 27 ⁴¹ Proctor, *Golden Holocaust: Origins of the Cigarette Catastrophe and the Case for Abolition*, 500 (1st
 28 ed. 2011).

⁴² *Id.* at 500-501.

1 advertising had been informed by traditional tobacco advertisements and that [the Stanford Research into
2 Impact of Tobacco Advertising] had been quite useful to them.”⁴³

3
4 88. One thing learned from the cigarette epidemic was that marketing played a substantial role
5 in youth smoking initiation. Big tobacco studied the propensities of youth and formulated content and
6 strategies to attract and retain new, young smokers. That marketing, including the depiction of young,
7 attractive peers smoking cigarettes was, unfortunately, highly successful.

8 89. Notably, many of the practices employed by big tobacco are prohibited by the 1998
9 Master Settlement Agreement between big tobacco, government officials, and injured smokers.

10 Specifically:

11 Prohibition on Youth Targeting. No Participating Manufacturer may take any
12 action, directly or indirectly, to target Youth within any Settling State in the
13 advertising, promotion or marketing of Tobacco Products, or take any action the
14 primary purpose of which is to initiate, maintain or increase the incidence of
Youth smoking within any Settling State.

15 90. Among other activities, the Master Settlement Agreement prohibits in large part the use of
16 cartoons in advertising, sponsoring of concerts or other events with an intended or actual audience
17 containing youth, sponsoring sporting events, billboard advertising, and free samples outside of adult-
18 only facilities. The Agreement also prohibits the use of third-parties or agents to carryout activities the
19 tobacco manufacturer could not perform itself. JUUL is not subject to the Master Settlement
20 Agreement.

21
22 91. The Tobacco Control Act of 2009 banned cigarette sales to minors and placed other
23 restrictions on marketing to youth, including banning tobacco-brand sponsorships of sports and
24 entertainment events or other social or cultural events, vending machine sales, free giveaways of sample
25 cigarettes, and brand-name non-tobacco promotions items. The Tobacco Control Act also prohibits
26

27
28 ⁴³ Robert K. Jackler, M.D. et al, *JUUL Advertising Over Its First Three Years on the Market* (Jan. 21, 2019) (the “Stanford Report”).

1 tobacco companies from making “modified risk” claims without scientific support and an FDA order. As
2 discussed above, the FDA gained authority over e-cigarettes in 2016 but exercised its enforcement
3 discretion to permit products previously on the market to remain on the market.

4 92. Because JUUL was not subject to the Master Settlement Agreement, and not yet directly
5 under the thumb of the FDA, JUUL was free to capitalize on marketing practices known to be highly-
6 successful at addicting youth to nicotine products. And capitalize it did.

7 93. Nicknamed “Vaporized,” JUUL’s early marketing depicted flirtatiously posed young
8 people holding JUUL products. JUUL’s advertisements mimicked those of big tobacco and traditional
9 cigarettes, including colorful ad images using eye-catching designs and youth-oriented imagery touting
10 themes of being “cool,” “carefree,” “stylish,” “attractive,” “sexy,” “pleasureful,” “popular” and that
11 JUUL e-cigarettes are “great tasting.” JUUL associated its product with one of the trendiest products of
12 all-time, the Apple iPhone. By calling it “the iPhone of e-cigarettes” on JUUL’s website, social media,
13 and email campaigns, JUUL portrayed its e-cigarette as a must have tech gadget.

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94. Among other print media, JUUL ran a full-paged spread in *Vice* magazine. Vice has marketed itself as the “#1 youth media company” in the world. JUUL also advertised on a 12-panel display over Times Square.

⁴⁴ Stanford Report at 8.

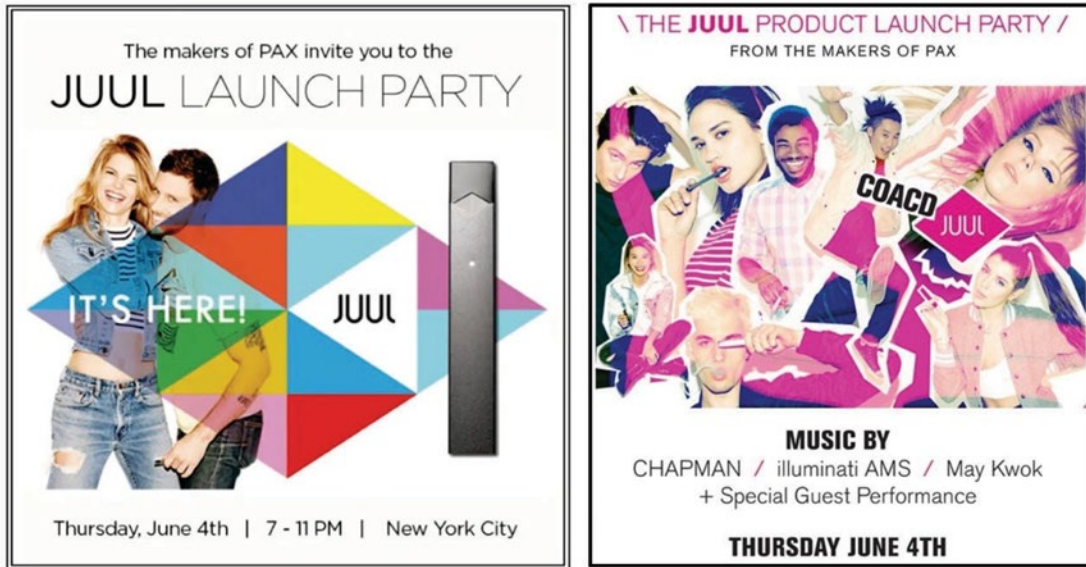


95. JUUL’s marketing also included attractive young people distributing free JUULs at movie and music events. The Stanford Report identified at least 25 JUUL “youth-oriented entertainment events, usually either music or cinema themed, whose primary purpose was to distribute free samples of JUUL devices and flavor pods to a youthful audience.”⁴⁵ The “average number of samples/event distributed equals 5,000+” JUUL Starter-Kits.⁴⁶ That equates to 20,000 packs of cigarettes at each event, or 500,000 packs of cigarettes total. Although JUUL claims its marketing changed after 2015, in December 2017 “JUUL tweeted an invitation for a ‘demo event’ for \$1 in Miami.” And in April 2018, JUUL promoted an event where new users could learn “how to use your device and sample #juulpod flavors.” JUUL sampling event invitations followed JUUL’s bright-colored, young-models template:

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⁴⁵ Stanford Report at 5.

⁴⁶ *Id.* at 6.



47

96. As the “Vaporized” campaign was rolled out, John Schachter with the Campaign for Tobacco-Free Kids “expressed concern about the Juul campaign because of the youth of the men and women depicted in the campaign, especially when adjoined with the design.” Mr. Schachter said: “the organization has noticed obvious trends that appeal to adolescents in e-cigarette campaigns such as celebrity endorsements, sponsorships, and various flavors.”

97. The highly-successful “Vaporized” campaign was created by JUUL’s Creative Director Steven Baillie along with Cult Collective LP (“Cult Collective”) and Grit Creative, LLC (“Grit”). Cult Collective has admitted the “Vaporized” campaign “created ridiculous enthusiasm.” JUUL’s “Vaporized” campaign failed to warn consumers about the risks of vaping and nicotine addiction or, remarkably, even that JUUL’s products contained nicotine. When nicotine warnings were present, they were in low contrast, small font that was intended to be overlooked or, for internet-based advertisements, positioned such that smartphone users may not even see them without clicking for additional information.

⁴⁷ *Id.* at 4.

1 ***JUUL Uses Social Media to Inundate Youth***

2 98. Although JUUL utilized multiple outlets to reach its target audience with its “Vaporized”
3 and similar youth-oriented marketing, perhaps the most successful strategy was JUUL’s use of social
4 media advertising to create a viral marketing campaign.

5 99. “Viral marketing” is defined as “marketing techniques that seek to exploit pre-existing
6 social networks to produce exponential increases in brand awareness, through processes similar to the
7 spread of an epidemic.”⁴⁸ Viral marketing is akin to word-of-mouth recommendations, accelerated
8 exponentially by the network effect of the internet. The goal in a viral marketing campaign is to turn
9 customers into unwitting salespeople who repeat a company’s representations on its behalf.

10 100. Companies may use different media to transmit their viral messaging, but generally, all
11 viral marketing campaigns tend to share similar features, including (1) a simple message—typically
12 implied by an image—that elicits an emotional response; (2) the strategic use of marketing platforms,
13 especially social media, to reach and engage the target audience; (3) use of content that invites
14 participation and engagement; and (4) use of third parties to magnify the impact of a message.

15 101. Typically, a viral marketing campaign will begin with a “push” by the company seeking to
16 advertise the product, and since the advent of social media, that push is typically done through the
17 creation of new content on a social media platform, such as Instagram, YouTube, Twitter, Facebook or
18 other similar platform.⁴⁹ A company that wants to push an ad on social media platforms has a few
19 options. First, the company can solicit followers to its social media pages, so that when the company
20 posts to its own social media feed, the content would be delivered to those followers and to those who
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25 ⁴⁸ Larson, *The Rise of Viral Marketing through the New Media of Social Media*, Liberty University,
26 Faculty Publications and Presentations (2009), available at
https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1009&context=busi_fac_pubs.

27 ⁴⁹ Skrob, *The viral marketing concept as a model for open source software to reach the critical mass for*
28 *global brand awareness based on the example of TYPO3*, University of Applied Science Kufstein,
Austria (Aug 2005), available at [http://citeseerx.ist.psu.edu/viewdoc/
download?doi=10.1.1.494.8779&rep=rep1&type=pdf](http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.494.8779&rep=rep1&type=pdf).

1 visited the company page. Second, the company can purchase paid advertisements that are delivered to
 2 specified target audiences. To amplify a message, companies can use other tools like paid influencers
 3 and hashtags to reach and inundate the target demographic.

4 102. Companies seeking to advertise new products or reach a new demographic have
 5 discovered the power of the “like” and “share” features on social media, which allow users to promote
 6 content to their own audiences. As Mark Zuckerberg, founder and Chief Executive Officer (“CEO”) of
 7 Facebook explained: “Nothing influences people more than a recommendation from a trusted friend. A
 8 trusted referral influences people more than the best broadcast message. A trusted referral is the Holy
 9 Grail of advertising.”

10 103. Today’s youth often are opposed to large, corporate product pushes, preferring more
 11 grassroots or start-up product offerings. Thus, a viral marketing campaign such as that implemented by
 12 JUUL seeks to appear organic rather than corporate-driven. JUUL’s social media campaign, including
 13 the use of paid social media influencers and viral hashtag advertising, was highly-coordinated and
 14 focused to persuade those who use social media—youth—that JUULing was the latest cool trend and
 15 healthy.

16 104. JUUL focused on social media because it knew adolescents are the predominant users of
 17 social media. 95% of teens report having use of a smart phone and 88% have a computer.⁵⁰ “Roughly
 18 nine-in-ten teens go online at least multiple times per day,” with 45% reporting they are “online on a
 19 near-constant basis.”⁵¹ 85% use YouTube.⁵² 72% use Instagram.⁵³ 69% use Snapchat.⁵⁴ JUUL knew
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25 ⁵⁰ Anderson & Jiang, *Teens, Social Media & Technology 2018*, Pew Research Center (May 2018),
 available at <https://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/>.

26 ⁵¹ *Id.*

27 ⁵² *Id.*

28 ⁵³ *Id.*

⁵⁴ *Id.*

1 that viral marketing campaigns on social media prey on teenagers' need to fit in and appear cool to their
 2 friends. Following trends on social media, set by influencers and others held out as trendsetters and cool,
 3 is instinctive for teenagers.

