

1 Peter A. Sandberg
2 Ingaldson Fitzgerald, P.C.
3 813 W. Third Avenue
4 Anchorage, Alaska 99501
5 (907) 258-8750
6 peter@impc-law.com

7 Robert J. Nelson
8 Lexi J. Hazam
9 Sarah R. London
10 Fabrice N. Vincent (*Pro Hac Vice* anticipated)
11 Reilly T. Stoler
12 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
13 275 Battery Street, 29th Floor
14 San Francisco, CA 94111-3339
15 Telephone: 415.956.1000
16 Facsimile: 415.956.1008

17 Wendy R. Fleishman
18 Kartik S. Madiraju (*Pro Hac Vice* anticipated)
19 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
20 250 Hudson Street, 8th Floor
21 New York, NY 10013-1413
22 Telephone: 212.355.9500
23 Facsimile: 212.355.9592

24 *Attorneys for Plaintiff*

25 UNITED STATES DISTRICT COURT
26 FOR THE DISTRICT OF ALASKA

27 JOSEPH BURNS, by and through his
28 PARENT and NATURAL GUARDIAN
MARGARET BURNS,

Plaintiff,

v.

JUUL LABS, INC., previously d/b/a PAX
Labs, Inc. and PLOOM Inc.; ALTRIA
Group, Inc.; Philip Morris USA, Inc.;
Altria Client Services LLC; Altria Group
Distribution Company; Altria Enterprises
LLC; Adam Bowen; James Monsees;
Nicholas Pritzker; Hoyoung Huh; Riaz
Valani; Mother Murphy's Labs, Inc.;
Alternative Ingredients, Inc.; Tobacco
Technology, Inc.; eLiquitech, Inc.; ZIIP
Lab Co., Ltd.; and ZLAB, S.A.,

Defendants.

Case No. 3:20-cv-00291-JWS

COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff JOSEPH BURNS (“Plaintiff”), by and through his guardian natural parent
2 MARGARET BURNS, through his undersigned counsel, brings this complaint against
3 Defendants JUUL Labs, Inc., previously d/b/a as PAX Labs, Inc. and PLOOM Inc. (“JLI”);
4 ALTRIA Group, Inc.; Philip Morris USA, Inc.; Altria Client Services LLC; Altria Group
5 Distribution Company; Altria Enterprises LLC (collectively “ALTRIA DEFENDANTS” or
6 “ALTRIA”); Adam Bowen; James Monsees; Nicholas Pritzker; Hoyoung Huh; Riaz Valani;
7 Mother Murphy’s Labs, Inc.; Alternative Ingredients, Inc; Tobacco Technology, Inc.; eLiquitech,
8 Inc. (together “E-LIQUID MANUFACTURING DEFENDANTS”); and ZIIP Lab Co. Ltd. and
9 ZLAB S.A. (together “ZLAB DEFENDANTS”); and allege as follows:

10 **I. INTRODUCTION**

11 1. In 2015, JUUL Labs, Inc. (“JLI”) set out to recapture the magic of the most
12 successful product ever made—the cigarette. In coordination with ADAM BOWEN, JAMES
13 MONSEES, NICHOLAS PRITZKER, HOYOUNG HUH, RIAZ VALANI (together with JLI,
14 “JLI DEFENDANTS”), ALTRIA, (Altria Group, Inc., Philip Morris USA, Inc., Altria Client
15 Services LLC, Altria Group Distribution Company, and Altria Enterprises LLC, together,
16 “ALTRIA”), JLI’s targeted advertising has contributed to a public health crisis that has left
17 thousands of individuals—many of them teenagers—addicted to its products and beset with
18 significant health consequences. ZLAB DEFENDANTS exploited JLI and ALTRIA’s actions to
19 manufacture and distribute Juul-compatible pods.

20 2. JLI was founded by ADAM BOWEN and JAMES MONSEES. The two men met
21 at Stanford University as graduate students in the product design program in 2002. The goal of
22 their 2005 thesis was to re-invent the cigarette. As MONSEES put it, “[c]igarettes are probably
23 the most successful consumer product of all time.”¹ He and BOWEN hoped their project would
24 “take tobacco back to being a luxury good and not so much a drug delivery device.”²

25 ¹ Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—JAMES MONSEES and ADAM*
26 *BOWEN Have Cornered the US E-Cigarette Market with Juul. Up Next: The World*, Forbes
27 (Sept. 27, 2018, 3:10:35 PM EST), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1.

28 ² Holden Foreman, *Juul Founders Call E-Cigarette Prototype ‘A Luxury Good’ in 2005 Thesis Footage*, STANFORD DAILY (Mar. 1, 2019), <https://www.stanforddaily.com/2019/03/01/juul-founders-call-e-cigarette-prototype-a-luxury-good-in-2005-thesis-footage/>.

1 3. In order to accomplish this goal, BOWEN and MONSEES studied the Truth
2 Tobacco Industry Documents at the University of California San Francisco Library. This public
3 collection contains internal corporate documents produced by the tobacco industry during the
4 litigation between the state attorneys general and the tobacco industry that resulted in the tobacco
5 Master Settlement Agreement in 1998 between the State Attorneys General of 46 states, five U.S.
6 territories, the District of Columbia and the four largest cigarette manufacturers in America,
7 including Philip Morris, concerning the advertising, marketing, and promotion of cigarettes.³

8 4. BOWEN and MONSEES also familiarized themselves with the advertising
9 techniques used by Big Tobacco to sell cigarettes from these documents. Stanford University
10 houses a collection of tobacco advertising imagery as part of the Stanford Research into the
11 Impact of Tobacco Advertising (“SRITA”).⁴ When MONSEES met Dr. Robert Jackler, principal
12 investigator of SRITA, in the summer of 2018, he thanked Dr. Jackler for the database and said
13 the images were very helpful in the design of JLI’s advertising.⁵ In a 2018 interview, “Monsees
14 indicated that the design of JUUL’s advertising had been informed by traditional tobacco
15 advertisements and that [the Stanford University Research into Impact of Tobacco Advertising]
16 had been quite useful to them.”

17 5. After graduating, and with the help of early investors like NICHOLAS
18 PRITZKER,⁶ BOWEN and MONSEES launched PLOOM, a pod-based tobacco vaporizer and
19 then PAX, a vaporizer for loose-leaf tobacco and marijuana.

20 6. BOWEN and MONSEES then turned their focus to a form of nicotine called
21 nicotine salts. This approach originated from their research into Big Tobacco patents. “We started
22 looking at patent literature. We are pretty fluent in ‘Patentese.’ And we were able to deduce what
23

24 ³ U.C.S.F. Truth Tobacco Industry Documents,
<https://www.industrydocuments.ucsf.edu/tobacco/>.

25 ⁴ Stanford Research Into the Impact of Tobacco Advertising,
http://tobacco.stanford.edu/tobacco_main/index.php.

26 ⁵ July 24, 2019 Dr. Jackler congressional testimony before the House Committee on Oversight
and Reform, 1:32:25 - 1:33:18.

27 ⁶ In 2007, he invested in JLI. Ainsley Harris, *How JUUL went from a Stanford thesis to \$16*
billion startup, FAST COMPANY (March 8, 2020 4:11 PM PST),
28 [https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-](https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup)
[startup](https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup).

1 had happened historically in the tobacco industry.”⁷ With access to the trove of documents made
2 public to curb youth smoking and aid research to support tobacco control efforts, JLI
3 FOUNDERS were able to review literature on manipulating nicotine pH to maximize its delivery
4 in a youth-friendly vapor with minimal “throat hit.” Working through their company, PAX,
5 MONSEES and BOWEN introduced the JUUL electronic cigarette to the market in June 2015.

6 7. Defendant HOYOUNG HUH has been on the Board of Directors of JLI or its
7 predecessors since at least June 2015. Defendant RIAZ VALANI has been on the Board of
8 Directors of JLI or its predecessors since at least May 2011. Defendant NICHOLAS PRITZKER
9 has been on the Board of Directors of JLI or its predecessors since at least December 2017.

10 8. In October 2015, MONSEES stepped down from his role as Chief Executive
11 Officer of JLI (to become Chief Product Officer) and, in his stead, PRITZKER, HUH, and
12 VALANI formed an Executive Committee of the JLI Board of Directors that would take charge
13 of fraudulently marketing JUUL products, including to youth.

14 9. Before installation of Tyler Goldman as JLI’s new CEO in August 2016,
15 Defendants PRITZKER, HUH, and VALANI used their newly formed Executive Committee to
16 expand the number of addicted e-cigarette users through fraudulent advertising and
17 representations to the public. They cleaned house at JLI by “dismiss[ing] other senior leaders and
18 effectively tak[ing] over the company.”⁸

19 10. In April 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc.

20 11. At all relevant times, BOWEN, JAMES MONSEES, NICHOLAS PRITZKER,
21 HOYOUNG HUH, RIAZ VALANI authorized, directed, participated in, and/or were involved in
22 all key decisions, actions, and omissions of JLI involving the design, manufacture, inspection,
23 testing (or not), packaging, labeling, marketing, advertising, promoting, distribution, and/or sale
24 of JUUL products, and all decisions, actions, and omissions stated herein, except as otherwise
25 expressly provided.

26
27 ⁷ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

28 ⁸ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES
(Nov. 23, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

1 12. In December 2018, ALTRIA invested \$12.8 billion for a 35% stake in JLI.⁹

2 13. Due to regulations and court orders preventing the major cigarette manufacturers
3 from marketing to young people, youth smoking had decreased to its lowest levels in decades.
4 While the public health community celebrated this decline as a victory, JLI saw an opportunity.
5 Seizing on regulatory inaction and loopholes for e-cigarettes, JLI set out to develop and market a
6 highly addictive product that could be packaged and sold to young people. Youth is and has
7 always been the most sought-after market for cigarette companies, because they are the most
8 vulnerable to nicotine addiction and are most likely to become customers for life.

