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Case Number:

Case File Date:

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F I L E D
Superior Court of California
County of San Francisco

JUL 23 2019

CLERK OF THE COURT

BY: [Signature]
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18 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN FRANCISCO**
20 **CIVIL-UNLIMITED JURISDICTION**

21 CODY BOYENS, an individual

22 Plaintiffs,

23 vs.

24 JUUL LABS, INC., ALTRIA GROUP,
25 INC., PHILIP MORRIS USA, INC., ADAM
26 BOWEN and JAMES MONSEES

27 Defendants.

28 CASE NO. **CGC-19-577875**

COMPLAINT AND DEMAND FOR JURY TRIAL

- (1) CIVIL CONSPIRACY;
- (2) FRAUD;
- (3) STRICT PRODUCT LIABILITY-FAILURE TO WARN;
- (4) STRICT PRODUCT LIABILITY-DESIGN DEFECT
- (5) NEGLIGENCE;
- (6) UNJUST ENRICHMENT;
- (7) VIOLATION OF CAL. BUSINESS CODE § 17200
- (8) VIOLATION OF CCP §1770
- (9) PRELIMINARY AND PERMANENT INJUNCTION

BY FAX

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COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff, Cody Boyens, through his undersigned counsel, brings this action against Defendants JUUL Labs, Inc., Altria Group, Inc., and Philip Morris USA, Inc., Adam Bowen, and James Monsees and alleges as follows:

INTRODUCTION

2. Plaintiff is only 19 years old yet he is addicted to JUUL, an e-cigarette. Health authorities consider youth e-cigarette use an epidemic. Defendants are to blame. Mimicking Big Tobacco's past marketing practices, Defendants prey on youth to recruit replacement smokers for financial gain. Tobacco giant Altria recently acquired a 35% stake in JUUL, the country's lead e-cigarette seller. Altria also owns Philip Morris, which sells Marlboro, the country's most popular cigarette. Now that JUUL has Altria's infrastructure, progress in nicotine cessation stands to erode. Defendants use the very fraudulent and deceptive youth marketing business practices adjudged to violate federal racketeering laws. They exploit themes that resonate with teenagers while falsely denying doing so:



1 Plaintiff brings this lawsuit to redress the harm already sustained and to prevent future harm to others.

2
3 **PARTIES, JURISDICTION, AND VENUE**

4 3. Plaintiff, Cody Boyens resides in Riverside County, California, and is a citizen of the
5 State of California. Plaintiff who is 19 years old, began using and purchasing JUUL vaping products
6 when he was 17. Plaintiff did not know how much nicotine JUUL contained or that JUUL was
7 specifically developed to create and sustain a nicotine addiction when he began using it. Plaintiff was
8 attracted to and used JUUL's Mango and Mint flavors. Plaintiff is addicted to the nicotine contained
9 in JUUL. Plaintiff suffers from nicotine addiction. Plaintiff was directly and proximately harmed by
10 Defendants' unlawful conduct as alleged in this complaint. Such harm includes personal injury,
11 exposure to significant toxic substances, which may cause or contribute to causing disease; nicotine
12 addiction; economic harm in that he would not have purchased JUUL if he knew the facts
13

14 4. Plaintiff is concerned for his health and his future health because of the known
15 complications associated with nicotine usage. Plaintiff reasonably fears that the Defendants listed
16 below are working in concert to market and advertise JUUL to youth and teenagers and that
17 Defendants' association and marketing efforts increase the likelihood that other youth will begin
18 using e-cigarettes and become addicted. Unless these Defendants are enjoined from their unlawful
19 acts as described below, the harms will continue.
20

21 5. Defendant JUUL Labs, Inc. ("JUUL"), is a Delaware corporation, having its principal
22 place of business in San Francisco, California. JUUL originally operated under the name PAX Labs,
23 Inc. In 2017, it was renamed JUUL Labs, Inc. JUUL manufactures, designs, sells, markets, promotes
24 and distributes JUUL e-cigarettes.
25

26 6. Defendant, Altria Group, Inc. ("Altria"), is a Virginia corporation, having its principal
27 place of business in Richmond, Virginia.
28

1 7. Defendant, Philip Morris USA, Inc. (Philip Morris), is a wholly-owned subsidiary of
2 Altria. Philip Morris is a Virginia corporation, having its principal place of business in Richmond,
3 Virginia. Philip Morris is engaged in the manufacture and sale of cigarettes in the United States. Philip
4 Morris is the largest cigarette company in the United States. Marlboro, the principal cigarette brand of
5 Philip Morris, has been the largest-selling cigarette brand in the United States for over 40 years.

6 8. Altria and Philip Morris are referred to collectively as the Altria Defendants. Altria
7 acquired 35% ownership in JUUL to, among other things, sell, promote, market, and distribute JUUL
8 e-cigarettes. Pursuant to a services agreement, JUUL will have access to Altria Defendants' industry
9 infrastructure.
10

11 9. Defendant Adam Bowen resides in San Mateo, California. Adam Bowen co-founded
12 PAX labs, Inc. in 2007, which rebranded to JUUL Labs, Inc. in 2017. Adam Bowen has been
13 instrumental in the creation of JUUL, including its invention, nicotine manipulation and delivery,
14 marketing, and advertising. Mr. Bowen promotes the sale of JUUL and has given industry
15 presentations about the e-cigarette. Mr. Bowen's actions mislead youth and JUUL users into thinking
16 the device is not harmful or as addictive as it is.
17

18 10. Defendant James Monsees resides in San Francisco, California. James Monsees
19 founded PAX labs, Inc. in 2007, which rebranded to JUUL Labs, Inc. in 2017. Mr. Monsees has been
20 instrumental in the creation of JUUL, including its invention, nicotine manipulation and delivery,
21 marketing, and advertising. Mr. Monsees promotes the sale of JUUL and has given industry
22 presentations about the e-cigarette, including on the perceived therapeutic effects of JUUL, though
23 without scientific substantiation. Mr. Monsees' actions mislead youth and other JUUL users into
24 thinking the device is not harmful or as addictive as it is
25

26 11. The Court has subject matter jurisdiction over this action because it exceeds twenty-
27 five thousand dollars (\$25,000.00), exclusive of costs and fees.
28

1 people's e-cigarette use over the past year threatens to erase progress made reducing tobacco use. It's
2 putting a new generation at risk for nicotine addiction."

