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6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
8 **SAN FRANCISCO DIVISION**

8 **DAULTIN PAYNE**

9 **VS.**

10 **JUUL LABS, INC. and**  
11 **ALTRIA GROUP, INC.**

**COMPLAINT WITH JURY TRIAL  
DEMAND**

3:20-cv-739

12 **I. INTRODUCTION**

13 Nicotine is one of the most addictive substances known to mankind. It is especially  
14 addictive to those under the age of 26. Nicotine addicts usually develop their addiction early in life  
15 and often stay addicted for decades. For generations, cigarette companies knew about nicotine's  
16 addictive power over young Americans and, seeing a way to create life-long customers, they  
17 targeted America's youth in their marketing. They ran ad campaigns that portrayed cigarettes as  
18 "cool," sold flavored cigarettes palatable to novice smokers, and increased the nicotine content of  
19 their products to make them more addictive. The cigarette companies were remarkably successful.  
20 Cigarette smoking was popular among American teenagers for much of the twentieth century, and  
21 in the late 1990s nearly a quarter of American high school seniors were smokers. Starting in the  
22 late 1990s, government regulations and legal settlements forced tobacco companies to abandon  
23 their youth-oriented marketing strategies and caused a dramatic decline in youth smoking. But the  
24 reforms aimed at stopping traditional cigarette companies from marketing to America's youth left  
25 a loophole for electronic cigarettes. Then came JUUL.

26 In 2015, JUUL launched a new electronic cigarette that is sleek, compact, relatively  
27 inexpensive, and delivers a much more potent punch of nicotine than previous generations of  
28 electronic cigarettes. Borrowing from the playbook that had worked for cigarette companies,

JUUL promoted its electronic cigarettes as hip and trendy, sold electronic cigarettes in fun flavors like cool cucumber and crème brûlée, and poured more than twice as much nicotine into its electronic cigarettes as producers of competing electronic cigarettes did. Since JUUL’s introduction in 2015, the term “JUULing” (a word describing the inhalation of vapor produced by a JUUL electronic cigarette) has entered the pre-teen/adolescent lexicon. Just four years after JUUL’s introduction, JUULing has become nearly as popular among high school students as smoking combustible cigarettes was a generation ago. The FDA has even declared youth electronic-cigarette use an epidemic. Because of this explosion in the number of teens using JUUL, JUUL dominates the electronic-cigarette industry and has become a multi-billion-dollar company.

Until recently, JUUL’s advertisements failed to disclose that its products contain nicotine at levels higher than traditional cigarettes or other electronic cigarettes. Consequently, surveys show the majority of youthful JUUL users have no idea that JUUL electronic cigarettes contain nicotine. JUUL also failed to disclose that vapors from its electronic cigarettes contain respiratory irritants and other chemicals that can cause a panoply of health problems. In a pattern eerily similar to what the U.S. saw with combustible cigarettes, millions of American youth have been led by advertising campaigns to think that “it’s cool to JUUL,” picked up the JUULing habit, and become addicted to nicotine. Many of these young JUUL users are also experiencing respiratory problems from using JUUL electronic cigarettes, and JUULing has even caused some users to suffer seizures and strokes.

## **II. PARTIES**

### **Plaintiff**

1. Plaintiff, Daultin Payne, is a citizen and resident of Florida.

### **Defendants**

2. Defendant JUUL Labs, Inc. (“JUUL”), is a Delaware corporation with its principal place of business in San Francisco, California. JUUL Labs, Inc., was incorporated in 2007 and has been known by its current name since 2017; it was named Ploom, Inc. (from 2007 until 2015), and renamed PAX Labs, Inc. (from 2015 to 2017). On December 20, 2018, Defendant Altria

1 Group, Inc.—the corporate parent of Phillip Morris USA, Inc.—purchased, through its subsidiary  
 2 Altria Enterprises, LLC, 35 percent of the stock of JUUL for \$12.8 billion.<sup>1</sup>

3 3. Defendant Altria Group, Inc. (“Altria”) is a Virginia corporation with its principal  
 4 place of business in Virginia.

5 4. JUUL Labs, Inc. and Altria Group, Inc., are referred to herein collectively as  
 6 “Defendants.”

### 7 **III. SUBJECT MATTER JURISDICTION**

8 5. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. §  
 9 1332(a)(1).

10 6. Complete diversity of citizenship exists: Plaintiff is a citizen of Florida; JUUL  
 11 Labs, Inc., is a citizen of California and Delaware; and Altria is a citizen of Virginia.

12 7. The amount in controversy also exceeds \$75,000: Plaintiff has suffered injury as a  
 13 result of Defendants’ wanton, reckless, or intentional misconduct, and Plaintiff claims  
 14 compensatory and punitive damages.

### 15 **IV. PERSONAL JURISDICTION**

16 8. JUUL Labs, Inc., is subject to general personal jurisdiction in California because its  
 17 principal place of business is in California.

18 9. Altria Group, Inc. is subject to specific personal jurisdiction in California. Altria  
 19 Group, Inc., working in concert with JUUL Labs, Inc., in California, has developed marketing  
 20 schemes for the JUUL electronic cigarette.

### 21 **V. VENUE**

22 10. This Complaint is filed in this District pursuant to the Direct Filing Order this  
 23 Court entered on December 13, 2019 in *In re: JUUL Labs, Inc. Marketing Sales Practices, and*  
 24 *Products Liability Litigation*, 3:19-md-02913 (Doc. 309, Case Management Order No. 3).

25 11. In the absence of the Direct Filing Order, this action would have been filed in the  
 26 United States District Court for the Northern District of California.

27  
 28 <sup>1</sup> Altria Group, Inc., Form 8-K (Dec. 21, 2018).

## VI. FACTS

### A. Products containing nicotine are dangerous.

12. Humans have consumed tobacco, in one form or another, for centuries. As far back as the 1600s, Europeans were hooked on tobacco. Scientists later learned that nicotine—a chemical found in tobacco leaves—gave tobacco its addictive quality.

13. The methods for consuming tobacco have changed. In the late 1800s, tobacco was most commonly consumed by smoking cigars and pipes or by chewing tobacco. In the early 20th century, many tobacco users switched to cigarettes, which eventually became the most popular method of consuming tobacco.

14. Today, over six trillion cigarettes are sold worldwide annually. As James Monsees, co-founder of JUUL noted, cigarettes are “one of the most successful consumer products of all time, if not the most successful.”<sup>2</sup>

15. As cigarette smoking grew in popularity, several companies, collectively dubbed “Big Tobacco,” came to dominate the cigarette industry. Big Tobacco, at various times, has included Phillip Morris (now Altria), R.J. Reynolds, Lorillard, Brown & Williamson, British American Tobacco, and Liggett.

#### 1. Nicotine is a neurotoxin

16. Nicotine is the common name given to the chemical compound  $C_{10}H_{14}N_2$  which is naturally found in the leaves of tobacco plants. Nicotine is a neurotoxin that helps protect tobacco plants from pests. For centuries, humans have produced pesticide from nicotine collected from tobacco.

17. But nicotine is also toxic to humans. Nicotine has been described as “one of the most toxic of all poisons.”<sup>3</sup>

<sup>2</sup> Leipholtz B. Juul faces criticism, concerns amid rising success. (9/17/2018). <https://www.thefix.com/juul-faces-criticism-concerns-amid-rising-success>. (accessed August 28, 2019).

<sup>3</sup> Mishra A, Chaturvedi P, Datta S, Sinukumar S, Joshi P, & Garg A. (2015). Harmful effects of nicotine. *Indian journal of medical and paediatric oncology : official journal of Indian Society of Medical & Paediatric Oncology*, 36(1), 24–31. doi:10.4103/0971-5851.151771 -

18. Nicotine causes a slew of health problems. Nicotine causes an increase in heart rate, blood pressure, and cardiac contractility. It also reduces blood flow in cutaneous and coronary vessels and increases blood flow in skeletal muscles.<sup>4</sup>

19. Persistent stimulation by nicotine can contribute to coronary vascular disease, increase atherosclerotic plaque formation, and increase incidence of hypertension and other cardiovascular disorders.<sup>5</sup>

20. Besides increasing the risk of cardiovascular disorders, nicotine can cause respiratory disorders, can harm the reproductive system, increase the risk of developing type 2 diabetes,<sup>6</sup> cause cancer,<sup>7</sup> and cause seizures.<sup>8</sup>

21. Nicotine can also cause physical changes in the brain, some temporary and others that could be long-lasting.<sup>9</sup>

## 2. Nicotine is highly addictive

22. Nicotine is not only toxic, it is also highly addictive.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4363846/>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Center for Disease Control and Prevention. Smoking and Diabetes. <https://www.cdc.gov/diabetes/library/features/smoking-and-diabetes.html>

<sup>7</sup> Mishra A., *et al.*, *supra*, note 3. Iha HA, Kunisawa N, Shimizu S, Tokudome K, Mukai T, Kinboshi M, Ohno Y. (2017). Nicotine elicits convulsive seizures by activating amygdala neurons. *Frontiers in pharmacology*, 8, 57. doi:10.3389/fphar.2017.00057, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5298991>

<sup>8</sup> U.S. Food & Drug Administration. (4/10/2019). Some e-cigarette users are having seizures, most reports involving youth and young adults. <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults>; Iha HA, *et al.*, *supra*, note 7

<sup>9</sup> Raven K. (3/19/2019). Nicotine addiction from vaping is a bigger problem than teens realize. <https://www.yalemedicine.org/stories/vaping-nicotine-addiction/> (accessed 8/29/2019); England, LJ, Bunnell, RE, Pechacek TF, Tong VT, McAfee TA. (2015). Nicotine and the developing human: a neglected element in the electronic cigarette debate. *Am J. Prev. Med.* 49(2):286-293. doi:10.1016/j.amepre.2015.01.015.

23. The U.S. Surgeon General reports that nicotine is as addictive as cocaine or heroin.<sup>10,11</sup> According to the Food and Drug Administration (FDA), “[n]icotine is a highly-addictive drug . . . studies estimate that as many as 92 percent of all smokers are addicted to the nicotine in cigarettes.”<sup>12</sup> A study published in *The Lancet* ranked nicotine more addictive than alcohol and barbiturates.<sup>13</sup>

24. When a person inhales nicotine, the nicotine travels to the lungs where it enters the circulatory system and moves to the brain within 10-20 seconds.<sup>14</sup>

25. Once in the brain, nicotine binds with nicotinic cholinergic receptors, stimulating those receptors to release a variety of neurotransmitters, including dopamine.<sup>15</sup> Dopamine signals a pleasurable experience and is critical for the reinforcing effects of nicotine and other drugs of abuse.<sup>16</sup>

26. Inhalation is a highly efficient form of nicotine administration. “Rapid rates of absorption and entry into the brain cause a strongly felt ‘rush’ and reinforce the effects of the drug.”<sup>17</sup>

<sup>10</sup> U.S. Department of Health & Human Services. *The Health Consequences of Smoking: Nicotine Addiction. A Report of the Surgeon General*. Atlanta (GA): U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 1988. DHHS Publication No. (CDC) 88-8406.

<sup>11</sup> Mishra A *et al.*, *supra*, note 3.

<sup>12</sup> See U.S. Food & Drug Administration. Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents; Final Rule; August 28, 1996. 61 Fed. Reg. 44396-01 at 44420 (1996).

<sup>13</sup> Brodwin E. (4/19/2018). Experts are calling out a vape pen with 'scary' nicotine levels that teens love — here's how it affects the brain. *Business Insider*. <https://www.businessinsider.com/vaping-brain-effects-juul-2018-4> accessed 8/29/2019).

<sup>14</sup> Benowitz NL. (2010). Nicotine addiction. *The New England journal of medicine*, 362(24), 2295–2303. doi:10.1056/NEJMra0809890 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928221/>; Benowitz NL, Hukkanen J, & Jacob P, 3rd (2009). Nicotine chemistry, metabolism, kinetics and biomarkers. *Handbook of experimental pharmacology*, (192), 29–60. doi:10.1007/978-3-540-69248-5\_2 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>)

<sup>15</sup> Benowitz NL. (2010) and Benowitz NL, *et al.*, (2009), *supra*, note 14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

1           27.     Because inhalation allows nicotine levels to rise quickly, a user, by controlling  
2 breathing, can titrate the level of nicotine and related effects. This makes inhalation a particularly  
3 reinforcing and dependence-producing form of nicotine administration.<sup>18</sup>

4           28.     By contrast, most other delivery systems for nicotine, such as nicotine gum or a  
5 transdermal patch, cause the blood nicotine level to increase more slowly. This slow increase in  
6 nicotine in the brain and blood make these other delivery systems for nicotine much less likely to  
7 lead to abuse.<sup>19</sup>

8           29.     Repeated exposure to nicotine causes the brain to develop a tolerance to some  
9 effects of nicotine.<sup>20</sup>

10          30.     After repeated nicotine use, some of the nicotinic cholinergic receptors become  
11 desensitized. This desensitization leads to an increase in the number of receptors and,  
12 consequently, symptoms associated with withdraw and cravings.<sup>21</sup> Withdraw causes anxiety and  
13 stress, both of which are powerful incentives to continue nicotine use.<sup>22</sup>

14          31.     For a nicotine addict, abstaining from nicotine “causes the emergence of  
15 withdrawal symptoms: irritability, depressed mood, restlessness, and anxiety.”<sup>23</sup>

16                   **3. Adolescents are particularly vulnerable to the harms of**  
17                   **nicotine.**

18          32.     Children and adolescents are more susceptible than those over age 25 to nicotine  
19 addiction and other nicotine-related injuries.

20          33.     The U.S. Surgeon General has reported that “nicotine has more significant and  
21 durable damaging effects on adolescent brains compared to adult brains.”<sup>24</sup>

23 <sup>18</sup> Benowitz NL, *et al.*, (2009), *supra*, note 14.

24 <sup>19</sup> *Id.*

<sup>20</sup> Benowitz NL, (2010), *supra*, note 14.

25 <sup>21</sup> *Id.*

26 <sup>22</sup> *Id.*

<sup>23</sup> *Id.*

27 <sup>24</sup> U.S. Dept. of Health & Human Services. Public Health Service, Office of the Surgeon General.  
28 (2016). E-cigarette use among youth and young adults: a report of the Surgeon General. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf) (page 105).