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

20 15. Nicotine is one of the most addictive chemicals in the world. By studying
21 cigarette industry archives, JLI DEFENDANTS learned how to manipulate the nicotine in their
22 products to maximize addictiveness, particularly among new users and young people, and thereby
23 increase sales. JLI designed its products to have maximum inhale-ability, without any "throat
24 hit" or irritation that would serve as a natural deterrent to new users. The sole purpose of this
25 design element was to initiate new smokers, since those who already smoke cigarettes are tolerant
26 to the throat hit sensation and associate it with smoking and nicotine satisfaction. At the same

27 ⁹ Ben Tobin, *Altria Purchases 35% Stake in Juul in Deal Worth \$12.8 Billion*, USA TODAY
28 (Dec. 20, 2018, 9:47 AM ET), <https://www.usatoday.com/story/money/2018/12/20/altria-buys-stake-juul-deal-worth-12-8-billion/2373663002/>.

1 time, JLI designed its device to deliver substantially higher concentrations of nicotine per puff
2 than traditional cigarettes and most other e-cigarettes. This combination of ease of inhalation and
3 high nicotine delivery makes JUUL both powerfully addictive and dangerous.

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

7 17. Nicotine addiction causes repeated exposure to the toxins and aerosols contained
8 in JUUL's vapor.

9 18. Several studies, including one recently released by the American Stroke
10 Association, have shown that e-cigarettes increase the risk of stroke, heart attack and coronary
11 artery disease.¹⁰ Other studies have shown that e-cigarettes containing nicotine significantly
12 increase blood pressure, heart rate and arterial stiffness, and also cause vascular damage, which
13 can lead to strokes and other cardiovascular injuries as well as lung problems.¹¹ These studies
14 build on the well-established research that nicotine increases blood pressure.¹²

15 19. Nicotine consumption has also been associated with causing seizures.¹³

16 ¹⁰ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries* (Jan. 30, 2019)
17 American Stroke Association News Release, Abstract 9, Session A2,
[https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries)
18 [diseased-arteries](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries) (as of Sept. 25, 2019).

19 ¹¹ Caporale, *et al.*, *Acute effects of electronic cigarette aerosol inhalation on vascular function*
20 *detected at quantitative MRI*, *Radiology* (2019); Franzen, *et al.*, *E-cigarettes and cigarettes*
21 *worsen peripheral and central hemodynamics as well as arterial stiffness*, *Vasc. Med.* (2018);
22 Lee, *et al.*, *Modeling cardiovascular risks of e-cigarettes with human-induced pluripotent stem*
23 *cell-derived endothelial cells*, *J. Am College of Cardiology* (2019); Middlekauff, *Cardiovascular*
24 *impact of electronic cigarette use*, *Trends in Cardiovascular Medicine* (2019); Ndunda, *et al.*,
25 *Abstract 9: Electronic cigarette use is associated with a higher risk of stroke*, Abstract 9 (2019);
26 Vlachopoulos, *et al.*, *Electronic cigarette smoking increases aortic stiffness and blood pressure*
27 *in young smokers: increased aortic stiffness and blood pressures in young smokers*, *J. Am. Coll.*
28 *Cardiol.* (2016).

¹² Vlachopoulos, *et al.*, *Electronic cigarette smoking increases aortic stiffness and blood*
pressure in young smokers: increased aortic stiffness and blood pressures in young smokers, *J.*
Am. Coll. Cardiol. (2016).

¹³ Iha, *et al.*, *Nicotine elicits convulsive seizures by activating amygdalar neurons*, *Frontiers*
Pharmacol. (2017); U.S. National Library of Medicine, Toxicology Data Network, *Nicotine:*
Human Health Effects (2019) [https://toxnet.nlm.nih.gov/cgi-](https://toxnet.nlm.nih.gov/cgi-bin/sis/search2/r?dbs+hsdb:@term+@rn+@rel+54-11-5)
[bin/sis/search2/r?dbs+hsdb:@term+@rn+@rel+54-11-5](https://toxnet.nlm.nih.gov/cgi-bin/sis/search2/r?dbs+hsdb:@term+@rn+@rel+54-11-5) (as of September 25th, 2019);
Gerdinique C. Maessen *et al.*, *Nicotine Intoxication by E-cigarette Liquids: A Study of Case*
Reports, *Pathophysiology*, 58 *Clinical Toxicology* 1 (2020),
<https://www.tandfonline.com/doi/full/10.1080/15563650.2019.1636994>; *Some E-cigarette Users*

Footnote continued on next page

1 20. The flavoring compounds used in e-cigarettes include chemicals known to be
2 toxins if inhaled, such as diacetyl, acetyl propionyl, and benzaldehyde. These chemicals are
3 linked to serious lung disease.¹⁴ In addition, ultrafine metal particles from the heating device have
4 been found in e-cigarette aerosol, and in e-cigarette user’s lungs.¹⁵

5 21. Recent studies also have linked lung inflammation, poor immune response,
6 weakened lung structure, ‘liquid pneumonia,’ chest abnormalities, and clinical respiratory
7 symptoms, some requiring intubation and mechanical ventilation, to e-cigarette use.¹⁶
8 Spontaneous pneumothorax (lung collapse) is also linked to vaping and use of e-cigarettes.¹⁷

9 22. The United States Surgeon General has concluded that e-cigarettes, including
10 JUUL, are not safe for anyone under age 26.¹⁸

11 23. Even though e-cigarettes are unsafe for anyone under 26, JLI DEFENDANTS
12 heavily promoted their products to young people. Following the wildly successful playbook laid
13 out in historic cigarette industry documents, JLI leveraged social media and utilized other

14 *Are Having Seizures, Most Reports Involving Youth and Young Adults*, U.S. Food & Drug
15 Administration (April 10, 2019), [https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-](https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involvingyouth-and-young-adults)
16 [cigarette-users-are-having-seizures-most-reports-involvingyouth-and-young-adults](https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involvingyouth-and-young-adults).

17 ¹⁴ Centers for Disease Control & Prevention, *Flavorings-Related Lung Disease* (2017),
18 <https://www.cdc.gov/niosh/topics/flavorings/default.html>; Lee, *Modeling Cardiovascular Risks of*
19 *E-Cigarettes*, *supra*; Sheila Kaplan & Matt Richtel, *Mysterious Vaping Illness That’s ‘Becoming*
20 *an Epidemic*,’ N.Y. TIMES (Aug. 31, 2019), [https://www.nytimes.com/2019/08/31/health/vaping-](https://www.nytimes.com/2019/08/31/health/vaping-marijuana-ecigarettes-sickness.html?auth=login-email&login=email)
21 [marijuana-ecigarettes-sickness.html?auth=login-email&login=email](https://www.nytimes.com/2019/08/31/health/vaping-marijuana-ecigarettes-sickness.html?auth=login-email&login=email).

22 ¹⁵ Caporale, *Acute Effects of Electronic Cigarette Aerosol Inhalation on Vascular Function*,
23 *supra*.

24 ¹⁶ Travis S. Henry, et al., *Imaging of Vaping-Associated Lung Disease*, 381 NEW ENGLAND J. OF
25 MED. 1486 (Sept. 6, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1911995>; Jennifer E.
26 Layden et al., *Pulmonary Illness Related to E-Cigarette Use in Illinois and Wisconsin—*
27 *Preliminary Report*, 381 NEW ENGLAND J. OF MED. (Sept. 6, 2019),
28 <https://www.nejm.org/doi/full/10.1056/NEJMoa1911614>; Matthew C. Madison, *Electronic*
Cigarettes Disrupt Lung Lipid Homeostasis and Innate Immunity Independent of Nicotine, 129 J.
CLINICAL INVESTIGATION 4290 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31483291>; Sean
D. Maddock, et al., *Pulmonary Lipid-Laden Macrophages and Vaping*, 381 NEW ENGLAND J. OF
MED. 1488 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1912038>; Martin, et
al., *E-Cigarette Use Results in Suppression of Immune and Inflammatory-Response Genes in*
Nasal Epithelial Cells Similar to Cigarette Smoke, 311 AM. J. OF PHYSIOLOGY L135 (July 2016),
<https://www.ncbi.nlm.nih.gov/pubmed/27288488>.

¹⁷ Alex Bonilla et al., *Recurrent Spontaneous Pneumothoraces and Vaping in an 18-year-old*
Man: a Case Report and Review of the Literature, 13 J. OF MED. CASE REPORTS 283 (Sept. 9,
2019), <https://doi.org/10.1186/s13256-019-2215-4>.

¹⁸ U.S Surgeon General and U.S. Centers for Disease Control & Prevention, Office on Smoking
and Health, *Know the risks: E-cigarettes and young people* (2019) [https://e-](https://e-cigarettes.surgeongeneral.gov/)
[cigarettes.surgeongeneral.gov/](https://e-cigarettes.surgeongeneral.gov/) (as of Sept. 25, 2019).

1 marketing and promotion tactics, long outlawed for cigarette companies, to capture the highly-
2 lucrative youth market. JLI preyed on youth using media and themes that exploit teenagers’
3 vulnerabilities to create and sustain nicotine addiction, all for financial gain, and without giving
4 kids any warnings about the serious risks of addiction, seizure and other neurological injuries,
5 strokes and other cardiovascular injuries, lung collapse and other pulmonary injuries, and other
6 permanent injuries.

7 24. At the time PLAINTIFF used JUUL, none of JLI’s advertising, marketing,
8 promotion, packaging or website disclosed any of the dangerous health effects and risks that JLI
9 knew or should have known would occur from use of its products. These dangerous and
10 potentially lethal risks include nicotine addiction, significant increases in blood pressure,
11 increased risk of stroke, heart attacks and other cardiovascular injuries, seizures, permanent brain
12 changes, mood disorders, heightened risk of cancer, lung collapse and other pulmonary injuries,
13 and other harms. JLI DEFENDANTS never disclosed that its products were unsafe for anyone
14 under age 26. Instead, the imaging, advertising, promotion, packaging and overall marketing
15 represented the product as safe, fun, and not harmful. As one of the JLI founders has said: “We
16 don’t think a lot about addiction here because we’re not trying to design a cessation product at
17 all...anything about health is not on our mind”.¹⁹

18 25. Since 2015 when JUUL hit the market, JUUL has become pervasive in schools
19 across the country, and adolescent use is rampant. JLI dominates the multi-billion dollar e-
20 cigarette market and has expanded the size of that market significantly—mostly via young non-
21 smokers.