3 16. Many youth tobacco product users are also using multiple tobacco products: a
4 combination of e-cigarettes and conventional cigarettes.

5 17. The FDA characterizes teen vaping as an epidemic. And with good reason: Smoking
6 is the leading cause of preventable death. Cigarette smoking causes about one in every five deaths in
7 the United States each year. This amounts to around 480,000 deaths annually. If smoking continues
8 at the current rate among U.S. youth, 5.6 million of today's Americans younger than 18 years of age
9 are expected to die prematurely from a smoking-related illness. This represents about one in every 13
10 Americans aged 17 years or younger who are alive today.

11 18. A study done by the American Journal of Medicine found that among young adults
12 who did not smoke cigarettes, those who used e-cigarettes were more than four times as likely than
13 non-vapers to start smoking traditional cigarettes within 18 months.²

14 19. JUUL e-cigarettes and JUULpods deliver dangerous toxins and carcinogens to users,
15 especially teenage users. Nicotine itself is a carcinogen, as well as a toxic chemical associated with
16 cardiovascular, reproductive, and immunosuppressive problems.

17 20. Nicotine adversely affects the heart, eyes, reproductive system, lungs, and kidneys.
18 Exposure to nicotine from sources such as nicotine gum still produces an increased risk of Coronary
19 Vascular Disease by producing acute myocardial ischemia, as well as an increased risk of peripheral
20 arterial disorders. Moreover, because vaping introduces foreign substances into the lungs, prolonged
21 use of vaping products is believed to produce chronic obstructive pulmonary disease, just like
22 traditional cigarette smoke. Vaping also triggers immune responses associated with inflammatory
23 lung diseases.

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28 ² Primack, Brian A. MD, PhD. "Initiation of Traditional Cigarette Smoking after Electronic Cigarette
Use Among Tobacco-Naïve US Young Adults." The Am. J. of Medicine. November 2017.

1 21. According to the National Institutes of Health, the “amount and speed of nicotine
2 delivery . . . plays a critical role in the potential for abuse of tobacco products.”³ Big Tobacco has
3 long known that nicotine addiction is the reason for tobacco product usage.

4 **B. The JUUL E-Cigarette**

5 22. Since its launch in 2015, JUUL has become the dominant e-cigarette manufacturer in
6 the United States. Its revenues grew by 700% in 2017. According to a recent Wells-Fargo report,
7 JUUL owns three-quarters of the e-cigarette market.⁴

8 23. JUUL is a novel cartridge-based e-cigarette design. The cartridges are called pods or
9 JUULpods. JUUL devices heat up a cartridge containing oils to create vapor, which quickly dissolves
10 into the air. JUUL describes the e-cigarettes as an “easy to use vaporizer.”

11 24. The JUUL e-cigarette is a sleek, high-tech design. It looks like a USB flash drive, and
12 it can charge in a computer. It is about the size and shape of a pack of chewing gum; it is small
13 enough to fit in a closed hand. JUUL is easy to conceal from parents and teachers. The odor emitted
14 from JUUL is a reduced aerosol – unlike the distinct smell of conventional cigarettes.

15 25. The thin, rectangular JUUL e-cigarette device consists of an aluminum shell, a battery,
16 a magnet (for the USB-charger), a circuit board, an LED light, and a pressure sensor. Each JUULpod
17 is a plastic enclosure containing 0.7 milliliters of JUUL’s patented nicotine liquid and a coil heater.
18 When a sensor in the JUUL e-cigarette detects the movement of air caused by suction on the
19 JUULpod, the battery in the JUUL device activates the heating element, which in turn converts the
20 nicotine solution in the JUULpod into a vapor consisting principally of nicotine, benzoic acid,
21 glycerin, and propylene glycol. A light embedded in the JUUL device serves as a battery level
22 indicator and lights up in a “party mode” display of rainbow of colors when the device is waved
23 around.
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28 ³ See <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>

⁴ <https://www.durbin.senate.gov/imo/media/doc/FINAL%20JUUL%20Letter%204.8.19.pdf>

1 26. The physical design of the JUUL device (including its circuit board) and JUULpod
2 determines the amount of aerosolized nicotine the JUUL emits. By altering the temperature, maximum
3 puff duration, or airflow, among other things, JUUL precisely controls amount of nicotine vapor
4 delivered. Studies show that there is a “decrease in the perceived harshness of the aerosol to the user
5 and thus a greater abuse liability.” See Duell, James F. Pankow, and David H. Peyton, *Free-Base*
6 *Nicotine Determination in Electronic Cigarette Liquids by 1H NMR Spectroscopy*, 31 Chem. Res.
7 Toxicol. 431, 431 (2018) (“the Duell study”).
8

9 27. JUUL designed its products to replicate the “feel” of traditional cigarettes, and this
10 design makes it easier for e-cigarette users to transition to conventional cigarettes because of the
11 similarity. Indeed, JUUL says its devices “mirror the simplicity that smokers are accustomed to.”⁵
12

13 28. The JUUL e-cigarette is defectively designed and therefore unreasonably dangerous.
14 JUUL is designed to create and sustain a nicotine addiction. JUUL appears to deliver nicotine more
15 effectively and at higher doses than other e-cigarettes, increasing users’ risk of addiction. JUUL’s
16 patented JUULSalts approach to nicotine delivery is due to compounds called nicotine salts, which
17 develop in heat-dried tobacco leaves much like most cigarettes. According to the company website,
18 freebase nicotine is mixed with benzoic acid to make the e-liquid, which has a chemical reaction to
19 produce the nicotine salts. JUULPod e-liquid cartridges contain up to twice the amount of nicotine as
20 a pack of cigarettes and are easier to inhale. This design method increases JUUL’s inhale-ability. The
21 Duell study concluded that JUUL’s use of nicotine salts “may well contribute to the current use
22 prevalence of JUUL products among youth.” *Id.* 433
23

24 29. Moreover, the JUUL device does not have a manual or automatic “off” switch. Neither
25 the JUULpod nor the programming of the JUUL device’s temperature or puff duration settings limits
26 the amount of nicotine JUUL delivers in each puff to the upper bound of a cigarette.
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⁵ See <https://support.juul.com/home/learn/faqs/juul-device-basics> (last visited Apr. 9, 2019)

1 30. JUUL e-cigarettes and JUULpods deliver dangerous toxins and carcinogens to users,
2 especially teenage users.