34. “Adolescence is one of the most dynamic events of human growth and development, second only to infancy in terms of the rate of developmental changes that can occur within the brain.”<sup>25</sup> During this time, “the brain undergoes a ‘rewiring’ process that is not complete until approximately 25 years of age.”<sup>26</sup>

35. Because the human brain is still developing during adolescence, youth are more likely than adults to suffer neurological impairment as a result of nicotine use. One study concluded:

The prefrontal cortex, the brain area responsible for executive functions and attention performance, is one of the last areas to mature and is still in the process of developing during adolescence. This places the adolescent brain in a vulnerable state of imbalance, susceptible to the influence of psychoactive substances such as nicotine. In prefrontal networks nicotine modulates information processing on multiple levels by activating and desensitizing nicotine receptors on different cell types and in this way affects cognition. The adolescent brain is particularly sensitive to the effects of nicotine. Studies in human subjects indicate that smoking during adolescence increases the risk of developing psychiatric disorders and cognitive impairment in later life. In addition, adolescent smokers suffer from attention deficits, which aggravate with the years of smoking.<sup>27</sup>

36. Since the prefrontal cortex is still developing during adolescence, adolescents who smoke have reduced prefrontal cortex activity.<sup>28</sup>

37. Nicotine affects the pre-frontal cortex, “which plays a key role in emotional control, decision making, and impulse regulation.”<sup>29</sup> Nicotine triggers reward circuits in the brain, binding to receptors and raising dopamine levels, mimicking brain chemicals that affect focus and

<sup>25</sup> Arain M, Haque M, Johal L, Mathur P, Nel W, Rais A. ... Sharma, S. (2013). Maturation of the adolescent brain. *Neuropsychiatric disease and treatment*, 9, 449–461. doi:10.2147/NDT.S39776 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/>

<sup>26</sup> *Id.*

<sup>27</sup> Goriounova NA, Mansvelder HD. (2012). Short- and long-term consequences of nicotine exposure during adolescence for prefrontal cortex neuronal network function. *Cold Spring Harb Perspect Med*. 2012 Dec 1;2(12):a012120. doi: 10.1101/cshperspect.a012120. PubMed PMID: 22983224; PubMed Central PMCID: PMC3543069. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

<sup>28</sup> Fraga J. (2018) The dangers of Juuling. National Center for Health Research. <http://www.center4research.org/the-dangers-of-juuling/>

<sup>29</sup> Brodwin E. (4/19/2018) Experts are calling out a vape pen with 'scary' nicotine levels that teens love — here's how it affects the brain. *Business Insider*. <https://www.businessinsider.com/vaping-brain-effects-juul-2018-4>



1 arousal. Brain imaging studies “suggest that those who begin smoking regularly at a young age  
2 have markedly reduced activity in the prefrontal cortex and perform less well on tasks related to  
3 memory and attention compared to people who don't smoke. [T]hese brain changes are also linked  
4 with increased sensitivity to other drugs as well as greater impulsivity.”<sup>30</sup>

5 38. This neurological damage can cause mood disorders and permanent reduction in  
6 impulse control.<sup>31</sup> Similarly, “[a]dolescent nicotine exposure results in long-term alterations in  
7 emotional response, specifically enhanced anxiety and fear, and in persistent alterations in  
8 serotonin systems involved in mediating mood disorders.”<sup>32</sup> Nicotine exposure can also “lead[] to  
9 problems with focus, memory, and learning.”<sup>33</sup>

10 39. When nicotine use begins early, there is also an increased risk of addiction.<sup>34</sup>

11 40. “In general, teens are far more vulnerable to addiction than adults.”<sup>35</sup> Because of  
12 adolescents’ brain plasticity and its undeveloped state, the reward circuits are more easily  
13 manipulated and triggered.<sup>36</sup> Because “the adolescent brain is more sensitive to rewards,”<sup>37</sup> an  
14 adolescent is more likely to keep using nicotine to provide a high. But that nicotine use can  
15 induce permanent brain changes that lead to addiction.<sup>38</sup>

16 41. Demonstrating this heightened susceptibility of adolescents to nicotine addiction,  
17 “[s]everal studies have found initiation of smoking before age 14, before age 16, and before age 20  
18 is associated with increased odds of nicotine dependence compared to initiation at later ages.”<sup>39</sup>

19  
20 <sup>30</sup> Id.

21 <sup>31</sup> U.S. Dept. of Health & Human Services. Public Health Service, Office of the Surgeon General.  
(2019). Know the risks: e-cigarettes & young people. [https://e-](https://e-cigarettes.surgeongeneral.gov/knowtherisks.html#risks)  
22 [cigarettes.surgeongeneral.gov/knowtherisks.html#risks](https://e-cigarettes.surgeongeneral.gov/knowtherisks.html#risks).

23 <sup>32</sup> U.S. Dept. of Health & Human Services, *supra*, note 24, page 107

24 <sup>33</sup> Raven K, *supra*, note 9.

25 <sup>34</sup> Benowitz NL, (2010), *supra*, note 14.

26 <sup>35</sup> Brodwin E, *supra*, note 29.

27 <sup>36</sup> Tolentino J. (5/7/2018). The promise of vaping and the rise of JUUL. *The New Yorker*. (May  
28 14, 2018 issue). [https://www.newyorker.com/magazine/2018/05/14/the-promise-of-vaping-and-](https://www.newyorker.com/magazine/2018/05/14/the-promise-of-vaping-and-the-rise-of-juul)  
[the-rise-of-juul](https://www.newyorker.com/magazine/2018/05/14/the-promise-of-vaping-and-the-rise-of-juul).

29 <sup>37</sup> Raven K, *supra*, note 9

30 <sup>38</sup> Benowitz NL, (2010), *supra*, note 14.

31 <sup>39</sup> Lanza ST, Vasilenko SA. (2015). New Methods Shed Light on Age of Onset as a Risk Factor  
for Nicotine Dependence. *Addiction Behavior* 2015.

1 42. Early exposure to nicotine can also increase the severity of nicotine dependence.<sup>40</sup>

2 **4. The sale of tobacco to minors is illegal.**

3 43. Recognizing that nicotine is harmful and that adolescents are vulnerable to nicotine  
4 addiction, states have enacted laws designed to curb the sale of tobacco products to minors.

5 44. All states prohibit tobacco sales to individuals under age 18, and some states have  
6 set a higher minimum age for tobacco purchases.

7 **5. Children and adolescents are a key growth market for**  
8 **nicotine-containing products.**

9 45. Despite restrictions on the sale of tobacco to minors, most smokers became  
10 addicted to nicotine as children or teenagers. Research has shown that 98 percent of smokers  
11 smoke by age 26, with nearly 90 percent of adult smokers having picked up the habit by age 18.<sup>41</sup>

12 46. This research is consistent with a 2009 Congressional finding that “[v]irtually all  
13 new users of tobacco products are under the minimum legal age to purchase such products,” Pub.  
14 L. 111-31 § 2. Similarly, the Massachusetts Supreme Judicial Court has noted that “the earlier a  
15 person starts smoking, the harder it is to quit. Most smokers start early in life. The average age at  
16 which individuals begin to smoke is fourteen and one-half years.”<sup>42</sup>

17 47. Big Tobacco recognized that children and teenagers are a key growth market for  
18 their products because of the early age when people start smoking. In 1981, Phillip Morris—now  
19 a subsidiary of Altria—explained that “[t]oday’s teenager is tomorrow’s potential regular  
20 customer, and the overwhelming majority of smokers first begin to smoke while still in their  
21 teens.”<sup>43</sup> One of Phillip Morris’ competitors, R.J. Reynolds, also appreciated that “if our company

22  
23 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4519837/>

24 <sup>40</sup> Benowitz NL, (2010), *supra*, note 14

25 <sup>41</sup> Truth Initiative. JUUL e-cigarettes gain popularity among youth, but awareness of nicotine  
26 presence remains low. (4/18/2018). [https://truthinitiative.org/press/press-release/juul-e-cigarettes-  
gain-popularity-among-youth-awareness-nicotine-presence](https://truthinitiative.org/press/press-release/juul-e-cigarettes-gain-popularity-among-youth-awareness-nicotine-presence)

26 <sup>42</sup> Evans v. Lorillard Tobacco Co., 900 N.E.2d 997, 1009 (Mass. 2013).

27 <sup>43</sup> Perry CL. (1999) The Tobacco Industry and Underage Youth Smoking: Tobacco Industry  
28 Documents from the Minnesota Litigation. *Arch. Pediatr. Adolsec. Med.* 1999;153(9):935-941.  
<https://jamanetwork.com/journals/jamapediatrics/fullarticle/347724>

1 is to survive and prosper, over the long term, we must get our share of the youth market” and  
 2 prepared a written report on its “Thoughts About New Brands of Cigarettes for the Youth  
 3 Market.”<sup>44</sup> Lorillard, in analyzing sales of its Newport brand cigarettes, acknowledged in 1978  
 4 that “the base of our business is the high school student.”<sup>45</sup>

5 48. Big Tobacco also appreciated that smokers had strong brand loyalty. Rather than  
 6 trying to get older smokers to switch cigarette brands, Big Tobacco devoted much of its  
 7 advertising dollars to recruiting youthful non-smokers.

8 **B. Big Tobacco created a public-health crisis by marketing its products to**  
 9 **America’s youth.**

10 49. Advertising influences human behavior. It convinces consumers they should buy a  
 11 product because it either meets their needs, or because it fits an image they want to portray to  
 12 others. Advertising psychologically conditions consumers to positively respond to the product,  
 13 and in the case of tobacco, the activity of smoking.<sup>46</sup>

14 **1. Big Tobacco created marketing images and messages that**  
 15 **appealed to America’s youth.**

16 50. Big Tobacco knew that non-smokers have no rational reason to start smoking  
 17 because they are not addicted to nicotine. So, to get non-smokers to smoke, Big Tobacco knew it  
 18 would have to convince non-smokers to smoke because they wanted to project a desired image or  
 19 for other “irrational reasons.” As a R.J. Reynolds executive explained:

20 [A non-smoker or pre-smoker] does not start smoking to obtain undefined  
 21 physiological gratifications or reliefs, and certainly he does not start to smoke to  
 22 satisfy a nonexistent craving for nicotine. Rather, he appears to start to smoke for  
 23 purely psychological reasons—to emulate a valued image, to conform, to  
 24 experiment, to defy, to be daring, to have something to do with his hands, or the  
 25 like. . . . If we are to attract the nonsmoker or pre-smoker, there is nothing in this  
 type of product that he would currently understand or desire . . . Instead, we  
 somehow must convince him with wholly irrational reasons that he should try  
 smoking, in the hope that he will for himself then discover the real ‘satisfactions’

26 <sup>44</sup> Id.

27 <sup>45</sup> Id.

28 <sup>46</sup> Lynch BS, Bonnie, RJ (1994). Growing up Tobacco Free: Preventing Nicotine Addiction in Children and Youths. National Academy Press, Washington D.C.

<https://www.ncbi.nlm.nih.gov/books/NBK236761/>

1 obtainable.<sup>47</sup>

2 51. Adolescents are particularly vulnerable to advertising that associates use of a  
3 product with desired attributes, such as sophistication, social popularity, and physical  
4 attractiveness. “Adolescence is a period of heightened self-awareness as well as preoccupation  
5 with one's self-image.” And “studies have shown that adolescents whose actual self-concepts are  
6 consistent with their perceptions of ‘stereotypic’ smokers (derived from advertisements) are more  
7 likely to smoke. In order to acquire selected attributes of model smokers, adolescents may be  
8 motivated to use tobacco, even when they view smoking as negative.”<sup>48</sup>

9 52. Knowing this, Big Tobacco created devastatingly-effective marketing campaigns  
10 targeted toward adolescents.

11 53. Tobacco companies designed advertisements not only to build brand loyalty, but  
12 also to build a positive association with smoking in general. Big Tobacco’s advertising  
13 traditionally centered on images and messages designed to evoke a vision of a glamorous lifestyle  
14 choice in the minds of potential new smokers – themes such as pleasure/relaxation, sophistication,  
15 popularity, romance, style, and satisfaction.

16 54. Much of the cigarette advertising in the mid- to late-20th century was directed to a  
17 youthful market. Big Tobacco advertising presented images and messages that equated smokers  
18 with young adults who live a hip, urbane, glamorous, care-free lifestyle surrounded by friends –  
19 the lifestyle adolescents crave. As one study noted: “In image advertising, smoking is portrayed as  
20 an expression of independence, individualism, and social sophistication. It engages the consumer  
21 in a fantasy and invites the consumer to participate. . . . The models in cigarette ads appear  
22 healthy and happy, in stark contrast to the negative health consequences of smoking. Adolescents  
23 who evaluate positively the attributes of models used in cigarette advertising strongly overestimate  
24 the prevalence of smokers and give less thought to long-term consequences of risky behavior.”<sup>49</sup>

27 <sup>47</sup> See 61 Fed. Reg. 44396-01 at 44480 (1996).

28 <sup>48</sup> Id.

<sup>49</sup> Id.

55. Advertising slogans also made explicit the message the images of fun-loving young smokers communicated. Brown and Williamson even used the tagline “B Kool” to promote Kool brand cigarettes in the 1990s. But Kool wasn’t the only cigarette brand that told America’s youth that smoking was cool. Camel ads, for instance, emblazoned the phrase “Smooth Character” over images of the anthropomorphic, cigarette-smoking camel character known as Joe Camel, who could be seen racing cars, rolling dice at a casino, or catching the attention of attractive women.

56. Big Tobacco created images designed to portray smoking as synonymous with a glamorous lifestyle to impressionable adolescents. Such advertisements included: (1) images of groups of care-free young adults in their 20s and 30s who young adults adolescents would wish to emulate; (2) images of celebrities who adolescents idolized; (3) characters like Joe Camel, who exuded relaxed, urbane sophistication and coolness while simultaneously appealing to children as a cartoon; and (4) pictures of young, attractive models striking poses and gestures that emulate those made by children and adolescents.



57. Cigarette advertisements frequently said nothing about the product being advertised, instead merely depicted young, attractive groups of models romping on a beach, going out for a night on the town, or playing sports.

58. Big Tobacco also targeted adolescents by advertisements that suggested smoking is related to romantic success:



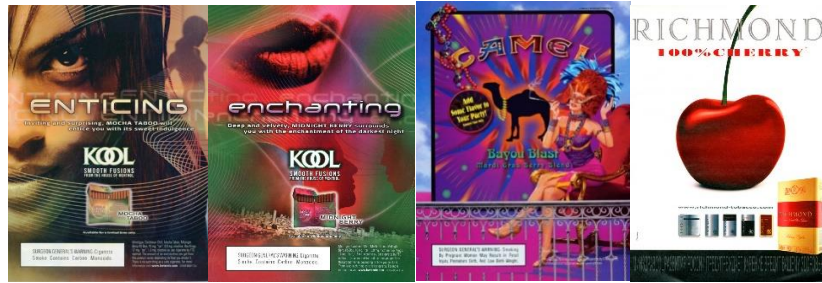


59. In the 1990s, ads for Kool brand cigarettes plastered the “B Kool” slogan on images of men casually holding a pack of Kools as they caught the eyes of young women in bars and clubs.

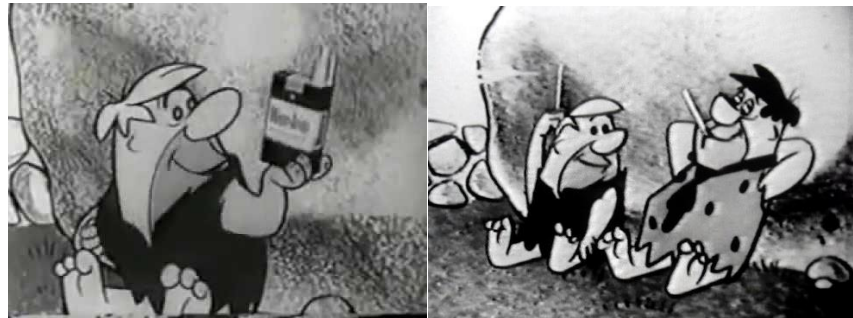


60. Another page in Big Tobacco’s playbook was selling flavored cigarettes that were more palatable to those not accustomed to the taste of tobacco. Big Tobacco learned these flavored cigarettes were attractive to youth – an FDA study showed that teen smokers were three times more likely to smoke flavored cigarettes.<sup>50</sup> So, Big Tobacco heavily marketed flavored cigarettes through brightly colored and suggestive imagery to attract young consumers:

<sup>50</sup> See Stanford University Research into the Impact of Tobacco Advertising (“SRITA”), [http://tobacco.stanford.edu/tobacco\\_main/images.php?token2=fm\\_st137.php&token1=fm\\_img4050.php&theme\\_file=fm\\_mt015.php&theme\\_name=Targeting%20Teens&subtheme\\_name=Flavored%20Tobacco](http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st137.php&token1=fm_img4050.php&theme_file=fm_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Flavored%20Tobacco).



61. To distribute these images and messages, Big Tobacco used marketing channels designed to reach adolescents. Big Tobacco advertised on the radio programs, television shows, and print media preferred by adolescents. R.J. Reynolds even infamously sponsored the children's television program *Flintstones* and enlisted Fred and Barney as spokespersons for the slogan, "Winston tastes good, like a cigarette should."



62. Big Tobacco aggressively used outdoor advertising. Cigarette advertisements appeared on hundreds of thousands of billboards across the nation.<sup>51</sup>

63. Big Tobacco also reached adolescents in more indirect and subtle ways. As part of its effort to associate cigarettes with the celebrities young Americans idolize and wish to emulate, Big Tobacco signed "product placement" contracts with Hollywood studios that placed cigarettes in the hands of movie stars. Big Tobacco also signed "testimonial" contracts with movie stars that called on them to smoke a brand of cigarette to build excitement for the brand and for smoking in general.<sup>52</sup>

<sup>51</sup> Lynch BS, *et al.*, *supra*, note 46.

