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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

MAXWELL BERGER,

Plaintiff,

v.

JUUL LABS, INC. and DOES 1-100,

Defendants.

Case No. CGC - 19 - 577444

COMPLAINT

DEMAND FOR JURY TRIAL

FAXED

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1 Plaintiff, Maxwell Berger, by and through his undersigned counsel, brings this complaint
2 against Defendants JUUL Labs, Inc. and Does 1-100 and alleges as follows:

3 **I. INTRODUCTION**

4 1. Mr. Berger was a social, active, and ambitious 20-year-old college student who
5 suffered a hemorrhagic stroke after becoming addicted to JUUL, an electronic nicotine delivery
6 system (ENDS) or e-cigarette. Defendant's wrongful conduct in marketing, promoting,
7 manufacturing, designing, and selling JUUL substantially contributed to Mr. Berger's
8 catastrophic injuries.

9 2. In 2015, JUUL set out to recapture the magic of the most successful product ever
10 made—the cigarette. Due to regulations and court orders preventing the major cigarette
11 manufacturers from marketing to young people, youth smoking had decreased to its lowest levels
12 in decades. While the public health community celebrated this decline as a victory, JUUL saw an
13 opportunity. Seizing on regulatory inaction and loopholes for e-cigarettes, JUUL set out to
14 develop and market a highly addictive product that could be packaged and sold to young people.
15 Youth is and has always been the most sought-after market for cigarette companies, because they
16 are the most vulnerable to nicotine addiction and are most likely to become customers for life.

17 3. JUUL was designed perfectly for teenagers. It doesn't look or smell like a
18 cigarette. It is a sleek, high-tech youth-friendly battery-powered device that looks like a USB
19 drive. The JUUL device heats a nicotine-filled liquid JUULpod, sold separately in fun flavors
20 like mango and cool mint, delivering powerfully potent doses of nicotine, along with aerosol and
21 other toxic chemicals into the lungs, body and brain. Unlike noxious cigarette smoke, when a
22 JUUL user exhales, the smoke is undetectable. JUUL is small, easily concealable and can be used
23 practically anywhere without parents or teachers knowing; Googling "hiding JUUL in school" or
24 "how to ghost rip JUUL" returns hundreds of videos on how to JUUL anywhere without
25 detection. This is part of the appeal, fostered and bolstered by JUUL's viral marketing campaigns
26 using young models to make the products look cool and stylish.

27 4. Defendant designed JUUL to addict young people. Nicotine is one of the most
28 addictive chemicals in the world. By studying cigarette industry archives, JUUL learned how to

1 manipulate the nicotine in its products to maximize addictiveness, particularly among new users
2 and young people, and thereby increase sales. JUUL designed its products to have maximum
3 inhalability, without any “throat hit” or irritation that would serve as a natural deterrent to new
4 users. The sole purpose of this design element was to initiate new smokers, since those who
5 already smoke cigarettes are tolerant to the throat hit sensation and associate it with smoking and
6 nicotine satisfaction. At the same time, JUUL designed its device to deliver substantially higher
7 concentrations of nicotine per puff than traditional cigarettes and most other e-cigarettes. This
8 combination of ease of inhalation and high nicotine delivery makes JUUL both powerfully
9 addictive and dangerous.

10 5. Nicotine is dangerous, particularly to young people whose brains are still
11 developing through age 25. Nicotine is not only addictive, but also permanently alters the
12 structure of the brain and causes permanent mood changes and other cognitive disorders.

13 6. Nicotine addiction causes repeated exposure to the toxins and aerosols contained
14 in JUUL’s vapor.

15 7. Several studies, including one recently released by the American Stroke
16 Association, have shown that e-cigarettes increase the risk of stroke, heart attack and coronary
17 artery disease.¹

18 8. Other studies have shown that e-cigarettes containing nicotine significantly
19 increase blood pressure, heart rate and arterial stiffness, and also cause vascular damage, which
20 can lead to strokes and other cardiovascular injuries.

21 9. These studies build on the well-established research that nicotine increases blood
22 pressure.

23 10. The United States Surgeon General has concluded that e-cigarettes, including
24 JUUL, are not safe for anyone under age 26.²

25 ¹ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries* (Jan. 30, 2019)
26 American Stroke Association News Release, Abstract 9, Session A2,
27 [https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries)
28 [diseased-arteries](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries) (as of July 5, 2019).

² 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* (2019) <https://e->

Footnote continued on next page

1 11. Even though e-cigarettes are unsafe for anyone under 26, JUUL heavily promoted
2 its products to young people. Following the wildly successful playbook laid out in historic
3 cigarette industry documents, Defendant leveraged social media and utilized other marketing and
4 promotion tactics, long outlawed for cigarette companies, to capture the highly-lucrative youth
5 market. JUUL preyed on youth using media and themes that exploit teenagers’ vulnerabilities to
6 create and sustain nicotine addiction, all for financial gain, and without giving kids any warnings
7 about the serious risks of addiction, stroke, and other permanent injuries.

8 12. At the time Mr. Berger used JUUL, none of JUUL’s advertising, marketing,
9 promotion, packaging or website disclosed any of the health effects and risks that JUUL knew or
10 should have known would occur from use of its products. These risks include nicotine addiction,
11 significant increases in blood pressure, vascular damage, increased risk of stroke, heart attacks
12 and other cardiovascular injuries, permanent brain changes, mood disorders, heightened risk of
13 cancer, and other harms. JUUL never disclosed that its products were unsafe for anyone under
14 age 26. Instead, the imaging, advertising, promotion, packaging and overall marketing
15 represented the product as safe, fun, and not harmful. As one of the JUUL founders has said:
16 “We don’t think a lot about addiction here because we’re not trying to design a cessation product
17 at all...anything about health is not on our mind”.³

18 13. Since 2015 when JUUL hit the market, JUUL has become pervasive in schools
19 across the country and adolescent use is rampant. JUUL not only dominates the multi-billion
20 dollar e-cigarette market, but has expanded the size of that market significantly—mostly via
21 young non-smokers. The cigarette company Altria (formerly known as Philip Morris) acquired a
22 35% stake in JUUL for \$12.8 billion, giving Altria access to the new generation of customers
23 JUUL has groomed.

24
25
26 *Footnote continued from previous page*
cigarettes.surgeongeneral.gov/ (as of July 5th, 2019).

27 ³ Tiku, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette: Surprise,*
28 *it's a rectangle*, The Verge (April 21, 2015) www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul (as of July 5, 2019).

1 14. JUUL has created an epidemic. According to Alex Azar, the Secretary of the U.S.
2 Department of Health and Human Services, “We have never seen use of any substance by
3 America’s young people rise as rapidly as e-cigarette use is rising.”⁴ JUUL’s conduct has led to a
4 surge in teen e-cigarette use, creating the “largest ever recorded [increase in substance abuse] in
5 the past 43 years for any adolescent substance use outcome in the U.S.”⁵ In a mere two years,
6 Defendant undid more than a decade of progress in reducing teen smoking, thereby increasing
7 nicotine use among teenagers to levels not seen since the early 2000s. Plaintiff was a target and a
8 victim of JUUL’s conduct.

9 15. As a result of Defendant’s conduct, Plaintiff has suffered catastrophic personal
10 injuries and seeks all appropriate remedies and relief.

11 **II. JURISDICTION AND VENUE**

12 16. This Court has personal jurisdiction over the Defendants, because JUUL is a
13 resident and/or does business in the State of California. JUUL and Does 1-100 purposely availed
14 themselves of the benefits, protections and privileges of the laws of the State of California in
15 conducting their business, and have purposely directed their activities in this State. JUUL and
16 Does 1-100 have sufficient minimum contacts with this State to render the exercise of
17 jurisdiction by this Court permissible.

18 17. Venue is proper in this Court because Defendant JUUL’s principal place of
19 business is in the City and County of San Francisco, and much of the wrongful conduct alleged
20 herein took place in this City and County.

21 **III. THE PLAINTIFF**

22 18. Plaintiff, Maxwell Berger is 22 years old and a resident of Fairfield County,
23 Connecticut.

24
25
26 ⁴ Surgeon General releases advisory on E-cigarette epidemic among youth, U.S. Department of
Health & Human Services (Dec 18, 2018) www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html (as of July 5, 2019).

27 ⁵ Boyles, Surgeon General Calls for New E-Cig Restrictions: ‘I am officially declaring e-
cigarette use among youth an epidemic (Dec 28, 2018) www.medpagetoday.com/primarycare/smoking/77000 (as of July 5, 2019).

1 19. Beginning in mid-2015, near the end of his senior year of high school and when he
2 was approximately 17 or 18 years old, Mr. Berger was exposed to JUUL’s advertising and
3 promotional efforts via many sources, including social media, direct emails, and at gas stations
4 where he purchased JUUL products near his home and school.

5 20. Mr. Berger regularly purchased and consumed JUUL products, including JUUL
6 devices and JUULpods, between June 2015 through July 2017, primarily in Fairfield County,
7 Connecticut and Onondaga County, New York.

8 21. Mr. Berger was initially attracted to JUUL’s flavors and sleek, discreet design. He
9 started with mint flavors and tried a number of others, including mango.

10 22. Mr. Berger was unaware when he first started using JUUL that it was unsafe for
11 anyone under age 26, was manipulated to addict him to nicotine, and could cause strokes or other
12 cardiovascular injuries. Had he known these things, he would not have started using JUUL.

13 23. Within a few weeks, Mr. Berger became powerfully addicted to JUUL, causing
14 him to increase his use over time. By 2017, Mr. Berger was consuming up to two JUULpods per
15 day, taking puffs every 10-20 minutes.

16 24. In 2017, after approximately two years of JUUL use, Mr. Berger suffered a
17 massive hemorrhagic stroke, resulting in catastrophic injuries.

18 25. JUUL was a substantial factor in Mr. Berger’s injuries.

19 **IV. THE DEFENDANTS**

20 **A. JUUL Labs, Inc.**

21 26. Defendant JUUL Labs, Inc. (“JUUL”) is a Delaware corporation, having its
22 principal place of business in San Francisco, California.

23 27. JUUL originally operated under the name PAX Labs, Inc. In 2017, it was renamed
24 JUUL Labs, Inc.

25 28. JUUL manufactures, designs, sells, markets, promotes and distributes JUUL e-
26 cigarettes.

27 29. JUUL ratified each and every act or omission alleged herein in proximately
28 causing the injuries and damages alleged herein.

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B. Does 1-25

30. Upon information and belief, Defendants Does 1 through 25 are individuals and corporations with their primary place of business or residence in California, or who directed their activities toward the state of California and/or have minimum contacts in this State.

31. Upon information and belief, Defendants Does 1 through 25 provided scientific research and development services to Defendant JUUL, enabling and in furtherance of JUUL's manufacturing, design, sale, marketing, promotion, and distribution of JUUL e-cigarettes.

C. Does 26-50

32. Upon information and belief, Defendants Does 26 through 50 are individuals and corporations with their primary place of business or residence in California, or who directed their activities toward the state of California and/or have minimum contacts in this State.

33. Upon information and belief, Defendants Does 26 through 50 provided marketing services, including, but not limited to, market analyses, advertising consultations, advertisement design, marketing tools and techniques, marketing strategies, data on potential target consumer populations, and other services enabling and in furtherance of JUUL's manufacturing, design, sale, marketing, promotion, and distribution of JUUL e-cigarettes.

D. Does 51-100

34. Upon information and belief, Defendants Does 51 through 100 are individuals and corporations with their primary place of business or residence in California, or who directed their activities toward the state of California and/or have minimum contacts in this State.

35. Upon information and belief, Defendants Does 51 through 100 are members of the e-cigarette industry that conspired with JUUL to fraudulently conceal and downplay the risks of e-cigarettes, engage in a campaign of doubt and confusion, and overstate the benefits of e-cigarettes and nicotine.

1 **V. FACTUAL ALLEGATIONS**

2 **A. JUUL Seeks to Re-create the “Magic” of the Cigarette, the “Most Successful**
3 **Consumer Product of All Time”, using the Cigarette Industry’s Playbook.**

4 36. JUUL’s founder James Monsees has described the cigarette as “the most
5 successful consumer product of all time . . . an amazing product.”⁶ Because of “some problems”
6 inherent in the cigarette, JUUL’s founders set out to “deliver[] solutions that refresh the magic
7 and luxury of the tobacco category.”⁷

8 37. Monsees saw “a huge opportunity for products that speak directly to those
9 consumers who aren’t perfectly aligned with traditional tobacco products.”⁸ With a focus on
10 recreating the “ritual and elegance that smoking once exemplified,”⁹ Monsees and Adam Bowen
11 set out to “meet the needs of people who want to enjoy tobacco but don’t self-identify with — or
12 don’t necessarily want to be associated with — cigarettes.”¹⁰

13 38. JUUL used the cigarette industry’s prior practices as a playbook. Monsees has
14 publicly admitted that JUUL built its e-cigarette business by first consulting cigarette industry
15 documents, including board meeting minutes, made public under the Master Settlement
16 Agreement that had been reached between the cigarette industry, governmental officials, and
17 injured smokers. “[Industry documents] became a very intriguing space for us to investigate
18 because we had so much information that you wouldn’t normally be able to get in most industries.
19 And we were able to catch up, right, to a huge, huge industry in no time. And then we started
20 building prototypes.”¹¹

21 ⁶ Chaykowski, *Billionaires-to-be: Cigarette breakers - James Monsees and Adam Bowen have*
22 *cornered the US e-cigarette market with Juul. Up next: The world*, FORBES Magazine (Sep 27,
23 2018), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1 (as
of July 5, 2019).

24 ⁷ Mings, *Ploom model Two Slays Smoking with Slick Design and Heated Tobacco Pods, Solid*
Smack (Apr 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/
25 (as of July 5, 2019).

26 ⁸ *Id.*

27 ⁹ *James Monsees – Co-founder and CEO of Ploom*, IDEAMENSCH (Apr 11, 2014),
<https://ideamensch.com/james-monsees/> (as of July 5, 2019).

28 ¹⁰ *Id.*

¹¹ *Montoya, Pax Labs: Origins With James Monsees, Social Underground*,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (as of July 5,
Footnote continued on next page)

1 39. JUUL researched how cigarette companies had chemically manipulated nicotine
2 content to maximize delivery: “We started looking at patent literature. We are pretty fluent in
3 ‘Patentese.’ And we were able to deduce what had happened historically in the tobacco
4 industry.”¹² Among the documents JUUL would have found were those documenting how to
5 manipulate nicotine pH to maximize the delivery of nicotine in a youth-friendly vapor that
6 delivers minimal “throat hit”—a combination that creates unprecedented risks of nicotine abuse
7 and addiction, as detailed further below.

8 40. JUUL also engaged former cigarette industry researchers to consult on the design
9 of their product. JUUL’s founder James Monsees noted in *Wired* magazine that “people who
10 understood the science and were listed on previous patents from tobacco companies aren’t at
11 those companies anymore. If you go to Altria’s R&D facility, it’s empty.” The *Wired* article
12 stated that “some of those people are now on Pax’s team of advisers, helping develop JUUL.”¹³

13 41. JUUL also used cigarette industry advertisements—which were created to lure
14 nonsmoking youth—as a blueprint for JUUL’s advertising campaigns. In a 2018 interview,
15 “Monsees indicated that the design of JUUL’s advertising had been informed by traditional
16 tobacco advertisements and that [the Stanford Research into Impact of Tobacco Advertising] had
17 been quite useful to them.”¹⁴

18 42. JUUL achieved its vision. Since its launch in 2015, JUUL has become the
19 dominant e-cigarette manufacturer in the United States. Its revenues grew by 700% in 2017.
20 According to a recent Wells-Fargo report, JUUL owns three-quarters of the e-cigarette market.¹⁵

21 *Footnote continued from previous page*
22 2019).

23 ¹² *Id.*

24 ¹³ Pierce, *This Might Just Be The First Great E-Cig*, *WIRED*, (Apr 21, 2015),
25 www.wired.com/2015/04/pax-juul-ecig/ (as of July 5, 2019).

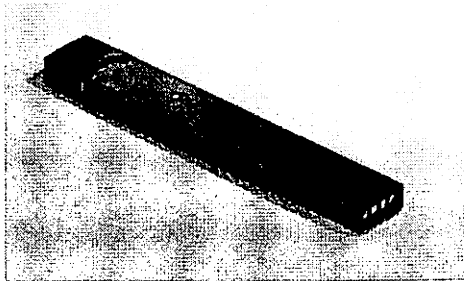
26 ¹⁴ Jackler et al., *JUUL Advertising Over its First Three Years on the Market, Stanford Research*
27 *into the Impact of Tobacco Advertising*, Stanford University School of Medicine (Jan 31, 2019),
28 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (as of
July 5, 2019).

¹⁵ Durbin et al., *Letter from United States Senators to Kevin Burns CEO JUUL Labs Inc. (Apr 8,*
2019), www.durbin.senate.gov/imo/media/doc/FINAL%20JUUL%20Letter%204.8.19.pdf (as of
July 5, 2019).

1 **JUUL is a Sleek, Easy to Conceal Nicotine Delivery Device with Kid-Friendly**
2 **Flavors.**

3 43. The JUUL e-cigarette looks sleek and high-tech. JUUL looks like a USB flash
4 drive, and it actually charges in a computer's USB drive. It is about the size and shape of a pack
5 of chewing gum; it is small enough to fit in a closed hand. JUUL is easy to conceal from parents
6 and teachers. The odor emitted from JUUL is a reduced aerosol without much scent – unlike the
7 distinct smell of conventional cigarettes.

8 44. The thin, rectangular JUUL e-cigarette device consists of an aluminum shell, a
9 battery, a magnet (for the USB-charger), a circuit board, an LED light, and a pressure sensor.
10 Each JUULpod is a plastic enclosure containing 0.7 milliliters of JUUL's patented nicotine liquid
11 and a coil heater. When a sensor in the JUUL e-cigarette detects the movement of air caused by
12 suction on the JUULpod, the battery in the JUUL device activates the heating element, which in
13 turn converts the nicotine solution in the JUULpod into a vapor consisting principally of nicotine,
14 benzoic acid, glycerin, and propylene glycol. A light embedded in the JUUL device serves as a
15 battery level indicator and lights up in a "party mode" display of rainbow of colors when the
16 device is waved around.



22 45. JUUL manufactures and distributes its nicotine formulation as JUULpods, which
23 contain JUUL's nicotine liquid. JUUL exclusively sells its pods in four-packs, in a variety of
24 flavors, many of which have no combustible cigarette analog, including mango, "cool" cucumber,
25 fruit medley, "cool" mint, and crème brulee. According to a recent survey of more than 1,000
26

27 _____
28 Footnote continued from previous page

1 to 17 year-olds, 6.5% admitted to using a JUUL e-cigarette. Of those, 86% of users most recently
2 used fruit medley, mango, cool mint, or crème brulee.¹⁶



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9 46. The physical design of the JUUL device (including its circuit board) and JUULpod
10 determines the amount of aerosolized nicotine the JUUL emits. By altering the temperature,
11 maximum puff duration, or airflow, among other things, Defendant can finely tune the amount of
12 nicotine vapor the JUUL delivers.¹⁷

13 C. **E-Cigarettes Containing Nicotine are Addictive, Increase the Risk for**
14 **Strokes, and are Unsafe for Anyone under Age 26.**

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

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

21 48. Nicotine fosters addiction through the brain's "reward" pathway. A stimulant and
22 a relaxant, nicotine affects the central nervous system; increases in blood pressure, pulse, and
23 metabolic rate; constricts blood vessels of the heart and skin, and causes muscle relaxation. When
24 nicotine is inhaled it enters the bloodstream through membranes in the mouth and upper

25 _____
26 ¹⁶ Willett, *JUUL: Recognition, use and perceptions* (Apr 26, 2018),
27 www.publichealthlawcenter.org/sites/default/files/JUUL-Webinar-Slides-Apr262018.pdf
(as of July 5, 2019).

28 ¹⁷ Talih *et al.*, Characteristics and toxicant emissions of JUUL electronic cigarette (Feb 11, 2019)
Tob Control. 054616 www.ncbi.nlm.nih.gov/pubmed/30745326/ (as of July 5, 2019).

1 respiratory tract and through the lungs. Once nicotine in the bloodstream reaches the brain, it
2 binds to receptors, triggering a series of physiologic effects in the user that are perceived as a
3 “buzz” that includes pleasure, happiness, arousal, and relaxation of stress and anxiety. These
4 effects are caused by the release of dopamine, acetylcholine, epinephrine, norepinephrine,
5 vasopressin, serotonin, and beta endorphin. With regular nicotine use, however, these feelings
6 diminish and the user must consume increasing amounts of nicotine to achieve the same
7 pleasurable effects.¹⁸

8 49. The neurological changes caused by nicotine create addiction. Repeated exposure
9 to nicotine causes neurons in the brain to adapt to the action of the drug and return brain function
10 to normal. This process, called neuroadaptation, leads to the development of tolerance in which a
11 given level of nicotine begins to have less of an effect on the user.¹⁹

12 50. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive
13 drug-seeking behavior, which, if not satisfied, results in withdrawal symptoms including anxiety,
14 tension, depression, irritability, difficulty in concentrating, disorientation, increased eating,
15 restlessness, headaches, sweating, insomnia, heart palpitations and tremors – and intense cravings
16 for nicotine. Though smokers commonly report pleasure and reduced anger, tension, depression
17 and stress after smoking a cigarette, many of these effects are actually due to the relief of
18 unpleasant withdrawal symptoms that occur when a person stops smoking and deprives the brain
19 and body of nicotine. Studies have found that most smokers do not like smoking most of the time
20 but do so to avoid withdrawal symptoms.²⁰

21 51. Nicotine causes permanent brain changes and damage. The effects of nicotine
22 exposure on the brain of youth and young adults include addiction, priming for use of other
23

24 ¹⁸ Neal L. Benowitz, Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and
25 Therapeutics (Sep 27, 2009) *Annu Rev Pharmacol Toxicol* 49: 57–71
www.ncbi.nlm.nih.gov/pmc/articles/PMC2946180/ (as of July 5th, 2019).