3 31. JUUL delivers doses of nicotine that are materially higher than combustible cigarettes.
4 The United Kingdom Medicines and Healthcare Products Regulatory Agency notes, “an e-cigarette
5 with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the time
6 needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg of
7 nicotine).⁶ JUUL’s nicotine concentration is 59 mg/ml, which is in a salt form that increases the rate and
8 efficiency of nicotine delivery. JUULpods therefore exceed the nicotine dose of a traditional cigarette.
9

10 32. Comparison of available data regarding per-puff nicotine intake corroborates the
11 other JUUL studies (mentioned above), indicating that JUUL delivers about 30% more nicotine per
12 puff. Specifically, a recent study of JUULpods found that “[t]he nicotine levels delivered by the
13 JUUL are similar to or even higher than those delivered by cigarettes.” Reilly et al., *Free Radical,*
14 *Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*, 3 (the “Reilly study”). The
15 Reilly study tested JUUL’s Tobacco, Crème Brulee, Fruit Punch, and Mint flavors and found that a
16 puff of JUUL delivered 164 ± 41 micrograms (μg) of nicotine per puff. Reilly et al. *Free Radical*. See
17 Appendix B, Chart 7. Reilly’s findings were based on a puff volume of 75/ml. By comparison, a 2014
18 study using larger, 100 ml puffs found that a Marlboro cigarette delivered 152—193 $\mu\text{g}/\text{puff}$. M.J.
19 Schroeder and A.C. Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology*, Tobacco
20 Control 2014; 23:ii30-ii35. Correcting to account for the different puff sizes between the Reilly and
21 Schroeder studies, this suggests that, at 75ml/puff, a Marlboro would deliver between 114 and 144
22 $\mu\text{g}/\text{puff}$. In other words, empirical data suggests that JUUL delivers up to 36% more nicotine per puff
23 than a Marlboro.
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28 ⁶ E-Cigarettes, https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf (last visited Apr. 9, 2019).

1 33. Adding to the above defects, JUUL is also defective in design because it puts e-
2 cigarette users, especially youth or young adults with developing brains, at greater risk of
3 experiencing seizures.⁷ JUUL's design for nicotine delivery, nicotine content, nicotine formulation
4 and their effects on creating or sustaining nicotine addiction increases the propensity of abnormal
5 electrical activity in the brain. JUUL is further defectively designed in that its users may unwittingly
6 swallow the e-liquid. These defects can cause or substantially contribute to causing mild or major
7 seizures. The FDA is currently investigating reports of youth and young adults who are experiencing
8 seizures following the use of e-cigarettes.
9

10 **B. JUUL Fraudulently Concealed Important Safety Information On How Addictive It's**
11 **E-Cigarettes Are**

12 34. JUUL has fraudulently concealed material information about the addictive nature of
13 its e-cigarettes. Plaintiff's claims arise out of JUUL's fraudulent concealment of material facts
14 concerning the JUUL e-cigarette and representations about the JUUL e-cigarettes' nicotine content,
15 its addictiveness, and the physiological effects of JUUL e-cigarettes.

16 35. At all relevant times, JUUL knew that JUUL e-cigarettes' were not safe for non-
17 smokers, and posed a risk of aggravating nicotine addiction in those already addicted to cigarettes.
18 JUUL was under a duty to disclose this material information based upon its exclusive knowledge of it,
19 and its concealment of it; yet JUUL never disclosed the defect to Plaintiff or the public.
20

21 36. JUUL repeatedly represented that a single JUULpod contains an amount of nicotine
22 equivalent to about a pack of cigarettes. For example, some JUUL advertisements and JUUL's
23 website currently provides that each "JUULpod is designed to contain approximately 0.7mL with 5%
24 nicotine by weight at time of manufacture which is approximately equivalent to 1 pack of cigarettes
25 or 200 puffs." This falsehood is recast in JUUL advertisements, and on JUUL's website, into the
26 claim that a JUUL delivers about as much nicotine as a cigarette.
27

28

⁷ <https://www.fda.gov/TobaccoProducts/NewsEvents/ucm635133.htm>

1 37. This statement is false because, as JUUL knows, it is not just the amount of nicotine,
2 but the efficiency with which the product delivers nicotine into the bloodstream, that determines the
3 product's narcotic effect and risk of addiction. Defendants know that benzoic acid affects pH and
4 "absorption of nicotine across biological membranes."⁸

5 38. JUUL's statement in its advertisements that each JUULpod contains about as much
6 nicotine as a pack of cigarettes is false and likely to mislead, because the amount of nicotine
7 *contained* in the JUULpod is perhaps six times less than in a pack of cigarettes, but actual amount of
8 nicotine *consumed* via JUULpod is as much as twice as high as that via cigarettes.

9
10 39. Despite making numerous revisions to its packaging since 2015, JUUL did not add
11 nicotine warnings until forced to do so in August of 2018.

12 40. JUUL has not been approved as a smoking therapy nor has it been approved as a
13 modified risk tobacco product.

14 41. JUUL fails to inform users that its products have not been found to be safe and
15 effective by the FDA for the purpose of smoking cessation.

16
17 **C. JUUL Copied Big Tobacco's Youth Marketing Playbook To Addict Youth to
18 Nicotine**

19 42. JUUL adopted the same themes used by Philip Morris and other Big Tobacco
20 companies in the cigarette industry's long-standing, extensive advertising campaign to glamorize
21 cigarette smoking while downplaying its addictiveness and deleterious health effects.

22 43. Statements by JUUL's founder and employees make clear JUUL's intent to develop a
23 highly addictive product to sell to a new audience of non-smokers. James Monsees, one of JUUL's
24 founders, described the cigarette as "the most successful consumer product of all time an
25

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27 ⁸ Neil L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, Handbook of
28 Experimental Pharmacology 1982: 29-60 (Oct. 13, 2010), available at: [HYPERLINK](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/)
["https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/"](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/)
<https://www.fda.gov/TobaccoProducts/NewsEvents/ucm635133.htm>

1 amazing product.” According to Monsees, JUUL aimed to “deliver[] solutions that refresh the magic
2 and luxury of the tobacco category.”