22 26. JLI DEFENDANTS misconduct could not have been carried out without the
23 expertise of an actual cigarette company. Well before ALTRIA announced its investment in JLI,
24 the connections between the two companies ran deep. JLI and ALTRIA collaborated to grow the
25 e-cigarette market and the number of users addicted to nicotine, including by sharing data and
26 information and coordinating marketing activities, including acquisition of key shelf space next to

27 ¹⁹ Tiku, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette: Surprise,*
28 *it's a rectangle*, The Verge (Apr. 21, 2015) <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul> (as of Sept. 25, 2019).

1 top-selling Marlboro cigarettes. ALTRIA's substantial investment in JLI was not merely a
2 financial proposition, but a key element of DEFENDANTS' collective plan to stave off regulation
3 and keep their most potent and popular products on the market. JLI has benefitted from
4 ALTRIA's expertise in designing and marketing addictive products, and in thwarting regulation
5 of its products.

6 27. In 2018, ALTRIA acquired a 35% stake in JUUL for \$12.8 billion, giving
7 ALTRIA access to the new generation of customers JUUL has groomed.²⁰

8 28. JLI DEFENDANTS and ALTRIA have created an epidemic. According to Alex
9 Azar, the Secretary of the U.S. Department of Health and Human Services, "We have never seen
10 use of any substance by America's young people rise as rapidly as e-cigarette use is rising."²¹
11 Defendants' conduct has led to a surge in teen e-cigarette use, creating the "largest ever recorded
12 [increase in substance abuse] in the past 43 years for any adolescent substance use outcome in the
13 U.S."²² In a mere two years, Defendants undid more than a decade of progress in reducing teen
14 smoking, thereby increasing nicotine use among teenagers to levels not seen since the early
15 2000s. Plaintiff was a target and victim of Defendants' conduct.

16 29. As a result of DEFENDANTS' conduct, Plaintiff has suffered catastrophic
17 personal injuries and seeks all appropriate remedies and relief.

18 **II. JURISDICTION AND VENUE**

19 30. This Court has jurisdiction over the subject matter of this action pursuant to 28
20 U.S.C §§ 1332(a)(1) and (a)(2). There is complete diversity of citizenship between the parties.

21 31. This Court has personal jurisdiction over JLI DEFENDANTS, ALTRIA, E-
22 LIQUID MANUFACTURING DEFENDANTS, and ZLAB DEFENDANTS because they have
23 committed the acts complained of herein in this State and in this Court's jurisdiction.

24 ²⁰ LaVito, *Tobacco giant Altria takes 35% stake in Juul, valuing e-cigarette company at \$38*
25 *billion*, CNBC (Dec. 20, 2018) [www.cnbc.com/2018/12/20/altria-takes-stake-in-juul-a-pivotal-](http://www.cnbc.com/2018/12/20/altria-takes-stake-in-juul-a-pivotal-moment-for-the-e-cigarette-maker.html)
[moment-for-the-e-cigarette-maker.html](http://www.cnbc.com/2018/12/20/altria-takes-stake-in-juul-a-pivotal-moment-for-the-e-cigarette-maker.html) (as of Sept. 25, 2019).

26 ²¹ *Surgeon General releases advisory on E-cigarette epidemic among youth*, U.S. Department of
27 Health & Human Services (Dec. 18, 2018) [www.hhs.gov/about/news/2018/12/18/surgeon-](http://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html)
[general-releases-advisory-e-cigarette-epidemic-among-youth.html](http://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html) (as of Sept. 25, 2019).

28 ²² Boyles, *Surgeon general calls for new e-cig restrictions: 'I am officially declaring e-cigarette*
use among youth an epidemic, MedPage Today (Dec. 18, 2018)
www.medpagetoday.com/primarycare/smoking/77000 (as of Sept. 25, 2019).

1 32. Defendants have sufficient minimum contacts with this State to render the
2 exercise of jurisdiction by this Court permissible.

3 33. Defendants purposely availed themselves of the benefits, protections and
4 privileges of the laws of the State of Alaska in conducting their business, and have purposely
5 directed their activities in this State.

6 **III. THE PLAINTIFF**

7 **A. JOSEPH BURNS**

8 34. Plaintiff, JOSEPH BURNS, is 20 years old and a citizen of Alaska.

9 35. Mr. BURNS was a 19-year-old who suffered cardiovascular and pulmonary
10 injuries after becoming addicted to JUUL.

11 36. Mr. BURNS regularly purchased and consumed JUUL products, including JUUL
12 devices and JUUL pods. Mr. BURNS also purchased and consumed e-liquid pods manufactured
13 by ZLAB DEFENDANTS.

14 37. Mr. BURNS became addicted to JUUL, causing him to increase his use over time.

15 38. Mr. BURNS suffered cardiovascular and pulmonary injuries from JUUL.

16 39. JUUL, and ZLAB DEFENDANTS' products were a substantial factor in causing
17 Mr. BURN's injuries.

18 **IV. THE DEFENDANTS**

19 **A. JUUL Labs, Inc. ("JLI")**

20 40. Defendant JLI is a Delaware corporation, having its principal place of business in
21 San Francisco, California. Ploom, Inc., a predecessor company to JLI, was incorporated in
22 Delaware on March 12, 2007. In 2015, Ploom, Inc. changed its name to PAX Labs, Inc. In April
23 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc., and formed a new subsidiary
24 corporation with its old name, PAX Labs, Inc. That new subsidiary, PAX Labs, Inc. ("PAX"),
25 was incorporated in Delaware on April 21, 2017 and has its principal place of business in San
26 Francisco, California.

27 41. JLI manufactures, designs, sells, markets, promotes and distributes JUUL e-
28 cigarettes devices, JUUL Pods and accessories (collectively "JUUL" or "JUUL products"). JLI is

1 registered to do business in the state of Arizona and has an entity number F20074280. JLI
2 manufactures, designs, sells, markets, promotes, and distributes JUUL products in this state.
3 JUUL products are available for sale in the State of Arizona.

4 42. JLI ratified each and every act or omission alleged herein in proximately causing
5 the injuries and damages alleged herein.

6 **B. ALTRIA DEFENDANTS**

7 43. Defendant ALTRIA Group, Inc. (“AGI”) is a Virginia corporation, having its
8 principal place of business in Richmond, Virginia. AGI is one of the world’s largest producers
9 and marketers of tobacco products. On December 20, 2018, AGI purchased a 35 percent stake in
10 JLI, worth \$12.8 billion.²³ AGI and JLI executed a Services Agreement that provides that AGI
11 through its subsidiaries would assist JLI in the selling, marketing, promoting, and distributing of
12 JUUL, among other things. ALTRIA is the parent company of Philip Morris, USA, the
13 manufacturer of Marlboro cigarettes. Altria is registered to do business in this state, and has the
14 entity number F15302116.

15 44. Defendant Philip Morris USA, Inc. (“Philip Morris”) is a wholly-owned subsidiary
16 of AGI. Philip Morris is a Virginia corporation with its principal place of business in Richmond,
17 Virginia. Philip Morris is the largest cigarette company in the United States. Marlboro, the
18 principal cigarette brand of Philip Morris, has been the largest selling cigarette brand in the
19 United States for over 40 years. Philip Morris performs direct marketing support services for JLI
20 under the Services Agreement to assist JLI in selling, marketing and promoting JUUL. This has
21 included, among other things, placing JUUL Product inserts in millions of packs of L&M,
22 Parliament, and Marlboro cigarettes and utilizing Philip Morris’ extensive customer market
23 database for targeted direct marketing purposes. Philip Morris is registered to do business in this
24 state, and has the entity number F00047988.

25 45. Defendant Altria Client Services LLC (“ACS”) is a wholly-owned subsidiary of
26 AGI. ACS is a Virginia limited liability company with its principal place of business in

27 _____
28 ²³ Ben Tobin, *Altria Purchases 35% Stake in Juul in Deal Worth \$12.8 Billion*, USA TODAY
(Dec. 20, 2018, 9:47 AM ET), <https://www.usatoday.com/story/money/2018/12/20/altria-buys-stake-juul-deal-worth-12-8-billion/2373663002/>.

1 Richmond, Virginia. ACS and JLI have executed several Statements of Work whereby ACS
2 performs services under the Services Agreement to assist JLI in the sale, marketing, promotion
3 and distribution of JUUL. Such services include database support, direct marketing support, and
4 premarket product application support.

5 46. Defendant Altria Group Distribution Company (“AGDC”) is a wholly-owned
6 subsidiary of AGI. AGDC is a Virginia corporation with its principal place of business in
7 Richmond, Virginia. AGDC and JLI have executed several Statements of Work whereby AGDC
8 performs services under the Services Agreement to assist JLI in the sale, marketing, promotion
9 and distribution of JUUL. Such services include JUUL-distribution support, the removal by
10 AGDC of Nu Mark e-cigarette products (such as Green Smoke or MarkTen) and fixtures in retail
11 stores and replacing them with JLI products and fixtures, and sales support services. AGDC is
12 registered to do business in this state, and has the entity number F15302116.

13 47. Defendant Altria Enterprises LLC (“AE”) is a wholly-owned subsidiary of AGI.
14 AE is a Virginia limited liability company with its principal place of business in Richmond,
15 Virginia. AE is a party to the purchase agreement between AGI and JLI. AE purchased
16 ALTRIA’s stake in JLI on ALTRIA’s behalf.

17 48. AGI, Philip Morris, ACS, AGDC, and AE are referred jointly as the “ALTRIA
18 DEFENDANTS” or “ALTRIA.”

19 49. Upon information and belief, the ALTRIA DEFENDANTS conducted meetings,
20 interviews and inspections at the JLI facilities in San Francisco and engaged in frequent
21 communications regarding JUUL with JLI in California and elsewhere prior to, during, and
22 subsequent to its stock purchase.

23 **C. DEFENDANTS BOWEN, MONSEES, PRITZKER, HUH, and VALANI**

24 50. Defendant ADAM BOWEN is a resident of the San Francisco Bay Area. In 2007,
25 he co-founded PLOOM with JAMES MONSEES. At all relevant times, Mr. BOWEN has been
26 Chief Technology Officer and a member of the Board of Directors of JLI or its predecessors.