4 105. In addition, paid social media advertising can be tailored to a target audience, e.g., youth,
 5 based on data points collected by social media platforms. Those same data points also allow advertisers
 6 like JUUL to see who is viewing their ads. JUUL undoubtedly tracked who viewed its social media
 7 advertisements.
 8

9 106. The Stanford Report analyzed JUUL's marketing campaign between its launch in 2015
 10 and fall 2018. The researchers scrutinized thousands of social media posts (Instagram, Facebook,
 11 Twitter), emails to consumers, and ads (including internet-based ads JUUL has since deleted). The
 12 Report's conclusion is damning: *JUUL's marketing was "patently youth-oriented. For the next 2 ½*
 13 *years it was more muted, but the company advertising was widely distributed on social media channels*
 14 *frequented by youth, was amplified by hashtag extensions, and catalyzed by compensated influencers*
 15 *and affiliates."*⁵⁵ Matt Myers, president of the Campaign for Tobacco-Free Kids observed: *"It's*
 16 *impossible to review the data [in the paper] and conclude anything other than the marketing is the*
 17 *major reason this product became so popular among young people."* As Massachusetts Attorney
 18 General Maura Healey said regarding her office's investigation into JUUL's marketing campaign: "This
 19 is about getting kids to start vaping, and make money and have them as customers for life."
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22 107. In addition to JUUL's countless postings on its own social media accounts, a highly
 23 effective strategy employed by JUUL was to hire the Social Media Influencers—social media
 24 personalities with large followers of the target demographic—to promote JUUL's products.⁵⁶ As
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26 ⁵⁵ Stanford Report at 1 (emphasis added).

27 ⁵⁶ The identities of the Social Media Influencers are largely unknown to Plaintiff but within Defendant's
 28 possession. One influencer Plaintiff is aware of is Christina Zayas. See Nedelman, *et al.*, #JUUL: How
 social media hyped nicotine for a new generation, CNN (Dec. 19, 2018), available at
<https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

1 discussed, teenagers have a heightened need to follow social norms and be perceived as cool by their
 2 peers. By using the Social Media Influencers, JUUL created the perception that its products were being
 3 voluntarily used and promoted by individuals to whom teenagers were likely to look for cues on how to
 4 behave. JUUL created hashtags—#JUUL, #JUULvapor, #switchtoJUUL, #vaporized—to facilitate
 5 dissemination of its youth-oriented marketing. JUUL’s Social Media Influencers would post youth-
 6 targeted advertising, often featuring images of young people JUULing, with JUUL’s hashtags.
 7

8 108. As the Stanford Report found:

9 JUUL has employed influencers – social media users with sizable
 10 followings recruited to increase brand awareness and to inspire sales. Confirming
 11 that JUUL used influencers since its inception was a June 2015 listing for an
 12 Influencer Marketing Intern. The job description makes clear: *“The Influencer
 13 Marketing Intern will create and manage blogger, social media and celebrity
 14 influencer engagements ... to build and nurture appropriate relationships with
 15 key influencers in order to drive positive commentary and recommendations
 16 through word of mouth and social media channels, etc.”*

17 Influencers are a form of paid promotion. For example, an influencer may
 18 earn \$1000 for each 100,000 followers. A particularly well-documented example
 19 is that of DonnySmokes (Donny Karle, age 21), whose JUUL “unboxing”
 20 YouTube video garnered some 52,000 views. With 120,000 subscribers on his
 21 YouTube channel, Mr. Karl was able to earn a good income stream from vapor
 22 companies before YouTube interrupted his channel. In October 2018, JUUL’s
 23 website still requests applications to *“Join the JUUL Influencers.”*⁵⁷

24 109. JUUL also allowed third parties to use its trademark when it benefitted JUUL, even if the
 25 third party was promoting prohibited use of JUUL’s products. For example, Twitter user
 26 @JUULnation’s posts on social-media platform Instagram included tips on how to conceal JUUL in
 27 school and dismissed efforts to combat use of JUUL’s products by youth. JUUL promoted
 28 @JUULnation on JUUL’s own Instagram account.

110. JUUL’s social media marketing reached its target demographic. The Surgeon General’s
 Advisory on E-Cigarette Use Among Youth found that JUUL’s Twitter account was being followed by

⁵⁷ Stanford Report at 19-20.

1 adolescents and that 25% of those retweeting official JUUL tweets were under 18. The National Youth
 2 Tobacco Survey has found that 78.2% of middle and high-school students—20.5 million youth—had
 3 been exposed to e-cigarette advertisements.

4 111. JUUL also used an undisclosed “affiliate program” and the JUUL Affiliates to attract
 5 customers to JUUL’s website. The Stanford Report describes the program:
 6

7 JUUL has used an affiliate program which makes payouts to online sites which
 8 refer business to them. In the vaping industry, this most often takes the form of
 9 sites which review the product favorably and include a link to the product’s
 10 website, especially to their “*buy now*” section. JUUL partnered with the
 11 company Impact Radius (<https://impact.com/>) whose goal is to: “*optimize partner*
 12 *marketing investments.*” In their affiliation application, JUUL explained: *How it*
 13 *works: You get paid by advertising performance campaigns to your audience on*
 14 *your blog, website, newsletter, search landing page. Depending on the specific*
 15 *terms of our agreement you can get paid as frequently as daily using direct*
 16 *deposit into your bank account. It goes on to specify: “The purpose of this*
 17 *Agreement is to allow HTML linking between your web site and the*
 18 *JUULvapor.com web site” and “At all times, you must clearly represent yourself*
 19 *and your web sites as independent from JUULvapor.com.”*

20 JUUL offers payment of as much as 25% of net sales for new customers and 10%
 21 of net sales for existing customers. On October 31, 2018 JUUL halted its affiliate
 22 program. JUUL did not wait for an internet admirer to apply to its affiliates
 23 program. In response to a complimentary tweet on JUUL’s Twitter feed, the
 24 company replied with an invitation for the individual to join the affiliates program
 25 18 times (15 in 2017 and 3 in 2018).⁵⁸

26 112. JUUL also carried out extensive email campaigns—roughly 200 email promotions
 27 between 2015 and 2018. But, like its other advertising, JUUL’s email subscription list was not age-
 28 restricted. Remarkably, until recently, consumers who failed JUUL’s age verification process on JUUL’s
 website were still added to JUUL’s mailing list and emailed a coupon for a discounted JUUL Starter Kit.

JUUL’s Point-of-Sale Advertising

29 113. Another prong of JUUL’s multi-faceted push to adolescents was its in-store product
 30 displays, or “point-of-sale” advertising. JUUL knew that younger smokers were more likely to be

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 32 ⁵⁸ *Id.* at 22.

1 influenced by point-of-sale advertising to make unplanned purchases.⁵⁹ Indeed, “youth who were
 2 frequently exposed to [point-of-sale] tobacco marketing were twice as likely to try or initiate smoking
 3 than those who were not as frequently exposed.”⁶⁰ To start, JUUL designed packaging that would appeal
 4 to teenagers. JUUL’s bright, white packaging with clean lines resonated with youth who had been
 5 conditioned to such themes by companies like Apple in promoting its iPhones and iPads—products that
 6 teenagers associate with being trendy and stylish.

8 114. Next, for years JUUL placed its products exclusively in gas stations as opposed to smoke
 9 shops. JUUL knew that teenagers were more likely to frequent gas stations and, by contrast, may not
 10 even be allowed in smoke shops. Finally, ***JUUL had its retailers display JUUL products on retail***
 11 ***shelves, not behind the counter with traditional cigarettes.*** JUUL’s point-of-sale advertising from 2015
 12 through late 2018 failed to disclose that JUUL’s products contained nicotine or otherwise adequately
 13 warn of the harmful effects of using JUUL’s products. JUUL went to great lengths to convey to
 14 consumers that JUUL’s products were not comparable to traditional cigarettes but, rather, safe and
 15 intended for youth.

17 ///

27 ⁵⁹ Truth Initiative, *The truth about tobacco industry retail practices* (April 2017),
 28 <https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-10-2017.pdf>

⁶⁰ *Id.*

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JUUL’s Youth-Oriented Flavoring

115. JUUL further targeted youth by manufacturing, selling, and promoting an array of youth-oriented flavors for its JUULpods. JUULpods came in sweet flavors including mango, fruit medley, “cool” mint, “cool” cucumber and crème brûlée. Research has shown that youth believe advertisements for flavored vaping and e-cigarette liquids and products are intended for them.⁶¹ According to one

⁶¹ McKelvey *et al.*, *Youth say ads for flavored e-liquids are for them*, *Addict Behav.* Vol. 91, 164-170 (Aug. 29, 2018), available at www.ncbi.nlm.nih.gov/pubmed/30314868.

1 survey, 81% of youth e-cigarette users reported that the first product they used was flavored and 81.5%
 2 reported product flavoring as a reason for use.⁶²



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18 116. Again, this was a page out of the big tobacco playbook. A 1972 internal memorandum at
 19 Brown & Williamson—party to the Master Settlement Agreement—recommending the company
 20 consider sweet-flavored cigarettes, stated: “It’s a well known fact that teenagers like sweet products.
 21 Honey might be considered.”⁶³ Likewise, a 1979 memorandum at Lorillard—also party to the Master
 22

25
26 ⁶² Ambrose *et al.*, *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*,
 27 *JAMA* 314(17):1871-1873 (Oct. 26, 2015), available at
 28 <https://jamanetwork.com/journals/jama/fullarticle/2464690>.

⁶³ Tobacco Industry Quotes on Nicotine Addiction,
[https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addicti](https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf)
 on.pdf (last visited Sep. 12, 2019).

1 Settlement Agreement—considered how to attract “younger” users.⁶⁴ The memorandum concluded “less
 2 tobacco taste” was the answer and suggested the company “investigate the possibility of borrowing
 3 switching study data from the company which produces ‘Life Savers’ as a basis for determining which
 4 flavors enjoy the widest appeal.”⁶⁵ And a 1978 report compiled for Lorillard found: “In psychological
 5 terms, what tastes and smells good, what one enjoys, cannot be ‘so bad.’”⁶⁶

7 117. The FDA banned flavored cigarettes in 2009, stating: “flavored cigarettes are a gateway
 8 for many children and young adults to become regular smokers.” As Dr. Schuchat of the CDC recently
 9 testified: “We know that flavors are a principle attractant to young people.”

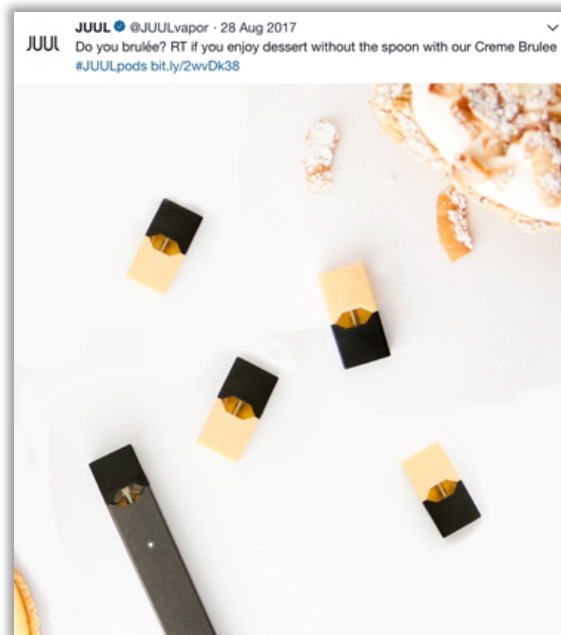
10 118. JUUL’s advertising emphasized the flavors of its sweetened nicotine pods. JUUL even
 11 advertised JUULpods as part of a meal, to be paired with other foods. In late 2015, JUUL began a food-
 12 based advertising campaign called “Save Room for JUUL.” A play on the expression “save room for
 13 dessert,” JUUL’s campaign focused on the JUULpods’ sweet flavors, and pairing them with foods.
 14 JUUL described its Crème Brulee nicotine pods as “the perfect evening treat” and encouraged users to
 15 “indulge in dessert without the spoon.” In one 2016 email, JUUL bluntly suggested that users satisfy
 16 their sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brulee.”