3 44. JUUL used the tobacco industry’s prior practices as a playbook. Monsees admitted
4 publicly that JUUL began by looking at tobacco industry documents, including board meeting minutes.
5 “It became a very intriguing space for us to investigate because we had so much information that you
6 wouldn’t normally be able to get in most industries. And we were able to catch up, right, to a huge,
7 huge industry in no time. And then we started building prototypes.”

8
9 45. JUUL’s research included documents about how tobacco companies had chemically
10 manipulated nicotine content to maximize delivery: “We started looking at patent literature. We are
11 pretty fluent in ‘Patentese.’ And we were able to deduce what had happened historically in the
12 tobacco industry.”

13 46. JUUL also used tobacco industry advertisements—which were created to lure non-
14 smoking youth—as a guide to JUUL’s own advertising campaigns. In a 2018 interview, “Monsees
15 indicated that the design of JUUL’s advertising had been informed by traditional tobacco
16 advertisements and that [the Stanford Research into Impact of Tobacco Advertising] had been quite
17 useful to them.” Robert K. Jackler, M.D. et al, *JUUL Advertising Over Its First Three Years on the*
18 *Market* (Jan. 21, 2019).

19
20 47. These copycat advertising and marketing practices include: colorful ad campaigns
21 using eye-catching designs and youth-oriented imagery touting themes of being “cool,” “carefree,”
22 “stylish,” “attractive,” “sexy,” “pleasureful,” “popular” and that the JUUL e-cigarettes are “great
23 tasting,” etc. Viral marketing campaigns push JUUL products on children, teens, and young adults.
24 For example, it is suspected that JUUL pays social media stars or social media influencers to flood
25 social media newsfeeds with JUUL promotion – Big Tobacco did the same type of product placement
26 to create viral campaigns of smoking. Like Big Tobacco before it, JUUL distributed free e-cigarette and
27 packs at live social events.
28

1 48. JUUL's original marketing campaign included billboards, YouTube videos, advertising
2 in magazines, like VICE Magazine, launch parties, and a sampling tour.

3 49. One study of JUUL's marketing showed that "the growth of JUUL was accompanied
4 by innovative marketing across a variety of new media platforms...JUUL was one of the first major
5 retail e-cigarette brands that relied heavily on social media to market its products."⁹ The study further
6 found that JUUL's Instagram account reached a quarter million followers, used artsy photographs to
7 display its products and "evoke lifestyle feelings such as relaxation, freedom and sex appeal."

8 50. The Surgeon General's Advisory on E-Cigarette Use Among Youth found that
9 JUUL's Twitter account was being followed by adolescents and that 25% of those retweeting official
10 JUUL tweets were under 18.

11 51. JUUL has also played off the ubiquity of Apple products such as iPhones and iPads.
12 JUUL promotes itself with statements like JUUL is "the iPhone of e-cigarettes," which JUUL posted on
13 its website and used as the basis for a social media and email campaign.
14

15 52. JUUL is available in sweet flavors including mango, fruit medley and cool mint.
16 According to one survey, 81 percent of current youth e-cigarette users cited the availability of appealing
17 flavors as the primary reason for use.¹⁰
18

19 53. JUUL's viral marketing campaign has been successful. The National Youth Tobacco
20 Survey has found that 78.2 percent of middle and high-school students – 20.5 million youth – had been
21 exposed to e-cigarette advertisements.

22 54. JUUL has styled itself as something different than Big Tobacco. For example, JUUL
23 had a campaign that expressly stated: "FACT: JUUL Labs is not Big Tobacco. We are an independent
24

25 _____
26 ⁹ Huang, J, et al., "Vaping versus JUULing: how the extraordinary growth and marketing of JUUL
27 transformed the US retail, available at
<https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2018/05/31/tobaccocontrol-2018-054382.full.pdf>.

28 ¹⁰ Villanti AC, Johnson AL, Ambrose BK, et al. Use of flavored tobacco products among U.S. youth and adults; findings from the first wave of the PATH Study (2013-2014)

1 vapor company on a mission to eliminate cigarettes.” That has proved false. As discussed below,
2 Altria acquired 35% of JUUL to partner with the company.

3 **D. Philip Morris, An Altria Subsidiary, Has a Long History of Marketing Tobacco**
4 **Products to Youth**

5 55. Beginning in the 1950s through the present, Philip Morris intentionally marketed
6 cigarettes to young people under the age of 21 to recruit “replacement smokers” to ensure the
7 economic future of the tobacco industry. *See U.S. v. Philip Morris, et al.*, No. 99-cv-2496, Amended
8 Final Opinion at page 972 (D.D.C. Aug. 17, 2006) (Kessler, J.).

9 56. Philip Morris knew that marketing cigarettes to youth is essential to the company’s
10 success and longevity, and for that reason, it created marketing campaigns to increase youth
11 consumption.

12 57. An internal memorandum dated March 31, 1981 sent by Myron Johnston, a marketing
13 researcher for Philip Morris, states: “It is important to know as much as possible about teenage
14 smoking patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the
15 overwhelming majority of smokers first begin to smoke while still in their teens.” *See Young*
16 *Smokers: Prevalence, Trends, Implications, and Related Demographic Trends*, p. 6.

17 58. To accomplish this sordid goal, Philip Morris tracked youth behavior and preference;
18 employed marketing themes that resonated with youth; and promoted cigarettes to youth through
19 retail promotions, events and sponsorships. *See U.S. v. Philip Morris, et al.*, at pages 1006, 1072.

20 59. Philip Morris intentionally exploited adolescents’ vulnerability to imagery by creating
21 advertising that utilizes the themes of independence, adventurousness, sophistication, glamour,
22 athleticism, social inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being
23 “cool.” Philip Morris’ marketing tactics consistently reached millions of teens. *Id.* at page 990

24 60. Philip Morris’ youth brand is Marlboro, which was and remains among the most
25 heavily advertised brands. *Id.*, at pages 980, 991.
26
27
28

1 61. Philip Morris was adjudged to have engaged in unlawful coordinated activity to
2 “recruit new, youth smokers through cigarette marketing,” and falsely denied that it marketed to
3 youth.