27 51. Defendant JAMES MONSEES is a resident of the San Francisco Bay Area. In
28 2007, he co-founded PLOOM with Mr. BOWEN. Mr. MONSEES served as Chief Executive

1 Officer of JLI until October 2015. Since October 2015, Mr. MONSEES has been Chief Product
2 Officer of JLI. At all relevant times, he has been a member of the Board of Directors of JLI or its
3 predecessors.

4 52. Defendant NICHOLAS PRITZKER is a resident of San Francisco, California, and
5 a member of the PRITZKER family, which owned the chewing-tobacco giant Conwood before
6 selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. More recently,
7 PRITZKER co-founded Tao Capital, an early investor in, among other companies, Tesla Motors
8 and Uber. In 2007, he invested in JLI.²⁴

9 53. Defendant HOYOUNG HUH lives and works in the Silicon Valley area. Dr. HUH
10 holds an M.D. from Cornell and a Ph.D. in Genetics/Cell Biology from Cornell/Sloan-Kettering.
11 Dr. HUH has been on the Board of Directors of JLI or its predecessors since at least June 2015.

12 54. Defendant RIAZ VALANI lives near San Jose and is a general partner at Global
13 Asset Capital, a San Francisco-based private equity investment firm. He has been on the Board of
14 Directors of JLI or its predecessors since at least May 2011.

15 55. Defendants BOWEN, MONSEES, PRITZKER, HUH, and VALANI ratified each
16 and every act or omission alleged herein in proximately causing injuries and damages alleged
17 herein.

18 **D. THE E-LIQUID MANUFACTURING DEFENDANTS**

19 56. Defendant MOTHER MURPHY'S LABS, INC. ("MOTHER MURPHY'S") is a
20 North Carolina corporation, with a principal place of business in Greensboro, North Carolina.
21 Mother Murphy's is in the business of manufacturing and supplying E-Liquids and the
22 ingredients and additives in E-Liquids including the E-Liquid in JUUL.

23 57. Defendant ALTERNATIVE INGREDIENTS, INC. ("ALTERNATIVE") is a
24 wholly owned subsidiary of Mother Murphy's. Alternative is a North Carolina corporation,
25 having a principal place of business in Greensboro, North Carolina. Alternative is in the business
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27 _____
28 ²⁴ Ainsley Harris, *How JUUL went from a Stanford thesis to \$16 billion startup*, Fast Company
(March 8, 2020 4:11 PM PST), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>.

1 of manufacturing and supplying E-Liquids, flavoring additives and raw ingredients in E-Liquids,
2 including the E-Liquid in JUUL.

3 58. Defendant TOBACCO TECHNOLOGY, INC. (“TTI”) is a Maryland corporation,
4 with a principal place of business in Eldersburg, Maryland. TTI is in the business of
5 manufacturing and supplying E-Liquids, flavoring additives and raw ingredients in E-Liquids,
6 including the E-Liquid in JUUL.

7 59. Defendant ELIQUITECH, INC. (“ELIQUITECH”) is a wholly-owned subsidiary
8 of TTI. ELiquitech is a Maryland corporation, with a principal place of business in Eldersburg,
9 Maryland. ELiquitech is in the business of manufacturing and supplying E-Liquids, flavoring
10 additives and raw ingredients in E-Liquids, including the E-Liquid in JUUL.

11 60. Mother Murphy's, Alternative, TTI, and ELiquitech, are referred to jointly as the
12 “E-LIQUID MANUFACTURING DEFENDANTS.”

13 **E. THE ZLAB DEFENDANTS**

14 61. Defendant ZLab S.A. (“ZLAB”) is a Uruguayan corporation with its principal
15 place of business in Punta del Este, Maldonado, Uruguay. ZLAB is in the business of designing,
16 manufacturing, supplying, distributing, marketing, and selling e-liquid pods, most often under the
17 brand name “Plus Pods” that are compatible with JUUL devices and products.

18 62. Defendant ZIIP LABS CO. LTD. (“ZIIP”) is a Chinese corporation and affiliate of
19 Defendant ZLAB, with a principal place of business in Shenzhen City, Guangdong Province,
20 China. ZIIP is in the business of designing, manufacturing. Supplying, distributing, marketing,
21 and selling e-liquid pods, most often under the brand name “Plus Pods” that are compatible with
22 JUUL devices and products.

23 63. ZLAB and ZIIP are referred to jointly as the “ZLAB DEFENDANTS.”
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1 **V. FACTUAL ALLEGATIONS**

2 **A. Each Defendant Was Instrumental in Seeking to Develop and Market the**
3 **Sequel to Combustible Cigarettes, the “Most Successful Consumer Product of**
4 **All Time.”**

5 64. JLI’s co-founder JAMES MONSEES has described the cigarette as “the most
6 successful consumer product of all time an amazing product.”²⁵

7 65. Because of “some problems” inherent in the cigarette, JLI’s founders set out to
8 “deliver[] solutions that refresh the magic and luxury of the tobacco category.”²⁶ MONSEES saw
9 “a huge opportunity for products that speak directly to those consumers who aren’t perfectly
10 aligned with traditional tobacco products.”²⁷ With a focus on recreating the “ritual and elegance
11 that smoking once exemplified,”²⁸ MONSEES and JLI co-founder ADAM BOWEN set out to
12 “meet the needs of people who want to enjoy tobacco but don’t self-identify with—or don’t
13 necessarily want to be associated with—cigarettes.”²⁹ Successfully capitalizing on this
14 opportunity would mean not only billions of dollars in short-term revenue but the prospect of a
15 lucrative acquisition by a cigarette industry power player.

16 66. BOWEN and MONSEES capitalized on that opportunity by deliberately creating
17 an extremely potent nicotine product that looked nothing like cigarettes. But achieving
18 widespread adoption of their highly addictive product required resources and expertise beyond
19 those possessed by BOWEN, MONSEES or others at JLI.

20 67. They needed an ally that knew the business. They turned to ALTRIA in the Spring
21 of 2017. While JLI DEFENDANTS are relative newcomers to the tobacco industry, ALTRIA has
22 been manufacturing and selling “combustible” cigarettes for more than a century.

23 ²⁵ Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—James Monsees and Adam*
24 *Bowen Have Cornered the US E-Cigarette Market with Juul. Up Next: The World*, FORBES
(Sept. 27, 2018, 3:10:35 PM EST), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1.

25 ²⁶ Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*,
26 SOLID SMACK (Apr. 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/.

27 ²⁷ *Id.*

28 ²⁸ *James Monsees—Co-founder and CEO of Ploom*, IDEAMENSCH (Apr. 11, 2014),
<https://ideamensch.com/james-monsees/> (as of Sept. 25, 2019).

²⁹ *Id.*

1 68. While JLI DEFENDANTS publicly claimed to be out to “disrupt” the industry,
2 they privately negotiated and ultimately relinquished a 35% ownership stake in the company to a
3 cigarette giant.

4 69. Due in large part to ongoing litigation and regulation, cigarette use has been
5 declining in the United States in the last decade, especially among youth.³⁰ ALTRIA estimates
6 that the cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a
7 continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019
8 through 2023.³¹ ALTRIA later adjusted the estimated rate of decline to 4% to 6%, to reflect
9 efforts to increase the legal age for cigarette smoking to 21.³²

10 70. ALTRIA’s own efforts at marketing an e-cigarette product had, however, proven
11 largely unsuccessful. ALTRIA had launched the MarkTen product nationwide in 2014 with an
12 aggressive marketing campaign. Of the \$88.1 million spent on e-cigarette advertising in 2014,
13 nearly 40% of that was ALTRIA’s MarkTen campaign, at \$35 million.³³ ALTRIA was clear in its
14 intent to dominate the e-cigarette market as it had the combustible cigarette market: “We are the
15 market leader today and we will continue to be,” then-CEO Marty Barrington told investors at the
16 time of MarkTen’s launch.³⁴ The original MarkTen was a “cigalike,” designed to mimic the look
17 and feel of a combustible cigarette.

18 71. In his remarks at the February 2017 Consumer Analyst Group of New York
19 (CAGNY) Conference, ALTRIA’s current CEO, Howard A. Willard III, said, “Nu Mark, our e-
20 vapor company, had a very strong year. It made excellent progress toward establishing MarkTen

21 ³⁰ *Current Cigarette Smoking Among Adults In the United States*, CDC,
22 https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last
23 visited April 2, 2020); *Youth and Tobacco Use*, CDC,
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last
visited April 2, 2020).

24 ³¹ *ALTRIA’s Fourth-Quarter 2018 Earnings Conference Call*, ALTRIA (Jan. 31, 2019),
[http://investor.ALTRIA.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877](http://investor.ALTRIA.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349)
&iid=4087349.

25 ³² *ALTRIA Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019),
26 <https://tobaccobusiness.com/ALTRIA-shares-slide-as-cigarette-sales-continue-to-decline/>.

27 ³³ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as ALTRIA’s*
MarkTen enters the marketplace, Tobacco Control 25 (10) (2015),
<http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

28 ³⁴ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July
22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

1 as a leading brand in the category, continued to improve its supply chain, and took the necessary
2 steps to comply with the deeming regulations.”³⁵ But in 2017, ALTRIA’s MarkTen e-cigarettes
3 had a market share of only 13.7%, well behind JLI’s growing market share of 40%.³⁶ Thus,
4 despite its public statements to the contrary, ALTRIA knew that it could not achieve its goal of
5 dominating the e-cigarette market through its own commercially inferior products.

6 72. In February 2018, with JUUL dominating the e-cigarette market, ALTRIA
7 announced the national launch of a pod-based, “closed-tank” e-cigarette like the JUUL, which it
8 branded as the MarkTen Elite: “a pod-based product with a premium, sleek battery design” and
9 having the “convenience of prefilled, magnetic click pods.” ALTRIA initially had brought the
10 Elite to market in 2016, telling investors that the product “offers a variety of flavorful liquids in a
11 modern, discrete device format.” At an analyst conference in February 2018, former ALTRIA
12 Chief Executive officer Marty Barrington boasted that the Elite’s pods held more than twice as
13 much liquid as JUUL’s. ALTRIA quickly followed with another pod-based product, the Apex by
14 MarkTen. These products were available in flavors designed to appeal to youth.