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 26 ⁶⁴ Students Working Against Tobacco, *Tobacco Industry Quotes and Facts Related to Flavored*
 27 *Tobacco*,
<http://swatflorida.com/uploads/fighresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (last visited Sep. 12, 2019).

28 ⁶⁵ *Id.*

⁶⁶ *Id.*



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119. JUUL similarly promoted the Fruit Medley pods using images of ripe berries. JUUL described its “Cool” Mint pods as having a “crisp peppermint taste with a pleasant aftertaste” and encouraged consumers to “Beat The August Heat With Cool Mint.” In a July 10, 2017 Facebook advertisement, JUUL urged customers to “start your week with cool mint juulpods.” Along with the bright green caps of the “Cool” Mint JUULpods, the Facebook ad included an image of a latte and an iPad.

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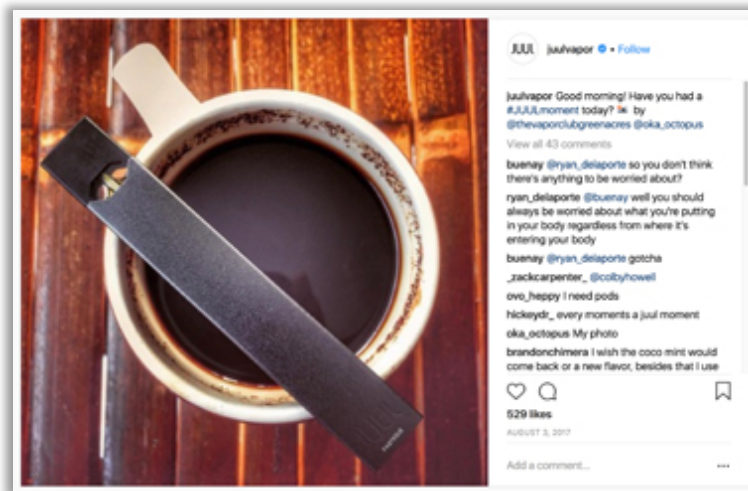
120. JUUL even hired celebrity chefs to provide pairing suggestions for JUUL flavors. On Instagram and Twitter, JUUL boasted about “featured chef” Bobby Hellen creating a “seasonal recipe to pair with our brulee pod.” On Facebook, JUUL posted a link to an article on porhomme.com about “what our featured chefs created to pair with our pod flavors.” JUUL tweeted repeatedly about its flavors and encouraged its social media followers to share their preferred pairings.

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121. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee and other caffeinated drinks, sometimes with what appear to be textbooks in the picture. JUUL’s coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup of coffee. This comparison to coffee was an intentional effort to misrepresent the health risks of JUUL’s products, suggesting they were no more risky than coffee, which is false—a tactic utilized by tobacco companies for decades to equate nicotine with caffeine.



1 122. By positioning JUULpods as a delicious treat rather than a system for delivering a highly-
2 addictive drug with dangerous side effects, JUUL deceptively led consumers to the conclusion that
3 JUULpods were not only healthy (or at least essentially harmless), but also a pleasure to be enjoyed
4 regularly, without guilt or adverse effect.

5 123. By modeling its nicotine pods' flavor profiles on sweets, naming its nicotine pods after
6 those sweets, and using images of the sweets in JUULpod advertisements, JUUL conditioned viewers of
7 its advertisements to associate JUUL with those foods. Through this conditioning process, Defendants
8 sought to link the sight or mention of JUUL products to mental images of the fruits and desserts in
9 JUUL's advertising, which would in turn trigger food-based physiological arousal including increased
10 salivation and heart rate. These physiological responses, in turn, would make JUUL use more appealing.

11 ***JUUL Attempts to Rewrite History***

12 124. In 2016, JUUL made some changes to its marketing, but the deception and intent to target
13 youth remained. For instance, JUUL's marketing would often depict themes like socialization and
14 romance or style and identity. Instagram and Facebook ads included photos of pop-star Katy Perry with
15 a JUUL e-cigarette at the Golden Globes. But most glaring was what JUUL did not include in their
16 advertising: adult smokers JUUL claimed it was targeting to switch from traditional cigarettes to JUUL.
17

18 125. JUUL's more recent marketing has included live testimonials from adults who claim to
19 have switched from cigarettes to JUUL. But according to Robert K. Jackler, M.D., one of the Stanford
20 Report's authors: "The JUUL hashtag lives on. It's immortal. It's still viral in peer-to-peer teen
21 promotion." "The fact that Juul shut down its own social media postings had little effect," Dr. Jackler
22 said.
23

24 126. After the FDA opened an investigation and lawsuits were filed, JUUL set out to rewrite its
25 history, JUUL added nicotine warnings to its product packaging in August 2018. Prior to that, they had
26 only contained California Proposition 65 warnings indicating that the product contains a substance
27
28

1 known to cause cancer and a warning to keep JUULpods away from children and pets, but nothing about
2 the known effects, or unknown long-term effects, of vaping nicotine salts.

3 127. JUUL has removed from its website, and much of the internet, images of glamorous
4 young models seductively exhaling clouds of vapors. JUUL's website now features middle-age adults in
5 non-glamorous settings and suggests that JUUL solely exists for the benefit of adult smokers looking for
6 an alternative.

7
8 128. JUUL now markets its product as a smoking cessation device: "Switch to JUUL". But, as
9 discussed below, it has not received FDA approval as a modified risk tobacco product or as a nicotine
10 replacement therapy, and JUUL's e-cigarette has not participated in any FDA approval process analyzing
11 its risks and benefits. JUUL's "Switch" campaign, promoting the benefits of vaping JUULpods
12 compared to combustible cigarettes create a false impression that JUUL products had been approved as
13 smoking cessation devices and found to be safer than combustible cigarettes. That is false.

14
15 129. While JUUL has also announced some half-hearted voluntary measures to reduce access
16 to young people, the cat cannot go back in the bag. The viral marketing campaign and images live on
17 and the product remains designed to maximize the nicotine delivery for young people, leading to
18 devastating health consequences. Although JUUL recently announced plans to stop selling fruity or
19 dessert-flavored pods, as well as Mint pods, they will continue selling Menthol flavor. Matthew L.
20 Myers, president of Campaign for Tobacco-Free Kids responded to the move, saying it "follows the
21 tobacco industry playbook of making changes only when it absolutely has no choice, and then to make a
22 change that will have far less impact than it appears," continuing, "with mint removed, kids will almost
23 certainly shift to Juul's menthol pods."

24
25 130. After addicting scores of youth to its product, JUUL now claims its marketing was never
26 geared towards youth. But as a former senior manager at JUUL has admitted, JUUL was "well aware it
27 could appeal to [teenagers]." In fact, Juul's founders had been warned by two prominent tobacco
28

1 researchers regarding the potential for abuse of e-cigarettes by youth. “[T]he first signs that Juul had a
 2 strong appeal to young people came almost immediately after the sleek device went on sale in 2015...
 3 Employees started fielding calls from teenagers asking where they could buy more Juuls.” It was quickly
 4 apparent that teenagers were seduced by the marketing and were picking up JUUL’s addictive, harmful
 5 products in droves. Indeed, some customers purchased more JUUL products than one could use,
 6 sometimes 10 or more devices. By the end of 2015, users had posted tens of thousands of videos on
 7 YouTube showing students how to “JUUL in school” without getting caught. Although some voiced
 8 concern internally, “a lot of people had no problem with 500 percent year-over-year growth,” according
 9 to a former company manager. *“[L]eaders also clearly understood the long-term benefit of young users*
 10 *on its bottom line,”* according to the former manager.

12 131. On September 25, 2019, JUUL announced that it was “suspending all broadcast, print and
 13 digital product advertising in the U.S.” and that JUUL would not fight the federal government’s proposed
 14 U.S. ban on flavored e-cigarettes, which the FDA is set to begin implementing any day. In addition,
 15 JUUL CEO Kevin Burns unexpectedly stepped down. But, as discussed below, these actions were too
 16 late as JUUL’s deceptive and illegal conduct had already succeeded in addicting a generation of
 17 America’s youth to its nicotine products. Indeed, demonstrating its callous attitude towards nicotine
 18 abuse, JUUL appointed K.C. Crosthwaite as its new CEO. Crosthwaite is an Altria—big tobacco—
 19 veteran. A week later, JUUL hired another Altria executive, 24-year Altria veteran Joe Murillo, as
 20 JUUL’s new chief regulatory officer.

23 ***JUUL’s Marketing was Deceptive and Failed to Warn of the Risks Associated with Use of Its***
 24 ***E-Cigarettes and JUULpods***

25 132. From its product release in 2015 and continuing through today, JUUL’s marketing has
 26 misrepresented and concealed material information regarding its products and their operation.
 27 Specifically, as detailed above, JUUL misstated and omitted material facts in social media posts—both
 28 its own posts and posts of its Social Media Influencers—advertisements on JUUL’s website, email

1 messages, print materials including 2015 full-page ads in *Vice* magazine, point-of-sale advertising, free
2 JUUL distribution events, and “education” programs to schools and youth (discussed below).

3 133. JUUL’s marketing misrepresents or fails to adequately disclose that its products contain
4 nicotine or how much nicotine JUUL products deliver to a user’s bloodstream, including as compared to
5 combustible cigarettes, as well as the benzoic acids levels. JUUL’s marketing further omitted the
6 increased risk of addiction, physiological effects, and other severe health risks the higher-than-disclosed
7 levels of nicotine delivery pose to a JUUL user. Instead, JUUL intentionally created a misleading
8 impression that JUUL’s products were intended for youth, were totally safe or at least safer than
9 combustible cigarettes, and were not a nicotine delivery device but, rather, a trendy tech product that
10 should be associated with products like the wildly popular iPhone.

11
12 134. As the FDA made clear in a September 9, 2019 warning letter, JUUL violated the Federal
13 Food, Drug, and Cosmetic Act when it advertised its e-cigarettes and nicotine juice as modified risk
14 tobacco products without an appropriate FDA Order in effect. JUUL’s “Switch” campaign, like its
15 earlier marketing, thus, continues the parade of misstatements and omissions of material facts regarding
16 the design and use of JUUL products.

17
18 135. To this day, JUUL has not disclosed the true health risks associated with its products, has
19 not recalled or modified its products despite the known risks, and continues to foster a public health
20 crisis, placing millions of young people in harm’s way.

21
22 **JUUL Targets Schools**

23 136. In addition to the purposeful targeting of student-aged youth generally, JUUL made
24 concerted efforts to market to students, including direct misstatements and omissions to students on
25 school grounds.

26 137. In January 2018, The Boulder Daily Camera published a front-page story about local
27 educators’ growing concerns over their students’ use of JUUL. Five days later, the principal at
28

1 Nederland Middle-Senior High School in Boulder, Colorado, Carrie Yantzer, received a surprising email
 2 from someone introducing themselves as Bruce Harter, a former educator. Mr. Harter claimed he was
 3 working with JUUL in developing anti-vaping curriculum for schools. Mr. Harter said he “read about
 4 the challenges you’re having with JUUL” and offered a free, three-hour curriculum provided by JUUL
 5 purportedly aimed at discouraging vaping amongst teens. Ms. Yantzer was not the only school
 6 administrator to get such a letter.
 7

8 138. During “educational” presentations to students like the one proposed to Ms. Yantzer,
 9 representatives of JUUL sought to raise awareness of JUUL’s addictive products surreptitiously and
 10 directly misrepresented or omitted the health risks associated with use of JUUL products to students. For
 11 example:

- 12 • JUUL “was much safer than cigarettes and that “FDA would approve it any
 13 day.”
- 14 • JUUL was “totally safe.”
- 15 • A student “...should mention JUUL to his [nicotine-addicted]
 16 friend...because that’s a safe alternative than smoking cigarettes, and it
 17 would be better for the kid to use.”
- 18 • “FDA was about to come out and say it [JUUL] was 99% safer than
 19 cigarettes...and that...would happen very soon...”⁶⁷

20 139. In addition, JUUL contracted with organizations such as LifeSkills, Inc. (“LifeSkills”) to
 21 purportedly provide health education to youth. In the instance of LifeSkills, the goal was to reach a
 22 thousand youths in Baltimore, Maryland. JUUL’s relationship with LifeSkills included at least the
 23 second half of 2018 and appears to have cost JUUL tens or hundreds of thousands of dollars. JUUL also
 24 appears to have sponsored a summer camp for kids aged grades 3-12 put on by The Freedom &
 25

26
 27 ⁶⁷ FDA News Release, *FDA warns JUUL Labs for marketing unauthorized modified risk tobacco*
 28 *products, including in outreach to youth* (Sep. 9, 2019), available at <https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth>.