4 62. The Racketeering Acts associated with Philip Morris’ youth marketing consisted of
5 advertisements that appeal to and target youth, the designs of which are based on its research on
6 teenage behaviors and preferences. *Id.*, at page 1519.

7 63. The Altria Defendants have not abandoned their youth-appealing themes. Up until it
8 acquired a 35% stake in JUUL, described below, Altria Defendants had their own e-cigarette, the
9 MarkTen products, which Altria conceded was popular among youth.

10 **E. The Government Takes Action to Address the E-Cigarette Epidemic**

11 64. On February 24, 2018, the FDA sent a letter to JUUL expressing concern about the
12 popularity of JUUL products among youth. The FDA ordered JUUL to submit documents regarding its
13 marketing practices. The FDA publicized this letter on its website.

14 65. On September 12, 2018, the FDA sent letters to five e-cigarette manufacturers that
15 represent more than 97 percent of the current market. JUUL and Altria were among these
16 manufacturers. The FDA commissioner, Dr. Gottlieb, stated these companies are “now on notice by
17 the FDA of how their products are being used by youth at disturbing rates.” Further, the FDA
18 requested “the manufacturers of these brands and products to come back to the FDA in 60 days with
19 robust plans on how they’ll convincingly address the widespread use of their products by minors.”
20 Dr. Gottlieb ordered the companies to “demonstrate that they’re truly committed to keeping these [e-
21 cigarettes] out of the hands of kids and they must find a way to reverse this trend.”
22

23 66. On October 4, 2018, JUUL stated it released 50,000 pages of documents to the FDA
24 and that it “want[s] to be part of the solution in preventing underage use.”
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1 67. On October 18, 2018, Altria's CEO met with members of the FDA leadership. During
2 that meeting, Altria acknowledged it had an obligation to address the epidemic of youth use of e-
3 cigarettes.

4 68. Publicly, and in response to the FDA's alarm concerning the rise in youth e-cigarette
5 use, Altria's CEO, Howard Willard, stated, in letter to the FDA of October 25, 2018, that the company
6 is "alarmed about the reported rise in youth e-vapor use to epidemic levels." Mr. Willard further wrote
7 that Altria believed that pod-based products significantly contributed to the rise in youth use of e-vapor
8 products and committed to "remove from the market our *MarkTen Elite* and *Apex by MarkTen* pod-
9 based products until we receive a market order from FDA or the youth issue is otherwise addressed."
10 Mr. Willard also wrote: "We are committed to helping reverse the current [vaping] use and trend among
11 youth."
12

13 69. On November 14, 2018, JUUL announced a plan to combat underage use.

14 70. A day later, on November 15, the CDC announced that e-cigarette use in general
15 increased 78 percent among high school students and 48 percent among middle school students from
16 2017 to 2018. The FDA Commissioner called these results "astonishing."
17

18 71. On December 7, 2018, Altria announced it would discontinue production and
19 distribution of all MarkTen products and said it will "refocus its resources on more compelling reduced-
20 risk tobacco product opportunities."
21

22 72. On December 18, 2018, the Secretary of the U.S. Department of Health and Human
23 Services, Alex Azar, stated at a press conference: "We have never seen use of any substance by
24 America's young people rise as rapidly as e-cigarette use is rising."

25 **F. Altria Defendants Long-Monitored JUUL's Growth And Recently Purchased a**
26 **Controlling Stake to Partner With JUUL**

27 73. Altria's public stance on e-cigarettes markedly differed from its private undertakings
28 with respect to JUUL.

1 74. The Altria Defendants closely and carefully monitored the details of JUUL’s business
2 for years prior to its decision to buy into JUUL in December 2018. In an earnings call of December
3 2018, Altria Defendants stated that they had been in talks with JUUL’s managers for “quite some time.”
4 Altria’s chief executive, Howard Willard, stated: “we’ve been monitoring [JUUL’s] growth...for three
5 years” – in other words, since JUUL launched back in 2015.

6 75. Altria’s disclosures to the Securities and Exchange Commission reveal it had been
7 “closely” following JUUL’s journey to “see if it had staying power.”
8

9 76. Weeks after Altria announced it would remove its e-vapor products from the market to
10 address the youth vaping epidemic, on December 20, 2018, Altria made public that it closed a \$12.8
11 billion investment with JUUL, the leader in e-cigarettes, amounting to a 35% stake. Thus, Altria is
12 continuing to sell flavored e-cigarettes, which it told the FDA it would stop.

13 77. Altria agreed to a non-competition obligation with JUUL as long as Altria is providing
14 services to JUUL, which Altria has committed to doing for at least six years.

15 78. Altria and JUUL also entered into a services agreement. Among other things, Altria
16 will provide services to JUUL with respect to logistics and distribution, access to retail shelf space,
17 youth vaping prevention, cigarette pack inserts and onserts, regulatory matters and government
18 affairs. Altria has also agreed to grant JUUL a non-exclusive, royalty-free perpetual, irrevocable,
19 sublicensable license to Altria’s non-trademark licensable intellectual property rights in the e-vapor
20 field, subject to the terms and conditions set forth in an intellectual property license agreement
21 between the parties.
22

23 79. Pursuant to the agreement Altria has agreed to provide JUUL with certain commercial
24 services on a cost-plus-3% basis for an initial term of six years.
25

26 80. Pursuant to the agreement Altria will provide JUUL access to its prime retail shelf
27 space, which will allow JUUL products to appear alongside Philip Morris combustible cigarettes like
28 Marlboro, the country’s most popular cigarette brand. Altria will also provide JUUL, through the

1 Altria Group Distribution Company, sales and distribution services and thus: access to Altria's near
2 230,000 retail locations.

3 81. Pursuant to the agreement, Philip Morris, which maintains a database of cigarette
4 smokers' mailing and email addresses, will send JUUL advertising and marketing messages to its
5 customers.

6 82. Further, pursuant to the agreement JUUL will benefit from Altria's influence with
7 legislators and regulators and the expertise of Altria's legal team in countering tobacco litigation.
8

9 83. At a conference call on December 20, 2018, Altria's CEO remarked that Altria felt
10 "fortunate to be the tobacco company that's partnered up with JUUL" and that Altria would provide
11 its infrastructure to JUUL in order to accelerate JUUL's growth. During that call, Altria said it would
12 continue to market conventional cigarettes "vigorously."