<sup>52</sup> See, Lum KL, Polansky JR, Jackler RK, Glantz, SA (2008). Signed, sealed and delivered: "big tobacco" in Hollywood, 1927–1951. *Tobacco Control*. 17:5 10/1/2008. <https://tobaccocontrol.bmj.com/content/tobaccocontrol/17/5/313.full.pdf>.



64. Big Tobacco held promotional events where they gave away free samples of cigarettes. Although illegal, minors were often provided free samples of cigarettes at promotional events.<sup>53</sup>

65. Big Tobacco also used aggressive “point-of-sale” advertising, where the tobacco companies advertised inside of retail locations to encourage “impulse” purchases. The point-of sale advertising often touted discounts on cigarettes.<sup>54</sup>

66. Big Tobacco achieved its goal of building a positive image of smoking in the minds of adolescents so each new generation would supply Big Tobacco with a new source of buyers. Studies showed that Big Tobacco’s advertisements made smoking attractive to adolescents, and even young children. In one study, 91 percent of six-year-old children surveyed identified Joe Camel with cigarettes.<sup>55</sup>

## 2. Amid this youth-oriented marketing, millions of

### American children and teenagers became smokers.

67. Big Tobacco’s youth-oriented marketing ploys worked: millions of American children and teenagers became addicted to nicotine before they could even lawfully purchase cigarettes.

68. Big Tobacco’s youth-oriented advertising played a major role in getting high-schoolers to light up. Congress found in 2009 that “[t]obacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.” Pub. L. 111-31 § 2. But this was not startling news. Nearly 90 years ago, a court explained:

[T]he tobacco habit has made great inroads into the youth of the country. The reason would seem quite plain. Manufacturers and dealers have been left free to appeal to the boys and girls as well as adults with most alluring and attractive cigarette and tobacco advertisements . . . . The recruits into the ranks of the

<sup>53</sup> Lynch BS., *et al.*, *supra*, note 46.

<sup>54</sup> *Id.*

<sup>55</sup> Arnett JJ, Terhanian G. (1998). Adolescents’ responses to cigarette advertisements: links between, exposure, liking, and the appeal of smoking. *Tobacco Control*, 1998;7:129-133. [https://tobaccocontrol.bmj.com/content/7/2/129?int\\_source=trendmd&int\\_medium=cpc&int\\_campaign=usage-042019](https://tobaccocontrol.bmj.com/content/7/2/129?int_source=trendmd&int_medium=cpc&int_campaign=usage-042019) (accessed August 5, 2019).

1 smokers come largely from the boys and girls rather than from people of  
maturity.<sup>56</sup>

2 69. Studies showed marketing campaigns by one company alone could lead to a huge  
3 increase in adolescent smoking nationwide. Introducing the Virginia Slims brand of cigarettes in  
4 the 1960s led to a huge increase in smoking among adolescent girls. And perhaps most  
5 infamously, introducing the cartoon Joe Camel character caused a spike in adolescent smoking in  
6 the 1990s.<sup>57</sup>

7 70. Amid Big Tobacco's youth-oriented advertising blitz, youth smoking was an  
8 epidemic for much of the twentieth century. About 29 percent of high school seniors were daily  
9 smokers in 1976. That figure dropped during the 1980s and early 1990s before increasing again  
10 each year from 1993 until 1997.<sup>58</sup>

11 71. By 1997, 24.6 percent of high school seniors were daily smokers. But smoking  
12 was also popular among even younger adolescents. In 1997, 18 percent of tenth graders and 9  
13 percent of eighth graders were daily smokers.<sup>59</sup>

14 **3. The Master Settlement Agreement and state and federal**  
15 **regulations led to a decline in youth smoking.**

16 72. In recent decades, federal and state governments have taken strides to reduce youth  
17 smoking.

18 73. In the 1990s, over 40 states sued tobacco manufacturers that alleged, among other  
19 claims, that tobacco companies marketed their products to minors.

20 74. Minnesota's claims against tobacco companies went to trial in 1998. That multi-  
21 month trial resulted in the release of internal documents where Big Tobacco executives  
22 acknowledged that they intentionally marketed cigarettes to minors. That case settled before  
23 verdict, and, as part of the settlement, Big Tobacco agreed to place many incriminating documents  
24 in a public depository.

25 <sup>56</sup> State v. Packer Corp., 297 P. 1013, 1017-18 (Utah 1931).

26 <sup>57</sup> See Lynch BS, *et al.*, *supra*, note 46.

27 <sup>58</sup> U.S. Dept. of Health & Human Services, Office of Population Affairs. Adolescents and  
Tobacco: Trends. [https://www.hhs.gov/ash/oah/adolescent-development/substance-  
28 use/drugs/tobacco/trends/index.html](https://www.hhs.gov/ash/oah/adolescent-development/substance-use/drugs/tobacco/trends/index.html) (access 8/29/2019).

<sup>59</sup> *Id.*

1           75.     Several months after the Minnesota trial, 46 states and the tobacco manufacturers  
2 entered a Master Settlement Agreement. As part of that settlement, tobacco manufacturers agreed  
3 not to target youth in the advertising, promotion, or marketing of tobacco products.

4           76.     Tobacco companies also agreed to fund anti-smoking advertising campaigns. Non-  
5 profit agencies have also launched numerous youth-oriented anti-smoking initiatives over the past  
6 25 years.

7           77.     Legislative efforts have further aimed to curb youth tobacco use. In 2009,  
8 Congress passed, and President Obama signed, the Family Smoking Prevention and Tobacco  
9 Control Act. *See* Pub. L. 111-31 (herein, “Tobacco Control Act”). That statute, among other  
10 provisions, banned tobacco companies from adding flavors “including strawberry, grape, orange,  
11 clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee” to  
12 cigarettes. Pub. L. 11-31 § 907(a)(1)(A) (codified at 21 U.S.C. § 387g(a)(1)(A)).

13           78.     The Tobacco Control Act also subjected tobacco products to regulation by the  
14 FDA. The Tobacco Control Act provides that any tobacco product introduced after February 15,  
15 2007, must receive premarket approval from the FDA, unless the product is substantially  
16 equivalent to tobacco products on the market before that date. Pub. L. 111-31 § 910(a)(2)  
17 (codified at 21 U.S.C. § 3879). The FDA must deny requests for pre-market approval of new  
18 tobacco products if “there is a lack of showing that permitting such tobacco product to be  
19 marketed would be appropriate for the protection of the public health.” Pub. L. 111-31 § 910  
20 (codified at 21 U.S.C. § 387j(c)(2)(A)).

21           79.     The Tobacco Control Act also gave federal regulators authority to “impose  
22 restrictions on the advertising and promotion of a tobacco product consistent with and to the full  
23 extent permitted by the first amendment to the Constitution,” Pub. L. 111-31 § 906(d)(1) (codified  
24 at 21 U.S.C. § 387f(d)), while also increasing states’ authority to regulate tobacco advertising and  
25 sales, Pub. L. 111-31 § 916 (codified at 21 U.S.C. § 387p(a)(1)).

26           80.     Since passage of the Tobacco Control Act, many local governments have added  
27 restrictions on tobacco advertising and sales. For example, Massachusetts recently enacted a  
28

1 statute that prohibits health care institutions, such as pharmacies, from selling tobacco products.

2 *See* Mass. Gen. L. 112 § 61A(b).

3 81. In recent years, many states have also increased taxes on cigarettes to make  
4 smoking less attractive to cash-strapped teens. Several states now have cigarette taxes that exceed  
5 \$3 per pack.

6 **4. Youth cigarette smoking declined as a result of**  
7 **marketing restrictions on Big Tobacco's marketing.**

8 82. Because of these restrictions on Big Tobacco's marketing, youth smoking has  
9 declined over the past generation. While about 25 percent of high school seniors reported  
10 smoking daily in 1997, that percentage dropped to 11.4 percent in 2008, and to 3.6 percent in  
11 2018.<sup>60</sup> Approximately 10 percent of U.S. eighth graders were daily smokers in the mid-1990s,  
12 but only 0.6 percent of U.S. eighth graders were daily smokers in 2017.<sup>61</sup>

13 83. The Master Settlement Agreement, Tobacco Control Act, and other reform efforts  
14 reduced youth smoking. By curtailing Big Tobacco's exploitative marketing, these reforms were  
15 helping to bring about an end to adolescent nicotine use.

16 84. But, unfortunately, the Master Settlement Agreement and Tobacco Control Act left  
17 a loophole – they did not expressly address e-cigarettes. JUUL saw an opportunity and exploited  
18 this loophole.

19 **C. JUUL copies the Big Tobacco playbook and creates a new public health crisis.**

20 85. Though nicotine has traditionally been inhaled through the burning of tobacco in  
21 cigarettes or pipes, electronic cigarettes provide an alternative mechanism for inhaling nicotine.  
22 Before JUUL, electronic cigarettes delivered freebase nicotine, which provides a less satisfying  
23 high to users than the nicotine found in tobacco leaves.

24  
25  
26  
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28 <sup>60</sup> *Id.*

<sup>61</sup> *Id.*

**1. JUUL designs an e-cigarette that will appeal to  
America's youth.**

86. In 2004, Adam Bowen and James Monsees—both graduate students at Stanford University studying product design—proposed an electronic cigarette that, as they described, would “take tobacco back to being a luxury good and not so much a drug delivery device.”<sup>62</sup>

87. Bowen and Monsees, describing this proposed product in their thesis presentation, explained that “attractive packaging” and a “variety of flavors”<sup>62</sup> would make the product more socially appealing. During their thesis presentation they described their goal to make an electronic cigarette that was “compact, highly portable, very convenient, easy to use, elegant...”<sup>62</sup> Monsees wrote, “[W]hen my co-founder and I began researching the tobacco industry, we started reading patent documents and TobaccoDocuments.org. These two resources were invaluable to gaining a clear understanding of the tobacco product evolution. Soon, we had a comprehensive view of the tobacco landscape, what it would take to change it, and how we needed to shape our product.”<sup>63</sup>

88. In 2007, Bowen and Monsees incorporated Ploom, Inc., to develop and market an electronic cigarette similar to the one they had envisioned as students. They brought to market the Ploom product, which was a tobacco vapor product that electrically heated tobacco to create inhalable vapor. Ploom caught the attention of investor Japan Tobacco International (JTI), who partnered with Ploom in further developing and marketing the product. JTI left the partnership with the related intellectual property, and JTI continues to market Ploom.<sup>64</sup> Ploom then built on that experience and released a loose leaf vaporizing product called Pax in 2012, while continuing product development. Ploom later changed its name to PAX Labs.

89. In 2015, PAX Labs released the JUUL electronic cigarette. PAX Labs changed its name to JUUL Labs, Inc. in 2017. Bowen and Monsees are, respectively, Chief Technology

<sup>62</sup> Bowen A, Monsees J. (2004). Adam and James Thesis Presentation, <https://www.youtube.com/watch?v=ZBDLqWCjsMM>

<sup>63</sup> Monsees J. Darwin's Lessons for Consumer Products (3/25/2015) <https://www.linkedin.com/pulse/darwins-lessons-consumer-products-james-monsees>

<sup>64</sup> Page B. (2/17/2015). Ploom and JTI agree to split up, divide heat-not-burn brands. *ECigIntelligence*. <https://ecigintelligence.com/ploom-and-jti-agree-to-split-up-divide-modeltwo-and-pax-brands/>

1 Officer and Chief Product Officer at JUUL. They are the inventors or share credit in invention of  
2 many of the components and the formulas that make JUUL what it is.

3 90. The JUUL electronic cigarette is less than four inches long and resembles a USB  
4 drive. A user inserts a small, disposable, plastic container—termed a JUUL pod—in the end of  
5 the JUUL electronic cigarette. The JUUL pod comes prefilled with a liquid mixture of JUUL’s  
6 patented nicotine salt formulations flavoring agents, glycerol, propylene glycol, and benzoic acid.



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12 91. The design of the JUUL electronic cigarette is appealing to children and teenagers.  
13 The JUUL electronic cigarette more closely resembles a computer accessory than a cigarette and is  
14 thus appealing to members of Generation Z, who grew up thinking that electronics were cool  
15 while combustible cigarettes were a relic of their parents’ generation. The JUUL electronic  
16 cigarette’s small size, and resemblance to a USB flash drive, allows it to be easily hidden from  
17 parents or teachers and camouflaged by its “tech” appearance.

18 92. To use a JUUL electronic cigarette, a user simply picks up the device and inhales.  
19 A sensor in the JUUL electronic cigarette detects air movement caused by the user’s inhalation  
20 and then directs a battery in the JUUL electronic cigarette to activate the device’s heating  
21 elements, which convert the liquid solution in the JUUL pod into a vapor that the user inhales.

22 93. The JUUL electronic cigarette is powered by a lithium-ion battery. The battery can  
23 be recharged on a laptop or wall charger within one hour—twice as fast as competing brands of  
24 electronic cigarettes can be recharged. JUUL claims that a full charge on their device will last as  
25 long as a full JUUL pod, or about 200 puffs.<sup>65</sup>

26  
27  
28 <sup>65</sup> Vape Passion.com. (9/12/2017) Hardware review: Pax JUUL.  
<https://www.vapepassion.com/hardware-review-pax-juul/>

1           94.     A JUUL user can easily determine the battery charge by tapping the device twice.  
2 An LED light will display green, yellow, or red. Green means a high charge, yellow means a  
3 medium charge, and red means a low charge.

4           95.     JUUL electronic cigarettes even have a “party mode” that is appealing to teen  
5 users. The party mode is an undocumented feature of the JUUL, which you will find nowhere on  
6 the JUUL website or in the JUUL instruction manual. It is simply there for users to discover on  
7 their own. In party mode, the LED lights on the device begin rapidly cycling through several  
8 colors. Party mode is well known among JUUL users and many put their JUUL in party mode at  
9 clubs or concerts. They accomplish this by puffing on their device, waiting for the LED light to  
10 turn solid white, and then waving the JUUL around quickly.

11           96.     JUUL advertises that JUULing costs less than smoking combustible cigarettes.<sup>66</sup> A  
12 JUUL “starter kit”—which includes an electronic cigarette, USB charger, and four JUUL pods—  
13 can be purchased from JUUL’s website for about \$50.<sup>67</sup> A package of four JUUL pods can be  
14 purchased from that website for about \$15.<sup>68</sup>

15           97.     The picture below shows a “starter kit,” with JUUL electronic cigarette, several  
16 JUUL pods (the different colors of the pods correspond with various flavors), and an attachment  
17 that connects the JUUL electronic cigarette to a USB outlet for charging.

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26  
27 <sup>66</sup> <https://www.juul.com/calculator>

<sup>67</sup> <https://www.juul.com/shop/devices/starter-kit>

<sup>68</sup> <https://www.juul.com/shop/pods/cucumber-5-percent>





98. JUUL knew that Big Tobacco had produced cigarettes in various flavors that made smoking more palatable to novice smokers. The Tobacco Control Act prohibited the production of flavored combustible cigarettes, but, when JUUL put its electronic cigarettes on the market, it was not subject to the Tobacco Control Act. Following the lead of Big Tobacco, JUUL developed various flavors for its JUUL pods, including mint, mango, crème brûlée, and cool cucumber.