1 Democracy Schools Foundation, Inc., in June 2018. In exchange for its payment of \$134,000, JUUL
 2 would receive data, including the students' general knowledge of health and risky behaviors, on the
 3 camp's participants.

4 140. JUUL's "educational" programs were marketing events, plain and simple. JUUL sought
 5 to raise awareness of its flavored, low-irritation nicotine products with students. Not surprisingly, that
 6 very same tactic—purportedly educating youth about the dangers of a product in order to market the
 7 product to them—was used by big tobacco in marketing traditional cigarettes.

8
 9 **JUUL's Illegal Conduct Gives Rise to a Youth E-Cigarette Epidemic and Puts a Generation at**
 10 **Risk**

11 141. Smoking remains the leading cause of preventable death in the U.S., killing more than
 12 480,000 people a year. Each year, cigarette smoking causes about one in every five deaths in the U.S.

13 142. The FDA and CDC characterize teen vaping as an epidemic. In a September 11, 2018
 14 statement announcing unprecedented steps to combat e-cigarette use by youth, FDA Commissioner Dr.
 15 Scott Gottlieb observed: "[e]-cigs have become an almost ubiquitous – and dangerous – trend among
 16 teens." As to drivers of that epidemic, Dr. Gottlieb stated: "[w]e know that the flavors play an important
 17 role in driving the youth appeal." Dr. Gottlieb admonished JUUL and other e-cigarette manufacturers:
 18 "I've been warning the e-cigarette industry for more than a year that they needed to do much more to
 19 stem the youth trends. In my view, *they treated these issues like a public relations challenge* rather than
 20 seriously considering their legal obligations, the public health mandate, and the existential threat to these
 21 products."
 22

23 143. U.S. Surgeon General Vice Adm. Jerome M. Adams followed suit, issuing an advisory:
 24 "stressing the importance of protecting children from a lifetime of nicotine addiction and associated
 25 health risks by immediately addressing the epidemic of youth e-cigarette use." The advisory notes the
 26 appeal of flavored e-cigarettes to youth, as well as the harmful chemicals used to make certain of the
 27 flavors. The Surgeon General singled out JUUL and its commanding market share, noting:
 28

1 One of the most commonly sold USB flash drive shaped e-cigarettes is JUUL,
 2 which experienced a 600% surge in sales during 2016-2017, giving it the greatest
 3 market share of any e-cigarette in the U.S. by the end of 2017. ... All JUUL e-
 4 cigarettes have a high level of nicotine. ... [JUUL's] products also use nicotine
 5 salts, which allow particularly high levels of nicotine to be inhaled more easily
 6 and with less irritation than the free-base nicotine that has traditionally been used
 7 in tobacco products, including e-cigarettes. This is of particular concern for
 8 young people, because it could make it easier for them to initiate the use of
 9 nicotine through these products and also could make it easier to progress to
 10 regular e-cigarette use and nicotine dependence. However, despite these risks,
 11 ***approximately two-third of JUUL users aged 15-24 do not know that JUUL***
 12 ***always contains nicotine.*** (emphasis added)

13 144. According to a December 2018 survey of adolescent drug use, 20.9% of 12th graders,
 14 16.1% of 10th graders, and 6.1% percent of eighth graders had vaped nicotine in the previous 30 days.⁶⁸
 15 According to the CDC, in 2018 3.05 million high-schoolers and 570,000 middle-schoolers used e-
 16 cigarettes.⁶⁹ Those figures are up from 220,000 and 60,000 in 2011.⁷⁰ E-cigarette use increased 78%
 17 among high-school students and 48% among middle-school students from 2017 to 2018.⁷¹ The 2019
 18 National Youth Tobacco Survey found there are over 5 million youth currently using e-cigarettes,
 19 including 27.5% of high schoolers and 10.5% of middle schoolers, both up from 2018.

20 145. A recent study out of the University of Michigan revealed: “[i]ncreases in adolescent
 21 vaping from 2017 to 2018 were the largest ever recorded in 43 years for any adolescent substance use
 22 outcome in the U.S.”⁷² The study noted that the percentage of 12th graders who “reported **vaping**

23 ⁶⁸ Stein, *Teen Vaping Soared in 2018*, NPR (December 17, 2018), <https://www.npr.org/sections/health-shots/2018/12/17/676494200/teen-vaping-soared-in-2018> (last visited September 12, 2019).

24 ⁶⁹ Cullen, *et al.*, *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School*
 25 *Students—United States, 2011-2018*, MMWR Morb Mortal Wkly Rep 2018;67:1276-1277 (Nov. 16,
 2018), available at <https://www.cdc.gov/mmwr/volumes/67/wr/mm6745a5.htm>.

26 ⁷⁰ *Id.*

27 ⁷¹ *Id.*

28 ⁷² *National Adolescent Drug Trends 2018*, Institute for Social Research, The University of Michigan
 (Dec. 17, 2018), <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/> (last visited Sep. 12, 2019).

1 *nicotine* in the past 30 days nearly doubled, rising from 11% to 21%” between 2017 and 2018.⁷³ That
 2 increase is “twice as large as the previous record for largest-ever increase among past 30-day outcomes
 3 in 12th grade.”⁷⁴

4
 5 146. As a direct result of JUUL’s deceptive marketing and failure to warn of the harms
 6 associated with e-cigarettes and nicotine, from 2015 to 2018, between only 14% to 18% of 12th graders
 7 perceived using e-cigarettes regularly as posing great risk of harm.⁷⁵ Those figures compared to a range
 8 of 74% to 78% who saw great risk of harm from smoking one or more packs of traditional cigarettes per
 9 day.⁷⁶ Similarly, an April 2018 study found: “63 percent of JUUL users did not know that the product
 10 always contains nicotine.”⁷⁷

11
 12 147. CDC Director Dr. Robert R. Redfield expressed concern in a February 11, 2019
 13 statement: “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to
 14 erase progress made reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”
 15 Hundreds of vaping-related illnesses have been reported, with several deaths.

16
 17 **Schools Are Uniquely and Disproportionately Harmed by JUUL’s Conduct**

18 148. JUUL’s deceptive and illegal conduct has caused unique harm to Plaintiffs. Because
 19 Defendants targeted school-aged youth and even sought directly to raise awareness of JUUL’s products
 20 on school campuses through “education” presentations, schools like Plaintiffs’ and those that Plaintiffs
 21 support are the epicenter of the youth vaping epidemic. A recent California Student Tobacco Survey
 22

23
 24 ⁷³ *Id.*

25 ⁷⁴ *Id.*

26 ⁷⁵ Monitoring the Future, National Adolescent Drug Trends Press Release: Text & Tables,
<https://monitoringthefuture.org/data/18data/18drtbl11.pdf> (last visited Sep. 12, 2019).

27 ⁷⁶ *Id.*

28 ⁷⁷ Truth Initiative, *Data suggest teens who use JUUL are not just experimenting* (Nov. 1, 2018),
<https://truthinitiative.org/research-resources/emerging-tobacco-products/data-suggest-teens-who-use-juul-are-not-just> (last visited Sep. 12, 2019).

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1 revealed that 43% of 12th graders within the San Francisco-San Mateo region had used an e-cigarette and
2 25% were current users.

3 149. An April 20, 2018 article in *The Wall Street Journal*, titled “Schools and Parents Fight
4 JUUL E-Cigarette Epidemic,” described the problems parents and schools are facing with the meteoric
5 rise of nicotine use by America’s youth:
6

7 At Northern High School in Dillsburg, Pa., Principal Steve Lehman’s locked safe,
8 which once contained the occasional pack of confiscated cigarettes, is now filled
9 with around 40 devices that look like flash drives.

10 The device is called a JUUL and it is a type of e-cigarette that delivers a powerful
11 dose of nicotine, derived from tobacco, in a patented salt solution that smokers
12 say closely mimics the feeling of inhaling cigarettes. It has become a coveted
13 teen status symbol and a growing problem in high schools and middle schools,
14 spreading with a speed that has taken teachers, parents and school administrators
15 by surprise.

* * *

16 After two decades of declining teen cigarette use, “JUULing” is exploding. The
17 JUUL liquid’s 5% nicotine concentration is significantly higher than that of most
18 other commercially available e-cigarettes. JUUL Labs Inc., maker of the device,
19 says one liquid pod delivers nicotine comparable to that delivered by a pack of
20 cigarettes, or 200 puffs—important for adult smokers trying to switch to an e-
21 cigarette. It is also part of what attracts teens to the product, which some experts
22 say is potentially as addictive as cigarettes and has schools and parents scrambling
23 to get a grip on the problem.

24 150. A February 13, 2018 article published by the Lawrence (Kansas) Free State High School’s
25 Free Press Online, described the seduction of JUUL products and students’ growing addiction:
26

27 Since most vape juices contain nicotine, laws have been put in place to keep
28 minors from using the potentially addictive substance. The Food and Drug
Administration prohibits anyone under the age of 18 from using any kind of vape
product. Despite the current legislation, many minors are still able to obtain
vaping devices. At Free State, underage use of vapes is quite typical. ***Out of 95
students surveyed, 50% of them said that the illegal use of vape products is very
common.*** Students are able to get their hands on vape products with ease, as there
are many effective methods of buying them unlawfully.

* * *

One of the reasons why vaping has become so popular is the “cloud” the user
makes after exhaling the substance. The vapor is cooler than a traditional
cigarette, and some students are fascinated with the many different things you can

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do with it, an anonymous senior said.

“I think if you’re doing it with people that you feel comfortable with then it’s just a good time. People are fascinated by the cloud and the tricks.” an anonymous senior said.

Another attractive characteristic of vaping is the buzz that the user gets after inhaling the substance. It can be described as a short-term head high.

“It’s almost like being drunk—you feel it in your head and you just kind of wobble,” senior Isaiah Jacobs said. “It’s a dizzy feeling. It feels nice.” The buzz is caused by nicotine which the vape juice contains. To a new user, vaping is an easy way to get a strong high. After continual use, users build up an immunity and must ingest more nicotine to reach their desired state. This is called a nicotine addiction and all consumers, especially minors, are susceptible to this craving according to the U.S. National Library of Medicine. Some students have become habitual users, causing them to spend time and money feeding their habit. Students who vape recognize that many of their peers have an addiction but still choose to partake in the activity, disregarding the risk.

“Some [people who vape] will admit it,” senior Isaiah Jacobs said. “You can tell they are addicted when they spend all their money and time on it, just like people who smoke cigarettes or drink alcohol.” (emphasis added)

151. Plaintiffs have expended, are expending, and will need to expend in the future significant resources to combat skyrocketing use of JUUL products by students. Steps to prevent use of JUUL products and help students that are addicted are costly and time consuming for schools like Plaintiffs’ and those in Plaintiffs’ districts who have limited resources. And because JUUL’s marketing to youth was so effective and the resulting rise in student vaping was so quick, little research exists on the effectiveness of prevention and cessation methods. Schools are, thus, forced to attack the epidemic from multiple angles, each requiring significant expenditures of their limited resources.

152. A July 26, 2019 article in *The Washington Post* noted the measures some schools were taking to combat JUULing by students:

Many schools are at a loss for how to deal with Juuls and other e-cigarettes. Some educators report increases in the number of students being suspended after they’re caught with e-cigarettes.