25 ³⁵ Remarks by Marty Barrington, ALTRIA Group, Inc.’s (ALTRIA) Chairman, CEO and
26 President, and other members of ALTRIA’s senior management team 2017 Consumer Analyst
27 Group of New York (CAGNY) (2017), <http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349>.

28 ³⁶ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, Winston-Salem Journal (Dec. 14,
2017), https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cigsales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.



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73. ALTRIA’s push to target the youth market gained the attention of the FDA. On September 12, 2018, the FDA sent a warning letter to ALTRIA, requesting that ALTRIA provide a “detailed plan” to address and mitigate the widespread use of its e-cigarette products by minors.³⁷ Due to the “epidemic rate of increase in youth use” of e-cigarettes, the FDA had conducted an “enforcement blitz” of retailers nationwide and confirmed that ALTRIA’s MarkTen products were being sold to minors. The FDA did not mince words, telling ALTRIA that “[t]his is

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³⁷ Scott Gottlieb, *Letter to Altria Client Services*, U.S. FOOD & DRUG ADMIN. (Sept. 12, 2018), <https://www.fda.gov/media/119666/download>.

1 unacceptable, both legally and as a matter of public health.” The FDA warned ALTRIA that it
2 had a responsibility to ensure minors were not getting access to its products and that it was
3 “crucial” that manufacturers like ALTRIA take steps to prevent youth from using its products.
4 First and foremost, the FDA asked ALTRIA to “take prompt action to address the rate of youth
5 use of MarkTen products.” The FDA suggested that ALTRIA could revise its current marketing
6 practices, eliminate online sales, and remove flavored products from the market. The FDA’s
7 command was clear: “steps must be taken to protect the nation’s young people.”

8 74. On October 25, 2018, ALTRIA responded to the FDA, claiming to have “serious
9 concerns” about youth access to e-vapor products.³⁸ It admitted that the use of e-cigarettes by
10 youth had risen to “epidemic levels.” In response, ALTRIA agreed to remove its pod-based e-
11 cigarettes from the market and stop selling any flavored traditional e-cigarettes other than
12 tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly-available information
13 from FDA and others, we believe pod-based products significantly contribute to the rise in youth
14 use of e-vapor products. We don’t believe our products are the issue, but we don’t want to risk
15 contributing to the problem.” ALTRIA’s letter went on to disclaim numerous practices that it
16 associated with marketing to youth that were key components of JUUL’s marketing strategy.
17 ALTRIA specifically identified the use of flavors that go beyond traditional tobacco flavors,
18 digitally advertising on websites with a large percentage of youth visitors, using social media to
19 promote the brand, allowing online purchases and promotional sign-ups without age verification,
20 advertising e-cigarettes on billboards, advertising with models who appear to be under 25 years
21 old, distributing branded merchandise, and paying celebrities or other third parties to market or
22 use a particular brand’s e-cigarettes. ALTRIA also claimed to support “banning vaping in
23 schools” to reduce “social access.” ALTRIA ended the letter by committing to “reverse the
24 current use trend among youth.”

25 75. But simultaneously, ALTRIA was engaging in communications with JLI.
26 According to Howard Willard, ALTRIA’s CEO, ALTRIA first contacted JLI about a commercial

27 ³⁸ Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, ALTRIA (Oct. 25, 2018),
28 <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

1 relationship in early 2017, with “confidential discussions” beginning in the Spring of 2017.³⁹ By
2 the Fall of 2017, JLI DEFENDANTS and ALTRIA had agreed to take, and had taken,
3 coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in
4 order to ensure a steady and growing customer base.

5 76. These “confidential discussions” with ALTRIA involved key employees and
6 officers of JLI, which would have included MONSEES and/or BOWEN. During this period, it
7 was JLI (through its executives and employees) and ALTRIA (through its executives and
8 employees) that primarily directed and conducted fraudulent acts designed to grow the market of
9 nicotine-addicted e-cigarette users, although BOWEN and MONSEES remained critical to the
10 success of these efforts. Without their control of the JLI Board of Directors and prior fraudulent
11 conduct, the close coordination between JLI and ALTRIA, and ALTRIA’s investment in JLI,
12 would not have been possible.

13 77. In December 2018, ALTRIA decided to take the next step in its coordination with
14 JLI DEFENDANTS by making a \$12.8 billion equity investment in JLI, the largest equity
15 investment in United States history. This arrangement was profitable for both companies, as well
16 as MONSEES and BOWEN. JLI employees received \$2 billion in bonuses, which, split among
17 the Company’s 1,500 employees, was approximately \$1.3 million per employee;⁴⁰ ALTRIA
18 received millions of loyal teen customers; and MONSEES and BOWEN received untold sums of
19 money and saw the value of their shares in JLI skyrocket, allowing them to cash out via a special
20 dividend and bonus, and through stock sales that were not available to other of JLI’s minority
21 shareholders.⁴¹

22 78. This investment further intertwined JLI and ALTRIA. According to the terms of
23 its investment, ALTRIA was allowed to appoint one-third of JLI’s board. And in October 2019,
24 JLI’s CEO resigned to be replaced by a career ALTRIA executive, K.C. Crosthwaite. The key

25 ³⁹ Altria’s October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

26 ⁴⁰ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in ALTRIA Deal*, BLOOMBERG (Dec.
27 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-ALTRIA-deal>.

28 ⁴¹ Tiffany Kary, *JLI Founders Sued for Self-Dealing Over ALTRIA’s \$12.8 Billion*, Bloomberg (Jan. 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-forself-dealing-over-ALTRIA-s-12-8-billion>.

1 employees within JUUL—including BOWEN and/or MONSEES—would have been instrumental
2 in bringing Crosthwaite on board at JLI. Crosthwaite had most recently served as the Vice
3 President and Chief Growth Officer of Altria Client Services, overseeing the company’s work to
4 assist ALTRIA’s companies, including with digital marketing, packaging design & innovation,
5 product development, and safety, health, and environmental affairs. Crosthwaite knew the
6 cigarette industry’s playbook all too well, having previously served as the president and CEO of
7 Phillip Morris, and the Vice President and General Manager at Marlboro—the leading cigarette
8 brand among youth, and the Vice President of Strategy and Business Development at Altria
9 Client Services.

10 79. Both before and after ALTRIA’s investment, JLI, through its employees and
11 officers, provided ALTRIA with critical information regarding the design and nicotine content of
12 the JUUL product, the labeling of the JUUL product, and related topics including advertising,
13 retail distribution, online sales, age verification procedures, information on underage user’s flavor
14 preferences, and regulatory strategies. ALTRIA, for its part, guided JLI DEFENDANTS in these
15 areas and helped them devise and execute schemes to maintain and expand the e-cigarette market.

16 **B. Defendants Sought to Create a Nicotine Product That Would Maximize**
17 **Customer Retention Through Addiction.**

18 **1. Defendants Understood That the “Magic” Behind Cigarettes’ Success**
19 **Was Nicotine Addiction.**

20 80. The first step in replicating the success of combustible cigarettes was to create a
21 product that, like combustible cigarettes, was based on getting users addicted to the nicotine in the
22 product. Nicotine is an alkaloid, a class of plant-derived nitrogenous compounds that is highly
23 addictive and the key ingredient that drives addiction to cigarettes. Nicotine’s addictive properties
24 are similar to heroin and cocaine.⁴²

25 81. All leading health authorities support the three major conclusions of a 1988 report
26 by the U. S. Surgeon General regarding nicotine and tobacco:

- 27 a. Cigarettes and other forms of tobacco are addictive;
- 28 b. Nicotine is the drug in tobacco that causes addiction; and

⁴² See e.g., US Department of Health and Human Services. *Nicotine Addiction: A Report of the Surgeon General*. DHHS Publication Number (CDC) 88-8406, (1988).

1 c. The physiological and behavioral processes that determine tobacco
2 addiction are similar to those that determine heroin and cocaine addiction.

3 82. Nicotine fosters addiction through the brain's "reward" pathway. As both a
4 stimulant and a relaxant, nicotine affects the central nervous system. It also increases blood
5 pressure, pulse, and metabolic rate, constricts blood vessels of the heart and skin, and causes
6 muscle relaxation. When nicotine is inhaled, it enters the bloodstream through membranes in the
7 mouth and upper respiratory tract and through the lungs. Once nicotine in the bloodstream
8 reaches the brain, it binds to receptors, triggering a series of physiologic effects in the user that
9 include pleasure, happiness, arousal, and relaxation of stress and anxiety. These effects, perceived
10 as a "buzz," are caused by the release of dopamine, acetylcholine, epinephrine, norepinephrine,
11 vasopressin, serotonin, and beta endorphin. With regular nicotine use, however, these feelings
12 diminish and the user must consume increasing amounts of nicotine to achieve the same
13 pleasurable effects.⁴³

14 83. The neurological changes caused by nicotine create addiction. Repeated exposure
15 to nicotine causes neurons in the brain to adapt to the action of the drug and return brain function
16 to normal. This process, called neuroadaptation, leads to the development of tolerance in which a
17 given level of nicotine begins to have less of an effect on the user.⁴⁴

18 84. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive
19 drug-seeking behavior, which, if not satisfied, results in withdrawal symptoms including anxiety,
20 tension, depression, irritability, difficulty concentrating, disorientation, increased eating,
21 restlessness, headaches, sweating, insomnia, heart palpitations and tremors – and intense cravings
22 for nicotine. While smokers commonly report pleasure and reduced anger, tension, depression
23 and stress after smoking a cigarette, many of these effects are actually due to the relief of
24 unpleasant withdrawal symptoms that occur when a person stops smoking and deprives the brain
25

27 ⁴³ Neal L. Benowitz, *Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and*
28 *Therapeutics*, 49 ANNUAL REV. OF PHARMACOLOGY & TOXICOLOGY 57 (Sept. 27, 2009),
www.ncbi.nlm.nih.gov/pmc/articles/PMC2946180/.