99. A JUUL advertisement depicting various JUUL pod flavors is shown below.



## 2. JUUL delivers a higher nicotine concentration that will quickly addict young users.

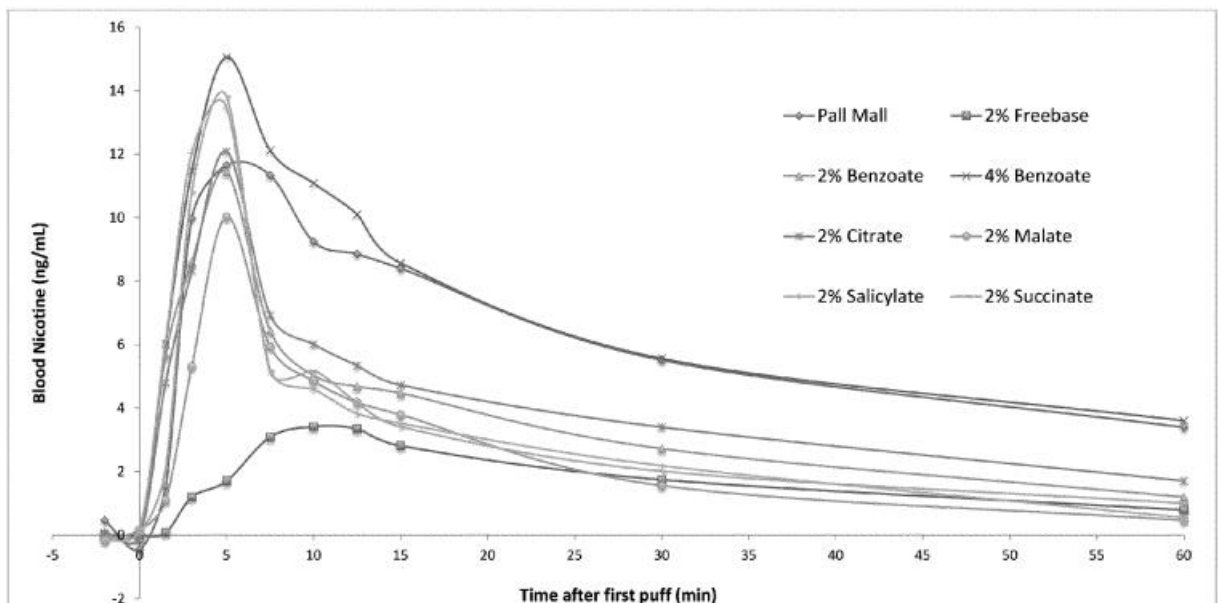
100. Electronic cigarettes pre-dating JUUL heated a formulation that contained freebase tobacco. JUUL electronic cigarettes, however, are different: they heat a liquid that contains

1 patented nicotine salts, which deliver a much more potent punch of nicotine than earlier electronic  
2 cigarettes.

3 101. In 2015, PAX Labs (as JUUL was then known) received a U.S. patent for “nicotine  
4 salt formulations for aerosol devices and methods thereof.” *See* U.S. patent no. 9215895 B2. The  
5 patent explained that “certain nicotine salt formulations provide satisfaction in an individual  
6 superior to that of freebase nicotine, and more comparable to the satisfaction in an individual  
7 smoking a traditional cigarette.” When compared to freebase nicotine solutions used in  
8 preexisting electronic cigarettes, nicotine salts caused faster heartbeat, faster delivery of nicotine,  
9 and higher nicotine uptake levels at early time periods after inhalation.<sup>69</sup>

10 102. The nicotine salts “...travel more deeply into the lung than freebase, where the  
11 nicotine is absorbed faster....”<sup>75</sup> This faster absorption allows the nicotine salts to “...more  
12 closely replicate a cigarette-like nicotine delivery.”

13 103. The chart below, which PAX Labs submitted with its patent application, shows that  
14 all nicotine salt formulations covered by the patent lead to higher blood nicotine concentrations  
15 than freebase nicotine. Some of those formulations also lead to higher blood nicotine  
16 concentrations than a combustible Pall Mall cigarette.



<sup>69</sup> U.S. Patent 9215895, Nicotine Salt Formulations for Aerosol Devices and Methods Thereof.

104. JUUL pods contain these patented nicotine salts rather than freebase nicotine.

105. JUUL delivers a higher concentration of nicotine than other e-cigarettes on the market. According to JUUL co-founder James Monsees, JUUL electronic cigarettes are intended to provide “cigarette-like levels of satisfaction.”<sup>70</sup>

106. JUUL electronic cigarettes provide a more powerful nicotine high than competing brands of electronic cigarettes because the nicotine salts used in JUUL electronic cigarettes are more readily absorbed in the blood than the freebase nicotine found in competing products.

107. But JUUL electronic cigarettes also contain higher concentrations of nicotine than competing products.

108. JUUL represents that the liquid in its standard strength JUUL pods has nicotine concentration of 59 milligrams per milliliter, or 5 percent by volume. By comparison, before JUUL was introduced in 2015, most electronic cigarette products had nicotine concentrations of only 1 percent or 2.4 percent.<sup>71</sup> Recently, JUUL started giving customers a choice of purchasing selected flavors of JUUL pods in either a 3 percent or 5 percent nicotine concentration, but even the 3 percent concentration is higher than the nicotine levels found in competing products.

109. The 59 mg/ml concentration in JUUL pods is nearly three times the maximum amount (20 mg/ml) European Union regulations allow electronic cigarettes to contain. Even the 3 percent nicotine concentration exceeds the levels of nicotine allowed under European Union regulations.

110. Studies have further noted that nicotine concentrations in JUUL’s pods are even higher than JUUL represents, with some research showing some pods contain 66 milligrams of nicotine.<sup>72</sup>

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<sup>70</sup> NBC News. (10/3/2018). Inside The Heated Battle Over Juul: Creating Teen Addicts Or Saving Lives? | Think |. <https://www.nbcnews.com/think/video/inside-the-heated-battle-over-juul-creating-teen-addicts-or-saving-lives-1336027715694>

<sup>71</sup> Truth Initiative. (2/26/2019). How much nicotine is in JUUL?

<https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>

<sup>72</sup> Omaiye EE, McWhirter KJ, Wentai L, Pankow JF, Talbot P. (12/9/2018). Toxicity of JUUL fluids and aerosols correlates strongly with nicotine and some flavor chemical concentrations. <https://www.biorxiv.org/content/biorxiv/early/2018/12/09/490607.full.pdf>.

111. JUUL further advertises that a JUUL pod contains about as much nicotine as is contained in a pack of combustible cigarettes. But JUUL users—especially those who are not experienced smokers—will usually absorb more nicotine in less time from “JUULing” a JUUL pod than from smoking a pack of traditional combustible cigarettes.

112. In a combustible cigarette, some nicotine is caught in the cigarette’s filter, so a smoker absorbs only about 1-2 milligrams of nicotine from smoking a combustible cigarette (or about 20-40 milligrams of nicotine after smoking a pack of 20 cigarettes).<sup>73</sup> Similarly, an electronic cigarette with a nicotine concentration of 20 milligrams per milliliter will deliver approximately 1 milligram of nicotine to a user in 5 minutes (the approximate time needed to smoke a combustible cigarette).<sup>74</sup> But JUUL pods have a nicotine concentration of around 60 milligrams per milliliter, allowing them to deliver more nicotine in five minutes than a combustible cigarette.

113. A JUUL user is also likely to inhale JUUL vapor more quickly than an inexperienced smoker will smoke combustible cigarettes. The nicotine salts in JUUL pods are ionized, which means they carry a slight positive charge. This ionization makes the hit from a JUUL less volatile and less harsh than the smoke from a combustible cigarette.<sup>75</sup> The absence of a “harsh throat hit” takes away users’ natural warning mechanism that they are taking in too much nicotine. Studies have noted that, without the harsh throat hit, JUUL “...allows even a novice to inhale large doses of nicotine.”<sup>76</sup>

114. JUUL pods also come in various flavors that are more palatable to inexperienced smokers than cigarette smoke.

<sup>73</sup> Koplon S. (11/12/2018). Vaping, e-cigarettes, JUULing: what parents, teens need to know. *UAB News*. University of Alabama at Birmingham. <https://www.uab.edu/news/youcanuse/item/9937-vaping-e-cigarettes-juuling-what-parents-teens-need-to-know>

<sup>74</sup> European Commission Directorate-General for Health and Food Safety. E-cigarettes. [https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs\\_ecigarettes\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf).

<sup>75</sup> JUUL’s Nicotine Salts are Dominating the Market – and Other Companies Want In, The crown Juuls (November 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>

<sup>76</sup> Juul nicotine hit may be “Worst for kids, best for smokers” (April 27, 2019), <https://www.apnews.com/681b934cc43147ed8026dd8fdb1dae56>

115. Because “JUULing” is less harsh on the throat than cigarette smoking and because JUUL pods come in flavors more palatable than tobacco smoke, adolescent users of JUUL electronic cigarettes often vape through a JUUL pod more quickly than they would burn through a pack of cigarettes. As noted above, a user will absorb more nicotine in five minutes from a standard strength JUUL pod than from a combustible cigarette. These adolescent JUUL users thus often absorb more nicotine than they would have absorbed had they smoked combustible cigarettes.

116. A recent study has shown that “adolescents who use pod-based e-cigarettes such as JUUL have higher concentrations of nicotine biomarkers in their body than adolescents who smoke cigarettes.”<sup>77</sup>

117. Nicotine is not any safer or less addictive when inhaled from a JUUL electronic cigarette than when inhaled from a combustible cigarette.

### 3. JUUL vapor contains additional harmful substances

118. JUUL vapor contains various harmful substances besides nicotine, but JUUL has not investigated the long-term consequences of exposure to those substances.<sup>78</sup>

119. According to the U.S. Surgeon General, the vapor from electronic cigarettes contains “ultrafine particles that can be inhaled deep into the lungs;” “flavorants such as diacetyl, a chemical linked to serious lung disease;” “volatile organic compounds;” and “heavy metals, such as nickel, tin, and lead.”<sup>79</sup>

<sup>77</sup> Winickoff JP. American Academy of Pediatrics. (7/24/2019). Examining JUUL’s Role in the Youth Nicotine Epidemic.” Testimony before the U.S. House of Representatives Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy. <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>

<sup>78</sup> Halpern-Felsher B. (8/15/2019). Op-Ed: Let’s call this youth vaping crisis what it is: A Juuling epidemic. *Los Angeles Times*. <https://www.latimes.com/opinion/story/2019-08-14/youth-vaping-crisis-juuling-epidemic>

<sup>79</sup> U.S. Dept. of Health & Human Services. Public Health Service, Office of the Surgeon General. (2019). E-Cigarettes. <https://e-cigarettes.surgeongeneral.gov/>

120. Research has also shown that JUUL vapor contains carcinogens like tobacco-specific nitrosamines<sup>80</sup> and formaldehyde.<sup>81</sup>

121. Flavoring agents in the JUUL pod also cause respiratory harm. The liquid in JUUL pods includes various flavoring agents, including aldehydes such as vanillin. Aldehydes react with other chemicals found in the JUUL pod liquid, such as polypropylene glycol and glycerol, to form new compounds called acetals. Those acetals can irritate the respiratory system.<sup>82</sup>

122. The chemicals in electronic cigarettes, including JUUL, can lead to numerous injuries. Research has linked those chemicals to seizures,<sup>83</sup> lung disease,<sup>84</sup> and damage to cardiovascular cells.<sup>85</sup>

123. A recent study found that, compared to non-electronic cigarette users, users of electronic cigarettes have a 71 percent higher risk of stroke; 59 percent higher risk of heart attack or angina; and 40 percent higher risk of coronary heart disease.<sup>86</sup>

<sup>80</sup> Winickoff JP, *supra*, note 77.

<sup>81</sup> Jensen RP, Luo W, Pankow JF, Strongin RM, Peyton DH. (1/22/2015). Hidden Formaldehyde in E-Cigarette Aerosols. *New England Journal of Medicine* 372(4):392-394, <https://www.nejm.org/doi/full/10.1056/NEJMc1413069>

<sup>82</sup> Duke University Medical Center. (10/18/2018). Adding flavors to e-cigarette liquids changes chemistry, creates irritants. <https://medicalxpress.com/news/2018-10-adding-flavors-e-cigarette-liquids-chemistry.html>

<sup>83</sup> U.S. FDA, *supra*, note 8.

<sup>84</sup> Sable-Smith B. (8/16/2019) What's Behind A Cluster Of Vaping-Related Hospitalizations? All Things Considered, National Public Radio. <https://www.npr.org/sections/health-shots/2019/08/16/751823475/whats-behind-a-cluster-of-vaping-related-hospitalizations?>; Nedelman M. (8/19/2019). CDC, state health officials investigating link between vaping and severe lung disease. CNN. <https://www.cnn.com/2019/08/17/health/vaping-lung-disease-states/index.html>

<sup>85</sup> Nedelman M. (8/20/2019). E-cigarettes change blood vessels after just one use, study says. <https://www.cnn.com/2019/08/20/health/vaping-cardiovascular-study/index.html>; Omaiye EE, McWhirter KJ, Wentai L, Pankow JF, Talbot P. (3/21/2019). High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations. *Chem. Res. Toxicol.* 2019, 32, 6, 1058-1069 <https://pubs.acs.org/doi/10.1021/acs.chemrestox.8b00381>

<sup>86</sup> American Stroke Association. (1/30/2019). E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries. <https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries>

**4. JUUL knew that its products were not safe.**

124. Given the vast amount of scientific research on nicotine and the general public awareness on the issue, JUUL has known since the time of its founding that nicotine is an addictive chemical. JUUL also knew from that body of research that adolescents are more susceptible to nicotine addiction than adults and that nicotine addiction usually starts before adulthood.

125. JUUL also knew, or should have known, from the volumes of published research nicotine, in addition to being addictive, poses various other serious health risks.

126. Health concerns, however, were not a priority for JUUL. Ari Atkins—one of JUUL’s research and development engineers and co-inventor on several patents of JUUL components—even acknowledged in a 2015 interview that “[w]e don’t think a lot about addiction here because we’re not trying to design a cessation product at all . . . anything about health is not on our mind.”<sup>87</sup>

127. JUUL has even acknowledged that it has not investigated the long-term health consequences of its product. JUUL CEO Kevin Burns admitted in a recent interview that “we have not done the long-term, longitudinal, clinical testing that we need to do.”<sup>88</sup>

128. Despite being aware of the health risks of nicotine and other chemicals in its electronic cigarettes, JUUL forged ahead with marketing its electronic cigarette.

**5. JUUL followed Big Tobacco’s playbook to target America’s youth**

129. Adolescents had traditionally comprised the growth market for Big Tobacco. But, as a result of various state and federal regulations and the Master Settlement Agreement, tobacco

<sup>87</sup> Tiku N. (4/21/2015). Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette:

Surprise, it's a rectangle. The Verge. <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>

<sup>88</sup> LaVito A. (7/15/2019). Juul CEO tells parents 'I'm sorry' amid teen vaping ‘epidemic’. *Tennessean*. <https://www.tennessean.com/story/news/newswire/2019/07/15/juul-ceo-kevin-burns-apologizes-parents-amid-teen-vaping-epidemic/1733693001/>



1 companies were restricted from marketing combustible cigarettes to the adolescent market.  
 2 Recognizing a business opportunity, JUUL deliberately targeted this large, vulnerable market.

3 130. It was easy for JUUL to copy Big Tobacco's proven marketing strategy. Big  
 4 Tobacco's playbook is now largely a matter of public record. The University of California San  
 5 Francisco Library compiled and made available online millions of the confidential memos Big  
 6 Tobacco produced in the litigation leading to the Master Settlement Agreement.<sup>89</sup> Researchers at  
 7 the Stanford University Research Into the Impact of Tobacco Advertising ("SRITA") program  
 8 cataloged and made available online hundreds of the images used in Big Tobacco's advertising.<sup>90</sup>  
 9 These repositories of information were designed to allow research and learning about the sins of  
 10 Big Tobacco.

11 131. But JUUL exploited this information to learn how to hook a new generation of  
 12 America's youth on nicotine. JUUL does not even keep this fact a secret. In an interview JUUL's  
 13 co-founder, James Monsees, admitted that JUUL consulted the millions of documents made public  
 14 because of the Master Settlement Agreement:

15 [W]e were able to deduce what had happened historically in the tobacco industry. In  
 16 particular, after the "Master Settlement Agreement," the big settlement where  
 17 everyone was suing the tobacco companies and there was one master lawsuit that  
 18 was kind of rolled together. One of the results was that a lot of tobacco industry  
 19 documentation was mandated to become public . . . . You can still go to a website  
 20 called tobaccodocuments.org and you can read board minutes and other things. It  
 21 became a very intriguing space for us to investigate because we had so much  
 22 information that you wouldn't normally be able to get in most industries. And we  
 23 were able to catch up, right, to a huge, huge industry in no time.<sup>91</sup>

24 132. In another interview, Monsees admitted "the design of JUUL's advertising had  
 25 been informed by traditional tobacco advertising" and that SRITA's online image bank of old  
 26 tobacco advertisements had been "quite useful" to JUUL.<sup>92</sup>

27 <sup>89</sup> See Truth Tobacco Industry Documents archive. University of California San Francisco.  
 28 <https://www.industrydocuments.ucsf.edu/tobacco/>.