26 ¹⁹ *Id.*

27 ²⁰ Rigotti, Strategies to help a smoker who is struggling to quit (Oct 17, 2012) *JAMA* 308 (15):
1573–1580, www.ncbi.nlm.nih.gov/pmc/articles/PMC4562427/ (as of July 5, 2019); Paolini &
28 De Biasi, Mechanistic insights into nicotine withdrawal (Oct. 15, 2011) *Biochem Pharmacol*
82(8): 996–1007, www.ncbi.nlm.nih.gov/pmc/articles/PMC3312005/ (as of July 5, 2019).

1 addictive substances, reduced impulse control, deficits in attention and cognition, and mood
2 disorders.²¹

3 52. Nicotine is also associated with cardiovascular, reproductive, and
4 immunosuppressive problems, and is also a carcinogen.²² Nicotine adversely affects the heart,
5 eyes, reproductive system, lung, and kidneys. It is well-established that nicotine increases blood
6 pressure. Exposure to nicotine from sources such as nicotine gum still produces an increased risk
7 of coronary vascular disease (CVD) by producing acute myocardial ischemia, as well as an
8 increased risk of peripheral arterial disorders. Aside from its use as a stimulant, the only other
9 known use of nicotine is as an insecticide.²³

10 53. Several studies have shown that e-cigarettes increase the risk of strokes and heart
11 attacks.²⁴

12 54. Research has also demonstrated that e-cigarettes significantly increase blood
13 pressure and arterial stiffness, which increases the risk for strokes and heart attacks.²⁵

14
15
16 ²¹ Yuan *et al.*, Nicotine and the adolescent brain (May 27, 2015) *The Journal of Physiology*
17 593(Pt 16): 3397–3412, www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/ (as of July 5, 2019);
18 U.S Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on
19 Smoking and Health, *Know The Risks: E-cigarettes and Young People* (2019) [https://e-](https://e-cigarettes.surgeongeneral.gov/)
20 [cigarettes.surgeongeneral.gov/](https://e-cigarettes.surgeongeneral.gov/) (as of July 5th, 2019).

21 ²² Mishra *et al.*, Harmful Effects of Nicotine (2015) *Indian J. Med. Paediatr. Oncol.*, 36(1): 24–31
22 (Jan- Mar 2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4363846/ (as of July 5, 2019).

23 ²³ *Id.*

24 ²⁴ E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries (Jan 30, 2019)
25 American Stroke Association *News Release*, Abstract 9, Session A2,
26 [https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries)
27 [diseased-arteries](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries) (as of July 5, 2019); Vindhya *et al.*, Impact on cardiovascular outcomes among
28 e-cigarette users: a review from National Health Interview Surveys (Mar 2019) *Journal of the*
American College of Cardiology, Vol. 73, Iss. 9, Suppl. 2,
www.onlinejacc.org/content/73/9_Supplement_2/11 (as of July 5, 2019); Ndunda & Muutu,
Electronic cigarette use is associated with a higher risk of stroke (Jan 30, 2019) *International*
Stroke Conference 2019 Oral Abstracts. Community/risk factors, Vol. 50, Suppl. 1, Abst. 9,
www.ahajournals.org/doi/10.1161/str.50.suppl_1.9 (as of July 5, 2019); Bhatta & Glantz,
Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population
Assessment of Tobacco and Health (Jun 18, 2019) *Journal of the American Heart Association*,
Vol. 8, Iss. 12, www.ahajournals.org/doi/10.1161/JAHA.119.012317 (as of July 5 2019).

²⁵ Vlachopoulos *et al.*, Electronic cigarette smoking increases aortic stiffness and blood pressure
in young smokers (Sep 10, 2017) *J. Am. Col.l Cardiol.* 67:2802–2803,
www.sciencedaily.com/releases/2017/09/170910232512.htm (as of July 5, 2019)

1 55. Further, scientists have found that e-cigarettes also cause oxidative stress, which
2 leads to vascular disease and damage, known risk factors for strokes.²⁶

3 56. With respect to JUUL products in particular, one recent study found that “the
4 concentrations of nicotine and some flavor chemicals (e.g. ethyl maltol) are high enough to be
5 cytotoxic in acute in vitro assays”.²⁷

6 57. Nicotine affects neurological development in adolescents, and exposure to nicotine
7 during adolescence produces an increased vulnerability to nicotine addiction.²⁸ Adolescent
8 nicotine addiction causes “substantial neural remodeling” including those parts of the brain
9 governed by dopamine or acetylcholine, which play central roles in reward functioning and
10 cognitive function, including executive function mediated by the prefrontal cortex. A “clear-cut
11 relationship” between adolescent smokers and diminished neural responses has been observed
12 such that addicts exhibit diminished sensitivity to non-drug rewards (e.g., financial rewards). This
13 relationship becomes even more severe in adolescents who smoke more than 5 cigarettes a day. In
14 sum, “the use of extremely rewarding drugs, such as nicotine, may decrease the pleasure obtained
15 from non-drug rewards.” *Id.* These changes occur in “early phases of smoking.” *Id.* Other brain
16 changes from nicotine include increased sensitivity to other drugs and heightened impulsivity.²⁹
17 “Brain imaging on adolescents suggest that those who begin smoking regularly at a young age
18 have markedly reduced activity in the prefrontal cortex and perform less well on tasks related to
19 memory and attention compared to people who don’t smoke.”³⁰

20 ²⁶ Thompson, Vaping May Hurt the Lining of Your Blood Vessels (May 28, 2019) WebMD
21 HealthDay Reporter [www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-](http://www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-the-lining-of-your-blood-vessels#1)
22 [the-lining-of-your-blood-vessels#1](http://www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-the-lining-of-your-blood-vessels#1) (as of July 5th, 2019). JUUL e-cigarettes and JUULpods
23 deliver dangerous toxins and carcinogens to users. The ingredients in JUULpods include glycerol,
propylene glycol, nicotine, benzoic acid, and flavoring chemicals.
www.juul.com/learn/pods (as of July 5, 2019).

24 ²⁷ Omaiye *et al.*, High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and
25 Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations (Apr 17,
2019) *Chem Res Toxicol* 17;32(6):1058-1069 www.ncbi.nlm.nih.gov/pubmed/30896936 (as of
July 5, 2019).

26 ²⁸ Arain *et al.*, Maturation Of The Adolescent Brain (Apr 25, 2013), *Neuropsychiatric Disease*
and Treatment, 9:449–461 <http://doi.org/10.2147/NDT.S39776> (as of July 5, 2019).

27 ²⁹ University of Warwick, “Different brain areas linked to smoking and drinking” (Jan 8, 2019)
ScienceDaily, www.sciencedaily.com/releases/2019/01/190108095119.htm (as of July 5, 2019).

28 ³⁰ Brodwin, *An e-cigarette with twice the nicotine of comparable devices is taking over high*
Footnote continued on next page

1 58. Public health authorities have concluded that e-cigarettes are unsafe for anyone
2 under age 26.³¹

3 **D. JUUL Designed its E-Cigarettes to Make them Easy for Young People to**
4 **Inhale and to Deliver Substantially Higher Doses of Nicotine than Cigarettes.**

5 59. According to the National Institutes of Health, the “amount and speed of nicotine
6 delivery . . . plays a critical role in the potential for abuse of tobacco products.”³² The cigarette
7 industry has long known that “nicotine is the addicting agent in cigarettes”³³ and that “nicotine
8 satisfaction is the dominant desire” of nicotine addicts.³⁴

9 60. For this reason, cigarette companies spent decades manipulating nicotine in order
10 to foster and maintain addiction in their customers. For example, R.J. Reynolds Tobacco
11 Company (“RJR”) developed and patented nicotine salt additives such as nicotine benzoate to
12 increase nicotine delivery in cigarette smoke. As detailed in an RJR memorandum titled
13 “Cigarette concept to assure RJR a larger segment of the youth market,” manipulating the pH of
14 nicotine was expected to give cigarettes an “additional nicotine ‘kick’.”³⁵ This kick was attributed
15 to increased nicotine absorption associated with lower pH.³⁶

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18 *Footnote continued from previous page*
19 *schools - and scientists are sounding the alarm* (Apr 30, 2018) Business Insider,
20 *www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3* (as of July 5, 2019).

21 ³¹ U.S. Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on
22 Smoking and Health, *Know The Risks: E-cigarettes and Young People* (2019) *https://e-*
23 *cigarettes.surgeongeneral.gov/* (as of July 5th, 2019).

24 ³² How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-
25 Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and
26 Present (2010), *www.ncbi.nlm.nih.gov/books/NBK53017/* (as of July 5th, 2019).

27 ³³ Brown & Williamson official A.J. Mellman, (1983) Tobacco Industry Quotes on Nicotine
28 Addiction, *www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes*
%20on%20Nicotine%20Addiction.pdf (as of July 5, 2019).

³⁴ *Id.*, R.J. Reynolds Tobacco Co. marketing memo, 1972.

³⁵ *Id.*, 1973 R.J. Reynolds Tobacco Co. memo titled, “Cigarette concept to assure RJR a larger
segment of the youth market.”

³⁶ Benowitz *et al.*, Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, Nicotine
Psychopharmacology (Oct. 13, 2010), *Handb Exp Pharmacol* 192:29–60,
www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/ (as of July 5, 2019).

1 61. JUUL knowingly used the RJR research and conclusions to produce a similar
2 nicotine kick, and thereby promoting increased use and sales of JUUL e-cigarettes. In U.S. patent
3 No. 9,215,895 (“the ‘895 patent”), assigned to “Pax Labs, Inc.” and listing JUUL executive Adam
4 Bowen as an inventor, JUUL describes a process for combining benzoic acids with nicotine to
5 produce nicotine salts, a formulation that mimics the nicotine salt additive developed by RJR
6 decades earlier.

7 62. In a 2015 interview, Ari Atkins, a JUUL research & development engineer and one
8 of the inventors of the JUUL device said this about the role of acids: “In the tobacco plant, there
9 are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that
10 makes it ...” He pauses. “I’ve got to choose the words carefully here: Appropriate for
11 inhalation.”³⁷

12 63. JUUL’s manipulation of nicotine pH directly affects the palatability of nicotine
13 inhalation by reducing the “throat hit” users experience when vaping. Benzoic acid reduces the
14 pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form. This
15 reduction in pH converts naturally-occurring unprotonated nicotine, which causes irritation in the
16 throat and respiratory tract, to protonated nicotine, which is not be absorbed in the throat or upper
17 respiratory tract and, therefore, does not irritate the throat. A recent study found that JUUL’s e-
18 liquid had a pH of under 6.0, suggesting that the JUUL contains almost no freebase (i.e., non-salt
19 form) nicotine.³⁸

20 64. The vapor from JUUL’s e-liquid contains about the same ratio of free-base
21 nicotine—and hence causes the same amount of irritation—as a nearly nicotine-free 3 mg/mL e-
22 liquid.³⁹

23 ³⁷ Pierce, *This Might Just Be The First Great E-Cig* (Apr 21, 2015) WIRED,
24 www.wired.com/2015/04/pax-juul-ecig/ (as of July 5, 2019).

25 ³⁸ Lauterbach, *One More Time Unprotonated Nicotine in E-Cigarette Aerosols: Is It Really*
26 *There?* (2018) www.coresta.org/sites/default/files/abstracts/2018_TSRC83_Lauterbach.pdf (as of
27 July 5, 2019); Other studies have confirmed the low ratio of freebase nicotine in JUUL products.
28 *See Duell et al., Free-Base Nicotine Determination in Electronic Cigarette Liquids by 1H NMR*
Spectroscopy (Jun 18, 2018) 31 *Chem. Res. Toxicol.* 431-434,
www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/ (as of July 5th, 2019).

³⁹ *Id.*, Duell Study, Fig. 3.

1 65. The same chart further shows that the Duell Study authors found that the low
2 freebase fraction in its aerosols suggested a “decrease in the perceived harshness of the aerosol to
3 the user and thus a greater abuse liability.” *Id.* At 431-434.

4 66. The authors noted that “tobacco company documents suggest that products [like
5 JUUL] with high nicotine levels but a low [percentage of freebase nicotine] will yield vape
6 aerosols of much reduced harshness as compared to products with even only moderate nicotine
7 levels” but high percentages of freebase nicotine. *Id.*

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

16 68. The Duell study concluded that JUUL’s use of nicotine salts “may well contribute
17 to the current use prevalence of JUUL products among youth.”⁴⁰

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

27 _____
28 ⁴⁰ *Id.*, Duell Study (citing Willett, *et al.*, Recognition, use and perceptions of JUUL among youth
and young adults, *Tobacco, Tob Control.* 2019 Jan;28(1):115-116.)

1 70. JUUL sells products that contain relatively low amounts of throat-irritating
2 freebase nicotine, yet contain and deliver far higher concentrations of nicotine than cigarettes or
3 other electronic nicotine delivery systems (“ENDS”) containing freebase nicotine.

4 71. Blood plasma studies in the ‘895 patent⁴¹ show that vaping nicotine benzoate
5 increases nicotine delivery compared to cigarettes or vaporized solutions of freebase nicotine. In
6 fact, nicotine uptake was up to four times higher for nicotine salt formulations than traditional
7 cigarettes (approximately 4 ng/mL/min compared to approximately 1 ng/mL/min). JUUL’s data
8 also indicates that nicotine salt solutions produce a higher heart rate in a shorter amount of time (a
9 50 beats/minute increase within 2 minutes for nicotine salt, versus a 40 beats/minute increase in
10 2.5 minutes for a Pall Mall cigarette). Nicotine salts also cause a faster and more significant rise
11 in heart rate than placebo or vaporized freebase nicotine.

12 72. JUUL’s ‘895 patent shows that a 4% solution of benzoic acid nicotine salt causes a
13 peak nicotine-blood concentration (“Cmax”) of approximately 15 ng/mL, compared to a Cmax of
14 11 ng/mL for a Pall Mall cigarette.⁴²

15 73. As high as the reported nicotine dose reported for JUULpods is, the actual dose is
16 likely higher. Though the strongest benzoic acid concentration mentioned in the ‘895 patent is 4%
17 (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUULpods and found a 4.5%
18 benzoic acid (44.8 ± 0.6) solution.⁴³ That study found that JUULpods contained a concentration
19 of 6.2% nicotine salt (about 60 mg/mL), rather than the 5% nicotine (about 50 mg/mL)
20 advertised. JUULpods containing an absolute nicotine concentration 1.2% higher than the stated
21 5% on the label (a relative increase of over 20%) coupled with more benzoic acid than listed in
22 the ‘895 patent produce higher nicotine absorption than expected for the advertised formulation.

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25
26 ⁴¹ See U.S. Patent No. 9, 215, 895.

27 ⁴² ‘895 Patent, at col. 26, ll. 33-50.

28 ⁴³ Pankow *et al.*, Benzene formation in electronic cigarettes (Mar 8, 2017) PLoS One. 2017;
12(3): e0173055 www.ncbi.nlm.nih.gov/pmc/articles/PMC5342216/ (as of July 5, 2019).

1 74. Other studies have reported even higher actual concentrations of nicotine in
2 JUULpods. Some experts estimate that JUULpods deliver the same nicotine as two packs of
3 cigarettes.⁴⁴

4 75. In any event, JUUL is delivering doses of nicotine that are materially higher than
5 delivered by combustible cigarettes. As a paper published by the European Union citing the
6 United Kingdom Medicines and Healthcare Products Regulatory Agency notes, “an e-cigarette
7 with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the
8 time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg
9 of nicotine).”⁴⁵ With at least 59 mg/mL of nicotine delivered in a salt form that increases the rate
10 and efficiency of uptake (and even with a lower mg/mL amount), a JUULpod will easily exceed
11 the nicotine dose of a traditional cigarette. Not surprisingly, the European Union has banned all e-
12 cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and Israel is
13 seeking to do the same.⁴⁶ As Israel’s Deputy Health Minister has noted, “a product that contains
14 a concentration of nicotine that is almost three times the level permitted in the European Union
15 constitutes a danger to public health and justifies immediate and authoritative steps to prevent it
16 from entering the Israeli market.”⁴⁷

17 76. Comparison of available data regarding per puff nicotine intake corroborates the
18 other JUUL studies (mentioned above), indicating that JUUL delivers about 30% more nicotine
19 per puff. Specifically, a recent study of JUULpods found that “[t]he nicotine levels delivered by
20 the JUUL are similar to or even higher than those delivered by cigarettes.”⁴⁸ The Reilly study

21 ⁴⁴ *6 important facts about JUUL*, Truth Initiative, [https://truthinitiative.org/research-](https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul)
22 [resources/emerging-tobacco-products/6-important-facts-about-juul](https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul) (as of July 5, 2019)

23 ⁴⁵ “E-Cigarettes” [https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_](https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf)
24 [ecigarettes_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf)
25 (as of July 5, 2019) (citing United Kingdom Medicines and Healthcare Products Regulatory
26 Agency and industry reports).

27 ⁴⁶ Belluz, *Juul, the Vape Device Teens are Getting Hooked On, Explained* (Dec 20, 2018) Vox
28 <https://www.vox.com/science-and-health/2018/5/1/17286638/juul-vaping-e-cigarette> (as of July
5, 2019).

⁴⁷ Linder-Ganz, *JUUL Warns It Will Fight Israel Over Its Potential Ban on E-Cigarettes* (Jan 30,
2018), HAARETZ, [www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-](http://www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058)
potential-ban-on-its-e-cigarettes-1.6140058 (as of July 5, 2019).

⁴⁸ Reilly *et al.*, *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes* (Oct 20, 2018) *Nicotine Tob Res.* 3 (the “Reilly study”)

Footnote continued on next page

1 tested JUUL’s Tobacco, Crème Brulee, Fruit Punch, and Mint flavors and found that a puff of
2 JUUL delivered 164 ± 41 micrograms of nicotine per puff. By comparison, a 2014 study using
3 larger 100 mL puffs found that a Marlboro cigarette delivered 152—193 $\mu\text{g}/\text{puff}$.⁴⁹ Correcting to
4 account for the different puff sizes between the Reilly and Schroeder studies, this suggests that, at
5 75ml/puff, a Marlboro would deliver between 114 and 144 $\mu\text{g}/\text{puff}$. In other words, empirical data
6 suggests that JUUL delivers up to 36% more nicotine per puff than a Marlboro.

7 77. Because “nicotine yield is strongly correlated with tobacco consumption,”⁵⁰ a
8 JUULpod with more nicotine will strongly correlate with higher rates of consumption of
9 JUULpods, generating more revenue for JUUL. For example, a historic cigarette industry study
10 looking at smoker employees found that “the number of cigarettes the employees smoked per day
11 was directly correlated to the nicotine levels.”⁵¹ In other words, the more nicotine in the
12 cigarettes, the more cigarettes a person smoked.

13 78. Despite the above data, Defendant has failed to disclose to consumers that the
14 JUULpods’ nicotine salt formulation delivers an exceptionally potent dose of nicotine.

15 79. By delivering such potent doses of nicotine, JUUL products magnify the health
16 risks posed by nicotine, significantly increase blood pressure, and place users at heightened risk
17 for stroke, heart attacks and other cardiovascular events.

18 80. Further, because JUUL’s nicotine salts actually increase the rate and magnitude of
19 blood plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse
20 is higher for JUUL e-cigarettes than traditional cigarettes. Thus, JUULpods are foreseeably
21 exceptionally addictive when used by persons without prior exposure to nicotine—a fact not
22 disclosed by Defendant.

23
24 *Footnote continued from previous page*
<https://www.ncbi.nlm.nih.gov/pubmed/30346584> (as of July 5, 2019).

25 ⁴⁹ Schroeder & Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology* (May 2014)
26 *Tobacco Control* 2014: 23:ii30-ii35, www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/ (as of
26 July 5, 2019).

27 ⁵⁰ Jarvis *et al.*, *Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in*
28 *Smokers: Evidence From a Representative Population Survey* (Jan 2001), *JNCI* Vol. 93, Issue 2,
134–138 <https://academic.oup.com/jnci/article/93/2/134/2906355> (as of July 6, 2019)

⁵¹ UCSF Library, 1003285443-5443 (US 85421).

1 81. At the same time, as discussed above, the throat “hit” from nicotine salts is much
2 lower than that for combustible tobacco products, making it easier to inhale. According to
3 researchers, the “high total nicotine level (addictive delivery)” of a JUUL coupled with its easily
4 inhalable nicotine vapor is “likely to be particularly problematic for public health.”⁵²

5 82. This powerful combination—highly addictive and easy to inhale—also repeatedly
6 exposes users to the toxic chemicals in the vapor, compounding the health risks to users, as
7 described above.