13 84. According to Robert K. Jackler, MD, Principal Investigator of the Stanford Research
14 into the Impact of Tobacco Advertising: "The joining of JUUL and Marlboro brings together the two
15 dominant players in the teenage nicotine addiction market (e-cigarette & cigarette). This powerful
16 combination constitutes a clear and present danger to the youth of America as well as those around
17 the world."
18

19 85. Studies demonstrate that e-cigarette use is associated with increased risk for cigarette
20 initiation and use, particularly among low-risk youths. See Berry KM, Fetterman JL, Benjamin EJ, et
21 al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US
22 Youths. *JAMA Netw Open*. 2019;2(2):e187794. doi:10.1001/jamanetworkopen.2018.7794.
23

24 86. Recent promotional practices of both companies suggest that they may pursue a
25 strategy by which youth start with JUUL and graduate to Marlboro:
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MARLBORO MENTHOL

SWITCH IT UP

RESEAL
REPEAT
WIN



**1000s OF CUTTING-EDGE PRIZES.
ALL PACKED IN THE NEW RESEAL PACK.**

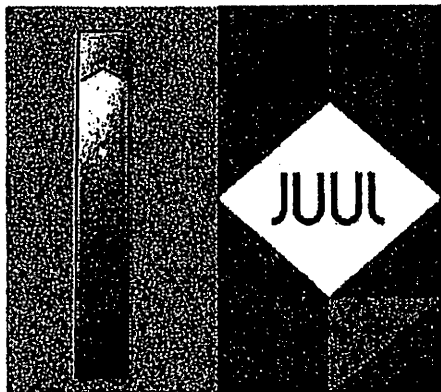
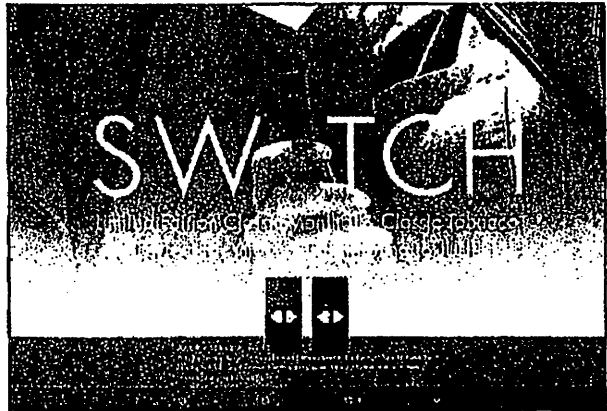
AND ONLY ONE WAY TO REVEAL WHAT'S NEXT.

ENTER FOR YOUR CHANCE TO
WIN INSTANTLY AT
MARLBORO.COM

SITE LIMITED TO ELIGIBLE SHOPPING FOR 18 AND UP ONLY

SWITCH

Doublemint, Citrus, Vanilla, Classic, Tobacco



JULI

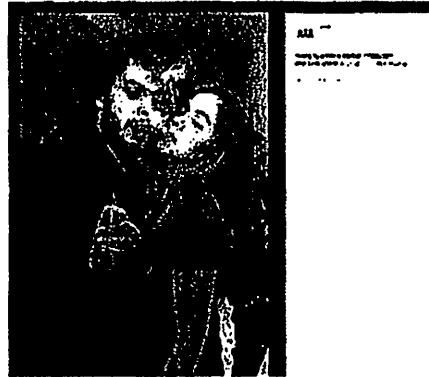


MARLBORO BEAT

17-22 PALEO
JULIET



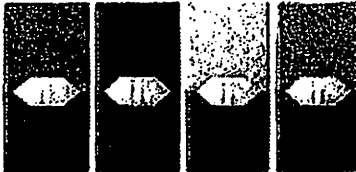
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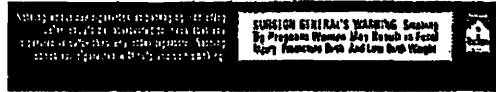
JUUL

FLAVOR MULTIPACK
4 Pods
5.0% Strength

- Mint
- Virginia Tobacco
- Creme
- Mango



The Alternative For Adult Smokers



Marlboro 725

NEVER SHORT ON FLAVOR

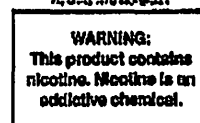
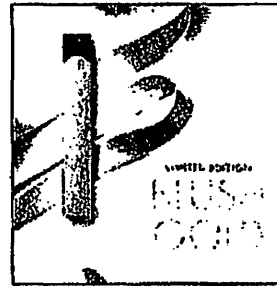
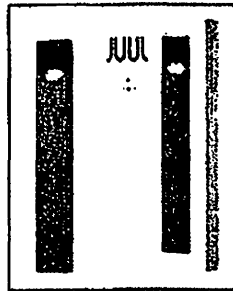
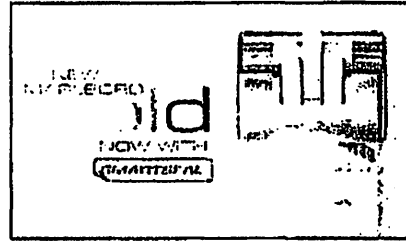


NOW AVAILABLE IN BLACK MENTHOL

DISCOVER THE FLAVORS
OF MARLBORO.COM

See retailer for details and more 725 packs of new flavors

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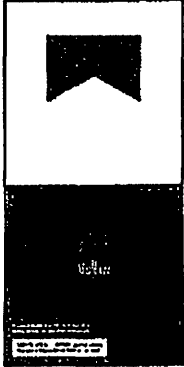
Original JUUL Design

Recent JUUL Design

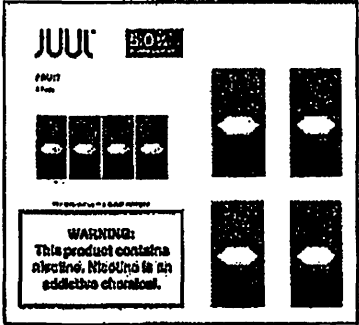
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**Leading
Youth
Cigarette
Initiation
Brand**



**Leading
Youth
e-Cigarette
Initiation
Brand**



1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Civil Conspiracy**

4
5 87. Plaintiff incorporates by reference paragraphs 1-86 above as if fully set forth herein,
6 and further declare:

7 88. Defendants JUUL, Altria, Philip Morris, Adam Bowen, and James Monsees are all
8 "persons" for purposes of this cause of action.