<sup>90</sup> Stanford University Research into the Impact of Tobacco Advertising ("SRITA").  
[http://tobacco.stanford.edu/tobacco\\_main/main.php](http://tobacco.stanford.edu/tobacco_main/main.php) (collecting hundreds of images of Big  
 Tobacco advertising).

<sup>91</sup> Montoya G. Pax Labs: Origins with James Monsees. Social Underground.

<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (accessed August 5, 2019)

<sup>92</sup> Jackler RK. (1/12/2019). *JUUL Advertising Over its First Three Years on the Market*, at 1.

1 133. Armed with Big Tobacco’s playbook, JUULs’ founders went to work with the goal  
 2 of selling “the wonder and elegance of smoking” to a new generation of impressionable  
 3 adolescents.<sup>93</sup>

4 134. JUUL launched in 2015 with its now infamous “Vaporized” advertising campaign.  
 5 SRITA’s researchers reviewed the campaign and concluded: “[T]he targeting of youthful  
 6 consumers was evident in design and implementation of the [V]aporized campaign.” SRITA’s  
 7 researchers noted that JUUL’s advertising messages and images corresponded to the images and  
 8 messages previously used by Big Tobacco.<sup>94</sup>

9 135. Side-by-side comparisons of JUUL’s advertisements to those of Big Tobacco leave  
 10 no doubt of JUUL’s intention to copy Big Tobacco’s highly successful youth-oriented marketing.

11 136. JUUL like Big Tobacco before it, portrayed JUUL users as young adults who live a  
 12 hip, urbane, glamorous, care-free lifestyle surrounded by friends:



26 [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf) (accessed August 5,  
 27 2019).

28 <sup>93</sup> Ideasmensch ‘interview’ James Monsees—Co-founder and CEO of Ploom. (4/11/2014)

<https://ideamensch.com/james-monsees/> (accessed August 6, 2019)

<sup>94</sup> Jackler RK, *supra*, note 92, at 7.



137. JUUL, like Big Tobacco before it, used images of young adults gesturing in a manner more typical of adolescents than adults.



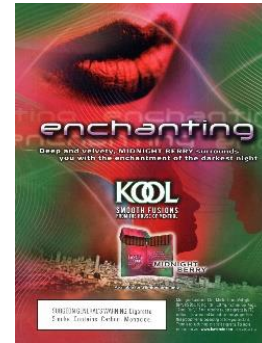
138. But JUUL's advertisements were even more blatantly and overtly teen-focused than anything even Big Tobacco had been willing to try:



139. JUUL, like Big Tobacco before it, promoted use of its product with romantic success:



140. JUUL, like Big Tobacco before it, marketed flavored products that appeal to adolescents:



141. As the U.S. Surgeon General summarized, “[t]hemes in e-cigarette marketing, including sexual content and customer satisfaction, are parallel to themes and techniques that have been found to be appealing to youth and young adults in conventional cigarette advertising and promotion.”<sup>95</sup>

142. While JUUL could view the archives and essentially copy some of Big Tobacco’s advertising themes, the channels for delivering marketing had changed since the Master Settlement Agreement. JUUL reached adolescents much more effectively and directly than Big Tobacco had done.

143. Before 1998, when Big Tobacco sought to influence the adolescents of the Baby Boom Generation and Generation X, social-media either did not exist or was in its infancy.<sup>96</sup>

144. But, in 2015, JUUL was seeking new generations of young people who grew up in a world of technology. Advertisers target today’s youth through new marketing channels,

<sup>95</sup> U.S. Dept. of Health & Human Services. Public Health Service, Office of the Surgeon General (2016), *supra*, note 24, at 10

<sup>96</sup> Jackler RK, *supra*, note 92, at 33.

1 including social-media engagement and “viral” marketing campaigns.<sup>97</sup> Today’s viral marketing  
 2 centers upon building a “buzz” among social-media users, many of whom are minors. These  
 3 minors post favorable product reviews and end up marketing for product manufacturers.

4 145. JUUL knew this. So, rather than focus its efforts on marketing channels preferred  
 5 by adults, JUUL targeted marketing channels preferred by today’s youth. JUUL’s use of  
 6 traditional media – media that appeals to adults—was almost non-existent. JUUL’s Vaporized  
 7 advertisements appeared in only one print source: *Vice* magazine. *Vice* is a pop culture magazine  
 8 that markets itself to advertisers as “#1 youth media company.”<sup>98</sup>

9 146. The main thrust of the Vaporized campaign was a social-media blitz and viral  
 10 marketing campaign. JUUL employed an army of in-house social-media managers and staff  
 11 whose job was to foster social-media engagement with JUUL’s target consumer, America’s youth.  
 12 JUUL’s marketing staff was tasked with the job of creating social-media conversation about its  
 13 product with favorable comments. This led to the creation of a social-media community called  
 14 “JUULers.”<sup>99</sup>

15 147. JUUL directly posted on its Instagram, Facebook, Twitter, and YouTube social-  
 16 media accounts. JUUL supplemented these efforts through social-media “influencers,” who are  
 17 individuals with large numbers of young followers on social-media. JUUL paid influencers to  
 18 promote the JUUL products. JUUL created hashtags (#vaporized, #juul, etc.) that the influencers  
 19 distributed to their armies of followers with photos frequently featuring young people playfully  
 20 using the JUUL product.<sup>100</sup>

21 148. Internal JUUL documents show that JUUL recruited “Social Buzzmakers” with “a  
 22 minimum of 30,000 followers on social-media.” JUUL dictated or approved the timing of the  
 23 these “buzzmakers” JUUL-related posts. A contractor established “a network of creatives to  
 24 leverage as loyalists for [JUUL] brand activations.” JUUL approved the plan of development.<sup>101</sup>

25  
 26 <sup>97</sup> *Id.*

27 <sup>98</sup> *Id.* at 17.

28 <sup>99</sup> *Id.* at 33.

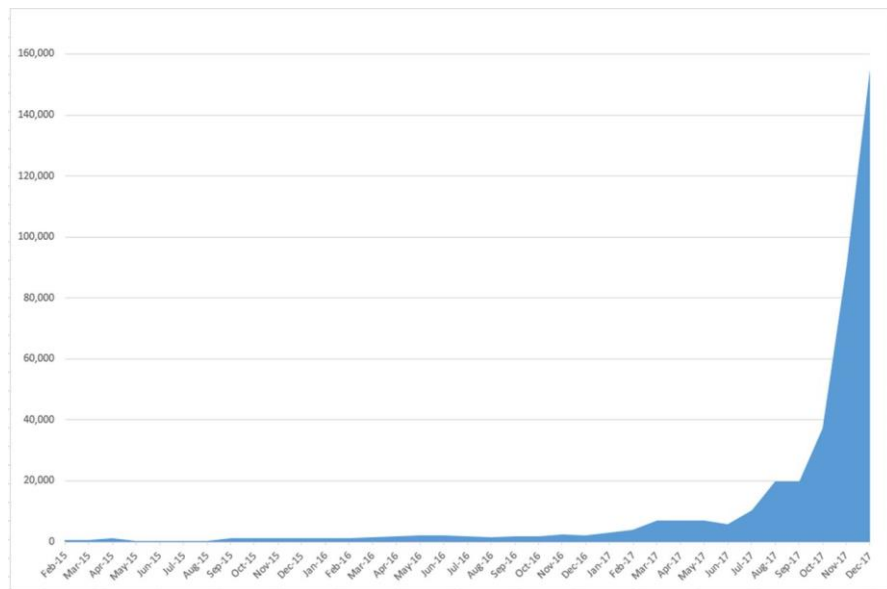
<sup>100</sup> *Id.*

<sup>101</sup> JLI-HOR-00042050.



149. JUUL's viral marketing campaign resulted in young social-media users posting to their own social-media accounts, promoting the JUUL product organically for JUUL. Videos of children JUULing became rampant on YouTube.

150. The following figure shows the increase in JUUL-related Tweets on Twitter between 2015 and 2017.



151. One study showed that only 12 percent of JUUL's followers on Twitter were over age 21, with about 45 percent of the followers being between the ages of 13 and 17.<sup>102</sup>

152. JUUL, facing scrutiny, later shuttered several of its social-media accounts. But the hashtags and social-media buzz JUUL created had already taken on a life of their own. As one industry critic said, "It's like they set a forest fire, they don't need to keep going around lighting trees. They're continuing to addict kids—without fingerprints."<sup>103</sup> JUUL was aware in 2015 teens were using its products, because JUUL-using teens were posting images of themselves on social-media.<sup>104</sup> There are over 500,000 posts on social-media promoting JUUL, much of which contains youthful content:

<sup>102</sup> Reinberg S. (5/20/2019). Nearly half of Juul Twitter followers are teens, young adults: study. <https://medicalxpress.com/news/2019-05-juul-twitter-teens-young-adults.html>. (accessed July 15, 2019)

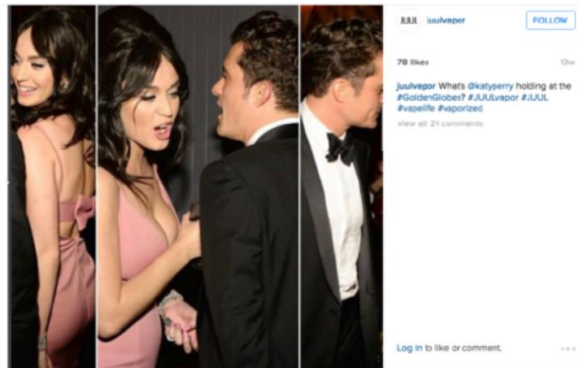
<sup>103</sup> Id.

<sup>104</sup> Richtel M, Kaplan S. (8/27/2018). Did JUUL lure teenagers and get 'customers for life'? New York Times. <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>



153. JUUL also created an online “affiliate program,” where it made payouts to online sites that referred business to JUUL. The affiliate program members would positively review of JUUL and funnel potential consumers to JUUL.

154. JUUL recreated the celebrity “testimonials” of Big Tobacco’s past by distributing images of celebrities like popular singer Katy Perry using JUUL:



155. JUUL copied Big Tobacco’s promotional events by hosting “Launch Parties” around the country. The Launch Parties were youth-oriented events with music or cinema themes where JUUL distributed free samples of its devices and pods to a youthful audience. JUUL’s goal for each Launch Party was to distribute over 5,000 samples.





156. JUUL invited popular bands to its Launch Parties, showed movies, and even hosted a “slumber party” in Hollywood’s Forever Cemetery featuring showing youth-targeted movies such as *Can’t Hardly Wait* (a movie about a high school graduation party).<sup>105</sup>



157. JUUL used its viral marketing to support the Launch Parties. It contracted with a marketing company to “curate and identify” 280 influencers in LA/NY to seed JUUL product” on social-media at product launch. This activity was tracked and monitored as part of the contract,

<sup>105</sup> Jackler RK, *supra*, note 92, at 33.

1 with weekly calls and reports. The contractor was also required to “secure 20 guests to attend/be  
2 gifted at the NY JUUL launch party.”<sup>106</sup>

3 158. Internal JUUL documents show JUUL recruited “lifestyle press people” to attend  
4 festivals where JUUL promoted its products. These “press people” were approved by JUUL prior  
5 to the event.<sup>107</sup>

6 159. JUUL also created an aggressive point-of-sale advertising campaign inside of  
7 20,000 retail locations around the country, with JUUL pods arranged in flashy “jewel” cases –  
8 cases that emulate a case of gems in a jewelry store. In addition to the product displays, JUUL  
9 created posters that emphasized discounted “starter” kits.<sup>108</sup>



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16 160. JUUL also employed aggressive outdoor advertising like Big Tobacco before it.

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25 <sup>106</sup> JLI-HOR-00029615-JLI-HOR-00029616; JLI-HOR 0042050-0042053.

26 <sup>107</sup> JLI-HOR-00029615-JLI-HOR-00029616; JLI-HOR 0042050-0042053.

27 <sup>108</sup> SRITA (2019). JUUL Labs, Inc., JUUL Stores/Displays.

28 [http://tobacco.stanford.edu/tobacco\\_main/images\\_pods.php?token2=fm\\_pods\\_st682.php&token1=fm\\_pods\\_img37791.php&theme\\_file=fm\\_pods\\_mt068.php&theme\\_name=JUUL&subtheme\\_name=Stores.](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st682.php&token1=fm_pods_img37791.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Stores)



161. JUUL even paid public schools in the form of “grants” to give it access to students inside the classrooms so JUUL could promote its product under the guise of preventing tobacco addiction.<sup>109</sup>

#### 6. JUUL failed to disclose the hazards of its products

162. Just like Big Tobacco, JUUL failed to warn consumers about the dangers its product presented, while running ad campaigns that portrayed the use of its product as a benign activity enjoyed by popular, fun-loving young people.

163. Despite the documented dangers of nicotine, JUUL founder and chief technology officer Adam Bowen described nicotine in a recent interview as “benign.”<sup>110</sup> And a high-school student recently testified to Congress that a JUUL representative told his ninth-grade class that JUUL’s product was “totally safe.”<sup>111</sup>

<sup>109</sup> Edwards E. (7/25/2019). JUUL comes under fire for allegedly hijacking teen anti-smoking curriculum. NBC News.com. <https://www.nbcnews.com/health/kids-health/juul-comes-under-fire-allegedly-hijacking-teen-anti-smoking-curriculum-n1034566>; JLI-HOR-00002035-JLI-HOR00002040.

<sup>110</sup> Pettitt J, Isaak A. (9/11/2018). Inside JUUL Labs—How the vaping giant hooked its users and became a \$15 billion company. AND: See video: How JUUL made vaping cool and became a \$15 billion e-cigarette giant. <https://www.cnbc.com/2018/09/11/how-juul-became-a-15-billion-vaping-giant.html>. <https://www.cnbc.com/video/2018/09/11/how-juul-became-a-15-billion-e-cigarette-company.html>; LaVito A. (2/8/2019). FDA chief accuses Juul, Altria of renegeing on promise to combat ‘epidemic’ teen vaping use. <https://www.cnbc.com/2019/02/08/fda-calls-juul-altria-back-in-to-explain-teen-e-cigarette-epidemic.html>

<sup>111</sup> Azad A. (7/25/2019) Juul went into a ninth-grade classroom and called its device 'totally safe,' teens testify. CNN Health <https://www.cnn.com/2019/07/25/health/juul-reps-in-classroom-teen->

1 164. JUUL has known since it first put its electronic cigarettes on the market that its  
 2 electronic cigarettes contain nicotine, that nicotine is an addictive substance, and that nicotine can  
 3 cause injuries in addition to addiction. But JUUL, in many of its advertisements, failed to inform  
 4 consumers that its products contain any nicotine at all, much less inform consumers that its  
 5 electronic cigarettes have significantly more nicotine than competitors' electronic cigarettes.

6 165. JUUL's promotional e-mails, for example, between June 2015 and April 2016,  
 7 failed to mention that JUUL electronic cigarettes contained nicotine. JUUL's Twitter feed did not  
 8 have a nicotine warning until October 2017.<sup>112</sup>

9 166. Other JUUL advertisements in 2015 and 2016 failed to contain any reference to the  
 10 fact that JUUL contained nicotine.

11 167. Some ads, which showed young people holding JUUL electronic cigarettes and  
 12 having fun, said nothing more than the word "vaporized"—suggesting that a JUUL electronic  
 13 cigarette just emitted water vapor rather than a mixture of nicotine and various other chemicals.