⁴⁴ *Id.*

1 and body of nicotine. Studies have found that most smokers do not like smoking but do so to
2 avoid withdrawal symptoms.⁴⁵

3 85. Nicotine affects neurological development in adolescents, and exposure to nicotine
4 during adolescence produces an increased vulnerability to nicotine addiction.⁴⁶ The effects of
5 nicotine exposure on the brains of youth and young adults also include priming for use of other
6 addictive substances, reduced impulse control, deficits in attention and cognition, and mood
7 disorders.⁴⁷ Specifically, adolescent nicotine addiction causes “substantial neural remodeling” to
8 those parts of the brain governed by dopamine or acetylcholine, which play central roles in
9 reward functioning and cognitive function, including executive function mediated by the
10 prefrontal cortex.

11 86. Kids are particularly vulnerable to nicotine addiction, as Defendants knew well. As
12 described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.” Nine out
13 of ten smokers begin by age 18 and 80% who begin as teens will smoke into adulthood.⁴⁸

14 87. Further, the Surgeon General has explained how the nicotine in e-cigarettes affects
15 the developing brain and can addict kids more easily than adults: “Until about age 25, the brain is
16 still growing. Each time a new memory is created, or a new skill is learned, stronger
17 connections—or synapses—are built between brain cells. Young people’s brains build synapses
18 faster than adult brains. Because addiction is a form of learning, adolescents can get addicted
19 more easily than adults.”⁴⁹

21 ⁴⁵ Nancy A. Rigotti, *Strategies to Help a Smoker Who is Struggling to Quit*, 308 JAMA 1573
22 (Oct. 17, 2012), www.ncbi.nlm.nih.gov/pmc/articles/PMC4562427/; Michael Paolini & Mariella
23 De Biasi, *Mechanistic Insights into Nicotine Withdrawal*, 82 BIOCHEMICAL PHARMACOLOGY 996
24 (Oct. 15, 2011), www.ncbi.nlm.nih.gov/pmc/articles/PMC3312005/.

25 ⁴⁶ Mariam Arain et al., *Maturation Of The Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE &
26 TREATMENT 449 (Apr. 3, 2013) <http://doi.org/10.2147/NDT.S39776>.

27 ⁴⁷ Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. OF PHYSIOLOGY 3397 (May 27,
28 2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/; U.S. Surgeon General and U.S.
Centers for Disease Control & Prevention, Office on Smoking and Health, *Know the Risks: E-
Cigarettes and Young People*, SURGEON GENERAL (2019) [https://e-
cigarettes.surgeongeneral.gov/](https://e-cigarettes.surgeongeneral.gov/).

⁴⁸ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General at 1*
(2012), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

⁴⁹ *Know The Risks: E-Cigarettes & Young People*, [https://e-
cigarettes.surgeongeneral.gov/knowtherisks.html](https://e-cigarettes.surgeongeneral.gov/knowtherisks.html).

1 88. In 2014, the United States Surgeon General reported that nicotine addiction is the
2 “fundamental reason” that individuals persist in using tobacco products, and this persistent
3 tobacco use contributes to millions of needless deaths and many diseases, including diseases that
4 affect the heart and blood vessels (cardiovascular disease), lung diseases (chronic obstructive
5 pulmonary disease (COPD) and lung cancer), cancer almost anywhere in the body, and birth
6 defects.

7 2. **Defendants Followed the Cigarette Industry Playbook to Create a**
8 **Product That Would Create and Sustain Nicotine Addiction, But**
9 **Without the Stigma Associated with Cigarettes.**

10 89. JLI followed the cigarette industry’s playbook. MONSEES has admitted publicly
11 that JLI was built in consultation with cigarette industry documents uncovered through litigation
12 and made public under the November 1998 Master Settlement Agreement between the State
13 Attorneys General of 46 states, five U.S. territories, the District of Columbia and the four largest
14 cigarette manufacturers in America, including Philip Morris, concerning the advertising,
15 marketing, and promotion of cigarettes. “[Industry documents] became a very intriguing space for
16 us to investigate because we had so much information that you wouldn’t normally be able to get
17 in most industries. And we were able to catch up, right, to a huge, huge industry in no time. And
18 then we started building prototypes.”⁵⁰

19 90. JLI researched how cigarette companies had chemically manipulated nicotine
20 content to maximize delivery: “We started looking at patent literature. We are pretty fluent in
21 ‘Patentese.’ And we were able to deduce what had happened historically in the tobacco
22 industry.”⁵¹ With access to the trove of documents made public to curb youth smoking and aid
23 research to support tobacco control efforts, JLI was able to review literature on manipulating
24 nicotine pH to maximize its delivery in a youth-friendly vapor with minimal “throat hit.”

25 91. JLI engaged former cigarette industry researchers to consult on the design of its
26 product. MONSEES noted in WIRED magazine that “people who understood the science and
27 were listed on previous patents from cigarette companies aren’t at those companies anymore. If

28 ⁵⁰ Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

⁵¹ *Id.*

1 you go to ALTRIA’s R&D facility, it’s empty.” The WIRED article stated that “some of those
2 people are now on Pax’s team of advisers, helping develop JUUL.”⁵²

3 92. JLI developed the first cartridge-based e-cigarette using nicotine salts. The JUUL
4 e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device, (2) the JUUL pod
5 (with e-liquid), and (3) the USB charger (collectively referred to herein as “JUUL” or “JUUL
6 product”). The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device consisting
7 of an aluminum shell, a battery, a magnet (for the USB charger), a circuit board, an LED light,
8 and a pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid that
9 includes nicotine, flavoring, and other additives. Each JUUL pod is a plastic enclosure containing
10 0.7 milliliters of JUUL’s patented nicotine liquid and a coil heater. When a sensor in the JUUL e-
11 cigarette detects the movement of air caused by suction on the JUUL pod, the battery in the JUUL
12 device activates the heating element, which in turn converts the nicotine solution in the JUUL pod
13 into a vapor consisting principally of nicotine, benzoic acid, glycerin, and propylene glycol along
14 with myriad chemical flavorings and other chemicals, many of which are recognized as toxic.⁵³

26 ⁵² David Pierce, *This Might Just Be the First Great E-Cig*, *WIRED* (Apr. 21, 2015, 8:00 AM),
27 www.wired.com/2015/04/pax-juul-ecig/.

28 ⁵³ *E-cigarettes and vapor products*, King County,
<https://www.kingcounty.gov/depts/health/tobacco/data/e-cigarettes.aspx> (last visited Apr. 2,
2020).

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93. JLI sells the JUUL pods packs of two or four pods, and until recently in a variety of enticing kid-friendly flavors. Many of these flavors have no combustible cigarette analog, including mango, “cool” cucumber, fruit medley, “cool” mint, and crème brûlée. The image below shows the JUUL device and a JUUL “Starter Kit” with four flavored JUUL pods:



1 94. JLI also used cigarette industry advertisements— designed to lure nonsmoking
2 youth —as a blueprint for JLI’s advertising campaigns. In a 2018 interview, “Monsees indicated
3 that the design of JUUL’s advertising had been informed by traditional tobacco advertisements
4 and that [the Stanford University Research into Impact of Tobacco Advertising] had been quite
5 useful to them.”⁵⁴

6 95. JLI attempted to distinguish JUUL products from the death and disease associated
7 with cigarettes by deliberately providing a false assurance of safety. For example, on May 8,
8 2018, a document titled “Letter from the CEO” appeared on JLI’s website. The document stated:
9 “[JUUL]’s simple and convenient system incorporates temperature regulation to heat nicotine
10 liquid and deliver smokers the satisfaction that they want without the combustion and the harm
11 associated with it.”⁵⁵

12 96. JLI’s mission was not to improve public health. Rather, JLI sought to introduce a
13 new generation of consumers to nicotine. As one JLI engineer put it: “We don’t think a lot about
14 addiction here because we’re not trying to design a cessation product at all ... anything about
15 health is not on our mind.”⁵⁶

16 97. JLI DEFENDANTS achieved their vision. Since its launch in 2015, JLI has
17 become the dominant e-cigarette manufacturer in the United States. Its revenues grew by 700
18 percent in 2017. By 2019, JLI owned three-quarters of the e-cigarette market.⁵⁷

19 98. MONSEES and BOWEN needed to shape social norms such that the public
20 attitude towards e-cigarettes would allow consumers to use their product without the stigma and
21 self-consciousness smokers experienced. MONSEES and BOWEN saw a market opportunity in a

22
23 ⁵⁴ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*,
STANFORD RESEARCH INTO THE IMPACT OF TOBACCO ADVERTISING (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

24 ⁵⁵ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019),
25 [https://www.fda.gov/inspections-compliance-enforcement-and-criminal-
investigations/warningletters/juul-labs-inc-590950-09092019](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warningletters/juul-labs-inc-590950-09092019).

26 ⁵⁶ Kevin Roose, *Juul’s Convenient Smoke Screen*, N.Y. Times (Jan. 11, 2019),
<https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

27 ⁵⁷ Dick Durbin *et al.*, *Durbin & Senators to JUUL: You Are More Interested in Profits Than*
28 *Public Health*, DURBIN NEWSROOM (Apr. 8, 2019),
[https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-
more-interested-in-profits-than-public-health](https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health).

1 generation of non-smoking consumers brought up on anti-smoking norms. In MONSEES' words,
2 they wanted to redesign the cigarette "to meet the needs of people who want to enjoy tobacco but
3 don't self-identify with—or don't necessarily want to be associated with—cigarettes."⁵⁸

4 99. JLI knew that to achieve the ultimate goal of acquisition, JLI DEFENDANTS
5 would have to grow the market share of nicotine-addicted e-cigarette users, regardless of the
6 human cost.

7 **C. JLI and BOWEN Designed a Nicotine Delivery Device Intended to Create**
8 **and Sustain Addiction.**

9 100. According to the National Institutes of Health, the "amount and speed of nicotine
10 delivery . . . plays a critical role in the potential for abuse of tobacco products." The cigarette
11 industry has long known that "nicotine is the addicting agent in cigarettes" and that "nicotine
12 satisfaction is the dominant desire" of nicotine addicts.

13 101. For this reason, cigarette companies spent decades manipulating nicotine to foster
14 and maintain addiction in their customers. For example, R.J. Reynolds Tobacco Company
15 ("RJR") developed and patented nicotine salt additives such as nicotine benzoate to increase
16 nicotine delivery in cigarette smoke. As detailed in an RJR memorandum titled "Cigarette
17 concept to assure RJR a larger segment of the youth market," manipulating the pH of nicotine
18 was expected to give cigarettes an "additional nicotine 'kick'." This kick was attributed to
19 increased nicotine absorption associated with lower pH.