8 83. In addition to its nicotine content, the “Cool” Mint pods pose additional risks. The
9 FDA’s Tobacco Products Scientific Advisory Committee in March 2011 issued a report on
10 menthol cigarettes, concluding that the minty additive was not just a flavoring agent but had drug-
11 like effects, including “cooling and anesthetic effects that reduce the harshness of cigarette
12 smoke.”⁵³ Mint could also “facilitate deeper and more prolonged inhalation,” resulting in “greater
13 smoke intake per cigarette.” *Id.* at 500-501.

14 84. JUUL has fraudulently concealed material information about the addictive and
15 dangerous nature of its e-cigarettes. Defendant necessarily is in possession of all of this
16 information.

17 **E. JUUL’s Design Offers No Benefit for Young People, Only Risk.**

18 85. JUUL’s design offers no benefit to young people like Mr. Berger, who was not
19 addicted to cigarettes before he started using JUUL.

20 **F. JUUL Conspired with Others in the Cigarette Industry to Engage Third-
21 Party Spokespersons to Downplay the Risks of E-cigarettes, Create Doubt,
22 and Misrepresent the Benefits of Nicotine.**

23 86. Because JUUL understood that it could not specifically make health-related claims
24 without drawing the ire of the FDA, JUUL conspired with others, including unnamed Defendants
25 Does 51-100, in the cigarette industry to engage consultants, academics, reporters, and other
26 friendly sources such as the American Enterprise Institute, to serve as spokespersons and

27 ⁵² Duell Study, 431

28 ⁵³ Proctor, *Golden Holocaust: Origins of the Cigarette Catastrophe and the Case for Abolition*,
500 (1st ed. 2011).

1 cheerleaders for e-cigarette products. Taking yet another page from the cigarette-industry
2 playbook, these influencers masked their connection to the e-cigarette industry, while serving as
3 its mouthpiece to cast doubt about risks and overstate benefits.

4 87. For example, just as JUUL launched, cigarette company expert witness Sally Satel
5 published an article in Forbes Magazine touting the benefits of nicotine—claiming it aids in
6 concentration—and stating that it is harmless.⁵⁴ In another article, she lauded efforts by JUUL
7 and others to develop nicotine-related products, and cast any doubters as hysterical and creating a
8 “panic”.⁵⁵

9 88. Numerous other articles, videos, and podcasts—also spread through social
10 media—echoed this same message that the public health community was overreacting to e-
11 cigarettes and in a panic about nothing.

12 89. During each of its multiple fundraising rounds, JUUL assured potential investors
13 that addiction to something that is not harmful is not harmful, suggesting that JUUL was no more
14 harmful than coffee.

15 90. On information and belief, JUUL and its co-conspirators spread this message
16 through hired third-party spokespersons and influencers.

17 91. Furthering their campaign of doubt and confusion, when asked directly about
18 health risks, JUUL’s employees and founders would point reporters to other sources to indicate
19 that its products had been shown to be safe, or not harmful, rather than admit what it knew were
20 the dangers.

21 92. JUUL well-understood from the cigarette industry playbook that sowing doubt and
22 confusion over the benefits and risks of e-cigarettes is key to long-term success. First, by creating
23 a “two-sides-to-every-story” narrative, JUUL reduced the barriers for young people and new
24

25 ⁵⁴ Satel, *Nicotine Itself Isn't The Real Villain* (Jun 19, 2015), Forbes,
26 www.forbes.com/sites/sallysatel/2015/06/19/nicotine-can-save-lives/#60379f766f43 (as of July 5,
2019).

27 ⁵⁵ Satel, *Why The Panic Over JUUL And Teen Vaping May Have Deadly Results* (Apr 11, 2018),
28 Forbes, [www.forbes.com/sites/sallysatel/2018/04/11/why-the-panic-over-juul-and-teen-vaping-
may-have-deadly-results/#6b1ec693ea48](http://www.forbes.com/sites/sallysatel/2018/04/11/why-the-panic-over-juul-and-teen-vaping-may-have-deadly-results/#6b1ec693ea48) (as of July 5, 2019).

1 users to try the product, and gave addicted users permission to keep using the product and avoid
2 the pain of withdrawal. Second, by engaging people who looked like independent experts, JUUL
3 staved off regulation and suppressed political opposition, allowing it a long runway to capture
4 market share. Third, by belittling the public health community, JUUL neutered its most vocal
5 threat.

6 93. On information and belief, JUUL conspired with others in the cigarette industry to
7 fraudulently conceal the risks of e-cigarettes, recognizing that a campaign of doubt,
8 misinformation and confusion would benefit all of them and would be the key to the industry's
9 survival.

10 G. **JUUL Intentionally Misrepresents and Grossly Understates the Amount of**
11 **Nicotine in each JUULpod.**

12 94. From JUUL's pre-release announcements to this day, JUUL, along with unnamed
13 Defendants Does 25 through 50 that provided marketing services to JUUL, has continuously
14 falsely represented that each pod contains only as much nicotine as a pack of cigarettes. JUUL
15 repeats these claims widely in advertisements, press releases, on its packaging, and on its web
16 site. For example, some JUUL advertisements and JUUL's website currently provides that each
17 "JUULpod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of
18 manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs."

19 95. This statement is false and seriously misleading because, as JUUL knows, it is not
20 just the amount of nicotine, but the efficiency with which the product delivers nicotine into the
21 bloodstream, that determines the product's narcotic effect, risk of addiction, and other health
22 risks.

23 96. Defendant knows that benzoic acid affects pH and "absorption of nicotine across
24 biological membranes."⁵⁶

25
26
27 ⁵⁶ Benowitz *et al.*, Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, Nicotine
28 Psychopharmacology (Oct 12, 2010), Handb Exp Pharmacol 192: 29–60
www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/ (as of July 5, 2019).

1 97. Assuming a concentration of 59 mg/mL, JUUL’s reported nicotine content
2 corresponds to about 40 mg of nicotine per 0.7 mL JUULpod. If, as JUUL claims, this is
3 equivalent to one pack of cigarette (or 20 cigarettes), that implies 2 mg of nicotine per cigarette.

4 98. JUUL’s equivalency claim further assumes 10 puffs per cigarette (i.e., 200 puff per
5 pack), or 0.2 mg (200 µg) of nicotine per puff.

6 99. Typically, a cigarette that delivers around one milligram of nicotine in smoke
7 retains “about 14-20 milligrams of nicotine in the unsmoked rod,” *USA v. Philip Morris, Inc.*
8 (D.D.C. 2006) 449 F.Supp.2d 1, 567, for an overall delivery of 5-7% of the cigarette’s actual
9 nicotine content. A study by the Center for Disease Control found that in “commercial cigarette
10 brands, nicotine concentrations ranged from 16.2 to 26.3 mg nicotine/g tobacco (mean 19.2 mg/g;
11 median 19.4 mg/g).”⁵⁷ Assuming an average of 19 milligrams of nicotine per cigarette, an
12 average pack of cigarettes contains 380 milligrams of nicotine, or six times as much nicotine as
13 the 62 milligrams reported for each JUULpod. Yet the average pack would be expected to deliver
14 only 5-7% (19-27 mg) of its nicotine content to the user. In line with this expectation, a study of
15 thousands of smokers found smokers intaking between 1.07 to 1.39 milligrams per cigarette
16 (21.4-27.8 mg per pack).⁵⁸ This is less than half of the amount of nicotine contained in a
17 JUULpod (i.e., 2 mg per “cigarette” based on JUUL’s stated concentration, or 200 µg per puff
18 assuming 100% delivery). Even with the slightly lower efficiency of delivery demonstrated in
19 studies like Reilly (about 82%, for averages of 164 µg per puff), this amounts to a substantially
20 higher amount of nicotine that a human will absorb from a JUULpod than from smoking a pack
21 of cigarettes.

22 100. JUUL’s statement in its advertisements that each JUULpod contains about as
23 much nicotine as a pack of cigarettes is therefore literally false and likely to mislead, because the
24 amount of nicotine contained in the JUULpod is perhaps six times less than in a pack of

25 _____
26 ⁵⁷ Lawler *et al.*, Surveillance of Nicotine and pH in Cigarette and Cigar Filler (Apr 1, 2018), *Tob
Regul Sci.* 3(Suppl 1): 101–116, www.ncbi.nlm.nih.gov/pmc/articles/PMC5628511/ (as of July 5
2019).

27 ⁵⁸ Jarvis *et al.*, Nicotine Yield From Machine-Smoked Cigarettes and Nicotine Intakes in
28 Smokers: Evidence From a Representative Population Survey (Jan 17, 2001), *JNCI*, Vol. 93,
2:134–138, www.ncbi.nlm.nih.gov/pubmed/11208883 (as of July 5 2019).

1 cigarettes, but the actual amount of nicotine consumed via JUULpod is as much as twice as high
2 as that via cigarettes. This fact is never mentioned by JUUL or Does 1-100.

3 101. Further, while a pack of cigarettes contains 20 cigarettes which each have to be
4 separately lit, the JUUL can be inhaled continuously, and often can be used indoors without
5 detection by others, a feature that JUUL promoted heavily in its advertisements, eliminating the
6 need for smoking breaks. Thus, the device design leads users to intake far more nicotine than
7 would occur with cigarettes.

8 102. Finally, the JUUL device does not have a manual or automatic "off" switch. On
9 information and belief, neither the JUULpod nor the programming of the JUUL device's
10 temperature or puff duration settings limit the amount of nicotine JUUL delivers each puff to the
11 upper bound of a cigarette. Thus, in contrast to a traditional cigarette, which self-extinguishes as
12 each cigarette is consumed, the JUUL allows non-stop nicotine consumption, which is limited
13 only by the device's battery. As a result, the JUUL is able to facilitate consumption of
14 extraordinarily high levels of nicotine that a cigarette cannot match. This makes it easier for the
15 user to become addicted to nicotine and poses additional health risks.

16 103. Contrary to Defendant's representations, the above data indicate that each
17 JUULpod delivers significantly more nicotine than a pack of cigarettes, both per pack and per
18 puff. JUUL's products thus have the foreseeable effect of luring youth, who react positively to a
19 strong nicotine "kick," and exacerbating nicotine addiction and adverse health effects associated
20 with nicotine consumption.

21 104. Thus, JUUL is more harmful when compared to cigarettes, in that the
22 extraordinarily high levels of nicotine can cause heightened blood pressure and stroke, and the
23 repetitive exposure to the toxins and chemical in JUUL can also cause vascular damage and
24 stroke.

1 **H. Defendants Never Warned Mr. Berger that JUUL’s Products Were Unsafe,**
2 **Addictive, and Dangerous.**

3 105. At no time before Mr. Berger suffered his stroke did JUUL, nor any of the other
4 unnamed Defendants involved in the research, development, marketing and distribution of JUUL
5 products provide any warnings about the risks of addiction, stroke, or other brain damage.

6 106. At no time before Mr. Berger suffered his stroke did JUUL or any other
7 Defendants warn Mr. Berger that JUUL products were unsafe for him and anyone under age 26,
8 nor instruct him on how much JUUL would be safe to consume.

9 107. Despite making numerous revisions to its packaging since 2015, JUUL did not add
10 nicotine warnings until forced to do so in August of 2018, far too late for Plaintiff. Neither did
11 any of the unnamed Defendants Does 1 through 100 involved in the research, development,
12 marketing of JUUL products and e-cigarettes provide any warnings. The original JUUL product
13 labels had a California Proposition 65 warning indicating that the product contains a substance
14 known to cause cancer, and a warning to keep JUULpods away from children and pets, but
15 contained no warnings specifically about the known effects, or possible long-term effects, of
16 nicotine or vaping/inhaling nicotine salts. Many of JUUL’s advertisements, particularly before
17 November 2017, also lacked a nicotine warning.

18 108. Furthermore, JUUL misrepresents the nicotine content of JUULpods by
19 representing it as 5% strength. As discussed above, JUULpods contain more than 5% nicotine by
20 volume, and deliver it in a form that is particularly potent.

21 109. Instead, JUUL marketed its JUUL products as an “alternative to cigarettes,”
22 thereby giving the false impression that they are not harmful like traditional cigarettes and safe to
23 use.

24 110. Plaintiff did not and could have known the risks associated with JUUL, because
25 Defendant had exclusive knowledge about its product, including its design, and concealed that
26 information from him.

1 111. Instead, as a result of JUUL’s wildly successful marketing campaign, based on
2 tactics developed by the cigarette industry and amplified in social media, Mr. Berger reasonably
3 believed that JUUL was safe, harmless, fun, and cool—a thing to do with friends.

4 112. A 2017 study by the Truth Initiative Schroeder Institute® found that 6 percent of
5 youth and 10 percent of young adults have used a JUUL e-cigarette in the last 30 days. The study
6 also found that while many young people are aware of JUUL, many are unaware that the product
7 always contains the addictive chemical nicotine.

8 a. Twenty-five percent of survey respondents aged 15 to 24 recognized a
9 JUUL e-cigarette device when shown a photo of the product.

10 b. Among those who recognized JUUL, 25 percent reported that use of this
11 product is called “JUULing,” indicating that this product is so distinctive, it is perceived as its
12 own category.

13 c. Fully sixty-three percent of JUUL users did not know that this product
14 always contains nicotine.

15 I. **Despite knowledge that its products were unsafe for anyone under age 26,**
16 **JUUL Deployed a Deceptive and Unfair Viral Marketing Campaign to Entice**
Young People to Start JUULing

17 113. As described further below, Defendant has used the same strategies perfected by
18 the cigarette industry to sell JUUL products to young people. In particular, JUUL has both
19 exploited regulatory loopholes and relied heavily on social media and other viral advertising tools
20 to hook people, and in particular young persons, on its addictive e-cigarettes.

21 114. To accomplish this, JUUL adopted the same themes used by Philip Morris and
22 other cigarette companies in the industry’s long-standing, extensive advertising campaign to
23 glamorize cigarette smoking while downplaying its addictiveness and deleterious health effects.

24 115. Defendants Does 25 through 50 provided the strategies, analyses, and services to
25 JUUL enabling and in furtherance of JUUL’s deceptive and unfair marketing tactics.

26 1. **Overview of Viral Marketing Campaigns and Online Marketing**

27 116. “Viral marketing” is defined as “marketing techniques that seek to exploit
28 preexisting social networks to produce exponential increases in brand awareness, through

1 processes similar to the spread of an epidemic.”⁵⁹ Viral marketing is a form of word-of-mouth
2 recommendation that harnesses the network effect of the internet to rapidly reach a large number
3 of people. Because the goal in a viral marketing campaign is to turn customers into salespeople
4 who repeat a company’s representations on its behalf, a successful viral marketing campaign may
5 look like millions of disconnected, grassroots communications, when in fact they are the result of
6 carefully orchestrated corporate advertising campaign.

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

13 118. Typically, a viral marketing campaign will begin with a “push” by the company
14 seeking to advertise the product, and since the advent of social media, that push is typically done
15 through the creation of new content on a social media platform, such as Instagram, YouTube,
16 Twitter, Facebook or other similar platform (“Social Media Platforms”).⁶⁰ A company that wants
17 to push an ad on Social Media Platforms has a few options. First, the company can solicit
18 followers to its social media pages, so that when the company posts to its feed, the content would
19 be delivered to those followers and to those who visited the company page. Second, the company
20 can purchase paid advertisements that were delivered to specified target audiences. Then, to
21 amplify a message, companies can utilize other tools, such as paid influencers and strategic use of
22 promotions and hashtags, to blanket the targeted demographic with advertisements across social
23 media.

24
25 ⁵⁹ Larson, *The Rise of Viral Marketing through the New Media of Social Media* (2009), Liberty
26 University Pub., [https://digitalcommons.liberty.edu/
cgi/viewcontent.cgi?article=1009&context=busi_fac_pubs](https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1009&context=busi_fac_pubs) (as of July 5, 2019).

27 ⁶⁰ Skrob, *The viral marketing concept as a model for open source software to reach the critical
28 mass for global brand awareness based on the example of TYPO3* (Aug 2005), University of
Applied Science Kufstein, Austria, [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) (as of July 5, 2019).

1 119. Companies seeking to advertise new products or reach a new demographic have
2 discovered the power of the “like” and “share” features on social media, which allow users to
3 promote content to their own audiences. As Mark Zuckerberg, founder and Chief Executive
4 Officer of Facebook explained: “Nothing influences people more than a recommendation from a
5 trusted friend...A trusted referral is the Holy Grail of advertising.”⁶¹

6 120. With the advent of social media, viral marketing campaigns have become a
7 particularly effective way to reach young people, particularly teenagers. Teenagers tend to use
8 social media far more than adults, and tend to be more susceptible to peer pressure. 95% of teens
9 report having use of a smart phone.⁶² 45% report being online “constantly.” *Id.* 85% use
10 YouTube. *Id.* 72% use Instagram, and 69% use Snapchat. *Id.* Adolescents also have a far
11 stronger herding instinct than adults. The desire to fit in and look cool means that adolescents
12 drive new trends online. As many businesses know, young people are often skeptical of
13 traditional advertising and the tactics of large corporations. Thus, by pushing a viral marketing
14 campaign, these businesses can reach consumers who might ignore typical advertising and are
15 more likely to respond to an advertisement that does not look or feel like an advertisement, but
16 instead is a message shared by a friend, a peer, or some other person influential to the viewer.

17 121. Companies can also take viral messaging off-line. By running simple, catchy ads
18 with minimal text and graphic visuals, and displaying those ads in various forms, companies
19 generate buzz and discussion, which is reinforced through social media.

20 **2. The Cigarette Industry Has Long Relied on Youth-Focused Viral**
21 **Marketing and Flavors To Hook New Underage Users On Its**
22 **Products.**

23 122. To remain profitable, the tobacco industry must continue to woo new customers:
24 some existing customers wean themselves from addiction and the others eventually die, so

25 ⁶¹ <https://www.ft.com/content/01341240-8cbd-11dc-b887-0000779fd2ac> (last accessed Dec. 13,
26 2018). See also *Perkins v. LinkedIn Corp.* (N.D. Cal. 2014) 53 F.Supp.3d 1190, 1210 (“One of
27 the principal reasons such viral marketing is superior to other forms of marketing is the source:
28 viral marketing comes from a friend or contact with whom the recipient is familiar and trusts as
opposed to an unfamiliar or untrusted source.”).

⁶² Anderson & Jiang, *Teens, Social Media & Technology 2018* (May 31 2018), Pew Research
Center, www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/ (as of July 5,
2019).

1 replacement customers are needed. In recent years, tobacco usage in the United States has fallen
2 dramatically, with particularly large decreases in the youth smoking rates, which cigarette
3 companies have been vigorously trying to counteract. The cigarette industry knows that the
4 younger a person starts smoking, the longer they will have a customer. Historically, cigarette
5 companies fought to increase share penetration among the 14-24 age group because “young
6 smokers have been the critical factor in the growth” of tobacco companies, and “the 14-18 year
7 old group is an increasing segment of the smoking population.”⁶³ The importance of the youth
8 market was illustrated in a 1974 presentation by RJR’s Vice-President of Marketing who
9 explained that the “young adult market . . . represent[s] tomorrow’s cigarette business. As this 14
10 24 age group matures, they will account for a key share of the total cigarette volume - for at least
11 the next 25 years.”⁶⁴

12 123. It is well-established that “marketing is a substantial contributing factor to youth
13 smoking initiation.” *USA v. Philip Morris* (D.D.C. 2006) 449 F. Supp.2d 1, 570.

14 124. Because teenagers are at a stage in their psychosocial development when they are
15 struggling to define their own identities, they are particularly vulnerable to image-heavy
16 advertisements providing cues for the “right” way to look and behave amongst peers. *Id.* at 578.
17 Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco
18 product initiation. *Id.* at 570, 590. By making smoking a signifier of a passage into adulthood,
19 tobacco companies turned smoking into a way for teenagers to enhance their image in the eyes of
20 their peers. *Id.* at 1072

21 125. The landmark *USA v. Philip Morris* case revealed that tobacco companies targeted
22 adolescents for decades by: “(1) employ[ing] the concept of peers in order to market to teenagers;
23 (2) us[ing] images and themes in their marketing that appeal to teenagers; and (3) employ[ing]
24 advertising and promotion strategies to knowingly reach teenagers.” No. 99-cv-2396, ECF 5732,
25

26 ⁶³ Memo to: C.A. Tucker from: J.F. Hind Re: "Meet the Turk" (January 23, 1978)
27 <http://legacy.library.ucsf.edu/tid/lve76b00> (last visited June 5, 2018).

28 ⁶⁴ Mr. C.A. Tucker Presentation to RJRI BOfD - 9/30/74 (740930), “Marketing Plan” (1974),
www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=yymw0091 (as of July 5, 2019)

1 ¶ 2682 (D.D.C. 2008). In terms of images and themes that cater to adolescents, the court found
2 “overwhelming” evidence that tobacco companies intentionally exploited adolescents’
3 vulnerability to imagery by creating advertising emphasizing themes of “independence,
4 adventurousness, sophistication, glamour, athleticism, social inclusion, sexual attractiveness,
5 thinness, popularity, rebelliousness, and being ‘cool.’” *Id.* at ¶ 2674.