1 Desperate school administrators have banned USB drives because they're
2 indistinguishable from Juuls. Others removed bathroom doors because teens were
3 regularly gathering there to vape, and some have even started searching students.
4 Jonathon Bryant, chief administrator of Lincoln Charter School in North Carolina,
5 estimated that three-quarters of suspensions in the just-completed academic year
6 were related to vaping, and some students were suspended more than once.

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153. Similarly, a September 19, 2019, *USA Today* article noted that in the Lee County School
District in Fort Myers, Florida, “[t]obacco use or possession offenses in the 95,000-student district
increased almost five-fold” in the 2017-18 school year. Among other steps taken to address student
vaping, the district “opened a new center where students suspended for such offenses are sent for 20
days.” Likewise, the article reported that a New York school district resorts to a “therapeutic
intervention” after a student’s second vaping offense.

154. As noted in *The Washington Post*, *USA Today*, and countless other instances, schools are
taking an array of actions to address student vaping. Those actions have included, among others, camera
surveillance near restrooms or elsewhere in schools, removing restroom doors, limiting the number of
students in a restroom at once, limiting the time students are allowed to spend in the restroom, assigning
teachers or administrators to monitor restrooms, hiring additional faculty to monitor for student vaping,
use of specialized detectors in restrooms or elsewhere in the schools, student and parent vaping-education
programs, specialized student counseling, and after-school programs.

155. Student use of JUUL products on school grounds has resulted in increased student
suspensions and absences. Because school funding is often related to the number of students enrolled
and present, suspensions and absences may decrease the amount of funding a school receives. Similarly,
for those students addicted to JUUL, the per-student cost to educate is increased as schools take the
necessary actions to help addicted students quit JUUL’s highly-addictive nicotine products.

156. The highly-addictive nature of JUUL’s products will require years of expensive actions by
school districts to adequately address the epidemic. Indeed, it took decades and billions of dollars to see a
meaningful decline in traditional cigarette use.

1 **JUUL Has Experienced Extraordinary Financial Success at the Expense of America’s Youth,**
2 **Parents, and Educators**

3 157. With skyrocketing revenue gains, JUUL controls nearly three quarters of the e-cigarette
4 market. In 2017, JUUL’s revenues grew by an astounding 700% to \$200 million. JUUL’s 2018 revenue
5 continued to climb, hitting the \$1 billion mark. And despite growing restrictions and regulations in the
6 U.S., JUUL forecasts revenue of over \$3 billion for 2019.

7 158. In December 2018, Altria, the parent of Phillip Morris USA, Inc. (“Phillip Morris”)
8 invested \$12.8 billion in JUUL, amounting to a 35% stake. Altria’s investment translates to a \$38 billion
9 valuation for JUUL.

10 159. Ironically, Altria’s announcement of its stake in JUUL came just weeks after Altria
11 announced it would remove its e-cigarette products from the market to purportedly address the youth
12 vaping epidemic.

13 160. In exchange for Altria agreeing to provide certain paid services to JUUL for at least six
14 years, Altria agreed to a non-competition obligation with JUUL. Altria and JUUL also entered into a
15 services agreement.

16 161. Under the agreements, Altria will, among other things, provide services to JUUL with
17 respect to logistics and distribution, access to retail shelf space, youth vaping “prevention,” cigarette pack
18 inserts and onserts, regulatory matters and government affairs. JUUL’s access to Altria’s retail shelf
19 space will allow JUUL products to appear alongside traditional cigarettes like Phillip Morris’s Marlboro
20 brand, the country’s most popular cigarette.

21 162. In addition, Philip Morris will send JUUL marketing messages to Phillip Morris’s
22 database of traditional cigarette smokers’ mailing and email addresses.

23 163. On a December 20, 2018 conference call, Altria’s CEO Howard Willard said Altria was
24 “fortunate to be the tobacco company that’s partnered up with JUUL” and that Altria’s infrastructure,
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1 including its “leading sales organization,” would help accelerate JUUL’s growth and financial
 2 performance, to the benefit of both JUUL and Altria.

3 164. According to Dr. Jackler, the joining of JUUL and the Marlboro corporate family brings
 4 together “the two dominant players in the teenage nicotine addiction market, i.e., cigarettes and vaping.
 5 This powerful combination constitutes a clear and present danger to youth.”
 6

7 **Government Investigations and Regulatory Actions Seek to Hold JUUL Accountable and Combat**
 8 **the Teen JUUL Epidemic**

9 165. In April 2018, the FDA announced it was investigating JUUL’s marketing efforts. The
 10 FDA requested JUUL’s research and marketing documents, including focus group data and toxicology
 11 reports, and whether design features and ingredients appeal to specific age groups.

12 166. On September 12, 2018, the FDA sent letters to five e-cigarette manufacturers that
 13 represent more than 97% of the current market. JUUL was among those manufacturers. Dr. Gottlieb
 14 stated these companies are “now on notice by the FDA of how their products are being used by youth at
 15 disturbing rates.” The FDA also requested “the manufacturers of these brands and products to come back
 16 to the FDA in 60 days with robust plans on how they’ll convincingly address the widespread use of their
 17 products by minors.” Dr. Gottlieb ordered the companies to “demonstrate that they’re truly committed to
 18 keeping these [e-cigarettes] out of the hands of kids and they must find a way to reverse this trend.”
 19

20 167. On September 31, 2018, the FDA conducted an unannounced inspection of JUUL’s
 21 headquarters in San Francisco. The FDA sought more information about JUUL’s sales and marketing
 22 practices.

23 168. In an October 25, 2018 public letter to the FDA, Altria’s Willard said “we share [the
 24 FDA’s] concerns and ... are alarmed about the reported rise in youth e-vapor use to epidemic levels.”
 25 *Altria admitted that “pod-based products significantly contribute to the rise in youth use of e-vapor*
 26 *products.”*
 27
 28

1 169. In response to mounting criticism and pressure, in November 2018, JUUL stated it
 2 “stopped accepting retail orders for our Mango, Fruit, Crème, and Cucumber JUUL pods to the over
 3 90,000 retail stores that sell our product.” But, until recently, JUUL continued selling those flavors on its
 4 website and continued selling the highly-popular Mint flavor in retail stores. An April 2018 survey
 5 indicated that JUUL’s “cool” mint flavor was the third-most popular flavor amongst JUUL users aged
 6 12-17.⁷⁸

8 170. In June of 2019, San Francisco became the first major city to ban the sale and distribution
 9 of e-cigarettes that have not undergone pre-market review by the FDA. JUUL’s e-cigarettes have not
 10 undergone that review. San Francisco City Attorney Dennis Herrera said the ban is a step toward
 11 preventing “another generation of San Francisco children from becoming addicted to nicotine.” In
 12 response, JUUL contributed more than \$18 million to a ballot initiative to overturn the ban. As criticism
 13 of JUUL’s actions grew, JUUL abruptly ended its support of the initiative in September 2019, after the
 14 initiative had qualified for the ballot. In early November 2019, San Franciscans voted down the JUUL-
 15 sponsored initiative. The ban is scheduled to go into effect on January 1, 2020.

17 171. On July 24 and 25, 2019, the United States House of Representatives Committee on
 18 Oversight and Reform held hearings at which JUUL executives and anti-tobacco witnesses testified. The
 19 hearings sought to investigate “JUUL’s role in the youth nicotine addiction epidemic, marketing to
 20 youth, misleading health claims, and new partnerships with traditional tobacco companies.” The
 21 hearings included appearances from students and parents who testified that JUUL representatives spoke
 22 at their schools, telling students that JUUL was “totally safe,” “much safer than cigarettes,” and that a
 23 student “should mention JUUL to his [nicotine-addicted] friend.” *See supra*, ¶¶136, *infra* ¶¶175-177.
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 26

27 _____
 28 ⁷⁸ Truth Initiative, *JUUL fails to remove all of youth’s favorite flavors from stores* (Nov. 15, 2018),
<https://truthinitiative.org/research-resources/emerging-tobacco-products/juul-fails-remove-all-youths-favorite-flavors-stores> (last visited Sept. 9, 2019).

1 172. In August 2019, a *The Wall Street Journal* article, titled “JUUL’s Marketing Under
2 Scrutiny As Vaping Increases Among Teens,” revealed a Federal Trade Commission (“FTC”) probe into
3 JUUL’s use of “influencers and other marketing to appeal to minors” and whether “Juul engaged in
4 deceptive marketing.” The probe began before the agency’s antitrust review of Altria’s 35% stake in
5 JUUL, which Altria purchased in December 2018. The FTC is reportedly considering seeking monetary
6 damages.
7

8 173. In September 2019, Michigan became the first state to ban flavored e-cigarettes.
9 Michigan Governor Gretchen Whitmer ordered the ban in response to the state’s health department
10 finding youth vaping constituted a public health emergency and marketing targeting youth. Whitmer
11 banned misleading descriptions of vaping products as “clear,” “safe,” and “healthy.” “Companies selling
12 vaping products are using candy flavors to hook children on nicotine and misleading claims to promote
13 the belief that these products are safe,” Ms. Whitmer said. Bills to prohibit sales of flavored vaping
14 products have been introduced in California and Massachusetts.
15

16 174. A September 23, 2019, *The Wall Street Journal* article revealed that JUUL was the subject
17 of a federal criminal probe.

18 **The FDA Issues a Warning Letter Outlining JUUL’s Deceptive Marketing and Targeting of**
19 **Schools**

20 175. On September 9, 2019, the FDA issued a Warning Letter to JUUL ordering JUUL to stop
21 making unproven claims for its products. The FDA outlined violations of the Federal Food, Drug, and
22 Cosmetic Act by JUUL when JUUL advertised its e-cigarettes and JUULpods as modified risk tobacco
23 products without an appropriate FDA Order in effect. The Warning Letter highlighted statements JUUL
24 made directly to students:
25

- 26 1. A JUUL representative speaking with students at his presentation
27 stated that JUUL “was much safer than cigarettes” and that “FDA
would approve it any day.”
- 28 2. The JUUL representative speaking with students at his presentation

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called JUUL “totally safe.”

3. The JUUL representative speaking with students at his presentation stated that a student “...should mention JUUL to his [nicotine-addicted] friend...because that’s a safer alternative than smoking cigarettes, and it would be better for the kid to use.”
4. The JUUL representative speaking with students at his presentation stated, “FDA was about to come out and say it [JUUL] was 99% safer than cigarettes...and that...would happen very soon...”

Referring to your ENDS products as “99% safer” than cigarettes, “much safer” than cigarettes, “totally safe,” and “a safer alternative than smoking cigarettes” is particularly concerning because these statements were made directly to children in school. Our concern is amplified by the epidemic rate of increase in youth use of ENDS products, including JUUL’s products, and evidence that ENDS products contribute to youth use of, and addiction to, nicotine, to which youth are especially vulnerable.

176. The FDA issued a separate letter to JUUL CEO Kevin Burns, requesting “documents and information from JUUL Labs, Inc. (JUUL) regarding JUUL’s marketing, advertising, promotional, and educational campaigns, as well as certain product development activity.” The FDA’s letter and news release chided JUUL for its role in the youth vaping epidemic, noting “[s]ome of this youth use appears to have been a direct result of JUUL’s *product design and promotional activities* and outreach efforts,” in particular, its outreach efforts to students. The FDA’s September 9, 2019 letter highlighted specific incidents of concerning “educational engagement and outreach,” requesting documents and explanations regarding:

1. Ms. Meredith Berkman, Co-founder, Parents Against Vaping e-cigarettes (PAVe), testified that, “In California, a retired school superintendent was offering schools in his state and in Massachusetts money if they would implement the anti-JUUL curriculum that...a man named Bruce Harder was offering on JUUL’s behalf.”
2. On July 24, 2019, Dr. Robert Jackler, M.D., Professor at Stanford University School of Medicine, testified that, “Altria may provide services to JUUL with respect to...youth vaping prevention...”
3. On July 25, 2019, in response to questions from Chairman Krishnamoorthi about JUUL’s program to pay schools \$10,000 or more to use a JUUL youth prevention curriculum, Ms. Ashley Gould, Chief Administrative

Officer, JUUL Labs, Inc., testified: “That is not currently the case. We ended that program in the fall of 2018,” and that, “...there were six schools that received funding from JUUL to implement programming to prevent teen vaping...”