20 102. Before JUUL, most e-cigarettes used an alkaline form of nicotine called free-base
21 nicotine.⁵⁹ When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates the
22 throat, and is perceived as harsh by the user. This experience is often referred to as a "throat hit."
23 The higher the concentration of free-base nicotine, the more intense the "throat hit."

24 103. Before 2015, most e-liquids on the market were between 1% and 2%
25 concentration; 3% concentrations were marketed as appropriate for consumers who were
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27 ⁵⁸ Gabriel Montoya, Pax Labs: Origins with JAMES Monsees, Social Underground,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-MONSEES/>.

28 ⁵⁹ Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine Product Market*, 28 Tobacco Control 623 (2019).

1 accustomed to smoking approximately forty cigarettes a day.⁶⁰ None of these e-liquids delivered
2 as much nicotine as quickly as a combustible cigarette.

3 104. JLI intentionally designed its product to minimize “throat hit” and maximize
4 “buzz.”

5 105. JLI knowingly used the RJR research and conclusions to produce a similar
6 nicotine kick, thereby promoting increased use and sales of JUUL e-cigarettes. In U.S. patent No.
7 9,215,895 (“the ‘895 patent”), assigned to “Pax Labs, Inc.” and listing JLI executive ADAM
8 BOWEN as an inventor, JLI describes a process for combining benzoic acids with nicotine to
9 produce nicotine salts, a formulation that mimics the nicotine salt additive developed by RJR
10 decades earlier.

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

15 107. JLI’s manipulation of nicotine pH directly affects the palatability of nicotine
16 inhalation by reducing the “throat hit” users experience when vaping. Benzoic acid reduces the
17 pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form.

18 108. A study by Anna K. Duell et al. examined 4% benzoate solutions—the basis for
19 JUUL’s subsequent commercial formulations—explains why there was so little throat hit. The
20 Duell study determined that the fraction of free-base nicotine in JLI’s “Fruit Medley” flavor was
21 0.05 and in “Crème Brulee” was 0.07.⁶¹ Given total nicotine content of 58 mg/ml and 56 mg/ml
22 in each flavor, respectively, these flavors have roughly 3-4 mg/ml free-base nicotine. For
23 comparison, “Zen” brand e-liquid contains 17 mg/ml of nicotine—less than one-third of the total
24 nicotine content of JLI’s flavors—but has a free-base fraction of 0.84,⁶² resulting in over 14
25 mg/ml of free-base nicotine. The Duell Study’s authors found that the low free-base fraction in

26 ⁶⁰ *Id.*

27 ⁶¹ U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in*
Electronic Cigarette Liquids by H NMR Spectroscopy, 31 Chem. Res. Toxicol. 431, 432 (Fig. 3).

28 ⁶² Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H*
NMR Spectroscopy, 31 Chem. Res. Toxicol. 431 (hereinafter “Duell Study”).

1 JLI aerosols suggested a “decrease in the perceived harshness of the aerosol to the user and thus a
2 greater abuse liability.”⁶³

3 109. Reducing the harshness of nicotine also allows more frequent use of e-cigarettes,
4 for longer periods of time, and masks the amount of nicotine being delivered. By removing the
5 physiological drawbacks of inhaling traditional free-base nicotine, JLI’s technology removes the
6 principal barrier to nicotine consumption and addiction. The Duell study further concluded that
7 JLI’s creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is
8 “particularly problematic for public health.”⁶⁴

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

17 1. **JUULs Rapidly Deliver Substantially Higher Doses of Nicotine than**
18 **Cigarettes.**

19 111. JUUL’s minimized throat hit also dangerously masks the amount of nicotine being
20 delivered, as it eliminates the throat sensory feedback normally associated with a large dose of
21 nicotine. The “throat hit” is part of the body’s alert system, letting users know they are inhaling
22 something harmful. Irritation to the throat causes even the most compulsive addict to wait before
23 the next inhalation. Reducing or removing this feedback impairs the user’s body from
24 ascertaining its consumption of a toxin and ensures that the nicotine can be consumed without
25 pause. This fosters addiction, and in the cases where users are already addicted, aggravates the
26 existing addiction.

27 ⁶³ *Id.* at 431–34.

28 ⁶⁴ Duell Study at 433 (citing Willett, J. G., et al., *Recognition, use and perceptions of JUUL among youth and young adults*, Tobacco Control, 054273 (2018)).

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

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

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

16 115. As strikingly high as the reported nicotine dose reported for JUUL pods is, the
17 actual dose is likely higher. JLI has continuously and falsely represented that each pod contains
18 only as much nicotine as a pack of cigarettes. This statement is false and seriously misleading
19 because, as JLI knows, it is not just the amount of nicotine, but the efficiency with which the
20 product delivers nicotine into the bloodstream, that determines the product’s narcotic effect, risk
21 of addiction, and other health risks.

22 116. Though the strongest benzoic acid concentration mentioned in the ‘895 patent is 4
23 percent (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUUL pods and found a
24 4.5 percent benzoic acid (44.8 ± 0.6) solution. That study found that JUUL pods contained a
25 concentration of 6.2 percent nicotine salt (about 60 mg/mL), rather than the 5 percent nicotine
26 (about 50 mg/mL) advertised. JUUL pods containing an absolute nicotine concentration 1.2 times
27 higher than the stated 5 percent on the label (a relative increase of over 20 percent) coupled with
28

1 more benzoic acid than listed in the '895 patent produce higher nicotine absorption than expected
2 for the advertised formulation.

3 117. Other studies have reported even higher actual concentrations of nicotine in JUUL
4 pods; some experts estimate JUUL pods deliver the same nicotine as two packs of cigarettes.

5 118. JLI's equivalency claim assumes 10 puffs per cigarette (i.e., 200 puff per pack), or
6 0.2 mg (200 µg) of nicotine per puff.

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

22 120. Comparison of available data regarding per puff nicotine intake corroborates the
23 JLI studies mentioned above and indicates that JUUL delivers about 30 percent more nicotine per
24 puff. Specifically, a recent study of JUUL pods found that "[t]he nicotine levels delivered by the
25 JUUL are similar to or even higher than those delivered by cigarettes." The Reilly study tested
26 JLI's Tobacco, Fruit Punch, and Mint flavors and found that one puff delivered 164 ± 41
27 micrograms of nicotine. By comparison, a 2014 study using larger 100 mL puffs found that a
28 Marlboro cigarette delivered 152—193 µg/puff. Correcting to account for the different puff sizes

1 between the Reilly and Schroeder studies, this suggests that, at 75ml/puff, a Marlboro would
2 deliver between 114 and 144 µg/puff. In other words, empirical data suggests that a JUUL device
3 delivers up to 36 percent more nicotine per puff than a Marlboro cigarette.

4 121. Because “nicotine yield is strongly correlated with tobacco consumption,” a JUUL
5 pod with more nicotine leads to the purchase of greater amounts of JUUL pods, generating more
6 revenue for JLI. For example, an historic cigarette industry study looking at smoker employees
7 found that “the number of cigarettes the employees smoked per day was directly correlated to the
8 nicotine levels.” In other words, the more nicotine in the cigarettes, the more cigarettes a person
9 smoked.

10 122. Despite this data, JLI failed to disclose to consumers that the JUUL pods’ nicotine
11 salt formulation delivers an exceptionally potent dose of nicotine.

12 123. By delivering such potent doses of nicotine, JLI products magnify the health risks
13 posed by nicotine.

14 124. Further, because JLI’s nicotine salts actually increase the rate and magnitude of
15 blood plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse
16 is higher for JUUL e-cigarettes than traditional cigarettes. Thus, JUUL pods are foreseeably
17 exceptionally addictive when used by persons without prior exposure to nicotine—a fact not
18 disclosed by JLI. Finally, the JUUL device does not have a manual or automatic “off” switch. On
19 information and belief, neither the JUUL pod nor the programming of the JUUL device’s
20 temperature or puff duration settings limit the amount of nicotine JUUL delivers in each puff to
21 the upper bound of a cigarette. Thus, in contrast to a traditional cigarette, which self-extinguishes
22 as each cigarette is consumed, the JUUL device allows non-stop nicotine consumption, which is
23 limited only by the device’s battery. As a result, the JUUL device is able to facilitate consumption
24 of extraordinarily high levels of nicotine unmatched by any cigarette. This makes it easier for the
25 user to become addicted to nicotine and poses additional health risks.

26 125. JLI knew or should have known these dangerous attributes of its products. Despite
27 this knowledge, JLI unfairly concealed material information about the addictive and dangerous
28 nature of its e-cigarettes.

1 2. **JUUL is a Sleek, Easy to Conceal Nicotine Delivery Device, Making it**
2 **Attractive to Non-Smokers and Easy for Young People to Use Without**
3 **Detection.**

4 126. As demonstrated by the image below, the JUUL e-cigarette was purposefully
5 designed to look sleek and high-tech.



10 127. It not only looks like a USB flash drive, but the JUUL device can also be plugged
11 into a computer's USB drive and charged. The device is approximately the size and shape of a
12 pack of chewing gum, and small enough to fit in a closed hand. In addition, the odor emitted from
13 smoking a JUUL device is a reduced aerosol without much scent, unlike the distinct smell of
14 conventional cigarettes. Because of its design, JUUL is easy to conceal from parents and teachers.

15 128. The JUUL device is small and discrete. Fully assembled, the device is just over 9.5
16 cm in length and 1.5 cm wide. The JUUL device resembles a memory stick and can be charged in
17 a computer's USB drive. This design allows the device to be concealed in plain sight,
18 camouflaged as a thumb-drive, for use in public spaces, like schools.