6 126. Thus, the industry has long used viral marketing campaigns to push its products on
7 children, teens, and young adults. Prior to the advent of the Internet, cigarette companies engaged
8 in “viral advertising” or “influential seeding” by paying “cool people” to smoke in select bars and
9 clubs, with the “idea being that people will copy this fashion, which would then spread as if by
10 infection.”⁶⁵ By simply paying some attractive, stylish third parties to use the product in trendy
11 public places, tobacco companies were able to create buzz and intrigue. As word spread, the
12 public would develop a strong association that smoking was what young, cool adults were doing.

13 127. Today, cigarette manufacturers like Altria are limited in their ability to advertise in
14 the United States, but actively use viral marketing techniques outside of the United States. For
15 example, Japan Tobacco International, one of JUUL’s early investors, launched social media
16 campaigns including a “Freedom Music Festival” promoting Winston cigarettes in Kazakhstan
17 Kyrgyzstan, and Jordan. Similarly, Phillip Morris International, a spin-off of Altria, JUUL’s
18 largest stakeholder, has used influencer campaigns in multiple countries. A campaign in
19 Indonesia called “I Decide To” has been viewed more than 47 million times online. A hashtag
20 marketing campaign called #NightHunters in Uruguay used paid influencers to pose with menthol
21 cigarettes and was seen by nearly ten percent of Uruguay’s population.⁶⁶

22 128. An influencer paid to promote Philip Morris brands stated that Philip Morris
23 targets a “super young profile” for its influencers . . . the people they selected are always the
24 youngest. They look for young people that have large groups of friends so [the social media
25

26 ⁶⁵ Golden Holocaust, 119 (citing Ted Bates and Co., Copy of a Study of Cigarette Advertising
Made by J.W. Burgard; 1953, (Lorillard), n.d., Bates 04238374-8433.

27 ⁶⁶ *New Investigation Exposes How Tobacco Companies Market Cigarettes on Social Media in the*
28 *U.S. and Around the World* (Aug 27, 2019) Campaign For Tobacco-Free Kids
www.tobaccofreekids.org/press-releases/2018_08_27_ftc (as of July 5, 2019).

1 promotional message] gets expanded more and more.” *Id.* Another influencer allegedly stated that
2 “we had a training session with the person in charge of marketing in Marlboro, she talked to us
3 about how difficult it was for them to advertise due to all the laws in place. She also talked to us
4 about . . . [linking] the brand to certain colors or situations.” *Id.* (brackets in original).

5 129. A study carried out by the campaign for tobacco-free kids, reported that “tobacco
6 companies are secretly paying social media stars to flood your newsfeed with images of their
7 cigarette brands.” *Id.* In a nutshell, “young social media stars are paid to make smoking look
8 cool.” *Id.* A gallery of influencer posts is available at:

9 <https://www.takeapart.org/wheretheressmoke/gallery/>.

10 130. Similarly, in 1988 the R.J. Reynolds Tobacco Company introduced the infamous
11 Joe Camel cartoon campaign, which faced instant criticism due to how appealing the cartoon
12 animal was to children and teens. Joe Camel was drawn as sleek, metropolitan figure, typically
13 wearing sunglasses or a tuxedo, or was depicted driving convertibles, gambling, or playing pool.
14 The ads often used the phrase “Smooth Character,” which to teenagers, meant he had a slick, cool
15 personality. That in turn led to an association between smoking and coolness in the minds of
16 young people. To ensure that message stuck, R.J. Reynolds put up billboards featuring Joe Camel
17 near schools, and printed Joe Camel shirts, hats, and other paraphernalia, ensuring the campaign
18 would be carried far and wide, and that kids would constantly be exposed to it. Only three years
19 after the campaign began, in 1991, the Journal of the American Medical Association published a
20 study showing that by age six nearly as many children could correctly respond that “Joe Camel”
21 was associated with cigarettes as could respond that the Disney Channel logo was associated with
22 Mickey Mouse, and it alleged that the “Joe Camel” campaign was targeting children, despite R. J.
23 Reynolds’ claim (similar to the claim of Defendants here) that the campaign was directed only to
24 adults who were already smokers of other brands.⁶⁷ At that time researchers estimated that 32.8%
25 of all cigarettes sold illegally to underage buyers were Camels.⁶⁸ The Joe Camel campaign ended

26 ⁶⁷ Fischer *et al.*, Brand Logo Recognition by Children Aged 3 to 6 Years (Dec 11, 1991), JAMA
27 266(22):3145-8, www.ncbi.nlm.nih.gov/pubmed/1956101 (as of July 5, 2019).

28 ⁶⁸ DiFranza *et al.*, RJR Nabisco’s cartoon camel promotes camel cigarettes to children (Dec 11,
1991) JAMA 266(22):3149-53, www.ncbi.nlm.nih.gov/pubmed/1956102 (as of July 5, 2019).

Footnote continued on next page

1 under the pressure of an impending civil trial brought by the City Attorney in San Francisco,
2 Congressional investigation, and public pressure.⁶⁹

3 131. Cigarette companies have also known for decades that flavored products are key to
4 nicotine adoption by youth. A 1972 Brown & Williamson internal memorandum titled “Youth
5 Cigarette – New Concepts,” observed that “it’s a well known fact that teenagers like sweet
6 products.”⁷⁰ A 1979 Lorillard memorandum found “younger” customers would be “attracted to
7 products with ‘less tobacco taste,’” and suggested investigating the “possibility of borrowing
8 switching study data from the company which produces ‘Life Savers’ as a basis for determining
9 which flavors enjoy the widest appeal” among youth.⁷¹ A 2008 study found that 17-year-old
10 smokers were more than three times as likely as those over the age of 25 to smoke flavored
11 cigarettes, and they viewed flavored cigarettes as safer.⁷² Cigarette companies also used
12 advertisements that paired cigarettes with foods, to make it seem like cigarettes were part of a
13 healthy meal.

14 **J. Because Advertising Fuels Youth Smoking, Tobacco Companies are**
15 **Prohibited from Viral Marketing Practices and Use of Flavors**

16 132. Most of the activities described in the section above are now recognized as against
17 public policy, and thus forbidden for cigarette companies.

18 133. Under the Tobacco Master Settlement Agreement (“MSA”), reached in 1998,
19 participating manufacturers agreed not to “take any action, directly or indirectly, to target Youth
20 within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take
21

22 *Footnote continued from previous page*

(The JUULs represent an even higher percentage of all cigarettes and e-cigarettes sold to minors.)
23 ⁶⁹Joe Camel, Wikipedia https://en.wikipedia.org/wiki/Joe_Camel#cite_note-8 (as of July 5, 2019).

24 ⁷⁰Brown & Williamson official A.J. Mellman, (1983) Tobacco Industry Quotes on Nicotine
Addiction, www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf (as of July 5, 2019).

25 ⁷¹Flavored Tobacco FAQs, Students Working Against Tobacco, (citing, Sedgefield Idea Sessions
790606-790607. June 8, 1979. Bates No. 81513681/3691)
26 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (as of July 5, 2019)

27 ⁷²Klein *et al.*, Use of flavored cigarettes among older adolescent and adult smokers: United
States, 2004-2005. (Jul 2008) Nicotine Tob Res. 10(7):1209-14,
28 <https://www.ncbi.nlm.nih.gov/pubmed/18629731> (as of July 5, 2019).

1 any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth
2 smoking within any Settling State.” MSA, § III(a). They are also prohibited from

3 a. using outdoor advertising such as billboards,
4 b. sponsoring events,
5 c. giving free samples,
6 d. paying any person “to use, display, make reference to or use as a prop any
7 Tobacco Product, Tobacco Product package . . . in any “Media,” which includes “any motion
8 picture, television show, theatrical production or other live performance,” and any “commercial
9 film or video,”; and

10 e. paying any third party to conduct any activity which the tobacco
11 manufacturer is prohibited from doing.

12 134. In 2009, the FDA banned flavored cigarettes pursuant to its authority under the
13 Family Smoking Prevention and Tobacco Control Act of 2009. Then-FDA commissioner
14 Dr. Margaret A. Hamburg announced the ban because “flavored cigarettes are a gateway for
15 many children and young adults to become regular smokers.”⁷³

16 135. The Tobacco Control Act of 2009 also prohibited sales of cigarettes to minors,
17 tobacco-brand sponsorships of sports and entertainment events or other social or cultural events,
18 and free giveaways of sample cigarettes and brand-name non-tobacco promotional items.

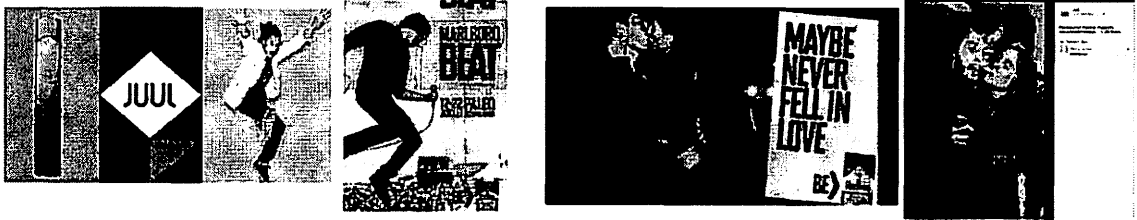
19 136. A study of the cigarette flavor ban in 2017 found that the flavor ban was effective
20 in lowering the number of smokers and the amount smoked by smokers, but also was associated
21 with an increased use of menthol cigarettes.⁷⁴ The same study reported that 85% of adolescents
22 who use e-cigarettes use flavored varieties.

23
24
25
26 ⁷³ Harris, *Flavors Banned From Cigarettes to Deter Youth* (Sep 22, 2009), The New York Times,
www.nytimes.com/2009/09/23/health/policy/23fda.html (as of July 5, 2019).

27 ⁷⁴ Courtemanche *et al.*, Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use
28 (May 2017), *Am J Prev Med* 52(5):e139-e146, www.ncbi.nlm.nih.gov/pubmed/28081999 (as of
July 5, 2019)

1 2. **JUUL’s Marketing Leveraged Banned Strategies Perfected by**
2 **Cigarette Companies to Induce Minors and Young Non-Smokers to**
3 **Purchase JUUL Products**

4 137. Following the successful model of its predecessors, since 2015, JUUL, in
5 conjunction and in concert with unnamed Defendants Does 25 through 50 involved in providing
6 marketing services to JUUL, has been operating a long term viral marketing campaign aimed at
7 teenagers and young adults. This campaign extends and expands upon deceptive advertising
8 tropes used by tobacco companies to exploit the psychological needs of consumers—especially
9 youth—to convert them into smokers.



10 138. JUUL’s admitted reliance on tobacco industry documents is apparent in a
11 collection of JUUL advertisements compared to historical cigarette advertisements on Stanford’s
12 Research into Impact of Tobacco Advertising (“SRITA”) website. The side-by-side comparison
13 of numerous JUUL advertisements shows that its imagery directly parallels that adopted by
14 cigarette manufacturers, including imagery relating to attractiveness, stylishness, sex appeal, fun,
15 “belonging,” relaxation, and sensory pleasure, including taste.

16 139. Because of social media, JUUL has been able to operate an even more pervasive,
17 insidious, and successful viral marketing campaign than its predecessors in this industry. As set
18 forth below, JUUL developed and oversaw a long-term viral marketing campaign with the intent
19 to convince young people to purchase its products. JUUL’s advertisements presented images
20 depicting an idealized future self that adolescents could achieve by taking up JUUL products.

21 140. JUUL carried this campaign out by: (i) intentionally designing a campaign that
22 was simple and would trigger an emotional response, particularly with young people; (ii)
23 intentionally designing flavored products that would appeal to teenagers and young adults; (iii)
24 directing its advertising to teenagers and young adults on social media; (iv) utilizing third party
25 influencers to amplify its message around the internet; (v) utilizing other social media tools, such
26 as social media influencers to amplify its message around the internet; (v) utilizing other social media tools, such
27 as social media influencers to amplify its message around the internet; (v) utilizing other social media tools, such
28 as social media influencers to amplify its message around the internet; (v) utilizing other social media tools, such

1 as hashtags, to encourage participation and word-of-mouth messaging by its customers; (vi)
2 amplifying the message through off-line advertising; and (vii) using a pricing and distribution
3 model designed to put the product within reach of youth.

4 141. JUUL's advertisements consistently withheld material information about the
5 dangers of the product. Through this long term advertising campaign, JUUL was able to persuade
6 consumers, and in particular teenagers and young adults that its product was cool, while hiding
7 from them the dangers associated with using the product. And because of the viral nature of
8 JUUL's marketing, JUUL promotions continue to reach youth, despite JUUL's deactivation of its
9 social media accounts.

10 3. **JUUL Advertising Used Imagery that Exploited Young People's**
11 **Psychological Vulnerabilities.**

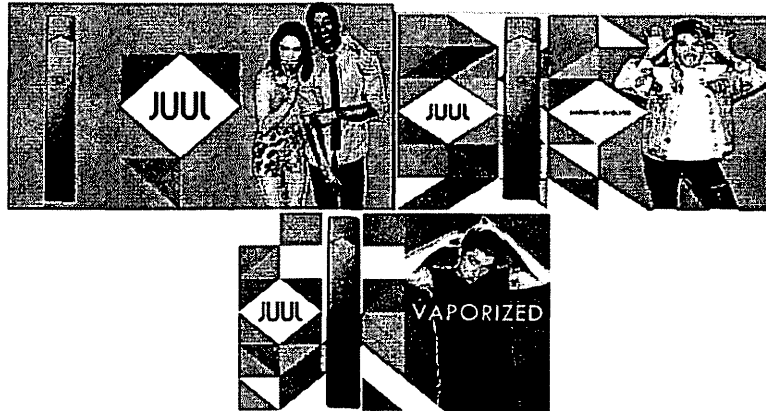
12 142. Throughout the relevant period, JUUL ran a consistent, simple message on social
13 media that communicated to people, and in particular, teenagers and young adults that JUUL's
14 products were used by popular, attractive, and stylish young adults (i.e., an idealized version of an
15 adolescent's future self) while failing to adequately and conspicuously disclose the nature or risks
16 of the products.

17 143. In designing the campaign, JUUL knew that to increase the chances that content
18 goes viral amongst the teen demographic, it needed to design a campaign that was simple, would
19 generate an emotional response that would resonate with teenagers, and obscure the fact that the
20 product was unsafe and addictive.

21 144. To help it design these ads, JUUL relied on various social media marketing
22 companies. In 2015, JUUL worked with Cult Collective, instructing Cult Collective to design an
23 ad campaign that would catch fire and reach customers who had "heard it all before." At the time,
24 JUUL was a young company, competing with bigger, more established companies with large
25 advertising budgets and high brand loyalty. The solution JUUL and Cult Collective reached was
26 to position JUUL as a modern product that represented a better way of life for young people. That
27 campaign was highly effective.
28

1 4. **JUUL’s Launch Campaign Was Targeted to Create Buzz Among**
2 **Young Consumers.**

3 145. To announce the JUUL’s release in June 2015, JUUL launched the “Vaporized”
4 advertising campaign that was aimed at a youth audience.⁷⁵ The campaign used young, stylish
5 models, bold colors, and memorable imagery. The models were often using hand gestures or
6 poses that mimicked teenagers.



14 146. JUUL’s advertisements presented images depicting an idealized future self that
15 adolescents could achieve by taking up JUUL products.

16 147. The Vaporized campaign advertisements featured young, stylish models and
17 images of attendees at JUUL’s launch parties and highlighted themes of sexual attractiveness,
18 thinness, independence, rebelliousness and being “cool.” This Vaporized campaign targeted
19 youth using the exact template established by the cigarette companies decades earlier.

20 148. Often the Vaporized ads contained the phrase “Smoking Evolved,” so that
21 consumers, and in particular youth, would associate JUUL with high tech and the latest
22 generation of cool products, like iPhones and MacBooks.

23 149. The color scheme chosen was similar to colors used by Natural Americans Spirit
24 Cigarettes, a leading brand of cigarettes among teenagers.

25

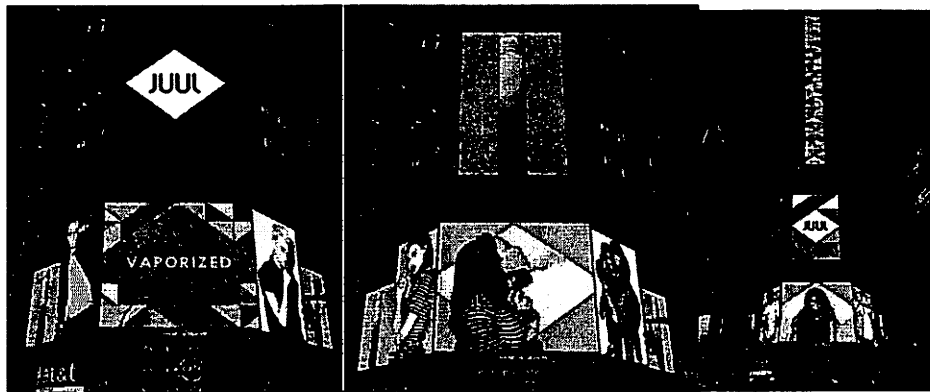
26

⁷⁵ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized’ Campaign* (Jun 23, 2015)
27 ADAGE, [http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/)
28 [campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (as of July 5, 2019).

1 150. Nowhere in the Vaporized ads did JUUL include any visible or prominent
2 disclaimers about the dangers of nicotine or e-cigarettes as described above or state that JUUL
3 was unsafe for anyone under age 26.

4 151. As the Cult Collective creative director explained, “We created ridiculous
5 enthusiasm for the hashtag ‘Vaporized,’ and deployed rich experiential activations and a brand
6 sponsorship strategy that aligned perfectly with those we knew would be our best customers.”⁷⁶

7 152. As part of the Vaporized campaign, JUUL advertised on a 12-panel display over
8 Times Square.



15 153. Billboard advertising of cigarettes has for years been unlawful under the Master
16 Settlement Agreement reached between 46 states’ attorneys general and cigarette companies, but
17 JUUL took advantage of that agreement’s failure to foresee the rise of vaping products to
18 advertise its nicotine products in a manner that had already been deemed against public policy for
19 other nicotine products.

20 154. To ensure that its message would spread, JUUL utilized several other tools to put
21 its product in front of young people. First, it ran the Vaporized campaign in the front spread of
22 Vice magazine’s cover issue. Notably, Vice bills itself as the “#1 youth media brand” in the world
23 and is known for running edgy content that appeal to youth. JUUL also implemented a series of
24 pop-up “JUUL bars” in Los Angeles, New York, and the Hamptons, imitating pop-up restaurants
25

26 ⁷⁶ Jackler *et al.*, JUUL Advertising Over its First Three Years on the Market (Jan 31, 2019)
27 Stanford Research into the Impact of Tobacco Advertising, Stanford University School of
28 Medicine, http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf
(as of July 5, 2019). (Citing, Cult Creative JUUL case study. <http://cultideas.com/case-study/juul>
(last accessed September 21, 2018)). (emphasis added)

1 and bars typically aimed at attracting young, hip urban consumers. Again, this is an activity
2 which would have been prohibited by law for a cigarette company on the ground that it was
3 against public policy.



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10 155. JUUL's chief marketing officer, Richard Mumby said "while other campaigns tend
11 to be 'overtly reliant on just the product,' [JUUL's] effort features diverse 20-to-30-year-olds
12 using the product."⁷⁷ This reliance on images of young, diverse users was specifically aimed at
13 convincing young people who were not previously addicted cigarette smokers to purchase JUUL
14 products, to make the use of JUUL appear fun and without long-term negative consequences, to
15 position the JUUL e-cigarette as the e-cigarette of choice for young adults, and to introduce youth
16 to the "illicit pleasure" of using the JUUL products.⁷⁸

17 156. JUUL promoted the Vaporized campaign on Facebook, Instagram, and Twitter.
18 The Vaporized campaign included the largest ENDS smartphone campaign of 2015, which
19 accounted for 74% of all such smartphone advertising that year and generated over 400 unique
20 promotions.

21 157. JUUL also sponsored at least 25 live social events for its products in California,
22 Florida, New York and Nevada. The invitations to JUUL's events did not indicate that the JUUL
23 was intended for cigarette smokers, was unsafe for anyone under 26, contained nicotine, carried
24 significant health risks or was addictive. Instead, the promised attendees "free #JUUL starter

25 ⁷⁷ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with 'Vaporized' Campaign* (June 23, 2015),
26 AdAge, [http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/)
[campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (as of July 5, 2019)

27 ⁷⁸ Additional images and videos are available at
28 http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php (as of
July 5, 2019).

1 kit[s],” live music, or slumber parties. Photographs from these events indicate that they drew a
2 youthful crowd. Use of sponsored events was a long-standing practice for tobacco companies, but
3 is now forbidden.