4. In addition, in response to questions from Chairman Krishnamoorthi about internal JUUL correspondence in 2018 about setting up a booth at a school health fair, Ms. Gould testified that JUUL ended its youth prevention program.
5. In response to questions about JUUL’s agreement to pay the Richmond, California Police Activities League (RPAL) \$89,000 to use its youth prevention curriculum in the RPAL youth program, which is for 12- to 17-year-olds who face suspension from school for using e-cigarettes, Ms. Gould testified that JUUL ended its youth prevention program.
6. Further, in response to questions about JUUL providing grants to youth programs, such as a \$134,000 grant for a summer program at a charter school in Baltimore, Maryland, for 80 students in grades 3 – 12, and for which the school agreed to provide JUUL with the students’ data (e.g., surveys, journals, activity logs), Ms. Gould testified that she, “...would have to check the contracts, but whatever grants were made were focused on youth prevention efforts.”
7. Moreover, in response to questions about JUUL’s agreement with Life Skills, Inc., to partner with church groups to provide health education to a thousand youth in Baltimore, even though internal JUUL correspondence indicated the company was aware that tobacco companies promoted such initiatives in the 1990s, Ms. Gould again testified that JUUL ended its youth prevention program.
8. In addition, in response to questions about JUUL’s contract with a consulting group to promote cessation programs run by community-based groups, including veterans’ organizations, Ms. Gould testified that she would need to review the documents being referenced.

177. In a statement issued the same day, Acting FDA Commissioner Dr. Norman Sharpless put it bluntly: JUUL has “*ignored the law, and very concerningly, has made some of these statements in school to our nation’s youth.*”

V. ADDITIONAL IMPACT ON PLAINTIFFS

178. While the length of time and steps ultimately necessary to address fully the epidemic of student vaping in Plaintiffs’ schools are not yet known due to the magnitude and uniqueness of the

1 problem, Plaintiffs have expended and are expending significant resources combatting the problem, as
 2 discussed herein.

3 179. In addition to the costs incurred and to be incurred resulting from the impact of
 4 Defendants' conduct at Plaintiffs' Court and Community schools, as discussed throughout, it has been
 5 necessary for Plaintiffs to expend resources to support the 23 school districts in San Mateo County that
 6 Plaintiffs support, including updating curriculum, that includes the Alternatives to Suspension Program,
 7 the Substance Use Program, and the Vaping and Prevention Education to address student vaping.
 8

9 180. Plaintiffs have also held or assisted in putting on community education and information
 10 sessions. For example, Plaintiffs recently held the Tobacco Use-Prevention Education Summit: Critical
 11 Updates on Vape Pens, Cannabis, and Our Students; the Vaping Prevention Collaborative; the Stanford
 12 Tobacco Toolkit Training; and the Brief Intervention Training (early intervention for smoking).
 13

14 VI. CAUSES OF ACTION

15 FIRST CAUSE OF ACTION

16 **Violation of the Racketeer Influenced Corrupt Organizations ("RICO") Act § 1962(a), (c), & (d)**

17 181. Plaintiffs incorporate by reference all preceding paragraphs.

18 182. Defendants are each a "person" under 18 U.S.C. §1961(3).

19 183. Section 1962(a) makes it "unlawful for any person who has received any income derived,
 20 directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in
 21 which such person has participated as a principal within the meaning of Section 2, Title 18, United States
 22 Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in
 23 acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or
 24 the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(a).
 25

26 184. Section 1962(c) makes it "unlawful for any person employed by or associated with any
 27 enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or
 28

1 participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of
2 racketeering activity.” 18 U.S.C. § 1962(c).

3 185. Section 1962(d) makes it unlawful for “any person to conspire to violate” §§ 1962(a) and
4 (c), among other provisions. 18 U.S.C. § 1962(d).

5 186. The enterprise, the activities of which affected interstate and foreign commerce, was
6 comprised of an association in fact of persons consisting of JUUL, Cult Collective, Grit, Impact Tech,
7 Inc. (“Impact Tech”), LifeSkills, the Social Media Influencers, the JUUL Affiliates, JUUL product
8 manufacturers, JUUL distributors, and JUUL retailers (collectively, the “JUUL Youth Marketing
9 Enterprise”).
10

11 187. Cult Collective is a marketing agency headquartered in Calgary, Alberta.

12 188. Grit is a marketing agency incorporated in Kentucky and headquartered in Frankfort,
13 Kentucky.
14

15 189. Impact Tech is an advertising and affiliate marketing company whose self-described
16 mission is “to deliver disruptive innovations in technology to help our clients successfully navigate the
17 ever-changing, digital landscape and grow their business.” Impact Tech maintains U.S. offices in New
18 York, California, Ohio, and Washington.

19 190. JUUL, in concert with Impact Tech, utilized the deceptive affiliate program, described
20 above, whereby purportedly independent entities—the JUUL Affiliates—were to promote JUUL
21 products and steer would-be consumers to JUUL’s web site. The JUUL Affiliates were compensated for
22 their services, as was Impact Tech for facilitating JUUL’s affiliate program. JUUL expressly directed the
23 JUUL Affiliates to not disclose their affiliation with JUUL.
24

25 191. LifeSkills is a consulting group with whom JUUL contracted to purportedly provide
26 health education to a thousand youths in Baltimore, Maryland. As discussed herein, JUUL’s “education”
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1 programs directed at youth, and schools in particular, were marketing programs designed to promote and
2 encourage JUUL use.

3 192. The JUUL Youth Marketing Enterprise functions to achieve a shared purpose: a scheme to
4 deceive youth regarding the health risks and characteristics of JUUL e-cigarettes and JUULpods to
5 encourage youth use of JUUL products, to enable use of JUUL products on school premises and during
6 class, to downplay or conceal the dangers posed by nicotine use, to design a product that facilitated youth
7 e-cigarette use and initiation of use by non-smokers, to conceal the unparalleled potency of JUUL's e-
8 cigarette, to addict youth to JUUL products, and to gain financially, through unlawful means.

9
10 193. JUUL misstated and omitted material facts in social media posts—both its own posts and
11 posts of its Social Media Influencers, advertisements on JUUL's website, email messages, print materials
12 including 2015 full-page ads in *Vice* magazine, point-of-sale advertising, free JUUL distribution events,
13 “education” programs to schools and youth, and product packaging.

14
15 194. The JUUL Youth Marketing Enterprise misrepresented or failed to adequately disclose
16 that its products contained nicotine or how much nicotine JUUL products deliver to a user's bloodstream,
17 including as compared to a combustible cigarette, as well as the benzoic acids levels JUULpods contain.
18 JUUL further omitted the increased risk of addiction, physiological effects, and other severe health risks
19 the higher-than-disclosed levels of nicotine delivery pose to a JUUL user. Instead, JUUL intentionally
20 created a misleading impression that JUUL's products were intended for youth, were totally safe or at
21 least safer than combustible cigarettes, and were not a nicotine delivery device but, rather, a trendy tech
22 product that should be associated with products like the wildly popular iPhone.

23
24 195. The JUUL Youth Marketing Enterprise violated the Federal Food, Drug, and Cosmetic
25 Act, 21 U.S.C. §§ 387b(8), 387k(a), as amended by the Tobacco Control Act, by advertising JUUL's e-
26 cigarettes and nicotine juice as modified risk tobacco products without an appropriate FDA Order in
27 effect, *i.e.* widely disseminating misleading statements about the safety of JUUL products.
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1 196. These deceptive acts were taken with the express intent of growing JUUL’s market share
2 and increasing JUUL’s revenue, thereby causing financial gain to each of the JUUL Youth Marketing
3 Enterprise’s constituents. In addition to enhancing the fortunes of its members, some of the increased
4 revenues were used to operate and expand the JUUL Youth Marketing Enterprise.
5

6 197. Each member of the JUUL Youth Marketing Enterprise was associated with an illegal
7 enterprise, and conspired, conducted, and participated in that enterprise’s affairs, through a pattern of
8 racketeering activity consisting of numerous and repeated uses of the interstate mail and wire facilities to
9 execute a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343, all in violation of the RICO
10 Act, 18 U.S.C. §§1962(a), (c)-(d). These acts, committed by interstate wire and through the mails,
11 include: (1) sending and receiving thousands of statements over a number of years that contained
12 deceptive statements regarding JUUL’s e-cigarettes and JUULpods, the effects of nicotine use, the
13 likelihood of becoming addicted to nicotine use, the design of JUUL’s e-cigarettes, the amount of
14 nicotine and other chemicals in JUULpods, and that JUUL’s e-cigarettes were intended for use by adults
15 who were already addicted to nicotine rather than by teens who were new nicotine users; and (2) sending
16 payments over that same time to further and guarantee the success of the deceptive acts described in (1).
17

18 198. Each member of the JUUL Youth Marketing Enterprise profited from the enterprise, and
19 Plaintiffs suffered injury to their property because they have incurred substantial expense, are incurring
20 substantial expense, and will continue to incur substantial expense in mitigating and combatting the
21 harmful effects resulting from JUULing by students, including increased security and monitoring
22 protocols, student suspensions and other disciplinary programs, and educational programs necessary to
23 correct the JUUL Youth Marketing Enterprise’s deceptive and illegal marketing. The members of the
24 JUUL Youth Marketing Enterprise used the proceeds from their deceptive acts to further the scheme by,
25 among other things, expanding the depth and breadth of the deceptive marketing. For example, JUUL
26 began offering to sponsor purportedly education-related activities under the guise of preventing underage
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1 use of e-cigarettes. In reality, JUUL sought to raise awareness of its products and gain additional student
2 users.

3 199. The members of the JUUL Youth Marketing Enterprise conspired to deceive Plaintiffs.

4 200. The JUUL Youth Marketing Enterprise has existed since at least 2015. It has functioned
5 as a continuing unit and maintains an ascertainable structure separate and distinct from the pattern of
6 racketeering activity. Each member's participation in the JUUL Youth Marketing Enterprise is necessary
7 for the successful operation of the deceptive marketing scheme and the financial gains that resulted
8 therefrom.
9

10 201. Plaintiffs have sustained injury to their property by reason of the acts and conduct of
11 Defendants alleged in this Complaint, including their loss of money in funding mitigation and remedial
12 programs regarding JUULing by students which but for the deceptive marketing and other acts of the
13 JUUL Youth Marketing Enterprise, it would not have incurred.
14

15 202. Plaintiffs were the direct target of Defendant's scheme.

16 203. But for the conduct of Defendant alleged herein, Plaintiffs would not have been injured.
17 The injury suffered by Plaintiffs was a foreseeable and natural consequence of the scheme to defraud.
18

19 204. The injuries of Plaintiffs were directly and proximately caused by Defendants'
20 racketeering activity that deceived and defrauded consumers and resulted in a meteoric rise of youth-
21 vaping.
22

23 205. As a result and by reason of the foregoing, Plaintiffs have been injured, suffered harm and
24 sustained damage to their business and property, and are therefore entitled to recover actual and treble
25 damages, and their costs of suit, including reasonable attorney fees, pursuant to 18 U.S.C. § 1964(c).
26

27 206. In addition, as set forth above, JUUL has violated 18 U.S.C. §§ 1962 (c), and (d), and will
28 continue to do so in the future.

1 207. Enjoining Defendants from committing these RICO violations in the future and/or
2 declaring their invalidity and disgorging ill-gotten gains is appropriate pursuant to 18 U.S.C. § 1964(a),
3 which authorizes the district courts to issue appropriate orders to provide equitable relief to civil RICO
4 plaintiffs and enjoin violations of 18 U.S.C. § 1962.

5 208. Plaintiffs seek compensatory damages, disgorgement, equitable relief, injunctive relief,
6 treble damages, and attorneys’ fees.
7

8 **SECOND CAUSE OF ACTION**

9 **Public Nuisance**

10 209. Plaintiffs incorporate by reference all preceding paragraphs.