14 168. JUUL eventually started stating in its advertisements that its electronic cigarettes  
 15 contained nicotine, but those statements were in small print consumers often would not see.  
 16 JUUL's advertisements, by associating JUULing with social acceptance, "coolness," and physical  
 17 attractiveness, further minimized any effect of the nicotine disclosure statement and continued to  
 18 suggest that JUUL's electronic cigarettes were benign.

19 169. It was not until August 2018, after being required to do so by the FDA,<sup>113</sup> that  
 20 JUUL added a larger label to its electronic cigarette packaging stating that its electronic cigarettes  
 21 contain nicotine, an addictive substance.

22  
 23  
 24 [testimony/index.html](#)

25 <sup>112</sup> Chaykowski K. (11/16/2018). The Disturbing Focus Of Juul's Early Marketing Campaigns.  
 26 *Forbes*. <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#7bfd560414f9>

27 <sup>113</sup> U.S. Food & Drug Administration. (8/13/2018) "Covered" Tobacco Products and Roll-Your-  
 28 Own/Cigarette Tobacco Labeling and Warning Statement Requirements.  
<https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/covered-tobacco-products-and-roll-your-own-cigarette-tobacco-labeling-and-warning-statement>.

1 170. Even after JUUL disclosed its electronic cigarettes contained nicotine, JUUL still  
 2 failed to disclose to consumers that JUUL electronic cigarettes contain considerably more nicotine  
 3 that competing electronic cigarettes. And JUUL continues to falsely represent that an individual  
 4 will absorb about the same amount of nicotine from using a JUUL pod as from smoking a pack of  
 5 cigarettes.

6 171. And, still today, JUUL fails to disclose in any of its advertisements or product  
 7 labels that the vapor from its electronic cigarettes contain certain substances such as acetals, which  
 8 can irritate the respiratory system,<sup>114</sup> or that the vapor contains other chemicals that can cause  
 9 seizures, cardiovascular harm, and other injuries.

10 **7. The Big Tobacco playbook made JUUL billions while**  
 11 **creating a teen-vaping epidemic**

12 172. The Big Tobacco marketing playbook worked for JUUL. By promoting its  
 13 electronic cigarettes as benign products used by fun-loving young people—without disclosing the  
 14 addictive nature of the electronic cigarettes or other health hazards the electronic cigarettes pose—  
 15 JUUL was able to quickly gain a massive market. Because of nicotine’s addictive qualities and  
 16 adolescents’ susceptibility to nicotine addiction, JUUL has turned millions of U.S. children and  
 17 teens into loyal customers.

18 173. In a few short years, JUUL went from its initial product launch to domination of  
 19 the American e-cigarette market by achieving a “cult level of popularity among school-aged  
 20 adolescents.”<sup>115</sup>

21 174. JUUL was introduced in 2015 but obtained a 24 percent share of the electronic  
 22 cigarette market by August 2017.

23 175. A study noted that JUUL came to dominate the electronic-cigarette business,  
 24 continuing to rapidly grow while sales of competing products stagnated:

25 JUUL has changed the landscape of the e-cigarette retail market in the USA.  
 26 Because of JUUL’s growth, the e-cigarette brands owned by the tobacco industry,

27 <sup>114</sup> Weir, W. (7/30/2019) Juul users are inhaling chemicals not listed on the label. *Medical*  
 28 *Express*. <https://medicalxpress.com/news/2019-07-juul-users-inhaling-chemicals.html>.

<sup>115</sup> Jackler RK, *supra*, note 92, at 1.



1 which had dominated the e-cigarette retail market since 2013, no longer had the  
 2 majority of the market share at the end of 2017. JUUL's fast growth contrasted  
 3 dramatically with the e-cigarette brands owned by the tobacco industry, whose  
 4 retail sales had stagnated since 2015. With quarterly retail sales exceeding  
 \$100 million and annual retail sales exceeding \$650 million, JUUL is now the  
 largest e-cigarette brand measured by retail sales, taking up more than half the e-  
 cigarette retail market share.<sup>116</sup>

5 176. From August 2017 to August 2018, JUUL sold \$1.29 billion in devices and pods,  
 6 representing an 800 percent increase in one year.<sup>117</sup> And, by November 2018, JUUL's sales  
 7 represented 76.1 percent of the U.S. electronic-cigarette market.<sup>118</sup>

8 177. Amid these impressive sales figures, JUUL rapidly became a multi-billion-dollar  
 9 company. In late 2018, Altria Group—the parent company of cigarette giant Phillip Morris—paid  
 10 \$12.8 billion for a 35 percent interest in JUUL.<sup>119</sup>

11 178. America's youth are the foundation for JUUL's surging sales. A 2018 survey  
 12 showed that teens between ages 15 and 17 were sixteen times more likely to be JUUL users than  
 13 individuals between the ages of 25 and 34.<sup>120</sup>

14 179. Additional research shows that JUUL is used by young, non-smokers rather than by  
 15 smokers trying to quit using combustible cigarettes. A 2018 study from the Dartmouth School of  
 16 Medicine showed that, for each person who quit smoking combustible cigarettes with the help of  
 17 electronic cigarettes, another 81 adolescents and young adults who used electronic cigarettes  
 18

19 <sup>116</sup> Huang J, Duan Z, Kwok, J, Binns S, Vera, LE, Kim, Y, Szczypka G, Emery, SL. (2019).  
 20 Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the  
 21 US retail e-cigarette market. *Tobacco Control* 28:2, 146-151.  
<https://tobaccocontrol.bmj.com/content/28/2/146.full.pdf>, at 147-148.  
<https://tobaccocontrol.bmj.com/content/28/2/146#xref-ref-29-1>.

22 <sup>117</sup> LaVito A. (7/2/2018). Popular e-cigarette JUUL's sales have surged 800 percent over the past  
 23 year. [https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-](https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html)  
[year.html](https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html).

24 <sup>118</sup> Carver R. JUUL expands top US e-cig market share; traditional cigarette volume continues to  
 25 slip. *Winston-Salem Journal* (Nov. 27, 2018). [https://www.journalnow.com/business/juul-](https://www.journalnow.com/business/juul-expands-top-u-s-e-cig-market-share-traditional/article_9bdfd55c-68b5-5c08-aeb8-edb4a616ca9e.html)  
[expands-top-u-s-e-cig-market-share-traditional/article\\_9bdfd55c-68b5-5c08-aeb8-](https://www.journalnow.com/business/juul-expands-top-u-s-e-cig-market-share-traditional/article_9bdfd55c-68b5-5c08-aeb8-edb4a616ca9e.html)  
[edb4a616ca9e.html](https://www.journalnow.com/business/juul-expands-top-u-s-e-cig-market-share-traditional/article_9bdfd55c-68b5-5c08-aeb8-edb4a616ca9e.html) (accessed August 3, 2019).

26 <sup>119</sup> See Altria Group, Inc., Form 8-K (Dec. 21, 2018).

27 <sup>120</sup> Truth Initiative. (10/30/2018). New study reveals teens 16 times more likely to use JUUL than  
 28 older age groups. [https://truthinitiative.org/press/press-release/new-study-reveals-teens-16-times-](https://truthinitiative.org/press/press-release/new-study-reveals-teens-16-times-more-likely-use-juul-older-age-groups)  
[more-likely-use-juul-older-age-groups](https://truthinitiative.org/press/press-release/new-study-reveals-teens-16-times-more-likely-use-juul-older-age-groups).



1 developed a regular smoking habit.<sup>121</sup> Other studies have shown that “smokers who used e-  
2 cigarettes were less likely to quit smoking than smokers who did not use e-cigarettes.”<sup>122</sup>

3 180. JUUL has driven youth electronic-cigarette use to epidemic proportions. The 2018  
4 National Youth Tobacco Survey found that, from 2017 to 2018, tobacco use by high-school  
5 students increased 38.3 percent.<sup>123</sup> This dramatic increase was “driven by an increase in e-  
6 cigarette use,” which, from 2017 to 2018, increased from 11.7 percent to 20.8 percent among high-  
7 school students and from 3.3 percent to 4.9 percent among middle-school students.<sup>124</sup>

8 181. Similarly, the annual Monitoring the Future survey found that “[l]evels of nicotine  
9 vaping in the past year increased dramatically in 2018. In 10th and 12th grade the annual  
10 increases are the largest ever recorded for any substance in the 44 years that [Monitoring the  
11 Future] has tracked adolescent drug use.”<sup>125</sup>

12 182. In 2018, then-FDA commissioner Scott Gottlieb declared adolescent electronic-  
13 cigarette use an “epidemic.”

14 183. These alarming increases in juvenile electronic-cigarette use are driven by the  
15 emerging popularity of JUUL in the youth market, which rapidly grew in popularity in 2017 and  
16 2018 while sales of competing products stagnated. According to the American Cancer Society,  
17 “JUUL is now the overwhelming favorite e-cigarette product among young people.”<sup>126</sup>

18  
19  
20 <sup>121</sup> Geisel Communications. (4/27/2018). Teenagers Love Vaping Flavors, and It’s a Regulatory  
21 Nightmare. <https://geiselmed.dartmouth.edu/news/2018/teenagers-love-vaping-flavors-and-its-a-regulatory-nightmare-los-angeles-times-via-bloomberg/>

22 <sup>122</sup> Grana R, Benowitz N, Glantz SA. (5/12/2014) E-cigarettes: a scientific review. *Circulation*.  
23 129(19):1972-86. doi: 10.1161/CIRCULATIONAHA.114.007667. PubMed PMID: 24821826;  
24 PubMed Central PMCID: PMC4018182.

25 <sup>123</sup> Centers for Disease Control and Prevention. (2/2019). Tobacco use is by youth is rising; e-  
26 cigarettes are the main reason. <https://www.cdc.gov/vitalsigns/youth-tobacco-use/>.

27 <sup>124</sup> *Id.*

28 <sup>125</sup> Johnston LD, Miech RA, O’Malley PM, Bachman JG, Schulenberg JE, Patrick ME. (2019).  
Monitoring the Future national survey results on drug use 1975-2018: Overview, key findings on  
adolescent drug use. Ann Arbor: Institute for Social Research, University of Michigan.  
<http://monitoringthefuture.org/pubs/monographs/mtf-overview2018.pdf>

<sup>126</sup> American Cancer Society. What do we know about e-cigarettes?  
<https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>.

1           184. The FDA singled out JUUL as a culprit in the youth electronic-cigarette-use  
2 epidemic. The FDA’s Center for Tobacco Products (“CTP”) told JUUL in 2018 it has a “growing  
3 concern about the popularity of JUUL products among youth.” The FDA further explained:

4           JUUL product use appears to be common in middle and high schools based on  
5 widespread media reporting describing a rapid growth of use among youth in  
6 general and on school property, numerous complaints that have been received by  
7 CTP, small research studies that have raised concerns, and social-media evidence  
8 of youth use.<sup>127</sup>

9           185. The popularity of JUUL among adolescents was to be expected, given JUUL’s  
10 marketing practices—such youth-oriented advertising and promotion of various flavors of JUUL  
11 pods—that were modeled on those that allowed Big Tobacco to hook generations of adolescents  
12 on cigarettes. Former FDA Commissioner Scott Gottlieb has even stated that he believes  
13 “...certain flavors are one of the principal drivers of the youth appeal of these products.”<sup>128</sup>

14           186. Given the high nicotine content of JUUL pods, adolescent JUUL users are  
15 becoming addicted to nicotine. Research shows that high-school students who start using JUUL  
16 electronic cigarettes are likely to continue using those products. A study of Massachusetts  
17 high-school students showed that 58 percent of those who tried electronic cigarettes remained  
18 daily users while only 17 percent of students who had tried combustible cigarettes remained daily  
19 smokers.<sup>129</sup>

20           187. JUUL has caused adolescents to suffer harm in addition to nicotine addiction. In  
21 August 2019, the FDA announced it was investigating reports of over 120 seizures believed to be  
22 linked to using electronic cigarettes. Children’s Hospital of Wisconsin admitted several teenage  
23 electronic-cigarette users suffering from lung damage in July 2019, setting off a national public

24 <sup>127</sup> U.S. Food & Drug Administration, Center for Tobacco Products. (4/24/2018) JUUL 904(b)  
25 Collection Letter. <https://www.fda.gov/media/112339/download>

26 <sup>128</sup> U.S. Food & Drug Administration. (9/11/2018). FDA takes new steps to address epidemic of  
27 youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major  
28 manufacturers for their roles perpetuating youth access. <https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more>

<sup>129</sup> Winickoff JP, *supra*, note 77.

1 health alarm involving more than a dozen states. In August 2019, the Centers for Disease Control  
 2 and Prevention and FDA announced a joint investigation of more than 150 electronic-cigarette  
 3 users suffering from severe pulmonary illnesses.

4 **8. Altria works in concert with JUUL in marketing**  
 5 **electronic cigarettes.**

6 188. JUUL not only followed Big Tobacco’s playbook in developing a youth-oriented  
 7 marketing strategy but now is also partnered with Altria—the same company that sells Marlboro,  
 8 Virginia Slims, and Parliament brand cigarettes. Altria has committed to using its resources to  
 9 grow the sales of JUUL-brand electronic cigarettes.

10 189. In late 2018, Altria paid \$12.8 billion for a 35 percent interest in JUUL. But Altria  
 11 was not a stranger to JUUL prior to that acquisition. As Altria’s chairman and CEO explained in  
 12 February 2019, Altria had “followed JUUL’s journey rather closely” for some time before that  
 13 acquisition.<sup>130</sup>

14 190. In connection with that investment in JUUL, Altria entered a services agreement  
 15 with JUUL.

16 191. Under that services agreement, Altria, as it represented on its website, agreed to  
 17 “provide JUUL access to its premier innovative tobacco products retail shelf space, allowing  
 18 JUUL’s tobacco and menthol-based products to appear alongside combustible cigarettes,” “enable  
 19 JUUL to reach adult smokers with direct communications through cigarette pack inserts and  
 20 mailings to adult smokers via Altria companies’ databases,” and “apply its logistics and  
 21 distribution experience to help JUUL expand its reach and efficiency.”<sup>131</sup> Altria also represented  
 22 that, under its agreement with JUUL, “JUUL will have the option to be supported by Altria’s sales  
 23 organization, which covers approximately 230,000 retail locations.”<sup>132</sup>

24 192. Altria’s chairman and CEO elaborated on Altria’s relationship with JUUL in a  
 25 February 2019 conference call. He explained that Altria was seeking to “accelerate [JUUL’s]

26 \_\_\_\_\_  
 27 <sup>130</sup> Form 8-K submitted by Altria Group, Inc., Feb. 20, 2019, available at  
 28 <http://www.sn1.com/Cache/c396812162.html>

<sup>131</sup> <http://investor.altria.com/file/Index?KeyFile=396169695>

<sup>132</sup> <http://investor.altria.com/file/Index?KeyFile=396169695>

1 global growth” and that Altria’s “services and infrastructure could complement JUUL’s terrific  
 2 product and capabilities.” He added that Altria’s “premier innovative products merchandising  
 3 position would raise JUUL’s visibility at retail.” Further showing that Altria expected JUUL to be  
 4 used by non-smokers, the chairman and CEO rejected as “overstated” any “concerns about the  
 5 cannibalization risk to [Altria’s] business” in combustible cigarettes.<sup>133</sup>

6 193. Altria, which had previously had little success selling its own brand of electronic  
 7 cigarettes, also agreed not to compete against JUUL in the electronic cigarette business.

8 194. In 2019, Altria executives assumed key leadership roles at JUUL.

9 195. Altria—with its vast resources, decades of experience in marketing nicotine  
 10 containing products, and relationships with retailers—made the youth vaping crisis even worse in  
 11 the first year of its partnership with JUUL.

12 196. JUUL continued to sell flavored JUULpods after Altria made its investment in  
 13 JUUL and started providing marketing services to JUUL.

14 197. In November 2019, the U.S. Food and Drug Administration released a report  
 15 showing that in 2019 over 5 million American youths were current electronic cigarette users,  
 16 compared to 3.6 million in 2018. The report also said that the majority of electronic cigarette  
 17 users used JUUL electronic cigarettes.<sup>134</sup>

18 **9. JUUL users are often ignorant of the risks that JUULing**  
 19 **presents.**

20 198. Not surprisingly, given JUUL’s marketing ploys, JUUL’s youthful market is  
 21 ignorant of the hazards that JUUL electronic cigarettes present.