4 158. John Schachter, director of state communications for Campaign for Tobacco-Free
5 Kids, expressed “concern about the JUUL campaign because of the youth of the men and women
6 depicted in the campaign, especially when adjoined with the design.” Mr. Schachter said “the
7 organization has noticed obvious trends that appeal to adolescents in e-cigarette campaigns such
8 as celebrity endorsements, sponsorships and various flavors.”⁷⁹

9 159. To the extent that the Vaporized advertisements disclosed that JUUL products
10 contained nicotine, the warnings were in small print against low-contrast backgrounds, making
11 them easy to overlook. By way of comparison, if the same ads had been touting cigarettes, they
12 would have been required to display a health warning in high contrast black and white in a box
13 comprising 30% of the image.

14 **5. JUUL Gave Away Free Products to Get New Consumers Hooked**

15 160. JUUL distributed free starter packs at the live social events described above in
16 paragraph 125—conduct forbidden for a cigarette company under the Tobacco Master
17 Settlement Agreement, because it lured young people into nicotine addiction and related harms.
18 BeCore, one of the firms responsible for designing and implementing JUUL’s live events
19 reported that “on average, BeCore exceeded the sampling goals set by JUUL . . . average number
20 of samples/event distributed equals 5,000+.”⁸⁰ At these events, BeCore distributed the
21 appropriately-named JUUL “Starter Kits,” which contain a JUUL and 4 JUULpods of varying
22 flavors. If BeCore indeed gave away 5,000 Starter Kits per event, JUUL effectively distributed
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24

25 ⁷⁹ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized’ Campaign* (June 23, 2015),
26 AdAge, [http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/)
[campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (as of July 5, 2019)

27 ⁸⁰ Jackler *et al.*, *JUUL Advertising Over its First Three Years on the Market, Stanford Research*
28 *into the Impact of Tobacco Advertising, Stanford University School of Medicine* (Jan 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (as of
July 5, 2019).

1 the nicotine equivalent of 20,000 packs of cigarettes at each of the 25 events described above—or
2 the equivalent of 500,000 packs of cigarettes at all 25 events.



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JUUL JUUL shared an event.
June 16, 2016 · 🌐

Hey Brooklyn. We will be in Industry City this Friday at Rooftop Films Inc.'s screening, and we have FREE tickets just for you. All attendees will receive a complimentary #JUUL starter kit. Please PM us for the code 📩



FRI, JUN 19, 2015

Rooftop Films Presents: New York Non-Fiction
Industry City · Brooklyn, New York

★ Interested

1,377 people went

👍 4

👍 Like

💬 Comment



Write a comment...



Please Enter to post

161. Though JUUL publicly acknowledged in October 2017 that it is unlawful to free samples of its products at live events, JUUL continued to do so, sometimes through \$1 “demo events.” Notably, promotions of this kind are prohibited for cigarette companies by the MSA.

162. The effect—and purpose—of JUUL’s Vaporized giveaways was to flood major cities with free product which by its addictive nature would hook tens or hundreds of thousands of new users, and to generate buzz for the brand among urban trendsetters who would then spread JUUL’s message to their friends via word of mouth and social media. Similar campaigns have long been used by drug cartels. This campaign unconscionably flooded cities with free samples of

1 an addictive product, with distribution focusing on the youth market. As a foreseeable result,
2 JUUL products ended up in the hands of non-smokers and youth, like Plaintiff, who used the
3 products, became addicted to nicotine and suffered severe health consequences.

4 **6. JUUL Portrayed Its Products as Status Symbols.**

5 163. As tobacco companies have long known, young people—and adolescents in
6 particular—find security and a sense of identity in status symbols. Even after the “Vaporized”
7 campaign, JUUL’s later advertisements mimicked the look and feel of the “Vaporized” ads to
8 foster the image of JUUL e-cigarettes and JUULpods as sleek, stylish, status symbol. For
9 example, JUUL developed and ran a series of advertisements that were simple images of stylish
10 young people using JUUL.

11 164. All of these ads communicated to teenagers that JUUL was a product being used
12 by cool, modern young people, which JUUL, like all cigarette companies, knows is a powerful
13 message. None of these ads prominently disclosed the dangers of using JUUL.

14 165. Other JUUL advertisements relied on graphic images with the look and feel of
15 advertisements by Apple, Google, and similar tech companies with progressive and modern
16 reputations. Again, these ads resonated with teenagers as well, as they made JUUL, and
17 especially the flavored pods, look like cool gadgets or software, something akin to an iPhone or a
18 hot new app to download. Like the other ads, none prominently disclosed the dangers of using
19 JUUL.

20 166. JUUL also consistently compared the JUUL to the iPhone through statements like
21 “the iPhone of e-cigarettes,” which JUUL posted on its website, distributed through social media,
22 and disseminated through its email campaign. The iPhone is the most popular smartphone among
23 adolescents, with 82% of teenagers preferring Apple’s phone over the competition. JUUL’s
24 advertising images frequently include pictures of iPhones and other Apple devices, including
25 iPads, Beats Headphones, MacBook laptops. Through these images, JUUL presented its image as
26 “must have” technology product and status symbol, instead of a nicotine delivery system.

27 167. Beyond triggering an emotional response in teenagers, all of JUUL’s social media
28 advertising had three additional things in common. First, through the use of clean lines, artistic

1 arrangements, minimal text, and eye-catching graphics, JUUL ensured that the advertisements
2 would jump out to distracted teenagers who scrolled crowded social media pages on their phones
3 and browsers.

4 168. Second, all of JUUL's advertisements reflect an understanding that social media
5 users in general, and teenagers in particular, do not typically read long blocks of text on social
6 media, and rely more heavily on imagery instead of text to convey a message. Many of the ads
7 did not include any warning about the dangers of JUUL or suggest to teenagers that the product
8 contained nicotine.

9 169. Moreover, where JUUL's advertisements appeared to contain such a disclaimer,
10 this disclaimer was not typically seen when viewing social media due to the way the posts appear
11 in phones and browsers. In particular, Facebook and Instagram typically only present to users the
12 image and a couple lines of text, and viewers who want to see the entire post must click on it to
13 open it up and read the rest.

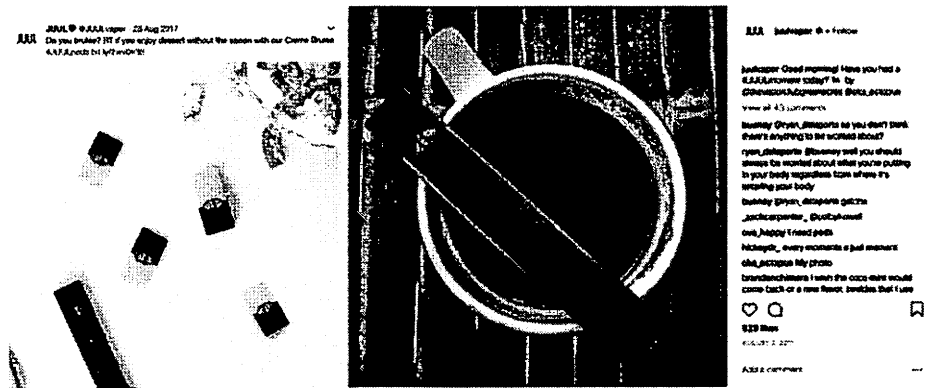
14 170. JUUL's Instagram advertisements obscure those nicotine warnings by placing
15 them in a location that requires the user to open up the post and read it. As can be seen in JUUL's
16 Instagram ads, the company consistently used brief text at the beginning of a post so that it would
17 be a complete sentence with no further content. Thus, the disclaimer was never visible to
18 anyone viewing the posts in their main feed, and it was only seen by a limited number of people
19 who elected to open the post and then read what was there. Notably, on Twitter, a Social Media
20 Platform that is geared towards reading text, and on Facebook, where some users do read text,
21 JUUL typically did not include the disclaimer in its advertisements.

22 171. Third, JUUL's advertisements were typically creative, giving them the look and
23 feel of "art." Thus, teenagers were drawn to the advertisements, holding their gaze on the ads for
24 longer periods of time, and being more inclined to share the advertisement with others in their
25 networks, thus accomplishing JUUL's goal: turning consumers into salespeople.

26 172. Even JUUL's newer "alternative for adult smokers" tagline suggests to adolescents
27 that JUUL-use is a symbol of status as an adult, which happens to be an advertising theme
28 cigarette companies peddled to youth for decades.

7. **JUUL Used Flavors and Food Imagery to Attract Teenagers and Downplay Risks**

173. JUUL sells its JUULpods in a variety of sweetened flavors. It even advertised some of its flavors as though they were desserts in themselves. For example, it advertised its crème brulee flavor using tag lines like “save room for JUUL” and “indulge in dessert without the spoon.” JUUL used imagery that looked like ads for a trendy coffee shop or restaurant.



174. Again, none of these advertisements prominently disclosed that JUUL was addictive and unsafe.

175. The tobacco industry has long known that sweetened cigarettes attracted young smokers. As discussed above, the FDA banned flavored cigarettes for that reason.

176. The use of flavors that appeal to youth has a marked effect on e-cigarette adoption by young “vapers.” A national survey found that that 81 percent of youth aged 12-17 who had ever used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3 percent of current youth e-cigarette users had used a flavored e-cigarette in the past month.

177. Moreover, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”⁸¹ Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their nonvaping peers, a new study has found.”⁸²

⁸¹ Ambrose *et al.*, Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, *2013-2014* (Oct 26, 2015), *JAMA* 314(17):1871-1873
<https://jamanetwork.com/journals/jama/fullarticle/2464690>

⁸² Primack *et al.*, Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults (Apr 2018), Vol. 131, Issue 4, 443.e1–443.e9, [www.amjmed.com/article/S0002-9343\(17\)31185-3/fulltext](http://www.amjmed.com/article/S0002-9343(17)31185-3/fulltext)

1 178. Research also shows that when youth see flavored ENDS liquids advertisements,
2 they believe the advertisements and products are intended for them.⁸³

3 179. The use of attractive flavors foreseeably increases the risk of nicotine addiction,
4 and e-cigarette related injuries, as traditional cigarette product designs aimed at reducing the
5 unpleasant characteristics of cigarette smoke (e.g., addition of menthol to mask unpleasant
6 flavors) have previously been shown to contribute to the risk of addiction.⁸⁴ Worse still,
7 adolescents whose first tobacco product was flavored are more likely to continue using tobacco
8 products than those whose first product was tobacco-flavored.

9 180. JUUL's kid-friendly flavors included Mango, "Cool" Mint, and Menthol. 74% of
10 youth surveyed in a recent study indicated that their first use of a JUUL was of a flavored pod.⁸⁵
11 More than half of teens in a nationwide survey by the Wall Street Journal stated that they use
12 ENDS because they like the flavors.

13 181. When JUUL released what are now the two most popular flavors among youth:
14 Mango and "Cool" Mint ("Cool Mint"), JUUL promoted those flavors on Instagram, Twitter,
15 YouTube and Facebook—all of which are skewed toward young audiences.

16 182. JUUL's Mango pods quickly became the runaway favorite among youth. The
17 Mango pods are so popular that, incredibly, they noticeably increased the use of the word
18 "mango" on the internet as a whole. Starting in early 2017, Google Trends reports a nearly five
19 percent increase in year-over-year use of the word "mango" online.⁸⁶

20 183. "Cool" Mint became youths' second youth favorite flavor. The 2018 Duell Study
21 found 94 mg/mL nicotine in a JUUL "Cool" Mint pod – nearly double the amount on JUUL's
22 "5% strength" label would suggest.

23 ⁸³ McKelvey *et al.*, Youth say ads for flavored e-liquids are for them (Aug 29, 2018), *Addict*
24 *Behav.* 91:164-170, www.ncbi.nlm.nih.gov/pubmed/30314868 (as of July 5, 2019)

25 ⁸⁴ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-
26 *Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and*
27 *Present* (2010) www.ncbi.nlm.nih.gov/books/NBK53017/ (as of July 5th, 2019).

28 ⁸⁵ McKelvey *et al.*, Adolescents and young adults use in perceptions of pod-based electronics
cigarettes (Oct 19, 2018), *JAMA Netw Open.* 1(6): e183535
www.ncbi.nlm.nih.gov/pmc/articles/PMC6324423/ (as of July 5, 2019).

⁸⁶ <https://trends.google.com/trends/explore?date=2014-06-01%202018-12-05&geo=US&q=mango>

1 184. JUUL’s advertising emphasized the flavors of its sweetened nicotine pods.
2 Leveraging the flavors, JUUL advertised JUULpods as part of a meal, to be paired with other
3 foods. In late 2015, JUUL began a food-based advertising campaign called “Save Room for
4 JUUL.” A play on the expression “save room for dessert,” JUUL’s campaign focused on the
5 JUULpods’ sweet flavors, and pairing them with foods. JUUL described its crème brulee nicotine
6 pods as “the perfect evening treat,” using tag lines like “save room for JUUL” and “indulge in
7 dessert without the spoon.” In one 2016 email, JUUL bluntly suggested that users satisfy their
8 sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brulee.”

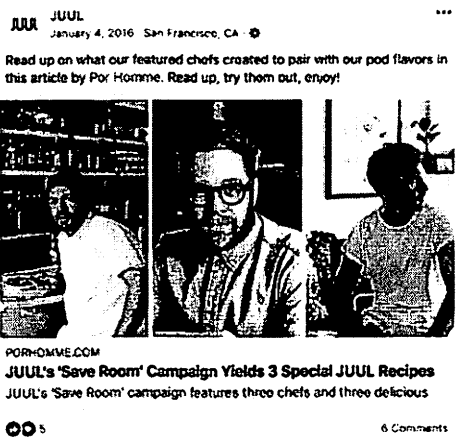
9 185. JUUL similarly promoted the Fruit Medley pods using images of ripe berries.
10 JUUL described its “Cool” Mint pods as having a “crisp peppermint taste with a pleasant
11 aftertaste” and encouraged consumers to “Beat The August Heat With Cool Mint,” and in a
12 Facebook advertisement dated July 10, 2017, JUUL urged customers to “start your week with
13 cool mint juulpods.”⁸⁷ Along with the bright green caps of the “Cool” Mint JUULpods, the
14 Facebook ad included an image of a latte and an iPad. *Id.*

15 186. JUUL even hired celebrity chefs to provide pairing suggestions for JUUL flavors.
16 On Instagram and Twitter, JUUL boasted about “featured chef” Bobby Hellen creating a
17 “seasonal recipe to pair with our bruule pod.” On Facebook, JUUL posted a link to an article on
18 porhomme.com about “what our featured chefs created to pair with our pod flavors.”⁸⁸ JUUL
19 tweeted repeatedly about its flavors and encouraged its social media followers to share their
20 preferred pairings.

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27 ⁸⁷ <https://airtable.com/tblkPVYIp5AFNLrTy/viwFFlmOJSzXHskhz/recEYkrXbuSCdZB0h>

28 ⁸⁸ Facebook 10, <https://airtable.com/tblkPVYIp5AFNLrTy/viwFFlmOJSzXHskhz/rec0vT9owbjQeVUuY>.

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187. 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 downplay and minimize the risks of JUUL, suggesting it was no more risky than coffee.

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

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

190. By 2017, JUUL knew that the foreseeable risks posed by fruit and candy-flavored e-liquids had materialized. A significant percentage of JUUL's customers included adolescents who overwhelmingly preferred Fruit Medley and Crème Brulee over Tobacco or Menthol.⁸⁹

⁸⁹ Truth Initiative, *JUUL fails to remove all of youth's favorite flavors from stores* (Nov 15, Footnote continued on next page

1 Instead of taking corrective action or withdrawing the sweet flavors, JUUL capitalized on youth
2 enthusiasm for its products.

3 191. JUUL disingenuously asserts that it did not intend its flavors to appeal to young
4 people, including Plaintiff. After 11 senators sent a letter to JUUL questioning its marketing
5 approach and kid-friendly e-cigarette flavors like Fruit Medley, Creme Brulee and Mango, JUUL
6 visited Capitol Hill and told senators that it never intended its products to appeal to kids and did
7 not realize they were using the products, according to a staffer for Sen. Dick Durbin (D-Ill.).
8 JUUL's statements to Congress—which parallel similar protests of innocence by cigarette
9 company executives—were false.

10 192. In November 2018, in response to litigation and other mounting public pressures,
11 JUUL announced that it had “stopped accepting retail orders” for many of its flavored JUULpods,
12 such as mango, crème brulee, and cucumber.⁹⁰ But JUUL's promise is misleading. JUUL has
13 only refused to sell them directly to retailers, but it still manufactures and sells the JUULpods.
14 The pods can still be purchased on its website by persons under age 26. JUUL also continues to
15 sell “Cool” Mint in gas stations knowing that the flavor is incredibly popular with youth and will
16 become the de facto favorite if access to other flavors is removed.

17 193. The only responsible solution to prevent flavored JUULpods from getting into the
18 hands of young people is to stop manufacturing them.

19 **8. JUUL Developed Point-of-Sale Advertising That Emphasized the**
20 **Products' Positive Image Without Adequately Disclosing Its Nature**
21 **and Risks.**

22 194. The cigarette industry spends \$8.6 billion a year in point-of-sale (“POS”)
23 promotions—or almost \$990,000 every hour.⁹¹ In a 2009 study of adult daily smokers,

24 *Footnote continued from previous page*

25 2018), <https://truthinitiative.org/news/juulfails-remove-all-youths-favorite-flavors-stores> (as of
26 July 5, 2019).

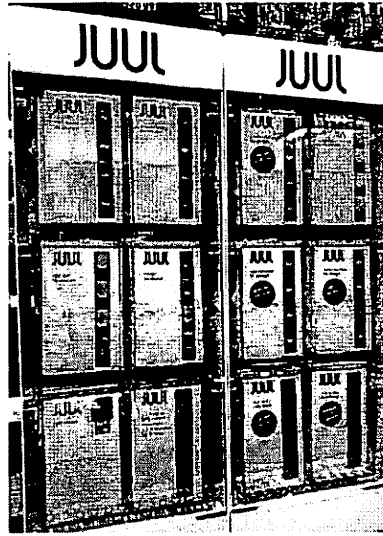
27 ⁹⁰ Kaplan & Hoffman, *Juul Suspends Selling Most E-Cigarette Flavors in Stores* (Nov 13, 2018),
28 *The New York Times*, www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html (as of July 5, 2019).

⁹¹ *The Truth About Tobacco Industry Retail Practices*, Truth Initiative,
https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-2017_0.pdf (as of
July 5, 2019)

1 unintended cigarette purchases were made by 22 percent of study participants, and POS displays
2 caused nearly four times as many unplanned purchases as planned purchases. *Id.* at 4. Younger
3 smokers, in particular, are more likely to make unplanned tobacco purchases in the presence of
4 POS advertising. *Id.*

5 195. Studies show that tobacco use is associated with exposure to retail advertising and
6 relative ease of in-store access to tobacco products. Some studies have shown that youth who
7 were frequently exposed to POS tobacco marketing were twice as likely to try or initiate smoking
8 than those who were not as frequently exposed. Frequent exposure to tobacco product advertising
9 and marketing at retail normalizes tobacco and smoking for youth over time and makes them
10 more likely to smoke. POS marketing is also associated with youth brand preference. Research
11 shows that young adult smokers prefer the tobacco brands marketed most heavily in the
12 convenience store closest to their schools. Before its launch in 2015, JUUL and Cult Collective
13 developed innovative packaging and creative in-store displays that would carry their message
14 through into stores.

15 196. In particular, they designed bright, white packages. The packaging looked similar
16 to iPhone packaging, which JUUL knew would resonate with young people, and because it was
17 solid white, the packaging stood out and caught people's eyes when displayed in store shelves.
18 This packaging buttresses Defendant's online marketing of JUUL e-cigarette as "the i-Phone of
19 Ecigs," thereby framing them as a cool, fashionable item to own and use. JUUL posters and signs
20 at the point of sale also promoted JUUL's flavors. From 2015 through late 2018, JUUL promoted
21 JUUL products and JUUL flavors at the point of sale without disclosing that the products
22 contained nicotine or warning that the products could lead to addiction. Instead, JUUL's
23 promotions displayed the colorful JUULpod caps and their food-based names while omitting that
24 JUUL delivers nicotine, is addictive, carries risks of stroke and other cardiovascular events, and is
25 unsafe for anyone under age 26.



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10 197. For many, JUUL’s POS materials provided an introduction to the brand. Because
11 JUUL’s POS materials omitted the most material features of JUUL’s product—that it is a
12 powerfully addictive nicotine delivery system, unsafe for anyone under age 26—adolescents who
13 saw JUUL’s POS and were later offered a JUUL would have no reason to think that what they
14 were being offered JUUL contained nicotine, or posed risks of addiction, or was unsafe.

15 **9. JUUL Used Social Media to Inundate Target Consumers, Particularly**
16 **Youth, With Messaging Promoting Its Nicotine Products**

17 198. JUUL not only designed its advertising with an eye to what might be appealing to
18 young people, but set about disseminating those ads to ensure that young people see them. JUUL
19 set out to advertise on at least three major social media platforms: Instagram, Facebook, and
20 Twitter, and disseminated the information in various ways across the platforms.