9 89. Defendants JUUL, Altria, Philip Morris, Adam Bowen, and James Monsees have been
10 conspiring, to sell and promote JUUL and have engaged in unlawful marketing practices to do so.

11 90. Since at least as long as Defendants JUUL, Altria and Philip Morris, have entered into
12 an agreement with respect to JUUL e-cigarettes, and continuing up to and including the date of the
13 filing of this complaint, Defendants have been functioning to achieve shared goals through unlawful
14 means including to deceive consumers, particularly parents and children, by claiming that they did
15 not market to children, while engaging in marketing and advertising with the intent of addicting
16 children into becoming lifetime nicotine users.

17 91. As detailed in the General Factual Allegations, these Defendants' know that marketing
18 JUUL e-cigarettes to youth is essential to Defendants' success and longevity, and for that reason, they
19 partnered to create marketing campaigns to increase youth consumption, while fraudulently denying
20 they are doing so. Defendants have furthered this scheme to profit. Defendants' collaboration, as
21 evidenced by a services agreement, marketing campaign, fraudulent statements, and
22 misrepresentations constitute overt acts in pursuance on the conspiracy.

23 92. The Defendants' conduct in furtherance of this scheme was intentional. Plaintiff was
24 directly harmed as a result of the Defendants' intentional conduct.

1 downplayed, misrepresented, concealed, and failed to warn of the heightened risks of nicotine
2 exposure and addiction.

3 108. In all forms of advertising as well as social media communications, Defendants failed
4 adequately to warn or instruct foreseeable users, including youth and adolescent users, that JUUL
5 products were unreasonably dangerous to them and created a high level of risk of harms caused by
6 nicotine exposure and addiction as explained herein. Defendants failed adequately to warn in their
7 advertising, social media communications, or anywhere on the product label that the product was not
8 safe for minors and should not be used or consumed by them. Instead, as described herein, Defendants
9 marketed their products to minors and made them available in youth-friendly colors and flavors.
10 Defendants also designed their products to be more palatable to youth and nonsmokers by increasing
11 JUUL's inhale-ability and increased the level of nicotine that is absorbed by users, making them even
12 more addictive.
13

14 109. The defects in JUUL Products, including the lack of warnings, existed at the time the
15 JUUL pods and devices were sold and/or when the JUUL pods and devices left JUUL's possession or
16 control.
17

18 110. The JUUL devices and pods were expected to be used by Plaintiff without substantial
19 change in their condition from the time of their manufacture or sale.

20 111. Plaintiff was harmed directly and proximately by Defendants' failure to warn. Such
21 harm includes personal injury, significant exposure to toxic substances, which may cause or
22 contribute to causing personal injury; disease; nicotine addiction; economic harm, in that he would
23 not have purchased JUUL or would have paid less for it if he had known the true facts and that he had
24 paid a premium as a result of Defendants' failure to warn.
25

26 **FOURTH CAUSE OF ACTION**

27 **Strict Product Liability – Design Defect**

1 112. Plaintiff incorporates by reference paragraphs 1-86 above as if fully set forth herein
2 and further declare:

3 113. Defendants JUUL, Monsees and Bowen, designed, engineered, developed,
4 manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to inspect,
5 labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the JUUL
6 devices and JUUL pods, which were intended by JUUL to be used as a method of ingesting nicotine
7 and the other aerosolized constituents of JUUL's nicotine solution. Since the Altria Defendants
8 partnered with JUUL, they have assisted with one or more of these activities.
9

10 114. Defendants knew or, by the exercise of reasonable care, should have known that
11 JUUL's products under ordinary use were harmful or injurious, particularly to youths and
12 adolescents, including the Plaintiff.

13 115. As described in this complaint, Defendants designed and marketed their products to
14 appeal to nonsmokers, youths and adolescents and to encourage them to buy and use the product.
15

16 116. JUUL products are also inherently defective because they contain and deliver
17 significantly more nicotine than JUUL represents. Moreover, JUUL is unreasonably dangerous and
18 therefore defective in design because it is made to create and sustain addiction. The risks inherent in
19 the design of JUUL outweigh significantly any benefits of such design.

20 117. At all relevant times, Defendants could have employed reasonably feasible alternative
21 designs to prevent the harms discussed in the complaint.
22

23 118. At all relevant times, Plaintiff was unaware of the design defects described in the
24 complaint. Further, Defendants knew or had reason to know that youths and adolescents would not
25 fully realize the dangerous and addictive nature of the JUUL products and the long-term
26 complications nicotine addiction can present, or that, due to their youth, inexperience and/or
27 immaturity of judgment, would recklessly disregard such risks.
28

1 119. Plaintiff was harmed directly and proximately by Defendants' defectively designed
2 JUUL e-cigarette. Such harm includes personal injury, significant exposure to toxic substances,
3 which may cause or contribute to causing personal injury; disease; nicotine addiction; economic
4 harm; in that he would not have purchased JUUL or would have paid less for it if he had known the
5 true facts and that he had paid a premium as a result of Defendants' defective products.

6 **FIFTH CAUSE OF ACTION**

7 **Negligence**

8
9 120. Plaintiff incorporates by reference paragraphs 1-86 above as if fully set forth herein
10 and further declare:

11 121. Defendants had a duty and owed a duty to Plaintiff to exercise a degree of reasonable
12 care including, but not limited to: ensuring that JUUL marketing does not target minors; ensuring that
13 JUUL devices and JUULpods are not sold and/or distributed to minors and are not designed in a
14 manner that makes them unduly attractive to minors; designing a product that is not defective and
15 unreasonably dangerous; designing a product that will not addict youth or other users to nicotine;
16 adequately warning of any reasonably foreseeable adverse events with respect to using the product.

17
18 122. Defendants knew the risks that minors would be attracted to their electronic cigarette
19 devices and JUULpods and knew or should have known the importance of ensuring that the products
20 were not sold and/or distributed to minors.