22  
 23  
 24  
 25 <sup>133</sup> Form 8-K submitted by Altria Group, Inc., Feb. 20, 2019, available at  
 26 <http://www.snl.com/Cache/c396812162.html>

27 <sup>134</sup> Youth Tobacco Use: Results from the National Youth Tobacco Survey,  
 28 <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>

199. The 2018 Monitoring the Future survey concluded that “e-cigarettes have one of the lowest levels of perceived risk for regular use of all drugs, including alcohol.” Among high-school seniors, only 18 percent perceived a risk of regular e-cigarette use.<sup>135</sup>

200. A Tobacco Control study further found that 63 percent of JUUL users between the ages of 15 and 24 do not know that JUUL electronic cigarettes contain nicotine.<sup>136</sup>

201. A pediatrician at Massachusetts General Hospital recently testified to Congress that his patients falsely perceive JUUL as a safe product:

Many of my patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes are dangerous, but assume that JUUL—since it’s ubiquitous, comes in child-friendly flavors, and is marketed as a healthier alternative to smoking—must be harmless. I have to explain to kids that e-cigarettes do not have the same positive health benefits as the fruits whose flavors they copy. Even the term vapor calls to mind harmless water vapor.<sup>137</sup>

202. Many JUUL users mistakenly believe that the vapor emitted from a JUUL electronic cigarette is merely flavored water vapor, rather than a combination of nicotine and various other chemicals.

**10. JUUL knows that it is responsible for causing a youth-health epidemic.**

203. JUUL co-founder, Adam Bowen, admitted his company understood the danger electronic cigarettes posed to teenagers.<sup>138</sup>

204. JUUL knew its astonishing and immediate success was being driven by its sales to America’s youth. A former JUUL manager, who spoke to the *New York Times* anonymously because he worried about facing the ire of JUUL, said during the 2015 launch of the Vaporized advertising campaign, JUUL knew teenagers were buying JUULs online or finding others who made the purchases for them because some purchasers bought far more JUUL kits on the company’s website than any person could individually use. “Then, when [JUUL] saw the social-media, in fall and winter of 2015, [JUUL] suspected it was teens.”<sup>139</sup> JUUL saw thousands of

<sup>135</sup> Johnston LD, et al., *supra*, note 125.

<sup>136</sup> Koplon S, *supra*, note 73.

<sup>137</sup> Winickoff JP, *supra*, note 77.

<sup>138</sup> Richtel M, *et al. supra*, note 104.

<sup>139</sup> *Id.*

1 videos and images online depicting teenagers using JUUL, doing “vape tricks” with JUUL, and  
 2 noting it was “cool to JUUL in school.”

3 205. Amid criticism of the youth JUULing epidemic, JUUL co-founder James Monsees  
 4 recently acknowledged that JUUL’s early marketing campaign was “flawed.”<sup>140</sup>

5 206. In a July 2019 interview, JUUL’s CEO, Kevin Burns, publicly apologized to  
 6 parents of children addicted to nicotine because of JUUL.<sup>141</sup>

7 **11. State and federal governments’ attempt to stop the**  
 8 **JUULing epidemic.**

9 207. The rise of JUULing among teens led to a public backlash that JUUL has been  
 10 trying to quell for the past two years.

11 208. Public health groups, such as the Truth Initiative, sounded the alarm about JUUL  
 12 and the teen electronic-cigarette epidemic.<sup>142</sup>

13 209. State and federal regulators have recently tried to address the youth JUULing  
 14 epidemic.

15 210. In 2016, the FDA issued a rule deeming electronic cigarettes to be subject to  
 16 regulation under the Tobacco Control Act. *See* 81 Fed. Reg. 28973. Producers of non-  
 17 combustible tobacco products that were not commercially marketed in the U.S. prior to 2007 are  
 18 required to apply for FDA approval by August 2022.<sup>143</sup> In July 2019, a federal court ordered the  
 19 FDA to move that application deadline up to May 2020. *See American Academy of Pediatrics v.*  
 20 *Food and Drug Admin.*, 2019 WL 3067492, at \*7 (D. Md. July 12, 2019).

23 <sup>140</sup> [https://www.cnn.com/2018/09/11/how-juul-became-a-15-billion-e-cigarette-](https://www.cnn.com/2018/09/11/how-juul-became-a-15-billion-e-cigarette-company.html)  
 24 [company.html](https://www.cnn.com/2018/09/11/how-juul-became-a-15-billion-e-cigarette-company.html)

25 <sup>141</sup> LaVito A. *supra*, note 88.

26 <sup>142</sup> Truth Initiative. (3/2019). E-cigarettes Fact Sheet.  
[https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth\\_E-](https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth_E-Cigarette_FactSheet_FINAL.pdf)  
[Cigarette\\_FactSheet\\_FINAL.pdf](https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth_E-Cigarette_FactSheet_FINAL.pdf)

27 <sup>143</sup> U.S. Food & Drug Administration. (6/11/2019) Premarket Tobacco Product Applications.  
 28 [https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-](https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications)  
[product-applications](https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications)



211. In April 2018, the FDA announced a “major crackdown” aiming to curb sales of JUUL devices to children.<sup>144</sup> The Center for Tobacco Products at the FDA requested under Section 904(b) of the Federal Food, Drug, and Cosmetic Act JUUL’s documents “relating to marketing practices and research on marketing, effects of product design, public health impact, and adverse experiences and complaints related to JUUL products.” The request applied to “research relating to all such tobacco products and their components or parts, including those products for research, investigational use, developmental studies, test marketing, and/or commercial marketing.” FDA expressed “growing concern about the popularity of JUUL products among youth,” noting JUUL’s “appeal may be related to different aspects of the product, including the product design, promotion, or distribution”<sup>145</sup> and ordered JUUL to turn over marketing and research documents.<sup>146</sup>

212. In August 2018, the FDA also required JUUL to place warning labels on its electronic-cigarette packaging.

213. In September 2018, the FDA wrote JUUL and other manufacturers requiring response and action to address their roles in perpetuating youth access to e-cigarettes, after a “nationwide undercover blitz of brick-and-mortar and online stores” resulted in fines to “over 1,300 retailers who illegally sold JUUL and other e-cigarette products to minors.”<sup>147</sup>

214. In June 2019, the U.S. House Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy requested JUUL’s documents from 2013 to present regarding its marketing practices, use of behavioral science in its advertising, its knowledge of adolescent JUUL users and its own deleted social-media content. The Subcommittee held two days of hearings on the effects of JUUL’s marketing practices. From its investigation, the Subcommittee

<sup>144</sup> U.S. Food & Drug Administration (2018). *supra*, note 127. Zernike K. (4/24/2018). FDA cracks down on ‘Juuling’ among teenagers. The New York Times. <https://www.nytimes.com/2018/04/24/health/fda-e-cigarettes-minors-juul.html?module=inline>

<sup>145</sup> U.S. Food & Drug Administration (2018), *supra*, note 127.

<sup>146</sup> *Id.*

<sup>147</sup> U.S. Food & Drug Administration (2018), *supra*, note 128.

1 “determined that the company deliberately targeted children in order to become the nation’s  
2 largest seller of e-cigarettes.”<sup>148</sup>

3 215. Additional investigations are underway by the U.S. Senate, the U.S. House  
4 Committee on Energy and Commerce, and the Federal Trade Commission.

5 216. JUUL’s marketing practices have also been the subject of several state government  
6 investigations. In 2018, the Massachusetts Attorney General launched an investigation into  
7 JUUL’s sales practices.<sup>149</sup> In July 2019, the Connecticut Attorney General similarly announced an  
8 investigation into whether JUUL markets electronic cigarettes to minors.<sup>150</sup> The North Carolina  
9 Attorney General filed suit in May 2019 against JUUL for violating state consumer-protection  
10 laws.<sup>151</sup> In August 2019, the State of Illinois filed suit for declaratory and injunctive relief, further  
11 claiming consumer fraud and deception, and negligence.<sup>152</sup> Illinois and the District of Columbia  
12 are also investigating JUUL’s marketing practices, and policies JUUL uses to prevent minors from  
13 using their products.<sup>153</sup>

14 217. Several jurisdictions have introduced laws restricting—or even banning—the sale  
15 of JUUL electronic cigarettes.

16 218. Foreign regulators have also barred JUUL from selling pods that contain the 59  
17 milligrams per milliliter nicotine concentration found in pods prepared for the U.S. market.

18  
19 <sup>148</sup> U.S. House Committee on Oversight and Reform Subcommittee on Economic and Consumer  
20 Policy (7/25/2019). Supplemental memo for Hearing on “Examining JUL’s Role in the Youth  
21 Nicotine Epidemic: Parts I & II” online  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>

22 <sup>149</sup> Commonwealth of Massachusetts, Office of Attorney General. (7/24/2018). AG Healey  
23 Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale  
24 to Minors. [https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-  
e-cigarette-retailers-over-marketing](https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing)

25 <sup>150</sup> Brone A. (7/31/2019). Connecticut Investigating JUUL Labs over health claims, marketing.  
26 *Hartford Courant*. [https://www.courant.com/news/connecticut/hc-news-attorney-general-juul-  
investigation-20190731-jq4grrl2kzdd5notsuctp2njru-story.html](https://www.courant.com/news/connecticut/hc-news-attorney-general-juul-investigation-20190731-jq4grrl2kzdd5notsuctp2njru-story.html)

27 <sup>151</sup> [https://www.huffpost.com/entry/north-carolina-lawsuit-juul\\_n\\_5cdc7582e4b066205c60cd88](https://www.huffpost.com/entry/north-carolina-lawsuit-juul_n_5cdc7582e4b066205c60cd88)

28 <sup>152</sup> People vs. JUUL Labs, Inc., Lake County, Illinois. Circuit Court, 19L 00000571. (8/13/2019)

<sup>153</sup> Associated Press. (8/29/2019). Probes of e-cigarette giant underway in Illinois, DC.  
<https://www.apnews.com/703e5fce0c004babb64eff407761e22b>

European Union regulations prohibit JUUL from selling pods with that concentration of nicotine, so JUUL sells pods with a lower nicotine concentration in the European market. In May 2018, JUUL started selling in Israel pods with the same 59 mg/mL concentration found in pods sold in the U.S. market, but, after just a few months on the market, Israeli regulators banned the sale of those pods, citing their high nicotine content.<sup>154</sup>

**12. JUUL has responded to this political pressure by  
attempting to rewrite history.**

219. By 2018, JUUL had secured its place as the dominant e-cigarette company and received billions in investments. In fiscal year 2018, JUUL raised \$650 million, and then, in December 2018, Altria invested \$12.8 billion, and the company was then valued at \$38 billion.<sup>155</sup> JUUL now had a lot to lose, and faced many legal threats arising from the backlash to its products.

220. JUUL has been at risk of losing its U.S. market. The FDA, in 2016, deemed electronic cigarettes subject to regulation under the Tobacco Control Act. To keep its product on the U.S. market JUUL must seek FDA approval for its electronic cigarettes in 2020. If JUUL fails to show that its electronic-cigarettes are appropriate for protection of public health, the FDA may order they be taken off the market. JUUL realizes that, to have a shot of remaining on the U.S. market, it must create a narrative that JUUL can protect the public health as a harm reduction device, or, specifically, a smoking-cessation device.

221. To help create that narrative, JUUL eliminated some of the more blatantly teen-oriented imagery from the 2015 Vaporized campaign, such as those shown below. Attempting to downplay its concern over FDA approval, a JUUL company spokesman recently made the laughable contention that JUUL stopped the Vaporized campaign “because it failed to gain traction on social-media and failed to gain sales.”<sup>156</sup>

<sup>154</sup> Baumer L. (9/3/2018) Following government ban, JUUL switches to reduced-nicotine pods in Israel. <https://www.calcalistech.com/ctech/articles/0,7340,L-3745520,00.html>

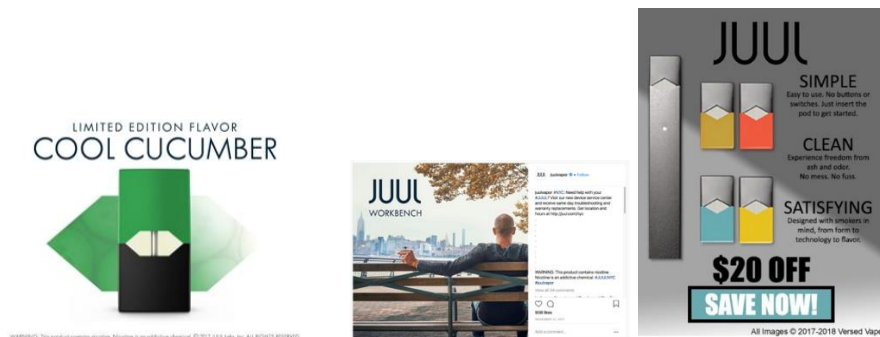
<sup>155</sup> Sherman N. (1/6/2019). Juul: The rise of a \$38bn e-cigarette phenomenon. BBC News. <https://www.bbc.com/news/business-46654063>

<sup>156</sup> Richtel M, *et al.*, *supra*, note 104.



222. JUUL further set out to rewrite history. It began by deleting segments of its social-media history.

223. JUUL changed to more subtle imagery in its advertisements in 2016 and 2017 following the FDA's determination that electronic cigarettes were subject to the Tobacco Control Act.



224. But, JUUL continued to use Big Tobacco's time-tested themes targeting adolescents, such as romance, flavors, and price-savings, or "relaxation":



225. And, JUUL continued to advertise using social-media channels, its hashtag extensions, and influencers and affiliates.<sup>157</sup>

<sup>157</sup> Jackler RK. *supra*, note 92.

226. Public-health groups continued to criticize JUUL and called for the FDA to ban e-cigarette flavors. JUUL responded with a public-relations campaign through emails and social-media posts contending, “We market our products responsibly . . . never to youth audiences.”<sup>158</sup> JUUL’s influencers also sprang into action, with one influencer touting the social-media message: “Vaping saves lives – We Vape We Vote”:



227. Anticipating the FDA ban of flavored e-cigarettes and facing increased legal and regulatory pressure about its advertising, JUUL made several announcements on November 13, 2018. JUUL announced that it would halt its social-media advertising and that it would remove four of its flavors from convenience stores and other retail locations, although those flavors remain available for purchase online. It would enhance its online sales age-verification process and technology. And “to prevent bulk shipments to those attempting to distribute minors,” JUUL finally limited online customers to purchase of two devices and 15 JUUL pod packages per month, but no more than ten devices per year.<sup>159</sup>

228. JUUL also modified its advertising again. JUUL began its “Switch” campaign, where it promoted its products’ use in “switching” from traditional cigarettes to JUUL.

<sup>158</sup> SRITA. (2018). Juul’s Company Message.

[http://tobacco.stanford.edu/tobacco\\_main/images\\_pods.php?token2=fm\\_pods\\_st663.php&token1=fm\\_pods\\_img36842.php&theme\\_file=fm\\_pods\\_mt068.php&theme\\_name=JUUL&subtheme\\_name=Company%27s%20Message](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st663.php&token1=fm_pods_img36842.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Company%27s%20Message)

<sup>159</sup> U.S. Senate. (4/8/2019) Letter to JUUL Labs, Inc.

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



229. In its new advertisements, JUUL used older models and testimonials from traditional smokers who had switched to JUUL. JUUL now claims the Vaporized campaign was “adult-oriented.” But a comparison of the images of JUUL’s own “Switch” campaign with the images of the Vaporized campaign shows this contention is laughable:



230. JUUL continues to deny the obvious truth – it targeted children to make billions. Today, JUUL’s founders now say they always made their advertising as “adult-oriented as possible,” and that JUUL was always designed to help traditional smokers switch to a healthier alternative – even though they admitted in 2015 “anything about health is not on our mind.”