21 199. On information and belief, JUUL maintains active accounts on most social media
22 platforms, including Instagram, Facebook, and Twitter, where JUUL tweeted nearly 5,000 times
23 in 2017 alone. As of 2016, 76 percent of American teens age 13-17 used Instagram, 66 percent of
24 teens use Facebook, and 44 percent of teens use Twitter.⁹² While JUUL continues to maintain its
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26
27 ⁹² Snapchat And Instagram Are The Most Popular Social Media Platforms Among American
28 Teens, The Associated Press-NORC Center for Public Affairs Research,
<http://apnorc.org/projects/Pages/HTML%20Reports/instagram-and-snapchat-are-most-popular-social-networks-for-teens.aspx> (as of July 5, 2019)

1 Twitter page, it deleted nearly all content from its Instagram and Facebook pages around
2 November of 2018, in response to lawsuits.

3 200. JUUL was able to deliver content directly on social media using two approaches.
4 First, it could post its advertisements directly to its own page, where it would be viewed by those
5 who followed JUUL, and those who shared its posts (“Unpaid Advertising”). And it could engage
6 in paid advertising, whereby it could target specific demographics of people to ensure they
7 received its advertisements (“Paid Advertising”).

8 201. With respect to Unpaid Advertising, Instagram was the centerpiece of JUUL’s
9 teen-focused advertising blitz. Instagram is used overwhelmingly by teenagers. At least 72% of
10 teenagers in the United States have an Instagram account, and at least 63% of teenagers between
11 the ages of 13 and 17 use Instagram every day.⁹³ While increasingly more adults are using
12 Instagram, this has been a recent development, and thus, advertisers typically only use Instagram
13 if they are interested in marketing to young people, especially teenagers.

14 202. Because of the way Instagram delivers content, Instagram allowed for fast,
15 effective delivery and sharing of its graphic, simple messages. Users would see these images
16 simply by scrolling through their feeds.

17 203. JUUL also disseminated Unpaid Advertising across social media through its use of
18 hashtags. Hashtags are simple phrases preceded by a #, and they operate as a way of cataloguing
19 posts. Authors of posts use hashtags if they want their posts to be discovered and seen by people
20 outside of their networks. On most social media platforms, users can find information by doing a
21 search for a hashtag with that key word. Thus, people interested in JUUL, could enter into the
22 search bar on most Social Media Platforms “#JUUL” to find posts that include that hashtag.
23 Instagram takes it one step farther and allows users to set up their accounts so that posts with a
24 certain hashtag are automatically delivered to their feed.

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26 ⁹³ Smith & Anderson, Social Media Use in 2018: A majority of Americans use Facebook and
27 YouTube, but young adults are especially heavy users of Snapchat and Instagram (Mar 1, 2018),
28 Pew Research Center, www.pewinternet.org/2018/03/01/social-media-use-in-2018/ (as of July 5,
2019).

1 204. JUUL’s hashtag marketing played a central role in the viral spread of JUUL
2 between teenagers. The use of hashtags in social media advertisements “can be used to get your
3 content in front of a bigger audience, raise awareness about your brand, target a very specific
4 group of people, boost your SEO, and use hot trends and topics to your advantage.”⁹⁴ Hashtags are
5 “the best weapon in your arsenal, aside from influencer marketing” for getting content “in front of
6 its intended audience.” *Id.* Through hashtag marketing, brands can Join in on trending topics,
7 engaging “an insane amount of readers” by using “hashtags which aren’t closely related to your
8 industry” by, e.g., using holiday-related hashtags. *Id.* By using “branded hashtags” that include
9 the company’s name or a specific product, advertisers can monitor the performance of specific
10 campaigns. Another advantage of branded hashtags is user-generated content: “Every time a user
11 puts one of your branded hashtags inside one of their posts, they are increasing your presence on
12 social media” by promoting the branded hashtag, and the related content, to the user’s followers.
13 *Id.* Through successful hashtag marketing campaign, brands can create communities through
14 which “followers will not only be able to communicate via chat or messages, but also connect
15 with each other by using your hashtag.” *Id.*

16 205. From 2015 through 2018, JUUL used hashtag marketing consistently on Twitter,
17 Instagram, and Facebook to promote its products. In various posts, JUUL would slip in hashtags
18 so that their posts would be found by young people. This post is not a paid advertisement, but a
19 post to JUUL’s Instagram feed. JUUL used #TBT, which is an acronym for “Throwback
20 Thursday.” Throwback Thursday is a popular meme on social media, and teenagers are especially
21 likely to understand it and use it. Thus, any teenager who had elected to follow the hashtag TBT
22 would see this post when they logged into Instagram that day. Moreover, no one would see any
23 warning regarding nicotine unless they actually opened the post. JUUL frequently used other
24 hashtags that would be used by teenagers to push their product to them across social media, such
25 as #icymi (“in case you missed it”).

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27 ⁹⁴ Ryan, *Hashtag Marketing: How to Use Hashtags for Better Marketing Campaigns*, Mention,
28 <https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-marketing-campaigns/> (as of July 5, 2019).

1 206. JUUL also used hashtags to convert young users into salespersons through unpaid
2 viral marketing.

3 207. In disseminating Paid Advertising, the Social Media Platforms allow companies
4 like JUUL to engage in micro-targeting, i.e., to select precisely what demographics of people
5 should be exposed to its advertising. Social Media Platforms create internal profiles for the
6 consumers that use them, tracking their online activity to determine their likes, habits, and
7 purchasing power. When advertisers pay to disseminate ads, they can choose to target those ads
8 so that they are received only by people whose digital footprint suggests an interest or
9 predisposition to the product. JUUL would have had the option to exclude teenagers. It also could
10 have elected to narrow its target audience to people with an interest in tobacco products, if it
11 wanted to reach and convert non-smokers. Or it could target a broader audience of people whose
12 digital footprints did not reveal that they were smokers.

13 208. While JUUL's precise targeting methods are unknown, on information and belief,
14 young people like Plaintiff are known to have been exposed to JUUL's Paid Advertising while on
15 social media, suggesting that JUUL did not narrow its target audience to adult smokers

16 209. Moreover, regardless of to whom JUUL targeted paid advertisements, JUUL's use
17 of Paid Advertising was aggressive, and had the inevitable result of reaching teenagers, including
18 Plaintiff. Paid advertising can be shared and liked just as Unpaid Advertising. JUUL relentlessly
19 advertised to its targeted audience, across all Social Media Platforms. Plaintiff saw JUUL
20 advertising on a near daily basis, regardless of what platform he used. The continual use of Paid
21 Advertising increased the pressure to buy, and it made quitting harder due to the fact that he was
22 exposed to the advertising all day long through his phone and other personal electronic devices.

23 **10. JUUL Exploited Social Media to Target Young People**

24 210. To broaden the reach of its campaign, JUUL used "influencers" to push the
25 product to young people. Influencers are "high-social net worth" individuals who have developed
26 large social media followings – i.e., the "cool kids" of the social media world. People follow
27 influencers because they tend to deliver lots of high quality, interesting photos and content, and
28 because they are known to be trend-setters.

1 211. Viewed as tastemakers and trendsetters by their followers, influencers are prized
2 sources of brand promotion on social media networks. Companies seeking to market products
3 often will pay influencers to advertise their products, similar to the ways in which they utilize
4 “product placement” in movies. They seek out influencers with large amounts of followers in
5 their target demographic, and will offer these influencers money or other deals to promote their
6 products. The influencer then will create various posts on social media using the product.
7 Typically, these posts are images of them using the product, but sometimes these posts will
8 include videos, longer written reviews, or other information about the product. Influencers often
9 include in these posts company-endorsed hashtags or links to the company’s website to try to
10 direct their followers to learn more. The company gets the benefit of having word-of-mouth
11 advertising, and the influencer is able to attract more followers because those followers want to
12 stay in the loop about new products and deals. While influencers operate on all Social Media
13 Platforms, most of them rely primarily on Instagram.

14 212. JUUL relied on influencers to carry out its viral marketing campaign. JUUL’s
15 reliance on influencers appears to have begun around June 2015, when JUUL listed a position on
16 its website for a three-month Influencer Marketing Intern.⁹⁵ JUUL described the position as
17 follows: “The Influencer Marketing Intern will create and manage blogger, social media and
18 celebrity influencer engagements. . . to build and nurture appropriate relationships with key
19 influencers in order to drive positive commentary and recommendations through word of mouth
20 and social media channels, etc.” (*Id.*). JUUL’s efforts to solicit influencers appears to have been
21 underway for years; until December 2018, JUUL’s website still called for individuals to “Join the
22 JUUL influencers.” Applicants were required to disclose their profile information for Instagram,
23 Twitter, and Facebook, as well as various other blog and vlog platforms, suggesting that JUUL
24 was interested in understanding whether the influencers could help JUUL reach its targeted youth
25 demographic.

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27 _____
28 ⁹⁵<https://www.internships.com/marketing/influencer-marketing-intern-i7391759> (last accessed
Nov 14, 2018).

1 213. JUUL's outreach had its desired impact, as it was able to line up influencers to
2 promote its products to teenagers, while spreading pictures of cool, young people using JUUL. In
3 addition to all the means above, JUUL paid influencers and celebrities to promote JUUL,
4 generating even more attention and exposure to young people, and reinforcing that the products
5 were safe, cool, and fun.

6 214. JUUL used or ratified multiple accounts across many social media sites to reach
7 young people, even encouraging users to JUUL at school.

8 215. JUUL also enjoyed the benefit of third-party promoters who reached hundreds of
9 thousands of young people.

10 216. JUUL allowed third parties, like @JUULnation to use its trademark.
11 @JUULnation's Instagram post included tips on how to conceal JUUL in school supplies and
12 ridiculed efforts to combat JUUL use among young people. JUUL promoted @JUULnation on
13 its own Instagram account.

14 217. Cigarette companies are prohibited from conducting any of the practices described
15 above under the Tobacco Master Settlement Agreement. Activities such as product placement in
16 performances and professional videos have been identified as against public policy for nicotine
17 products.

18 218. One recent study concluded that JUUL was "taking advantage" of the reach and
19 accessibility of multiple social media platforms to "target the youth and young adults . . . because
20 there are no restrictions," on social media advertising.⁹⁶

21 **11. JUUL Utilized a Pricing and Distribution Model Designed to Put the**
22 **Product Within Reach of Youth Without Disclosing Harms.**

23 219. Cigarette companies for years sold youth-brand cigarettes at lower prices that
24 young smokers could afford and used discounts and other promotions to ensnare them. JUUL is
25 no different. It not only designed a marketing campaign to reach young people and entice new
26 smokers, but it priced its products in such a way to ensure they would buy them.

27 ⁹⁶ Kelley, *JUUL Sales Among Young People Fueled by Social Media, Says Study* (Jun 4, 2018),
28 *The Washington Times*, www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/ (as of July 5, 2019).

1 220. A pack of four JUULpods, which, according to JUUL, is the equivalent of four
2 packs of cigarettes, costs approximately \$13-\$20. JUUL's website charges \$15.99 for a pack of
3 JUULpods, or about \$4 per JUULpod. By contrast, a single pack of cigarettes in Connecticut
4 costs approximately \$9, and \$13 in New York.

5 221. For years, JUUL directed all of its product to gas stations. JUUL knows that
6 teenagers and those new to smoking are likely to frequent gas stations and convenience stores
7 rather than smoke shops. By distributing in those kinds of stores, JUUL would increase the
8 chances that these people would purchase the product.

9 222. To further drive curiosity and interest, and make it so its target audience, and
10 especially teenagers, would purchase JUUL, JUUL instructed retailers to display the product in an
11 unusual fashion. Whereas cigarettes and other tobacco products have long been kept behind the
12 counter, JUUL designed display cases that would sit on store shelves. JUUL intentionally
13 designed the clear display cases so that the bright white, sleek packaging and the flavors would
14 catch consumers' eyes and make them interested in purchasing the product.

15 223. JUUL knew that by asking retailers to display JUUL products separate from other
16 tobacco products, and within arms' reach, it would also suggest to consumers that JUUL was
17 safer than traditional cigarettes and that it was not an addictive drug.

18 **K. JUUL Used Non-Age-Restricted Emails to Promote and Track Its Products**

19 224. Between 2015 and 2018, JUUL sent around 200 email promotions to customers
20 and potential customers. JUUL's email subscription list was not age-restricted and, until recently,
21 users who failed the age verification requirements on JUUL's purchase page were nevertheless
22 added to JUUL's mailing list and emailed a coupon for a discount on a Starter Kit. The JUUL
23 emails promoted retail locations, flavors, discounts, and "refer a smoker" programs. The emails
24 also promoted JUUL's find-a-store locator.

25 225. JUUL also used emails to distribute surveys. Because JUUL's emails were not
26 age-restricted, neither were their surveys. On information and belief, JUUL thus collected data
27 from minors. JUUL paid customers, including youth, up to \$30 to complete some surveys.
28

1 **L. JUUL Knew that its Scheme to Attract Young Smokers Like Plaintiff had**
2 **Worked**

3 226. Within a few months of the JUUL’s commercial release in June 2015, a former
4 JUUL executive reportedly told the New York Times that JUUL “quickly realized that teenagers
5 were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social
6 media.”⁹⁷

7 227. JUUL tracked and closely monitored usage among youth through social media,
8 online surveys, Youtube videos, hashtags, likes, email lists, and myriad other sources.

9 228. By the end of 2015, young people had posted tens of thousands of videos on
10 YouTube demonstrating ways to “JUUL in school” and in other locations without teachers,
11 coaches or parents finding out.

12 229. From the outset, JUUL was well-aware that a huge portion of its sales was going
13 to persons like Plaintiff under age 26, but did nothing to curb, prevent, or mitigate the harms that
14 its products could cause.

15 **M. JUUL Created an Youth Vaping Epidemic and Exposed a New Generation to**
16 **the Dangers of Nicotine Products.**

17 230. JUUL’s marketing and product design efforts have been wildly successful. Since
18 its launch, JUUL is now the fastest growing e-cigarette in the country. Because the JUUL delivers
19 more nicotine in a shorter amount of time than any other product, delivers that nicotine in a
20 sweetened vapor that causes no irritation, and does so through a concealable device that can be
21 consumed discretely in class, at home, and in the car, nicotine naïve users like Plaintiff frequently
22 spiral into patterns of addiction with no historical precedent. It is not uncommon for teenagers,
23 like Plaintiff, to consume two JUULpods a day, the nicotine equivalent of at least as many—and
24 likely more—packs of cigarettes.

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27 ⁹⁷ Richtel & Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette*
28 *company says it never sought teenage users, but the F.D.A. is investigating whether Juul*
intentionally marketed its devices to youth (Aug 27, 2018), *The New York Times*,
www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html (as of July 5, 2019).

1 231. Because JUUL’s marketing turned the JUUL into a status symbol for teens, the
2 acute nicotine addiction a JUUL fosters is frequently reinforced by the idea—which JUUL
3 spread—that JUUL use is what “cool” popular kids do in high school. As a result, the medical
4 community has found itself ill-equipped to develop a treatment for JUUL-addicted youth, as
5 evidenced by a January 2019 FDA-sponsored meeting concerning the role of drug therapies in
6 treating e-cigarette use.

7 232. The vaping epidemic caused by JUUL has swept the entire nation in a short period
8 of time. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends
9 for 2018 reported that increases in adolescent Electronic Nicotine Delivery System (“ENDS”)
10 vaping from 2017 to 2018 were the “*largest ever recorded in the past 43 years for any adolescent*
11 *substance use outcome in the U.S.*”⁹⁸

12 233. The percentage of 12th grade students who reported vaping nicotine almost
13 doubled between 2017 and 2018, rising from 11% to 21%. The ten-percentage-point increase in
14 12th grade students who reported vaping nicotine (an indicator of nicotine addiction) is “twice as
15 large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”
16 *Id.* “One in five 12th graders vaped nicotine in the last 30 days in 2018.” *Id.* And because JUUL
17 controls over 50% of the e-cigarette market, and was released immediately prior to the jump in
18 vaping prevalence from 11% of teens to 21%, the entire increase in vaping prevalence since 2016
19 is attributable to JUUL.

20 234. FDA Commissioner Dr. Scott Gottlieb has described the increase in e-cigarette
21 consumption as an “almost ubiquitous – and dangerous – trend” that is responsible for an
22 “epidemic” of nicotine use among teenagers.⁹⁹ The rapid –indeed infectious- adoption of e-
23 cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to
24

25 ⁹⁸ Prieur, National Adolescent Drug Trends in 2018 (Dec 17, 2018), Institute For Social Research,
26 The University of Michigan, <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/> (as of July 5, 2019).

27 ⁹⁹ FDA launches new, comprehensive campaign to warn kids about the dangers of e-cigarette use
28 as part of agency’s Youth Tobacco Prevention Plan, amid evidence of sharply rising use among
kids, U.S. Food & Drug Administration, (Sep 18, 2018),
www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm (as of July 5, 2019)

1 tobacco products.” *Id.* The Commissioner identified the two primary forces driving the epidemic
2 as “youth appeal and youth access to flavored tobacco products.” *Id.*

3 235. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome
4 Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a
5 lifetime of nicotine addiction and associated health risks.”¹⁰⁰

6 236. Even more troubling are the challenges associated with getting kids to quit JUUL
7 once they start. JUUL’s aggressive social media campaign puts JUUL advertisements before them
8 every day, all day. Those that want to stop thinking about it are faced with advertising when
9 engaging in their regular activities. And even while JUUL has purportedly stopped advertising on
10 social media in recent months, its hashtags, imagery, and impact live on, as there remain nearly
11 524,000 posts and counting on Instagram featuring the #juul hashtag as of July 8, 2019.

12 237. Moreover, many medications for breaking nicotine addictions are approved only
13 for adults.

14 238. The inadequacy of quality control and other standards in the manufacture of JUUL
15 raises additional, serious public health concerns regarding youth access and use. For instance,
16 actual nicotine concentrations in JUUL can vary from advertised amounts, sometimes
17 significantly exceeding the advertised concentration of nicotine. Because the concentration of
18 nicotine in JUUL pods is already staggeringly high and potent, concentrations over the advertised
19 amounts can increase the risk that users could become addicted or experience nicotine poisoning,
20 or experience a spike in blood pressure which can result in serious illness or death. A related
21 concern is the lack of full disclosure of all ingredients in e-liquids, some of which can also cause
22 harm when inhaled.

23 N. **JUUL Implemented its Advertising Strategy with the Advice and Services of**
24 **Defendants Does 1-100.**

25 239. In order to implement such a diverse, wide-ranging advertising scheme, designed
26 for the sole purpose of delivering its JUUL e-cigarette products to young consumers, JUUL

27 ¹⁰⁰ Surgeon General’s Advisory on E-cigarette Use Among Youth (last updated Apr 9, 2019),
28 CDC, www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html
(as of July 5, 2019).

1 worked in concert with an array of marketing, research and development, and distribution
2 professionals.

3 240. JUUL's advertising and marketing relied on the ideas, strategies, and advice of
4 marketing and public relations entities.

5 241. These entities, unnamed Defendants Does 25 through 50, willingly and knowingly
6 provided advertising expertise to JUUL, fully aware that JUUL would use these advertisements to
7 target, sell to, and ultimately increase the number of young people consuming nicotine via its
8 products.

9 242. Defendants Does 25 through 50 used their knowledge of how young adults use
10 social media, interact with social media posts, and are influenced by such posts, to create an
11 advertising strategy designed to consistently, relentlessly, and exploitatively induce young adults
12 and teenagers to use JUUL's JUUL e-cigarette products.

13 243. Defendants Does 25 through 50 provided their marketing services knowing that
14 the marketing slogans, advertisements, and advertising methods they created were deceptive,
15 provided no meaningful warning to users, and would necessarily mislead or otherwise falsely
16 suggest that JUUL's JUUL e-cigarette products were not harmful, not addictive, or otherwise safe
17 for use.

18 244. Defendants Does 25 through 50 expended time, money, and effort in order to
19 design, create, and implement and pervasive advertising scheme whose sole purpose was to
20 exploit and influence the minds of young adults into associating social status, popularity,
21 desirability, and success with the purchase and consumption of JUUL's JUUL e-cigarette
22 products.

23 245. Defendants Does 25 through 50 essentially used the playbook of cigarette and
24 tobacco product advertising implemented by companies such as Philip Morris, in order to market
25 JUUL e-cigarette products to young adults.

26 O. **JUUL Unraveled Decades of Progress in Reducing Teen Smoking by**
27 **Exploiting Regulatory Loopholes.**

28 246. The teen vaping epidemic was by design, not by accident.

1 247. When JUUL was first developed, the FDA’s regulations on tobacco products were
2 vague as to whether they applied to vaping devices. Because the regulations did not explicitly
3 identify electronic vaping devices that dispensed tobacco and nicotine as a regulated product,
4 JUUL interpreted those regulations to mean that it could sell its dangerous products to anyone,
5 regardless of their age, and that it did not have to comply with the advertising and labeling
6 restrictions that restricted other tobacco companies.

7 248. As other vaping companies began to enter the market, JUUL no doubt knew that
8 this gray area was unlikely to stay gray for long. Knowing that the clock was ticking, JUUL went
9 on a wild spree to get as many young people addicted as possible while it still viewed itself as
10 “unregulated.” The aggressive advertising described above was designed not just to sell the
11 products to teenagers, but to sell the product to as many teenagers as possible while it still had a
12 plausible defense to any assertion that it was violating FDA regulations. By hooking teens, JUUL
13 not only ensured it would have loyal consumers for decades, but those teens would influence their
14 friends.