11 210. Defendants created and maintained a public nuisance which proximately caused injury to
12 Plaintiffs.
13

14 211. Defendants’ design, manufacture, production, marketing, distribution, and sale of highly-
15 addictive and harmful e-cigarettes and nicotine juice pods, when such actions were taken with the intent
16 to market and, in fact, were marketed to youth through repeated misstatements and omissions of material
17 fact, unreasonably interfered with a public right in that the results of Defendants’ actions created and
18 maintained a condition dangerous to the public’s health, was offensive to community moral standards, or
19 unlawfully obstructed the public in free use of public property. Defendants intentionally created and
20 maintained a public nuisance by, among other acts:
21

- 22 a. designing a product that was uniquely youth-oriented in design, resembling a
common USB flash drive;
- 23 b. designing a product that was meant to facilitate underage use, both generally and
24 by enabling easy concealment of JUUL’s e-cigarette in school;
- 25 c. designing a product with a nicotine delivery system that results in a quicker and
26 more potent dose of nicotine to its users;
- 27 d. designing a product with as little irritation to a user’s throat, like that experienced
28 from smoking a combustible cigarette, as possible to facilitate initiation of nicotine
use by youth and non-smokers;

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- e. designing a flavored nicotine juice for JUUL e-cigarettes that was intended to mask the harmful effects of nicotine and facilitate initiation of nicotine use by youth and non-smokers;
- f. marketing highly-addictive nicotine products to youth, who are, because of their age and lack of experience, particularly susceptible to Defendants’ targeted marketing preying on their need for social acceptance;
- g. marketing a nicotine product to a population—youth—that, because of their developmental stage, is more susceptible to nicotine addiction;
- h. marketing nicotine products to a population—youth—that faces an increased risk of adverse mental and physical health impacts from nicotine use; and
- i. misrepresenting, in marketing and elsewhere, the actual amount of nicotine that JUUL products contain and deliver, as well as misrepresenting the amount of benzoic acid and other chemicals Defendants’ nicotine juice contains.

212. Defendants’ acts described throughout this Complaint and in the preceding paragraph were continuous and occurred over a span of several years and, in fact, in large part are continuing to occur.

213. The public nuisance created and maintained by Defendants’ wrongful acts was in close proximity to Plaintiffs. The nuisance created and maintained by Defendants has resulted in an epidemic of nicotine use by students in Plaintiffs’ schools and the school districts in San Mateo County that Plaintiffs support, resulting in significant expenditures—past, present, and future—by Plaintiffs to combat the epidemic. Indeed, as discussed herein, Defendants and agents thereof presented directly to students at schools and through youth programs and community events, in addition to the youth-oriented design and marketing of Defendants’ nicotine products.

214. The public nuisance created and maintained by Defendants has resulted, and continues to result, in significant damage and annoyance to Plaintiffs. Again, the FDA and others have recognized that youth vaping is an epidemic and that Defendants’ actions are at the heart of that epidemic.

215. The injury suffered by Plaintiffs is distinguishable from that suffered by the general public, both in kind and quality. Plaintiffs have incurred, and continue to incur, significant expenditures of time and resources to combat rampant use of Defendants’ nicotine products by students, including

1 during school. The significant time and resources necessary to combat this reality and maintain the
2 safety of Plaintiffs' students and achieve the educational goals of Plaintiffs are unique from the harm
3 suffered by the general public.

4 **THIRD CAUSE OF ACTION**

5 **Negligence**

6 216. Plaintiffs incorporate by reference all preceding paragraphs.

7 217. Defendants owed Plaintiffs a duty to not expose Plaintiffs to an unreasonable risk of harm.

8 218. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care
9 in the design, research, manufacture, marketing, advertisement, supply, promotion, packaging,
10 sale, and distribution of JUUL products, including the duty to take all reasonable steps
11 necessary to manufacture, promote, and/or sell a product that was not unreasonably dangerous
12 to consumers, users, and other persons coming into contact with the product.
13

14 219. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care
15 in the marketing, advertisement, and sale of JUUL products. Defendants' duty of care owed to
16 consumers and the general public, including Plaintiffs, included providing accurate, true, and correct
17 information concerning the risks of using JUUL products and appropriate, complete, and accurate
18 warnings concerning the potential adverse effects of vaping and nicotine use and, in particular, JUUL's
19 patented nicotine salts and the chemical makeup of JUULpods liquids.
20

21 220. At all times relevant to this litigation, Defendants knew or, in the exercise of
22 reasonable care, should have known of the hazards and dangers of JUUL products and specifically, the
23 health hazards posed by vaping JUULpods and continued use of nicotine, particularly among adolescents.
24

25 221. Accordingly, at all times relevant to this litigation, Defendants knew or, in the
26 exercise of reasonable care, should have known that use of JUUL e-cigarettes and JUULpods by
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1 students could cause Plaintiffs' injuries and thus created a dangerous and unreasonable risk of injury
2 to Plaintiffs.

3 222. Defendants also knew or, in the exercise of reasonable care, should have known that
4 users and consumers of JUUL products were unaware of the risks and the magnitude of the risks
5 associated with the use of JUUL products including but not limited to the risk of continued nicotine use
6 and nicotine addiction.

7
8 223. As such, Defendants breached their duty of reasonable care and failed to exercise
9 ordinary care in the design, research, development, manufacture, testing, marketing, supply,
10 promotion, advertisement, packaging, sale, and distribution of JUUL e-cigarettes and JUULpods, in
11 that Defendants manufactured and produced defective products containing nicotine and other chemicals
12 known to cause harm to consumers, knew or had reason to know of the defects inherent in JUUL
13 products, knew or had reason to know that a consumer's use of the products created a significant
14 risk of harm and unreasonably dangerous side effects, and failed to prevent or adequately warn of
15 these risks and injuries.

16
17 224. Despite their ability and means to investigate, study, and test the products and to
18 provide adequate warnings, Defendants have failed to do so. Indeed, Defendants have wrongfully
19 concealed information and have made false and/or misleading statements concerning the safety and/or
20 use of JUUL products and nicotine vaping.

21
22 225. Defendants' negligence included:

- 23 a. Manufacturing, producing, promoting, formulating, creating, developing,
24 designing, selling, and/or distributing JUUL products without thorough and
25 adequate pre- and post-market testing;
- 26 b. Failing to undertake sufficient studies and conduct necessary tests to determine
27 whether or not JUUL products were safe for their intended use;
- 28 c. Failing to use reasonable and prudent care in the design, research, manufacture,
formulation, and development of JUUL products so as to avoid the risk of
serious harm associated with the prevalent use of JUUL products and nicotine;

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- d. Failing to provide adequate instructions, guidelines, and safety precautions to those persons who Defendants could reasonably foresee would use JUUL products;
- e. Failing to disclose to Plaintiffs, users, consumers, and the general public that the use of JUUL products presented severe health risks including nicotine addiction;
- f. Representing that JUUL products were safe for their intended use when, in fact, Defendants knew or should have known that the products were not safe for their intended use;
- g. Declining to make or propose any changes to JUUL products’ packaging or other promotional materials that would alert the consumers and the general public of the true risks of JUUL products;
- h. Advertising, marketing, and recommending the use of JUUL products, while concealing and failing to disclose or warn of the dangers known by Defendants to be associated with or caused by the use of JUUL products;
- i. Continuing to disseminate information to consumers, which indicates or implies that Defendants’ products are not unsafe for their intended use; and
- j. Continuing the manufacture and sale of JUUL’s products with the knowledge that the products were unreasonably unsafe and dangerous.

226. Defendants knew and/or should have known that it was foreseeable that Plaintiffs would suffer injuries as a result of Defendants’ failure to exercise ordinary care in the manufacturing, marketing, labeling, distribution, and sale of JUUL products.

227. Plaintiffs did not know the nature and extent of the injuries that could result from the intended use of JUUL products or JUUL’s patented JUULpods liquids by Plaintiffs’ students.

228. Defendants’ negligence was the proximate cause of the injuries, harm, and economic losses that Plaintiffs suffered, and will continue to suffer, as described herein.

229. Defendants’ conduct, as described above, was reckless. Defendants regularly risk the lives of consumers and users of their products with full knowledge of the dangers of the products. Defendants made conscious decisions not to redesign, re-label, warn, or inform the unsuspecting public,

1 including Plaintiffs. Defendants' reckless conduct therefore warrants an award of aggravated or
2 punitive damages.

3 230. As a proximate result of Defendants' wrongful acts and omissions in placing defective
4 JUUL products into the stream of commerce without adequate warnings of their hazardous nature,
5 Plaintiffs have been injured and suffered economic damages and will continue to incur expenses in the
6 future.
7

8 **FOURTH CAUSE OF ACTION**

9 **Gross Negligence**

10 231. Plaintiffs incorporate by reference all preceding paragraphs.

11 232. Defendants owed a duty of care to Plaintiffs to conduct their business of manufacturing,
12 promoting, marketing, and/or distributing JUUL nicotine products in compliance with applicable state
13 law and in an appropriate manner.
14

15 233. Specifically, Defendants had a duty and owed a duty to Plaintiffs to exercise a degree of
16 reasonable care including, but not limited to: ensuring that JUUL marketing does not target minors;
17 ensuring that JUUL e-cigarettes and JUULpods are not sold and/or distributed to minors and are not
18 designed in a manner that makes them unduly attractive to minors; designing a product that is not
19 defective and unreasonably dangerous; designing a product that will not addict youth or other users to
20 nicotine; adequately warning of any reasonably foreseeable adverse events with respect to using the
21 product. Defendants designed, produced, manufactured, assembled, packaged, labeled, advertised,
22 promoted, marketed, sold, supplied and/or otherwise placed JUUL products into the stream of commerce,
23 and therefore owed a duty of reasonable care to those, including Plaintiffs, who would be impacted by its
24 use.
25

26 234. JUUL's products were the types of products that could endanger others if negligently
27 made, promoted, or distributed. Defendants knew the risks that young people would be attracted to their
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1 e-cigarettes and JUULpods and knew or should have known the importance of ensuring that the products
2 were not sold and/or distributed to anyone under age 26, but especially to minors.

3 235. Defendants knew or should have known that their marketing, distribution, and sales
4 practices did not adequately safeguard minors from the sale and/or distribution of e-cigarette devices and
5 JUULpods and, in fact, induced minors to purchase JUUL products.
6

7 236. Defendants were negligent in designing, manufacturing, supplying, distributing,
8 inspecting, testing (or not testing), marketing, promoting, advertising, packaging, and/or labeling JUUL's
9 products.

10 237. As a powerfully addictive and dangerous nicotine-delivery device, Defendants knew or
11 should have known that JUUL's products needed to be researched, tested, designed, advertised,
12 marketed, promoted, produced, packaged, labeled, manufactured, inspected, sold, supplied and
13 distributed properly, without defects and with due care to avoid needlessly causing harm. Defendants
14 knew or should have known that JUUL's products could cause serious risk of harm, particularly to young
15 persons like students in Plaintiffs' schools.
16

17 238. Defendants were negligent, reckless and careless and failed to take the care and duty owed
18 to Plaintiffs, thereby causing Plaintiffs to suffer harm.