231. But the truth is clear. The “Switched” campaign and JUUL’s suspension of social-media activity in 2018 are admissions by JUUL. JUUL knows how to market to adults, but JUUL instead chose to market to children. JUUL created a public-health crisis for America’s youth, but now wants to avoid FDA scrutiny and civil liability.

232. The public-health crisis in America’s schools continues because of the success of JUUL’s viral marketing campaign and because JUUL was designed to appeal to children. As



1 noted by the President of the Campaign for Tobacco Free Kids: “Now that it has become so  
 2 popular with kids and captured 75% of the e-cigarette market, JUUL can pull back on social-  
 3 media because its young customers are doing the social-media marketing for them.”<sup>160</sup>

4 **D. Plaintiff has been harmed as a result of JUUL’s actions.**

5 233. Plaintiff started using JUUL electronic cigarettes as a teenager.

6 234. At no time before Plaintiff became addicted to nicotine did JUUL or anyone else  
 7 warn Plaintiff that JUUL products were unsafe or that JUUL products presented a risk of  
 8 addiction, stroke, respiratory problems, cardiovascular problems, seizures, or brain damage.

9 235. Plaintiff used mango-flavored JUULpods.

10 236. When Plaintiff first starting “JUULing,” he was not aware of the dangers associated  
 11 with JUUL, including the addiction and other harmful health effects it could cause. He was not  
 12 aware of how much nicotine JUULs products contained.

13 237. JUUL never disclosed to Plaintiff that it had manipulated the nicotine in its  
 14 products to deliver massive doses of nicotine that could cause immediate addiction for the rest of  
 15 his life.

16 238. If Plaintiff had known of the dangers of JUUL, he would not have tried the product.

17 239. Plaintiff is now addicted to nicotine and will struggle with that addiction for life.

18 240. Plaintiff’s nicotine addiction from JUUL caused a permanent brain injury to his  
 19 developing brain.

20 241. Plaintiff has suffered harm, including chest pains, through exposure to the toxic  
 21 substances in JUUL, which may cause or contribute to causing disease, future health problems,  
 22 and other injuries.

23 242. As a direct and proximate result of JUUL’s conduct, Plaintiff suffered life-altering  
 24 and permanent injuries and will incur medical expenses, pain and suffering, and emotional  
 25 distress.

26  
 27 <sup>160</sup> Boyles S. (11/13/2018) Juul to pull four e-cig flavors from retail stores – move comes ahead of  
 28 expected FDA action banning sale of most flavored e-cigarettes in stores.  
<https://www.medpagetoday.com/pulmonology/smoking/76318>

**VIII. CAUSES OF ACTION**

**COUNT I – NEGLIGENCE**

**(against both Defendants)**

243. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth herein.

244. Defendants had a duty not to market electronic-cigarettes to minors and young adults. State laws make the sale of tobacco products (including electronic-cigarettes) to minors illegal. It is also foreseeable that minors and young adults will suffer harm from the use of JUUL electronic-cigarettes: nicotine is highly addictive, particularly among adolescents; nicotine has been shown to cause neurological damage to the developing adolescent brain; and, nicotine is known to cause various other physical injuries.

245. Defendants further had a duty to warn users of the dangers presented by use of JUUL electronic-cigarettes. JUUL electronic-cigarettes have a higher concentration of nicotine than competing products, yet survey data shows that most JUUL users do not know that JUUL electronic-cigarette pods contain any nicotine at all. Defendants, at all relevant times, has also known that the vapor from its electronic-cigarettes causes irritation and can cause respiratory harm.

246. Defendants breached their duties.

247. JUUL breached its duties by:

- a. engaging in marketing campaigns that targeted youth, rather than current smokers trying to quit smoking combustible cigarettes;
- b. designing and selling fruit and sweet flavored pods of its electronic-cigarettes and incorporating other features in the design of its electronic-cigarettes that appealed to non-smoking adolescents rather than adult smokers;
- c. failing to include sufficient warnings in advertisements about the dangers posed by its electronic-cigarettes, including their highly-addictive qualities.

1           248. Altria breached its duties in providing marketing for JUUL despite knowing that  
2 JUUL electronic cigarettes were used largely by a youthful market.

3           249. Defendants' conduct was furthermore grossly negligent, reckless, willful, or  
4 wanton. Defendants acted with a knowledge or consciousness that their actions would likely or  
5 probably cause harm. Defendants knew that nicotine is addictive and also knew, from the well-  
6 publicized history of cigarette marketing, that youth-oriented marketing initiatives and product  
7 designs would or would probably lead to widespread use of JUUL electronic-cigarettes by minors.  
8 Defendants also knowingly failed to warn consumers of the health risks associated with use of  
9 JUUL electronic-cigarettes. Many JUUL users do not even know that JUUL contains nicotine, yet  
10 JUUL pursued a marketing strategy that portrayed JUUL as a benign product for fun-loving young  
11 people and failed to disclose the health risks, including nicotine addiction, associated with use of  
12 JUUL. Altria further marketed JUUL electronic cigarettes despite knowing that JUUL electronic  
13 cigarettes were used largely by a youthful market and knowing that flavored JUULpods were  
14 particularly attractive to non-smoking youth.

15           250. Defendants' breach of their duties proximately harmed Plaintiff. Youth-oriented  
16 marketing campaigns prompted Plaintiff to use JUUL electronic-cigarettes and, because of  
17 JUUL's failure to warn of the hazards of those electronic-cigarettes, Plaintiff did not know of their  
18 addictive qualities and have been harmed.

19                           **COUNT II – BREACH OF IMPLIED WARRANTY**

20                                   **(against JUUL Labs, Inc.)**

21           251. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
22 herein.

23           252. JUUL is a manufacturer of JUUL-brand electronic-cigarettes and is regularly in the  
24 business of selling electronic-cigarettes.

25           253. JUUL, at all relevant times, has owed a legal duty to consumers not to market a  
26 product unfit for the ordinary purpose for which it is used.

27           254. JUUL electronic-cigarettes are not fit for the ordinary purpose for which they are  
28 used. The JUUL electronic-cigarettes contain high concentrations of nicotine and are highly-

1 addictive, particularly among the youthful targets of JUUL's marketing campaigns. Nicotine in  
2 JUUL electronic-cigarettes can also cause damage to the developing adolescent brain. The vapor  
3 from JUUL electronic-cigarettes also contains various respiratory irritants. An ordinary consumer,  
4 at least before JUUL added a nicotine warning label to its electronic-cigarettes in 2018, would not  
5 be aware of the highly-addictive qualities of JUUL electronic-cigarettes or of the other health  
6 hazards presented by use of JUUL electronic-cigarettes. It was not commonly known that JUUL  
7 electronic-cigarettes contained nicotine or respiratory irritants and JUUL's advertising furthermore  
8 gave the impression that JUUL electronic-cigarettes were benign.

9 255. Plaintiff suffered harm as a result of his use of JUUL electronic-cigarettes.

10 **COUNT III – FAILURE TO WARN**

11 **(against JUUL Labs, Inc.)**

12 256. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
13 herein.

14 257. JUUL is in the business of designing, manufacturing, marketing, and selling  
15 electronic cigarettes.

16 258. The electronic cigarettes designed, manufactured, and marketed by JUUL were  
17 intended to, and did, reach Plaintiff without substantial change in their condition.

18 259. The electronic cigarettes that JUUL designs, manufactures, markets, and sells are  
19 unreasonably dangerous when used as intended.

20 260. JUUL electronic cigarettes are unreasonably dangerous because they do not meet  
21 the reasonable expectations of the ordinary consumer as to safety. An ordinary consumer, with  
22 access to knowledge common to his community, would not be aware of the dangers of using  
23 JUUL electronic cigarettes. JUUL electronic cigarettes contain more nicotine than competing  
24 brands of electronic cigarettes and survey data has shown that many JUUL users were ignorant of  
25 the fact that JUUL electronic cigarettes contained any nicotine at all.

26 261. JUUL knew or should have known that its electronic cigarettes could create danger  
27 when used as intended in their customary manner. Those dangers included nicotine addiction,  
28 neurological harm, and respiratory irritation.



1           270. There was a safer and practical alternative design that JUUL could have used when  
2 electronic cigarettes were manufactured. JUUL, for instance, could have produced electronic  
3 cigarettes with a lower nicotine concentration or with no nicotine. JUUL could have also refrained  
4 from using product designs—such as the addition of fruity and sweet flavorings to its pods—that  
5 make its electronic cigarettes attractive to non-smoking adolescents.

6                           **COUNT V – FRAUDULENT SUPPRESSION**

7                                   **(against JUUL Labs, Inc.)**

8           271. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
9 herein.

10           272. JUUL had a duty to disclose the dangers presented by the use of its electronic  
11 cigarettes. JUUL, in its advertisements, portrayed its electronic cigarettes as a benign product,  
12 leading Plaintiff to believe that they faced no health risks in using JUUL electronic cigarettes.  
13 JUUL, which had developed the nicotine-salt formulation used in its electronic cigarettes, knew  
14 full well the addictive qualities of its electronic cigarettes while the average consumer was  
15 ignorant of the fact that JUUL electronic cigarettes contained any nicotine.

16           273. JUUL failed to disclose the dangers that its electronic cigarettes presented.  
17 Specifically, JUUL, in advertisements prior to 2018, failed to disclose that its electronic cigarettes  
18 contained nicotine, an addictive substance. At all times, JUUL has failed to disclose that its  
19 electronic cigarettes contain acetals that can cause respiratory harm as well as other chemicals that  
20 can cause injury.

21           274. JUUL intended to mislead consumers, knew that it was misleading consumers,  
22 and/r recklessly disregarded whether it was misleading consumers.

23           275. Plaintiff was not aware of the dangers posed by JUUL's electronic cigarettes.

24           276. Because Plaintiff was not aware of the dangers of using JUUL's electronic  
25 cigarettes, Plaintiff purchased or used JUUL electronic cigarettes and was harmed as a result.



**COUNT VI – FRAUDULENT MISREPRESENTATION**

**(against JUUL Labs, Inc.)**

277. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth herein.

278. JUUL, moreover, has represented that its electronic cigarettes contain approximately as much nicotine as a pack of combustible cigarettes. In reality, as JUUL knew, a JUUL user will absorb more nicotine from a JUUL pod than from smoking a pack of cigarettes.

279. Plaintiff did not know that a JUUL user would absorb more nicotine from a JUUL pod than from smoking a pack of cigarettes.

280. JUUL intended that consumers rely on its false representation of the nicotine concentration in its electronic cigarettes, knew that it was misleading consumers, and/or recklessly disregarded whether it was misleading consumers.

281. Plaintiff acted in reliance on JUUL's misrepresentation and were harmed as a result.

**COUNT VII – UNLAWFUL TRADE PRACTICE,**

**F.S.A. § 501.201, et seq.**

**(against both Defendants)**

282. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth herein.

283. JUUL engaged in unlawful acts and practices when it, *inter alia*, misrepresented the amount of nicotine absorbed from use of JUUL electronic cigarettes; failed to disclose that use of its electronic cigarettes could lead to nicotine addiction; failed to disclose health hazards, including nicotine addiction and respiratory problems, associated with the use of JUUL electronic cigarettes; falsely portrayed JUUL electronic cigarettes as benign products; and formulated its JUUL pods to contain high levels of nicotine, an addictive substance.

284. Altria working in concert with JUUL to market electronic cigarettes and thus also engaged in unlawful trade practices by, *inter alia*, promoting JUUL electronic cigarettes despite

1 their high nicotine content and youthful appeal and failing to disclose various hazards associated  
2 with the use of JUUL electronic cigarettes.

3 285. The conduct of JUUL and Altria violated F.S.A § 501.204(1).

4 286. Altria and JUUL acted willfully in engaging in unlawful practices because they  
5 knew that their conduct was unfair or deceptive.

6 **COUNT VIII – UNJUST ENRICHMENT**

7 **(against JUUL Labs, Inc.)**

8 287. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
9 herein.

10 288. JUUL profited from its marketing of electronic cigarettes to minors and by failing  
11 to disclose the dangers associated with the use of its electronic cigarettes.

12 289. JUUL, in equity and good conscience, holds money that should belong to those,  
13 including Plaintiff, who have driven the demand for JUUL electronic cigarettes.

14 **COUNT IX – VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

15 **CAL. CIV. CODE § 1750, *ET SEQ.***

16 **(against JUUL Labs, Inc.)**

17 290. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
18 herein.

19 291. JUUL is based in San Francisco, California and accordingly developed the product  
20 design of and marketing strategy for its electronic cigarettes and JUUL pods in California. The  
21 nationwide marketing of JUUL's electronic cigarettes has at all relevant times been directed from  
22 JUUL's California headquarters.

23 292. JUUL misrepresented the amount of nicotine absorbed from using its electronic  
24 cigarettes, in violation of Cal. Civ. Code § 1770(a)(5). Plaintiff was harmed as a result of that  
25 misrepresentation.

26 **COUNT X – VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW,**

27 **Cal. Bus. & Prof. Code 17500, *et seq.***

28 **(against JUUL Labs, Inc.)**

1           293. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
2 herein.

3           294. JUUL, *inter alia*, made untrue or misleading statements about the amount of  
4 nicotine absorbed from use of its electronic cigarettes and furthermore falsely advertised its  
5 electronic cigarettes as benign products.

6           295. JUUL knew or should have known that such statements were false or misleading.

7           296. Plaintiff was harmed by JUUL's untrue or misleading statements.

8           **COUNT XI – VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW,**

9                           **Cal Bus. & Prof. Code § 17200, et seq.**

10                           **(against JUUL Labs, Inc.)**

11           297. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
12 herein.

13           298. JUUL engaged in unlawful, unfair, and fraudulent business practices; engaged in  
14 unfair, deceptive, untrue or misleading advertising; and engaged in conduct that violated the  
15 California False Advertising Law. JUUL, *inter alia*, falsely portrayed its electronic cigarettes as  
16 benign products, failing to disclose the dangers involved in using its electronic cigarettes,  
17 formulated its JUUL pods to contain high levels of nicotine, misrepresented the amount of  
18 nicotine absorbed from using its electronic cigarettes, marketed its electronic cigarettes to non-  
19 smokers, and marketed its electronic cigarettes to youth despite prohibitions on sales of tobacco  
20 products to minors and well-known scientific research showing that adolescents and young adults  
21 are particularly vulnerable to nicotine.

22           299. JUUL's conduct was likely to deceive the public.

23           300. Plaintiff was harmed by JUUL's conduct.

24                           **COUNT XII – CIVIL CONSPIRACY**

25                           **(against both Defendants)**

26           301. Plaintiff re-alleges all previous paragraphs of this Complaint as if fully set forth  
27 here.

1           302. Defendants have agreed to work together to market JUUL electronic cigarettes.  
2 Altria under its services agreement with JUUL, for instance, agreed to provide various marketing  
3 services to JUUL. In providing those services, Altria aided and assisted JUUL's misconduct  
4 alleged above.

5           303. Defendants have worked together to accomplish an unlawful, oppressive, or  
6 immoral end—namely, the marketing to adolescents, young adults, and non-smokers of electronic  
7 cigarettes, that contain high levels of nicotine as well as other harmful substances.

8           304. Defendants have furthermore marketed electronic cigarettes through unlawful,  
9 oppressive, or immoral means by marketing those electronic cigarettes knowing that they were  
10 purchased largely by youthful buyers and by failing to disclose health risks associated with the use  
11 of those electronic cigarettes.

12 **IX. PRAYER FOR RELIEF**

13           305. WHEREFORE, Plaintiff seeks any and all relief to which he may be entitled under  
14 Counts I-VIII and X-XII, including compensatory damages, punitive damages, treble damages,  
15 statutory damages, injunctive relief, restitution, costs, and attorneys' fees. Plaintiff at this time  
16 seeks injunctive relief under Count IX.

17 **X. JURY TRIAL DEMAND**

18           306. Plaintiff demands a trial by jury on all issues so triable.

19                               Respectfully Submitted,  
20                               HARE, WYNN, NEWELL & NEWTON, LLP

21                               By:           /s/ Scott A. Powell          

22                                       Scott A. Powell

23                                       Attorney for Plaintiff Daultin Payne  
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