15 249. Moreover, by pumping social media platforms full of images of cool, young
16 people having fun while JUULing, JUUL ensured that everyone from adults to young children,
17 would think JUULing was a cool, fun, and safe activity. Just as RJR Reynolds learned with Joe
18 Camel, even very young children would in turn be more likely to form strong, positive
19 associations with the tobacco product and be more susceptible to trying it in the future.

20 250. In 2017, the FDA announced that it would be taking steps to regulate vaping
21 devices such as JUUL and other ENDS. Regulations were proposed and ultimately went into
22 effect in late 2018. But the damage was done, and it was too late for Mr. Berger.

23 251. In 2018, after the FDA opened an investigation and lawsuits were filed, JUUL set
24 out to rewrite its history. It has removed from its website and much of the internet images of
25 glamorous young models seductively exhaling clouds of vapors. JUUL’s website now pictures
26 middle-age adults in non-glamorous settings and suggests that JUUL solely exists for the benefit
27 of adult smokers looking for an alternative. Although JUUL now markets its product as a
28 smoking cessation device (“Switch to JUUL”), it has not received FDA approval as a modified

1 risk tobacco product or as a nicotine replacement therapy, and JUUL's e-cigarette has not
2 participated in any FDA approval process analyzing its risks and benefits. While JUUL has also
3 announced some half-hearted voluntary measures to reduce access to young people, the cat
4 cannot go back in the bag. The viral marketing campaign and images live on, the candy flavors
5 are still available, and the product remains designed to maximize the nicotine delivery for young
6 people, leading to devastating health consequences.

7 252. To this day, JUUL has not disclosed the health risks associated with its products,
8 has not recalled or modified its products despite the known risks, and continues to foster a public
9 health crisis, placing millions of young people in harm's way.

10 **P. JUUL's Conduct Harmed Mr. Berger.**

11 253. Starting in mid-2015, when he was approximately 17 or 18, through July 2017,
12 Plaintiff was exposed to advertising and promotions for JUUL on his cell phone through displays
13 at the gas station near his home, and via print and other sources. These ads and promotions made
14 JUULing seem fun, healthy and cool.

15 254. Plaintiff first tried JUUL in or around June 2015, when the device became
16 ubiquitous among his high school friends.

17 255. Plaintiff started using JUUL with his friends, largely because it had a cool design,
18 appealing flavors, and was fun to use. Part of the attraction for Mr. Berger was the discreet slick
19 design that would avoid detection from teachers, coaches or other authority figures.

20 256. Before Mr. Berger tried JUUL, he was not addicted to nicotine.

21 257. Mr. Berger initially was attracted to JUUL's flavors, including mint, fruit medley
22 and crème brulee. He also regularly used mango flavor. He purchased JUUL devices and pods at
23 gas stations close to his home in Connecticut, as well as at various retail shops in Syracuse, where
24 he was a college student. At the gas station, Mr. Berger was exposed to JUUL's point of sale
25 advertising, promotions and messaging.

26 258. Like the majority of young people surveyed, Plaintiff was not aware when he first
27 began "JUULing" that the device contained nicotine. He did not know how much nicotine the
28 device contained, that it was addictive, or that it carried any health risks.

1 259. Mr. Berger relied to his detriment on JUUL's representations that the product was
2 safe, not harmful, fun, and that each JUULpod contained no more nicotine than approximately a
3 pack of cigarettes.

4 260. JUUL never warned Mr. Berger that JUUL was addictive, dangerous, could cause
5 him to suffer a stroke, or would permanently alter his brain.

6 261. Had Mr. Berger known that JUUL was addictive or increased his risk for having a
7 stroke, he never would have tried it.

8 262. JUUL never disclosed that it had manipulated the nicotine in JUUL to deliver
9 massive doses of nicotine that could addict him quickly, spike his blood pressure, and put him at
10 greater risk of stroke.

11 263. JUUL never instructed Mr. Berger that the product was unsafe for him, nor how
12 much JUUL was safe to consume.

13 264. Had Mr. Berger known that JUUL was not safe, was addictive, dangerous, could
14 cause strokes, could permanently alter his brain and impair his mood and mind, that JUUL had
15 manipulated nicotine to maximize addiction, or that each JUULpod delivered substantially more
16 nicotine than a pack of cigarettes, he would not have used or continued to use JUUL.

17 265. Within weeks of first using JUUL, Mr. Berger became addicted to nicotine. His
18 use steadily increased, until he began using JUUL immediately upon waking, extensively
19 throughout the day (often every 10-20 minutes), and then just before going to sleep. He would
20 JUUL during class, on the tennis court, and during restroom breaks while having dinner with his
21 family. He struggled to function without nicotine, and when he tried to quit using the product, he
22 would shake, have mood swings, and become antsy and irritable. The level of nicotine his body
23 required increased over time, and by July 87, 2017, he was consuming up to two Pods per day.

24 266. On July 8, 2017, Mr. Berger was home from college, working as a summer intern,
25 visiting with family and friends. As he was getting ready for bed, he experienced a terrible
26 headache. He had difficulty controlling his hands, and eventually stumbled into his parents'
27 bedroom, became incoherent, and then fell flat onto his bed. Mr. Berger's parents rushed him to
28 the hospital, where he was diagnosed with a hemorrhagic stroke. Mr. Berger underwent multiple

1 brain surgeries, required hospitalization for more than a hundred days, and suffered catastrophic
2 injuries that will permanently impair his functioning and ability to live independently.

3 267. While Mr. Berger was in the hospital, he suffered nicotine withdrawal so severe,
4 that his doctors had to administer a nicotine patch.

5 268. Before he started to use JUUL, Mr. Berger was a healthy, active, ambitious and
6 student. He exhibited no signs or indications that he was at risk for a hemorrhagic stroke. While
7 he has and will continue to fight for his recovery and to lead as normal a life as possible, Mr.
8 Berger's brain and other physical injuries have caused him to become more withdrawn,
9 depressed, aggressive and impatient with his family and friends. He feels socially isolated, but
10 never alone, as he cannot perform some of his most basic day-to-day tasks without full-time care
11 and assistance, usually provided by his parents.

12 269. As a direct and proximate result of JUUL's conduct, Mr. Berger suffered
13 catastrophic and permanent injuries, including: a massive hemorrhagic stroke, secondary swelling
14 stroke following pulmonary arrest, three brain surgeries, left side paralysis, 50% loss of vision
15 from both left and right eyes, speech impairment, prosthetic bone plate, permanent scarring and
16 disfigurement, cognitive impairments, imbalance, mood disorder, nicotine addiction, and
17 permanent brain changes.

18 270. As a result of his injuries caused by JUUL, Mr. Berger has incurred and will incur
19 significant medical expenses, pain and suffering, and emotional distress. His earning capacity is
20 greatly diminished, and he can no longer live independently.

21 **VI. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **Strict Products Liability - Design Defect - Consumer Expectations Test**
(against Defendants JUUL and Does 1 through 25)

24 271. Plaintiff incorporates the above and below allegations by reference.

25 272. At all relevant times, JUUL Labs, in concert and aided by Does 1 through 25,
26 manufactured, distributed, and/or sold the JUUL Devices and Pods ("JUUL Products") that
27 Plaintiff consumed.

1 absorbed by users, making them even more addictive and dangerous. There were and are
2 alternative designs available to JUUL. For example, Defendants could have designed the
3 product to appeal to adult smokers over age 26 who smoked conventional cigarettes without
4 using the flavors or reduced “harshness” to attract young people and create their addiction to
5 nicotine. Further, Defendants could have significantly lowered the nicotine content, while still
6 delivering sufficient levels to cigarette smokers, to reduce the risks from high exposure to
7 nicotine and repeated exposures to the toxic chemicals in JUUL.

8 280. JUUL and Does 1 through 25 had constructive notice or knowledge and knew, or
9 in the exercise of reasonable care should have known, that its Products were dangerous, had
10 risks, and were defective in design, including because delivering high doses of nicotine to a
11 young person could cause addiction to nicotine, permanently alter the structure of the developing
12 brain, significantly increase blood pressure, repeatedly expose users to toxic chemicals, and
13 cause strokes resulting in catastrophic, life-altering injuries.

14 281. As a result of the defect in JUUL’s Products, Plaintiff was harmed as described
15 herein, including that he suffered a massive hemorrhagic stroke, secondary swelling stroke
16 following pulmonary arrest, three brain surgeries, left side paralysis, 50% loss of vision from both
17 left and right eyes, speech impairment, prosthetic bone plate, permanent scarring and
18 disfigurement, cognitive impairments, imbalance, mood disorder, nicotine addiction, and
19 permanent brain changes.

20 282. The defect(s) in JUUL’s Products was a substantial factor in causing Plaintiff’s
21 harms.

22 **THIRD CAUSE OF ACTION**
23 **Strict Products Liability - Failure to Warn**
24 **(against Defendants JUUL and Does 1 through 25)**

25 283. Plaintiff incorporates the above and below allegations by reference.

26 284. At all relevant times, JUUL Labs, in concert and aided by Does 1 through 25
27 manufactured, distributed, and/or sold the JUUL Products that Plaintiff consumed.
28

1 285. The JUUL Products that Plaintiff consumed had potential risks that were known
2 or knowable in light of the scientific and medical knowledge that was generally accepted in the
3 scientific community at the time of manufacture, distribution, or sale.

4 286. The potential risks presented a substantial danger when the JUUL Products were
5 used or misused in an intended or reasonably foreseeable way.

6 287. The ordinary consumer of JUUL Products would not have recognized the
7 potential for risks.

8 288. JUUL Products were defective and unreasonably dangerous when they left
9 JUUL's possession because they did not contain adequate warnings, including warnings that the
10 products are not safe for anyone under 26 years old, may cause strokes, heart attacks and other
11 cardiovascular injuries, are powerfully addictive, may cause permanent brain changes and mood
12 disorders, may impair learning and cognition. Instead, as described herein, Defendants JUUL and
13 Does 1 through 25 made their products available in youth-friendly colors and flavors. Defendant
14 also designed their products to be more palatable to youth and nonsmokers by increasing JUUL's
15 inhale-ability, and increased the level of nicotine that is absorbed by users, making them even
16 more addictive and dangerous.

17 289. JUUL Products were defective and unreasonably dangerous when they left
18 JUUL's possession because they lacked sufficient instructions, including instructions that the
19 products should not be used by anyone under age 26, should not be used concurrently with
20 cigarettes, and instructions regarding how many pods are safe to consume in a day.

21 290. JUUL and Does 1 through 25 had constructive notice or knowledge and knew, or
22 in the exercise of reasonable care should have known, that its Products were dangerous, had
23 risks, and were defective without adequate warnings or instructions, including because delivering
24 high doses of nicotine to a young person could cause addiction to nicotine, permanently alter the
25 structure of the developing brain, and cause strokes resulting in catastrophic, life-altering
26 injuries.

27 291. JUUL and Defendants 1 through 25 failed to adequately warn or instruct
28 concerning the potential risks of the JUUL Products.

1 Defendants knew or should have known that its JUUL Products could cause serious risk of harm,
2 particularly to young persons like Plaintiff.

3 299. JUUL and/or their predecessors-in-interest, along with Defendants Does 1
4 through 100, were negligent, reckless and careless and failed to take the care and duty owed to
5 Plaintiff, thereby causing Plaintiff to suffer harm.

6 300. The negligence and extreme carelessness of JUUL and/or their predecessors-in-
7 interest, along with Defendants Does 1 through 50 includes, but is not limited to, the following:

8 a. Failure to perform adequate testing of the JUUL Products prior to
9 marketing to ensure safety, including long-term testing of the product, and testing for injury to the
10 brain and cardiovascular systems, and other related medical conditions;

11 b. Failure to take reasonable care in the design of JUUL's Products;

12 c. Failure to use reasonable care in the production of JUUL's Products;

13 d. Failure to use reasonable care in the manufacture of JUUL's Products;

14 e. Failure to use reasonable care in the assembly of JUUL's Products;

15 f. Failure to use reasonable care in supplying JUUL's Products;

16 g. Failure to use reasonable care in advertising, promoting, and marketing
17 JUUL's Products;

18 h. Promotion of JUUL to young people under age 26;

19 i. Use of flavors and design to appeal to young people under age 26, in that
20 the products smell good, look cool and are easy to conceal from parents and teachers;

21 j. Use of design that maximizes nicotine delivery while minimizing
22 "harshness", thereby easily creating and sustaining addiction;

23 k. Failure to prevent JUUL from being sold to young people under age 26;

24 l. Failure to prevent JUUL use among young people under age 26;

25 m. Failure to curb JUUL use among young people under age 26;

26 n. Failure to develop tools or support to help people addicted to JUUL cease
27 using the product;

28

1 o. Failure to reasonably and properly test and properly analyze the testing of
2 JUUL's Products under reasonably foreseeable circumstances;

3 p. Failure to warn its customers about the dangers associated with use of
4 JUUL's Products, in that it was unsafe for anyone under age 26, significantly increases blood
5 pressure, causes vascular damage, carries risks of stroke, heart attacks, and cardiovascular
6 events, is powerfully addictive, can cause permanent brain changes, mood disorders, and
7 impairment of thinking and cognition.

8 q. Failure to instruct customers not to use the product if they were under 26,
9 and failing to provide any instructions regarding a safe amount of JUUL pods to consume in a
10 day.

11 r. Failure to warn customers that JUUL had not adequately tested or
12 researched JUUL Products prior to marketing to ensure safety, including long-term testing of the
13 product, and testing for injury to the brain and cardiovascular systems, and other related medical
14 conditions;

15 s. Failure to utilize proper materials and components in the design of
16 JUUL's Products to ensure they would not deliver unsafe doses of nicotine;

17 t. Failure to use due care under the circumstances;

18 u. Failure to take necessary steps to modify JUUL's Products to avoid
19 delivering high doses of nicotine to young people and repeatedly exposing them to toxic
20 chemicals;

21 v. Failure to recall JUUL's Products; and

22 w. Failure to inspect JUUL's Products for them to operate properly and avoid
23 delivering unsafe levels of nicotine to young persons.

24 301. Defendants' acts and omissions constitute gross negligence, because they
25 constitute a total lack of care and an extreme departure from what a reasonably careful person
26 would do in the same situation to prevent foreseeable harm to young persons, like Plaintiff.
27
28

1 permanent brain changes, mood disorders, strokes, heart attacks, and other cardiovascular
2 injuries. Nevertheless, at no point during this time period did JUUL recall, repair, or warn of the
3 danger posed by Products.

4 310. A reasonable designer, manufacturer, distributor, or seller facing the same or
5 similar circumstances as JUUL in the exercise of reasonable care, would have recalled JUUL
6 Products to ensure young people including Plaintiff were not harmed.

7 311. JUUL's failure to timely recall its Products was a substantial factor in causing
8 harm to Plaintiff. Had JUUL recalled its Products when it knew or should have known of the
9 risks to young people like Plaintiff, he would not have used it, and he would not have become so
10 powerfully addicted to the product and would not have suffered a hemorrhagic stroke.

11 **SIXTH CAUSE OF ACTION**
12 **Fraudulent Concealment**
13 **(against Defendants JUUL and Does 1 through 50)**

14 312. Plaintiff incorporates the above and below allegations by reference.

15 313. Defendants had a duty to disclose material facts about JUUL to Plaintiff, as:

16 a. Defendants disclosed some facts to Plaintiff about the nature and safety of
17 its products but intentionally failed to disclose other facts, making the disclosures it did make
18 misleading or deceptive; and

19 b. Defendants intentionally failed to disclose certain facts about the nature
20 and safety of JUUL products that were known only to Defendants and that Defendants knew
21 Plaintiff could not have known or reasonably discovered.

22 314. At all times relevant, Defendants fraudulently and deceptively sold or partnered to
23 sell JUUL products to Plaintiff as safe or not harmful, when Defendants knew it to be untrue.

24 315. Defendants fraudulently and deceptively downplayed or minimized any risk
25 associated with e-cigarettes generally and JUUL in particular for young persons under age 26. At
26 all relevant times, Defendant JUUL represented its products on its website as a "smarter" choice.
27 Defendant JUUL pitched investors by claiming that the product was not harmful, and therefore
28 any concern about addiction was irrelevant. Defendants and/or others worked together to pitch
news stories or other media content designed to downplay the risks of e-cigarettes, suggesting that

1 any concern was overblown, or a panic. These tactics mimic those used by the tobacco industry
2 to sow seeds of doubt and confusion among the public, to initiate new users, to keep customers
3 buying JUUL products, and to avoid regulation or legislative efforts to control sales.

4 316. Defendants failed to disclose to Plaintiff that the JUUL significantly increases
5 blood pressure, and can cause strokes and other adverse health effects.

6 317. Defendants failed to disclose that they had not adequately researched or tested
7 JUUL to assess its safety before placing it on the market and promoting it to young people under
8 age 26.

9 318. At all times relevant to Plaintiff, Defendants failed to disclose that JUUL was
10 addictive.

11 319. Defendants also failed to disclose to Plaintiff that the JUUL nicotine salts
12 purchased were highly addictive in nature, making it extremely difficult for one to cease
13 purchasing JUULpod refills.

14 320. Defendants further failed to disclose to Plaintiff that JUUL is designed to create
15 and sustain an addiction to nicotine. Defendants also manipulated the formulations of JUUL
16 devices and JUULpods in ways that could and would impact their potency and addictiveness, and
17 Defendants did so without notifying Plaintiff. Defendants actively concealed the nicotine content
18 and nicotine potency of JUUL e-cigarettes.

19 321. Defendants fraudulent misrepresented to users the amount of nicotine consumed
20 by using JUUL. As previously explained, Defendant JUUL claims that one JUULPod is
21 "approximately equivalent to about 1 pack of cigarettes," but that is false and misleading. The
22 amount of nicotine consumed from one JUULPod is actually equivalent to the amount of nicotine
23 consumed through at least two packs of traditional cigarettes.

24 322. Each of these misrepresentations and omissions were material at the time they
25 were made. In particular, each of the misrepresentations and omissions concerned material facts
26 that were essential to the analysis undertaken by Plaintiff as to whether to purchase or consume
27 JUUL ENDS or Pods.

28 323. Plaintiff did not know of the facts that Defendants concealed.

1 331. During all relevant times, including before Plaintiff consumed JUUL, Defendant
2 JUUL was part of a conspiracy with tobacco and e-cigarette industry players, Does 51 through
3 100, to fraudulently conceal, misrepresent, and downplay the risks of e-cigarettes to boost profits
4 at the expense of public health. Does 51 through 100, for research and development, marketing,
5 and distribution purposes, engaged consultants, pundits, academics, lobbyists, media
6 personalities, reporters, researchers and other influencers to tout the safety of e-cigarettes, and
7 benefits of nicotine, while minimizing or downplaying the dangers, particularly to those under
8 age 26. These tactics mimic those used by the tobacco industry to sow seeds of doubt and
9 confusion among the public, to initiate new users, to keep customers buying JUUL products, and
10 to avoid regulation or legislative efforts to control sales.

11 332. JUUL was aware that others in the e-cigarette and tobacco industry, Does 51
12 through 100, planned to engage in a campaign of doubt to mislead, downplay, and deflect
13 concerns about the risks of e-cigarettes and nicotine, and to fraudulently conceal material
14 information about the safety of these products and compounds.

15 333. JUUL agreed with others in the e-cigarette and tobacco industry, Does 51 through
16 100, and intended that the conspiracy to commit fraudulent concealment be committed.

17 334. JUUL well-understood and continues to understand that by working in concert
18 with other e-cigarette manufacturers and the tobacco industry, it can more effectively mislead and
19 fraudulently conceal material facts from the public, including Plaintiff, regarding risks of its
20 products, as described herein.

21 335. JUUL's participation in this conspiracy was a substantial factor in causing
22 Plaintiff's harm as alleged herein.

23 336. Defendants' acts and omissions as described herein were committed maliciously,
24 oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's rights,
25 interests, and well-being to enrich Defendants. Defendants' conduct warrants an assessment of
26 punitive damages in an amount sufficient to deter such conduct in the future, which amount is to
27 be determined according to proof.

**EIGHTH CAUSE OF ACTION
Intentional Misrepresentation
(against Defendants JUUL and Does 1 through 50)**

1
2
3 337. Plaintiff incorporates the above and below allegations by reference.

4 338. At all times relevant, Defendants represented to Plaintiff via the media,
5 advertising, website, social media, packaging, and promotions that:

6 a. JUUL products were safe or not harmful; and

7 b. That one JUULPod is “approximately equivalent to about 1 pack of
8 cigarettes”

9 339. These representations were false. JUUL is unsafe for anyone under age 26. The
10 amount of nicotine consumed from one JUULPod is actually equivalent to the amount of nicotine
11 consumed through at least two packs of traditional cigarettes.

12 340. Defendants knew these representations were false, or made them recklessly
13 without regard for their truth. For example, JUUL claims that it did not study the safety of its
14 products, acknowledging that it had a vested interest, and instead left it to others to analyze their
15 risks.

16 341. Defendants intended for Plaintiff to rely on these representations.

17 342. Each of these misrepresentations were material at the time they were made. In
18 particular, each of the misrepresentations concerned material facts that were essential to the
19 analysis undertaken by Plaintiff as to whether to purchase or consume JUUL ENDS or Pods.