19 239. The negligence and extreme carelessness of Defendants includes, but is not limited to, the
20 following:
21

- 22 a. Failure to perform adequate testing of the JUUL products prior to marketing to
23 ensure safety, including long-term testing of the product, and testing for injury to
the brain and cardiovascular systems, and other related medical conditions;
- 24 b. Failure to take reasonable care in the design of JUUL's products;
- 25 c. Failure to use reasonable care in the production of JUUL's products;
- 26 d. Failure to use reasonable care in the manufacture of JUUL's products;
- 27 e. Failure to use reasonable care in the assembly of JUUL's products;
- 28 f. Failure to use reasonable care in supplying JUUL's products;
- g. Failure to use reasonable care in distributing JUUL's products;

- 1 h. Failure to use reasonable care in advertising, promoting, and marketing JUUL’s
- 2 products;
- 3 i. Promotion of JUUL’s products to young people under age 26, and especially to
- 4 minors;
- 5 j. Use of flavors and design to appeal to young people under age 26, and especially
- 6 to minors, in that the products smell good, look cool and are easy to conceal from
- 7 parents and teachers;
- 8 k. Use of design that maximizes nicotine delivery while minimizing “throat hit,”
- 9 thereby easily creating and sustaining addiction;
- 10 l. Failure to prevent JUUL’s products from being sold to young people under age 26,
- 11 particularly to minors;
- 12 m. Failure to prevent use of JUUL’s products among young people under age 26,
- 13 particularly for minors;
- 14 n. Failure to curb use of JUUL’s products among young people under age 26,
- 15 particularly for minors;
- 16 o. Failure to develop tools or support to help people addicted to JUUL’s products
- 17 cease using the products, including manufacturing lesser amounts of nicotine;
- 18 p. Failure to reasonably and properly test and properly analyze the testing of JUUL’s
- 19 products under reasonably foreseeable circumstances;
- 20 q. Failure to warn their customers about the dangers associated with use of JUUL’s
- 21 products, in that it was unsafe for anyone under age 26, significantly increases
- 22 blood pressure, carries risks of stroke, heart attacks, and cardiovascular events, is
- 23 powerfully addictive, can cause permanent brain changes, mood disorders, and
- 24 impairment of thinking and cognition;
- 25 r. Failure to instruct customers not to use the product if they were under 26,
- 26 particularly minors, and failing to provide any instructions regarding a safe amount
- 27 of JUULpods to consume in a day;
- 28 s. Failure to ensure that JUUL’s products would not be used by persons like
- Plaintiffs’ students who were not smokers and who were under age 26, particularly
- minors;
- t. Failure to warn customers that JUUL had not adequately tested or researched
- JUUL products prior to marketing to ensure safety, including long-term testing of
- the product, and testing for injury to the brain and cardiovascular systems, and
- other related medical conditions;
- u. Failure to utilize proper materials and components in the design of JUUL’s
- products to ensure they would not deliver unsafe doses of nicotine;
- v. Failure to use due care under the circumstances;
- w. Failure to take necessary steps to modify JUUL’s products to avoid delivering high
- doses of nicotine to young people and repeatedly exposing them to toxic
- chemicals;

- x. Failure to recall JUUL’s products; and
- y. Failure to inspect JUUL’s products for them to operate properly and avoid delivering unsafe levels of nicotine to young persons.

240. Defendants breached the duties they owed to Plaintiffs and in doing so, were wholly unreasonable. A responsible company, whose primary purpose is to help adult smokers, would not design a product to appeal to minors and nonsmokers nor market their products to minors and nonsmokers. If they are aware of the dangers of smoking and nicotine ingestion enough to create a device to help people stop smoking, then they are aware of the dangers enough to know that it would be harmful for young people and nonsmokers to use.

241. Defendants breached their duties through their false and misleading statements and omissions in the course of their manufacture, distribution, sale, and/or marketing of JUUL nicotine products within the State.

242. As a foreseeable consequence of Defendants’ breaches of their duties, Plaintiffs suffered direct and consequential economic injuries as a result of dealing with the JUUL epidemic in Plaintiffs’ schools.

243. Defendants’ breaches of their duties involved an indifference to duty amounting to recklessness and actions outside the bounds of reason, so as to constitute gross negligence.

244. Defendants’ gross negligence was egregious, directed at the public generally, and involved a high degree of moral culpability.

FIFTH CAUSE OF ACTION

Willful Misconduct

245. Plaintiffs incorporate by reference all preceding paragraphs.

246. Defendants committed intentional acts of an unreasonable character in disregard of known or obvious risks so great as to make it highly probable that harm would result in the course of their

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1 manufacture, distribution, sale, promotion, advertising and/or marketing of JUUL products within the
2 State.

3 247. Defendants knew the risks that minors would be attracted to JUUL's e-cigarettes and
4 JUULpods and knew or should have known the importance of ensuring that the products were not sold
5 and/or distributed to minors and young people.

6 248. Defendants could have easily marketed the products to a whole different audience of prior
7 smokers as well as could have easily informed the ultimate consumers of the extremely high nicotine
8 content, the true level of which Defendants misrepresented and concealed.

9 249. Defendants breached the duties they owed to Plaintiffs and in doing so, were wholly
10 unreasonable. Defendants breached their heightened duties owed to minors when it intentionally
11 marketed and sold JUUL products to minors, which it should not have done.

12 250. Defendants' acts and omissions constitute wanton and willful conduct because they
13 constitute a total lack of care and an extreme departure from what a reasonably careful person or a
14 reasonably careful company that holds itself out as manufacturers of smoking cessation devices would do
15 in the same situation to prevent foreseeable harm to young persons.

16 251. Defendants acted and/or failed to act willfully and with conscious and reckless disregard
17 for the rights and interests of Plaintiffs. Defendants' acts and omissions had a great probability of
18 causing significant harm and in fact resulted in such harm.

19 252. But for Defendants' duties and breaches thereof, Plaintiffs would not have been harmed as
20 alleged in this Complaint.

21 253. As a consequence of each such intentional act, Plaintiffs suffered direct and consequential
22 economic injuries.

23 254. Defendants' willful misconduct was egregious, directed at the public generally, and
24 involved a high degree of moral culpability.
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SIXTH CAUSE OF ACTION

Strict Product Liability – Failure to Warn

255. Plaintiffs incorporate by reference all preceding paragraphs.

256. Defendants designed, manufactured, marketed, distributed, and sold JUUL e-cigarettes and JUULpods, or has partnered to design, manufacture, market, distribute, and sell JUUL e-cigarettes and JUULpods.

257. At all times relevant, Defendants were well-aware of the dangers of vaping and nicotine use, including use of JUUL’s products, as described herein.

258. At all times relevant, Plaintiffs and students at Plaintiffs’ school were not aware of and would not have recognized the risks of using a JUUL e-cigarette with a JUULpod because Defendants intentionally downplayed, misrepresented, concealed, and failed to warn of the heightened risks to users’ mental and physical health from use of JUUL’s products, including high-levels of nicotine exposure and nicotine addiction.

259. In all forms of advertising, including but not limited to social media communications, Defendants failed to warn adequately or instruct foreseeable users, including youth and adolescent users, that JUUL products were unreasonably dangerous to them and created a high level of risk of harm caused by vaping JUULpods, including but not limited to nicotine exposure and addiction. Defendants failed to warn adequately in their advertising or anywhere on the product that the product was not safe for minors and, instead, posed serious immediate and long-term health risks, and should not be used or consumed by them. Rather, Defendants intentionally marketed their products to minors in youth-friendly colors and flavors. Defendants also designed their products to be more palatable to youth and nonsmokers by making JUUL e-cigarettes easier to inhale while increasing the level of nicotine that is absorbed by users, making them even more addictive.

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1 260. The defects in JUUL's products, including the lack of warnings or instructions, existed at
2 the time the JUUL e-cigarettes and JUULpods were sold and/or when the JUUL e-cigarettes and
3 JUULpods left JUUL's possession or control.

4 261. JUUL's e-cigarettes and JUULpods were anticipated to be used by youth, including
5 students, without substantial change in their condition from the time of their manufacture or sale.
6

7 262. Plaintiffs were harmed directly and proximately by Defendants' failure to warn. Such
8 harm includes significant and ongoing nicotine abuse and addiction by students at Plaintiffs' schools,
9 which has necessitated and continues to necessitate significant steps to combat and mitigate use of
10 Defendants' products by students. Use of Defendants' products by students at Plaintiffs' schools
11 frustrates Plaintiffs' ability to achieve their educational goals and ensure the safety of Plaintiffs' students
12 which, again, has required and continues to require significant expenditures of Plaintiffs' resources to
13 address these conditions.
14

15 SEVENTH CAUSE OF ACTION

16 **Strict Product Liability – Design Defect**

17 263. Plaintiffs incorporate by reference all preceding paragraphs.

18 264. Defendants designed, engineered, developed, manufactured, fabricated, assembled,
19 equipped, tested or failed to test, inspected or failed to inspect, labeled, advertised, promoted, marketed,
20 supplied, distributed, wholesaled, and sold the JUUL e-cigarettes and JUULpods, which were intended
21 by Defendants to be used as a method of vaping nicotine and the other aerosolized constituents of
22 JUUL's nicotine solution.
23

24 265. Defendants knew or, by the exercise of reasonable care, should have known that JUUL's
25 products under ordinary use were harmful or injurious, particularly to youths and adolescents, including
26 students at Plaintiffs' schools.
27
28

1 266. As described herein, Defendants designed and marketed their products to appeal to
2 nonsmokers, youths and adolescents and to encourage them to buy and use the product. Because JUUL
3 products deliver significantly more nicotine into a user’s bloodstream than combustible cigarettes and
4 contain more nicotine than JUUL represents, thereby posing an unnecessary risk of addiction and other
5 severe health consequences, they are inherently defective. In addition, because JUUL products are made
6 to create and sustain addiction, including through a quicker and more potent delivery system than
7 Defendants represented and compared to any other nicotine vaping product, they are unreasonably
8 dangerous and defective in design. The risks inherent in the design of JUUL products outweigh
9 significantly any benefits of such design, including any benefit as an alternative to smoking combustible
10 cigarettes.
11

12 267. At all relevant times, Defendants could have employed reasonably feasible alternative
13 designs to prevent the harms discussed herein.
14

15 268. At all relevant times, Plaintiffs and Plaintiffs’ students were unaware of the design defects
16 described herein. Further, Defendants knew or had reason to know that youths and adolescents,
17 including students who Defendants told their products were “totally safe,” would not fully realize the
18 dangerous and addictive nature of JUUL products and the long-term complications nicotine addiction can
19 present, or that, due to their youth, inexperience and/or immaturity of judgment, would recklessly
20 disregard such risks.
21

22 269. Plaintiffs were harmed directly and proximately by Defendants’ defectively designed
23 JUUL e-cigarette and JUULpods. Such harm includes significant and ongoing nicotine abuse and
24 addiction by students at Plaintiffs’ schools, which has necessitated and continues to necessitate
25 significant steps to combat and prevent use of Defendants’ products by students. Use of Defendants’
26 products by students at Plaintiffs’ schools frustrates Plaintiffs’ ability to achieve their educational goals
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1 and ensure the safety of Plaintiffs’ students which, again, has required and continues to require
2 significant expenditures of Plaintiffs’ resources to address these conditions.

3 **EIGHTH CAUSE OF ACTION**

4 **Unjust Enrichment**

5 270. Plaintiffs incorporate by reference all preceding paragraphs.

6 271. As a result of Defendants’ unlawful and deceptive acts described above, Defendants were
7 enriched at the expense of Plaintiffs.
8

9 272. Defendants retained the benefits under such circumstances as make the retention
10 inequitable. Defendants’ unlawful and deceptive acts were undertaken to gain market share and revenue
11 through increased usage of JUUL’s products by students.

12 273. It is against equity and good conscience to permit Defendants to retain the benefits they
13 received as a result of their wrongful and continuing acts, practices and omissions.
14

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for a judgment:

- 17 a. Awarding Plaintiffs compensatory damages, trebled, in an amount to be determined at
- 18 trial;
- 19 b. Awarding Plaintiffs punitive damages;
- 20 c. Ordering all appropriate equitable remedies, including but not limited to declaratory and
- 21 injunctive relief;
- 22 d. Awarding Plaintiffs attorneys’ fees and costs;
- 23 e. Awarding prejudgment interest as permitted by law; and
- 24 f. Affording Plaintiffs with such further and other relief as deemed just and proper by the
- 25 Court.

26 **VIII. DEMAND FOR JURY TRIAL**

27 Plaintiffs hereby demand a trial by jury.
28

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Respectfully Submitted,

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