21 123. Defendants knew or should have known that their marketing, distribution, and sales
22 practices did not adequately safeguard Plaintiff from the sale and/or distribution of electronic
23 cigarette devices and JUULpods and, in fact, induced minors to purchase JUUL products.

24 124. Defendants breached the duties they owed to Plaintiff.

25 125. But for Defendants' duties and breaches thereof, Plaintiff would not have been harmed
26 as alleged in the Complaint.
27
28

1 140. Manufacturing, selling, promoting e-cigarettes in interstate commerce are
2 “transaction” and “services” in the scope of CLRA, and JUUL is a “good” within the meaning of
3 CLRA § 1761. CAL. CIV. CODE § 1761 (WEST 2019).

4 141. Plaintiff is a “consumer” as defined by CLRA § 1761. CAL. CIV. CODE § 1761(d)
5 (WEST 2019).

6 142. Defendants are “persons[s]” as defined by CLRA § 1761. CAL. CIV. CODE § 1761(c)
7 (WEST 2019).

8 143. Defendants’ unfair and deceptive practices are likely to mislead – and have misled –
9 reasonable consumers, such as Plaintiff, and therefore, violate CLRA § 1770.

10 144. Defendants have engaged and continue to engage in unfair, unlawful, and deceptive
11 trade practices in California as outlined herein. In particular, Defendants have knowingly developed,
12 sold, and promote a product that contained nicotine levels in excess of cigarettes with the intention of
13 creating and fostering long-term addiction to JUUL products for minors to continue that addiction
14 into adulthood; selling a product that aggravates nicotine addiction; creating advertising to target
15 youth into using JUUL e-cigarettes, and disseminating that advertising through unregulated social
16 media platforms commonly used by youth. Plaintiff reasonably relied to his detriment on Defendants’
17 unlawful conduct in that he purchased JUUL not knowing the true propensity of its dangers.
18

19 145. Plaintiff sustained damages as a direct and proximate result of Defendants’ tortious
20 conduct.
21

22 146. Plaintiff seeks injunctive relief to prohibit Defendants from continuing to engage in
23 the unfair and deceptive advertising and marketing practices complained of in this complaint. Such
24 misconduct by Defendants, unless and until enjoined and restrained by order of this Court, will
25 continue to cause injury in fact.
26

27 147. Pursuant to the CLRA § 1780, Plaintiff makes claims for actual damages, punitive
28 damages, and any other relief that the court deems proper. The damages suffered by the Plaintiff was

1 directly and proximately caused by the deceptive, misleading and unfair practices of Defendants.
2 CAL. CIV. CODE § 1780 (WEST 2019).

3 **NINTH CAUSE OF ACTION**

4 **Preliminary and Permanent Injunction**

5
6 148. Plaintiff incorporates by reference paragraphs 1-86 above as if fully set forth herein
7 and further declare:

8 149. Defendants' actions – designing, marketing, and selling JUUL in ways that it knows
9 will attract minors and deceptively downplaying the potency and danger of the nicotine in JUUL –
10 constitute unlawful acts under California Law.

11 150. Nicotine addiction constitutes irreparable harm. Nicotine is a neurotoxin, which
12 means that it is poisonous to the human brain. Further, the brains of teenagers are particularly
13 vulnerable to nicotine's neurotoxic effects. Nicotine causes macromolecular alterations of the brain.

14 151. Based on the factual allegations above, Plaintiff established a clear legal right, an
15 inadequate remedy at law and that irreparable harm will arise absent injunctive relief.

16 152. Thus, Defendants, officers, directors, employees, agents, and all those acting in
17 concert with them, should be preliminarily and permanently enjoined from:

18
19 a. Offering, selling, delivering, or in any manner, providing or facilitating others to
20 provide JUUL products to minors within this State;

21
22 b. Offering, selling, delivering, or in any manner, providing or facilitating others to
23 provide any flavors other than tobacco through online sales;

24 c. Engaging or participating in any marketing or advertising activities within this State
25 that are intended or are known to likely appeal to minors, and should thus be enjoined from: sending
26 marketing emails to minors within this State; advertising outdoors within 1,000 feet of schools and
27 playgrounds within this State; sponsor any sporting, entertainment, or charity event in this State;
28

1 providing free or discounted samples, starter kits or e-cigarette products to consumers, including
2 being enjoyed from providing automatic renewals or bulk orders; advertising in any fashion in media
3 or outlets that serve consumers under 30 years;

4 d. Offering, selling, delivering, or in any manner, providing or facilitating others to
5 provide JUUL products within this State unless and until JUUL obtains Premarket Approval or
6 approved as a Modified Risk Tobacco Product under the Tobacco Control Act.
7

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment as follows:

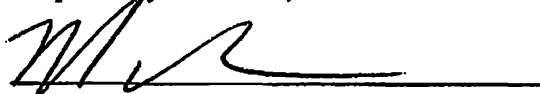
- 11 A. An order enjoining Defendants from further negligent, deceptive, unfair, and unlawful
12 conduct as alleged herein;
- 13 B. Awarding actual, compensatory, and consequential damages;
- 14 C. Awarding other monetary and equitable relief for diagnostic testing, medical monitoring,
15 and nicotine cessation programs;
- 16 D. Awarding restitution;
- 17 E. Awarding reasonable attorneys' fees, and costs of this case;
- 18 F. Awarding prejudgment and post-judgment interest;
- 19 G. Such other and further relief as the Court deems appropriate under the circumstances.
20

21 **JURY TRIAL DEMAND**

22 Plaintiff hereby demands a jury trial on all issues so triable.
23

24 Dated: July 23, 2019

Respectfully submitted,

25
26 

27 Martin Schmidt, Esq.
28 SCHMIDT NATIONAL LAW GROUP
9191 Towne Centre Drive, Suite 510
San Diego, California 92122

AND

Scott P. Schlesinger (*pro hac vice anticipated*)
Jonathan R. Ganski (*pro hac vice anticipated*)
Jeffrey L. Haberman (*pro hac vice anticipated*)
SCHLESINGER LAW OFFICES, P.A.
1212 SE Third Avenue
Ft. Lauderdale, FL 3316

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