20 343. Defendants have yet to disclose correct these misrepresentations about JUUL
21 products.

22 344. Plaintiff reasonably relied on these representations and was harmed as described
23 herein. Plaintiff’s reliance on Defendants’ representations was a substantial factor in causing his
24 harms, including suffering a stroke and becoming powerfully addicted to JUUL. Had Defendants
25 told Plaintiff the truth about the safety and composition of JUUL’s products, he would not have
26 purchased them.

27 345. Defendants’ fraud was a substantial factor in Plaintiff’s harm as described herein,
28 including that he suffered a massive hemorrhagic stroke, secondary swelling stroke following

1 pulmonary arrest, three brain surgeries, left side paralysis, 50% loss of vision from both left and
2 right eyes, speech impairment, prosthetic bone plate, permanent scarring and disfigurement,
3 cognitive impairments, imbalance, mood disorder, nicotine addiction, and permanent brain
4 changes. He also suffered economic harm in that he would not have purchased JUUL if he had
5 known the true facts.

6 346. Defendants' acts and omissions as described herein were committed maliciously,
7 oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's rights,
8 interests, and well-being to enrich Defendants. Defendants' conduct warrants an assessment of
9 punitive damages in an amount sufficient to deter such conduct in the future, which amount is to
10 be determined according to proof.

11 **NINTH CAUSE OF ACTION**
12 **Violations of the Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq.**
13 **(against Defendants JUUL, and Does 26 through 100)**

14 347. Plaintiff incorporates the above and below allegations by reference.

15 348. The UCL prohibits acts of "unfair competition," including any "unlawful, unfair
16 or fraudulent business act or practice."

17 349. Defendants have engaged in unlawful, unfair and fraudulent business acts and
18 practices in violation of the UCL. Defendants conduct violates the UCL in at least the following
19 ways:

- 20 a. By violating the California Consumer Legal Remedies Act, as described
21 below;
- 22 b. By concealing the health risks associated with JUUL products, including,
23 but not limited to, increased blood pressure, strokes, heart attacks and other cardiovascular events,
24 addiction, permanent brain changes, mood disorders and learning and cognitive impairments;
- 25 c. By concealing that JUUL is unsafe for anyone under age 26;
- 26 d. By downplaying and minimizing the risks of JUUL products and
27 promoting them as safe and not harmful;
- 28 e. By conspiring with others in the tobacco industry to downplay and
minimize the risks of e-cigarette products, create confusion and doubt in the public regarding the

1 safety of e-cigarettes, overstate the benefits of nicotine and e-cigarette products, and undermine
2 the public health efforts to prevent and curb use of e-cigarettes by those under age 26;

3 f. By misrepresenting the delivery of nicotine as “approximately equivalent
4 to one pack of cigarettes” when in fact, as consumed, JUUL products deliver much higher
5 quantities of nicotine;

6 g. By concealing that JUUL is designed to create and sustain addiction among
7 young people rather to transition adult smokers from conventional cigarettes;

8 h. By knowingly and intentionally designing the JUUL device and JUUL
9 pods in a way that deliberately appeals to young people:

10 i. Making the pods available in flavors that JUUL knew that teens
11 would find irresistible and would not associate with tobacco or smoking;

12 ii. Intentionally advertising and marketing its products in ways that
13 make the device appear deceptively harmless, including concealing that product is highly
14 addictive, poses long-term risks to developing brains (mood disorders, permanent impairment of
15 impulse control, concentration and learning), significantly increases blood pressure, causes
16 repeated exposure to toxic chemicals and can cause cardiovascular events, such as strokes and
17 heart attacks;

18 iii. Designing the JUUL so that it maximizes nicotine delivery, while
19 minimizing “harshness”, so as to recruit and retain young people as the next generation of
20 customers;

21 iv. Designing the JUUL device so that it is small and can easily be
22 concealed;

23 v. Designing the JUUL device so that it resembles a USB flash drive,
24 which can be charged in the USB port of laptop, so that parents and teachers will have trouble
25 identifying when a young person is JUULing;

26 vi. Making the smell emitted when a young person exhales
27 indistinguishable from other common scents, so that parents and teachers will not be any the
28 wiser; and

1 vii. Promoting the JUUL device on social media sites such as Twitter
2 and Instagram in order to appeal to the younger generation.

3 350. Defendants' unfair and fraudulent business acts and practices caused Plaintiff to
4 purchase the JUUL device and/or JUUL pods.

5 351. Defendants' conduct is unfair because Defendants deceive and mislead consumers
6 by inducing young persons under age 26 to purchase a product that is unsafe for them, delivers
7 high amounts of nicotine, is incredibly addictive, causes repeated exposure to toxic chemicals,
8 carries risks of stroke and other cardiovascular events, and has no benefit to them, while making
9 it appear that the product is harmless. Defendants were and are aware that young persons are
10 unable to appreciate the risk of JUULing to their health and welfare, and that many young people
11 do not even know that the product always contains nicotine, is addictive, or unsafe for them in
12 any amount. In this way, Defendants unfairly target young persons in order to get customers for
13 life.

14 352. Defendants' business practices are also fraudulent because Defendants deceptively
15 sell JUUL products to Plaintiffs as harmless, and a "safer" alternative to cigarettes, while
16 concealing that JUUL is unsafe for anyone under age 26, delivers a more potent dose of nicotine
17 than conventional cigarettes, is highly addictive, significantly increases blood pressure, and can
18 cause strokes, heart attacks and other deleterious effects.

19 353. Defendants' misrepresentations and omissions as alleged herein were consistent
20 with and part of its scheme to lure young persons into becoming customers for life and to
21 maximize profits at the expense of public health.

22 354. Accordingly, Plaintiff has suffered injury in fact including lost money as a result
23 of Defendants' unlawful, unfair and fraudulent business practices.

24 355. Plaintiff seeks to enjoin further unlawful, unfair and fraudulent acts or practices by
25 Defendants under Bus. & Prof. Code § 17200.

26 356. Plaintiff requests that this Court enter such orders or judgments as may be
27 necessary to enjoin Defendants from continuing their unfair and deceptive practices and to restore
28 to Plaintiff any money it acquired by unfair competition, including restitution and/or

1 disgorgement, as provided in Bus. & Prof. Code § 17203 and Bus. & Prof. Code § 3345; and for
2 such other relief set forth below.

3 357. Defendants' conduct, as described herein, is unfair because it is immoral,
4 unethical, unscrupulous, oppressive, and substantially injurious. Under the auspices of creating
5 an alternative for adult cigarette smokers, Defendants developed a highly addictive and
6 dangerous product and marketed it to young people as cool, fun, and harmless. Their scheme
7 worked, attracting millions and millions of teens, including Plaintiff, who have become
8 powerfully addicted to their product and have been exposed to massive amounts of nicotine and
9 other toxic chemicals. As a result of Defendants' conduct, Plaintiff suffered harms as described
10 herein, and others are at risk of the same or similar injuries. Defendants created this epidemic
11 and bear responsibility for its consequences.

12 358. The gravity of the harm resulting from Defendants' conduct far outweighs any
13 conceivable utility of this conduct. There are reasonably available alternatives that would further
14 Defendants' legitimate business interests in offering an alternative to adult cigarette smokers
15 over age 26, including, but not limited to: using only tobacco flavoring, designing the products to
16 deliver far less nicotine—only as much as would be sufficient to attract a nicotine-addicted
17 cigarette smoker—so as to reduce the nicotine-related harms and reduce the exposure to other
18 toxic chemicals, and offering the products “behind the counter” at pharmacies. Instead,
19 Defendants used kid-friendly flavors and design, promoted the products as harmless and cool,
20 conspired with others in the industry to downplay the risks and inflate the benefits, and has done
21 nothing to curb or prevent young people from starting and continuing to use its products, despite
22 the known risks of harm.

23 359. Plaintiff could not have reasonably avoided injury from Defendants' unfair
24 conduct. Plaintiff did not know, and had no reasonable means of learning, that JUUL could
25 harm him as it did. Nor did Plaintiff know that JUUL had been designed to lure and trap him
26 into becoming a customer for life.

27 360. Plaintiff was harmed, and Defendants' misleading statements and omissions were
28 a substantial factor in causing Plaintiff's harm.

1 c. Defendants represented that they had developed JUUL products only as an
2 alternative for adult cigarette smokers, when in fact they designed and marketed JUUL's
3 products to young people to create and sustain addiction so as to build customers for life; and

4 d. Defendants concealed material facts from Plaintiff, including that JUUL is
5 highly addictive, significantly increases blood pressure, causes repeated exposure to toxic
6 chemicals, causes vascular damage, causes strokes, heart attacks and other cardiovascular risks,
7 and causes permanent brain changes, mood disorders and learning and cognitive impairments.

8 368. Defendants had ample means and opportunities to tell the truth and to alert
9 Plaintiff regarding the dangers of JUUL's product and to instruct him not to use it, but did not.

10 369. Had Defendants not engaged in their scheme of misrepresentations and omissions,
11 Plaintiff would not have purchased, or continued purchasing JUUL and would not have been
12 harmed.

13 370. Defendants had a duty to disclose material facts regarding the risks of JUUL to
14 Plaintiff, because they had made partial representations that were made misleading by omissions,
15 and also because Defendants had exclusive knowledge of these facts, while Plaintiff could not
16 have known or reasonably discovered them.

17 371. Plaintiff was harmed, and Defendants' misleading statements and omissions were
18 a substantial factor in causing Plaintiff's harm. If Plaintiff had known the information that was
19 concealed, he would not have used JUUL, and would not have been harmed as described herein.
20 In the meantime, Defendants generated more revenue than they otherwise would have, unjustly
21 enriching themselves.

22 372. Plaintiff accordingly is entitled to equitable relief, reasonable attorneys' fees and
23 costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful,
24 fraudulent, and deceitful activity.

25 373. Pursuant to Civ. Code § 1782(a), Plaintiff sent a letter to JUUL regarding their
26 CLRA violations and affording them the opportunity to correct their business practices and
27 rectify the harm they caused. Plaintiff sent the CLRA notice via certified mail, return receipt
28

1 requested, to JUUL's principal places of business. Plaintiff reserves the right to amend this
2 complaint to seek money damages under the CLRA.

3 374. In accordance with Civ. Code § 1780(d), Plaintiff's CLRA venue declaration is
4 attached to this Complaint.

5 375. Defendants' conduct as set forth herein was reprehensible and subjected Plaintiff
6 to cruel and unjust hardship in conscious disregard of his rights, constituting oppression, for
7 which Defendants should be punished by punitive and exemplary damages in an amount
8 according to proof. Defendants' behavior evidences a conscious disregard for Plaintiff's safety,
9 health and well-being. Defendants' conduct was and is despicable conduct and constitutes
10 malice under Section 3294 of the California Civil Code. An officer, director, or managing agent
11 of each of Defendants JUUL and Does 1 through 100 personally committed, authorized, and/or
12 ratified the reprehensible conduct set forth herein. Plaintiff thus seeks an award of punitive
13 damages sufficient to penalize Defendants.

14 **VII. EQUITABLE TOLLING OF STATUTES OF LIMITATIONS**

15 376. Plaintiff hereby incorporates by reference all other paragraphs of this Complaint.

16 377. Plaintiff has suffered permanent and catastrophic injuries as a result of
17 Defendants' conduct.

18 378. Plaintiff filed this lawsuit within the applicable limitations period of first
19 suspecting that the JUUL Products were the cause of any appreciable harm sustained by Plaintiff,
20 within the applicable limitations period of first suspecting or having reason to suspect any
21 wrongdoing, and within the applicable limitations period of first discovering the injuries.
22 Plaintiff could not, by the exercise of reasonable diligence, have discovered any wrongdoing and
23 could not have discovered the causes of the injuries at an earlier time because the injuries
24 occurred without initial perceptible trauma or harm and, when the injuries were discovered, the
25 causes were not immediately known. Plaintiff did not suspect, nor did they have reason to
26 suspect, that wrongdoing had caused the injuries until recently. Plaintiff filed the original action
27 within two years of discovering the causes of action and identities of Defendants.
28

1 379. Plaintiff had no knowledge of the defects in the JUUL Products or of the wrongful
2 conduct of Defendants as set forth herein, nor did Plaintiff have access to information regarding
3 other injuries and complaints in the possession of Defendants. Additionally, Plaintiff was
4 prevented from discovering this information sooner because Defendants herein misrepresented
5 and continue to misrepresent to the public that the JUUL Products are safe, and Defendants
6 fraudulently concealed information to allow Plaintiff to discover a potential cause of action
7 sooner.

8 380. Furthermore, the running of any statute of limitations has been equitably tolled by
9 reason of Defendants' fraudulent concealment and conduct. Through their affirmative
10 misrepresentations and omissions, Defendants actively concealed from Plaintiff the true risks
11 associated with consuming JUUL e-cigarettes and JUULPods.

12 381. As a result of Defendants' actions, Plaintiff was unaware, and could not
13 reasonably know, or could not have reasonably learned through reasonable diligence, that
14 Plaintiff has been exposed to the risks alleged herein and that those risks were the direct and
15 proximate result of Defendants' acts and omissions.

16 382. Furthermore, Defendants are estopped from relying on any statute of limitations
17 because of their concealment of the truth, quality and nature of the JUUL e-cigarette and other
18 JUUL products. Defendants were under a duty to disclose the true character, quality and nature of
19 the JUUL products because this was non-public information over which the Defendants had and
20 continue to have exclusive control, and because the Defendants knew that this information was
21 not available to Plaintiff.

22 383. Defendants had the ability to and did spend enormous amounts of money in
23 furtherance of their purpose of marketing and promoting profitable JUUL products,
24 notwithstanding the known or reasonably known risks. Plaintiff could not have afforded and
25 could not have possibly conducted studies to determine the nature, extent and identity of related
26 health risks, and was forced to rely on Defendants' representations.

27 384. In representations to the Plaintiff and the public in general, Defendants also
28 fraudulently concealed and intentionally omitted the following material information:

- 1 a. that JUUL products were unsafe for use by anyone under the age of 26
2 b. that JUUL products were dangerous to young persons when used as
3 intended
4 c. that JUUL products delivered excessive does of nicotine, significantly
5 increase blood pressure, cause addiction, permanent brain changes, mood disorders, strokes, heart
6 attacks, and other cardiovascular injuries, and
7 d. that the JUUL products were defectively and negligently designed and had
8 defective, inadequate, and insufficient warnings and instructions.

9 385. Defendants were under a duty to disclose to Plaintiff, and the public in general, the
10 defective nature of the JUUL Products.

11 386. Defendants made the misrepresentations and actively concealed information
12 concerning the unsafe, dangerous, and harmful nature of the JUUL products with the intention
13 and specific desire to induce the consumers, specifically young adults, including Plaintiff, to rely
14 on such misrepresentations in selecting, purchasing and using the JUUL Products.

15 387. Defendants made these misrepresentations and actively concealed information
16 concerning the unsafe, dangerous, and harmful nature of the JUUL Products in the labeling,
17 advertising, promotional material or other marketing efforts.

18 388. These representations, and others made by Defendants, were false when made
19 and/or were made with the pretense of actual knowledge when such knowledge did not actually
20 exist, and were made recklessly and without regard to the true facts.

21 389. The misrepresentations and active concealments by Defendants were perpetuated
22 directly and indirectly by Defendants, its sales representatives, employees, distributors, agents,
23 marketers and those with whom it worked in concert to design, develop, market and distribute
24 JUUL products.

25 390. At the time the misrepresentations were made, Plaintiff did not know the truth
26 about the dangers and serious health and/or safety risks inherent in the use of the JUUL Products.
27 Plaintiff did not discover the true facts about the dangers and serious health and/or safety risks,
28

1 nor did Plaintiff discover the false representations of Defendants, nor would Plaintiff with
2 reasonable diligence have discovered the true facts or Defendants' misrepresentations.

3 391. Defendants knew that Plaintiff, and the public in general, had no way to determine
4 the truth behind Defendants' concealment and omissions, and that these included material
5 omissions of facts surrounding the JUUL Products, as set forth herein.

6 392. Had Plaintiff known the true facts about the dangers and serious health and/or
7 safety risks of the JUUL Products, Plaintiff would not have purchased, used, or relied on
8 Defendants' JUUL Products.

9 393. Defendants had a duty when disseminating information to the public to
10 disseminate truthful information and a parallel duty not to deceive the public, including Plaintiff.

11 394. The information distributed to the public and Plaintiff by Defendants included, but
12 was not limited to, reports, press releases, advertising campaigns, television commercials, print
13 advertisements, billboards, social media posts, the use of social media personalities as promoters,
14 and other commercial media containing material representations, which were false and
15 misleading, and contained omissions and concealment of the truth about the dangers of the use of
16 the JUUL Products.

17 395. Defendants intentionally made material misrepresentations to the public, including
18 Plaintiff, regarding the safety of the JUUL Products specifically that the JUUL Products did not
19 have dangerous and/or serious adverse health safety concerns, and that the JUUL Products were
20 safe for consumption by young adults, specifically those under the age of 26.

21 396. Defendants' intent and purpose in making these misrepresentations was to deceive
22 the Plaintiff; to gain the confidence of the public and Plaintiff, to falsely assure them of the
23 quality and fitness for use of the JUUL Products; induce Plaintiff and the public to use the JUUL
24 Products; and to avoid litigation and liability.

25 397. Defendants recklessly and/or intentionally falsely represented the dangerous and
26 serious health and safety concerns inherent in the use of the JUUL Products to the public at large,
27 for the purpose of influencing the sales of products known to be dangerous and defective, and/or
28 not as safe as other alternatives.

1 398. At all times relevant to this action, Defendants knew that the JUUL Products were
2 not safe for consumers under age 26.

3 399. The misrepresentations and active concealment by Defendants constitute a
4 continuing tort. Indeed, Defendants continue to misrepresent the potential risks and serious side
5 effects associated with the use of the JUUL Products.

6 400. As a result of the Defendants' advertising and marketing efforts,
7 misrepresentations and omissions, the JUUL Products are and continue to be pervasively
8 manufactured and used in California and throughout the United States.

9 401. The acts, conduct, and omissions of Defendants, and each of them, as alleged
10 throughout this Complaint were fraudulent, willful and malicious and were done with a conscious
11 disregard for the rights of Plaintiff and other users of the JUUL Products and for the primary
12 purpose of increasing Defendant's profits from the sale and distribution of the JUUL Products.
13 Defendants' outrageous and unconscionable conduct warrants an award of exemplary and
14 punitive damages against each Defendant in an amount appropriate to punish and make an
15 example of each Defendant.

16 402. Prior to the manufacturing, sale and distribution of the JUUL Products,
17 Defendants, and each of them, knew that the JUUL Products were dangerous and unsafe when
18 used as intended as previously alleged herein and knew that those who consumed the JUUL
19 Products would experience and did experience severe injuries, such as those experienced by
20 Plaintiff. Further, Defendants and each of them through its officers, directors, managers, and
21 agents, had knowledge that the JUUL Products presented a substantial and unreasonable risk of
22 harm to the public, including Plaintiff and, as such, consumers of the JUUL Products were
23 unreasonably subjected to risk of injury.

24 403. Despite such knowledge, Defendants, and each of them, acting through its officers,
25 directors and managing agents for the purpose of enhancing Defendant's profits, knowingly and
26 deliberately failed to remedy the known defects in the JUUL Products and failed to warn the
27 public, including the Plaintiff, of the extreme risk of injury inherent in the JUUL Products.
28 Defendants and its individual agents, officers, and directors intentionally proceeded with the

1 manufacturing, sale, distribution and marketing of the JUUL Products knowing that the public,
2 including Plaintiff, would be exposed to serious danger in order to advance Defendants' own
3 pecuniary interest and monetary profits.

4 404. Defendants' conduct was despicable, and so contemptible that it would be looked
5 down upon and despised by ordinary decent people, and was carried on by Defendants with
6 willful and conscious disregard for safety, entitling Plaintiff to exemplary damages under
7 California Civil Code section 3294.

8 405. Plaintiff has reviewed the potential legal claims and causes of action against the
9 Defendants and intentionally chooses only to pursue claims based on state law. Any reference to
10 any federal agency, regulation or rule is stated solely as background information and does not
11 raise a federal question. Plaintiff chooses to only pursue claims based on state law and are not
12 making any claims that raise federal questions.

13 **VIII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully requests that the Court:

15 1. Award Plaintiff compensatory, restitutionary, rescissory, general, consequential,
16 punitive and exemplary damages in an amount to be determined at trial, and also including, but
17 not limited to:

18 a. General Damages;

19 b. Special Damages, including all expenses, including incidental past and
20 future expenses, including medical expenses, and loss of earnings and earning capacity;

21 2. Award prejudgment interest as permitted by law;

22 3. Enter an appropriate injunction against Defendants and their officers, agents,
23 successors, employees, representatives, and assigns;

24 4. Appoint a monitor and retain jurisdiction to ensure that Defendants comply with
25 the injunctive provisions of any decree of this Court;

26 5. Enter other appropriate equitable relief;


27 6. Award reasonable attorneys' fees and costs, as provided for by law; and

28 7. Grant such other and further relief as the Court deems just and proper.

1 **IX. JURY TRIAL DEMAND**

2 Plaintiffs demand trial by jury.

3 Dated: July 8, 2019

4 
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