1 129. JUUL’s design also included an LED light, which allowed users to active “party
2 mode,” whereby the LED light would flash a rainbow of colors. “Party mode” is activated by the
3 user by waving the JUUL device back and forth until the white LED light starts flashing multiple
4 colors, so that the rainbow colors are visible while the person inhales from the JUUL device.
5 “Party mode” can also be permanently activated on the JUUL by the user quickly and firmly
6 slapping the JUUL against the palm of the hand, until the LED light starts flashing multiple
7 colors permanently. Party mode on the JUUL is described by users to be “like an Easter egg in a
8 video game” and allows for “some cool tricks that are going to drive [] friends crazy.”⁶⁵ This
9 feature was another characteristic that set JUUL apart from other e-cigarettes on the market, and
10 made it even more appealing and “cool” to young users.



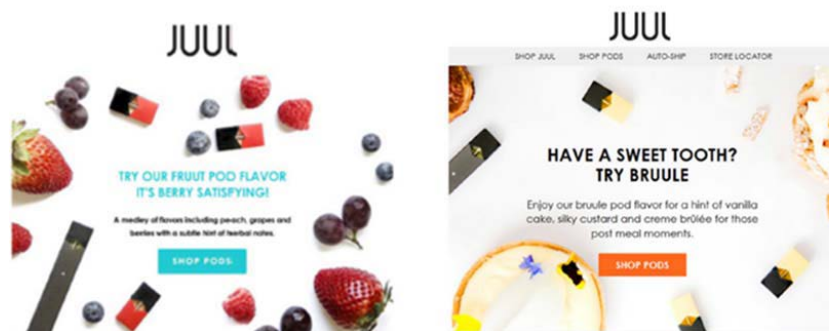
21 **3. JLI Enticed Newcomers to Nicotine with Kid-Friendly Flavors Without Ensuring the Flavoring Additives Were Safe for Inhalation.**

22 130. Cigarette companies have known for decades that flavored products are key to
23 getting young people to acclimate to nicotine.⁶⁶

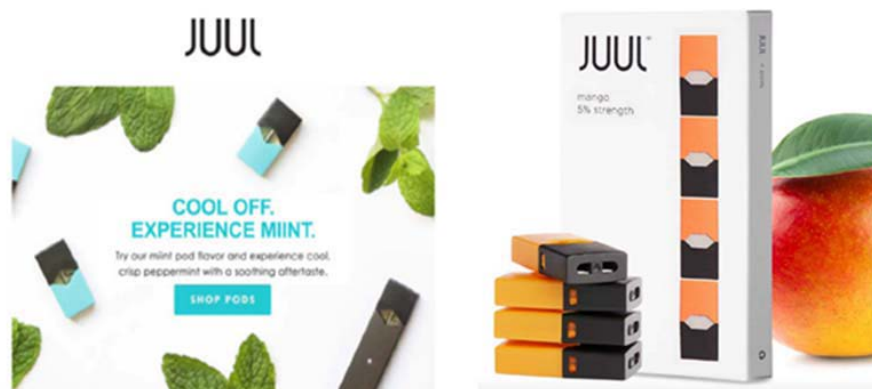
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25 ⁶⁵ Jon Hos, *Getting Your Juul Into Party Mode*, (Jul. 12, 2018),
<https://vapedrive.com/gettingyour-juul-into-party-mode>.

26 ⁶⁶ A Sept. 1972 Brown & Williamson internal memorandum titled “Youth Cigarette New
27 Concepts,” observed that “it’s a well known fact that teenagers like sweet products.” A 1979
28 Lorillard memorandum found “younger” customers would be “attracted to products with ‘less
tobacco taste,’” and suggested investigating the “possibility of borrowing switching study data
from the company which produces ‘Life Savers’ as a basis for determining which flavors enjoy
the widest appeal” among youth.

1 131. In June 2015, JUUL came to market in four flavors including tabaac (later
2 renamed Tobacco), fruit (later renamed Fruit Medley), bruulé (later renamed Crème Brulee), and
3 miint (later renamed mint).



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10 132. JUUL later offered other kid-friendly flavors, including cool mint, Cucumber, and
11 mango.



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19 133. In 2009, the FDA banned flavored cigarettes (other than menthol) as its first major
20 anti-tobacco action pursuant to its authority under the Family Smoking Prevention and Tobacco
21 Control Act of 2009. “Flavored cigarettes attract and allure kids into addiction,” Health and
22 Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference held to
23 announce the ban.⁶⁷ In January 2020, the FDA banned flavored e-cigarette pods, other than
24 “Tobacco” and “Menthol” flavors.

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28 ⁶⁷ Daniel J. DeNoon, FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors, WebMD (Sept. 22, 2009), <https://www.webmd.com/smokingcessation/news/20090922/fda-bans-flavored-cigarettes#2>.

1 134. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction by
2 making it easier and more pleasant to ingest nicotine.⁶⁸

3 135. In a recent study, 74% of youth surveyed indicated that their first-use of a JUUL
4 was of a flavored JUUL pod.⁶⁹

5 136. JLI asserts that it did not intend its flavors to appeal to underage consumers. After
6 eleven Senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette
7 flavors, JLI visited Capitol Hill and told Senators that it never intended its products to appeal to
8 kids and did not realize they were using the products, according to a staffer for Senator Dick
9 Durbin. JLI's statements to Congress—which parallel similar protests of innocence by cigarette
10 company executives—were false.⁷⁰

11 137. JLI's use of flavors unfairly targeted not only youth, but unsuspecting adults as
12 well. By positioning JUUL pods as a flavor-oriented product rather than a system for delivering a
13 highly addictive drug, JLI deceptively led consumers to believe that JUUL pods were not only
14 healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt
15 or adverse effect.

16 **D. Defendants Developed and Implemented a Marketing Scheme to Downplay**
17 **the Risks of E-cigarettes, Create Doubt, and Misrepresent the Benefits of**
18 **Nicotine.**

19 138. Having created a product designed to hook users to its nicotine, JLI had to mislead
20 consumers into believing JUUL was something other than what it actually was. So, the company
21 engaged in a years' long campaign to downplay JUUL's nicotine content, nicotine delivery, and
22 the unprecedented risks of abuse and addiction JUUL poses. Defendants devised and knowingly
23 carried out a material scheme to defraud consumers by (a) misrepresenting the nicotine content,
24 nicotine delivery profile, and risks of JUUL products, (b) representing to the public that JUUL

25 ⁶⁸ See How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-
26 Attributable Disease: A Report of the Surgeon General, Chapter 4 (Centers for Disease Control
and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

27 ⁶⁹ Karma McKelvey et al., Adolescents and Young Adults Use in Perceptions of Pod-based
28 Electronic Cigarettes. 1 JAMA Network Open e183535 (2018),
<https://doi:10.1001/jamanetworkopen.2018.3535>.

⁷⁰ <https://www.politico.com/story/2018/12/08/juul-lobbying-washington-1052219>.

1 was a smoking cessation tool, and (c) using third-party groups to spread false and misleading
2 narratives about e-cigarettes, and JUUL in particular.

3 **1. Defendants Knowingly Made False and Misleading Statements and**
4 **Omissions Concerning JUUL’s Nicotine Content.**

5 139. Every 5% strength JUUL pod package represents that one pod is equivalent to one
6 pack of cigarettes. This statement is deceptive, false and misleading. As JLI’s regulatory head
7 explained internally to former CEO Kevin Burns in 2018, each JUUL pod contains “roughly
8 twice the nicotine content of a pack of cigarettes.”

9 140. In addition, and as JLI DEFENDANTS know, it is not just the amount of nicotine,
10 but the efficiency with which the product delivers nicotine into the bloodstream, that determines
11 the product’s narcotic effect, risk of addiction, and therapeutic use. Most domestic cigarettes
12 contain 10–15 mg of nicotine per cigarette and each cigarette yields between 1.0 to 1.4 mg of
13 nicotine, meaning that around 10% of the nicotine in a cigarette is typically delivered to the user.
14 JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine
15 contained in a JUUL pod to the user. JLI’s own internal studies suggest a nicotine transfer
16 efficiency rate of closer to 100%.

17 141. JUUL’s e-liquid formulation is highly addictive not only because it contains a high
18 concentration of nicotine, but because it contains a particularly potent form of nicotine, i.e.,
19 nicotine salts. Defendants knew this.

20 **2. JLI DEFENDANTS Transmitted, Promoted, and Utilized Statements**
21 **Concerning JUUL’s Nicotine Content that They Knew Was False and**
22 **Misleading.**

23 142. As set forth above, the statements in JLI advertisements and on JUUL pod
24 packaging that each JUUL pod contains about as much nicotine as a pack of cigarettes are
25 deceptive, false and misleading. Defendants knew this.

26 143. By no later than October 30, 2016 (and likely much earlier), the JLI Website –
27 which, as discussed above, JLI’s Board of Directors reviewed and approved – advertised that
28 “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight, approximately equivalent to 1

1 pack of cigarettes or 200 puffs.”⁷¹ The language on the website would later change, but still
2 maintained the same fraudulent misrepresentation – i.e., that “[e]ach 5% JUULpod is roughly
3 equivalent to one pack of cigarettes in nicotine delivery.”⁷²

4 144. As noted above, JLI DEFENDANTS directed and approved the content of the
5 JUUL website, and they also directed and approved the distribution channels for JUUL pods and
6 their deceptive, misleading and fraudulent statements regarding JUUL’s nicotine content. And
7 although they knew that these statements, were untrue, JLI DEFENDANTS have made no effort
8 to retract such statements or correct their lies.

9 145. JUUL pod packages that DEFENDANTS sold and distributed stated that JUUL
10 pods are “approximately equivalent to about 1 pack of cigarettes.”⁷³ These statements, as well as
11 the statements on the JLI website, are false and misleading.

12 146. ALTRIA greatly expanded the reach of this fraud by providing its retail and
13 distribution might for JLI products, causing millions of JUUL pods to be sold and distributed with
14 packaging stating that JUUL pods contained only 5% nicotine by weight and were
15 “approximately equivalent to about 1 pack of cigarettes.”⁷⁴ JLI DEFENDANTS and ALTRIA
16 knew that these statements were false and misleading, but nevertheless utilized JUUL product
17 packing, marketing and advertising.

18 147. ALTRIA knew in 2017 that a JUUL pod delivered more nicotine than one pack of
19 cigarettes. In 2017, ALTRIA launched its MarkTen Bold ENDS, a relatively high-strength 4%
20 formulation compared to the 2.5% and 3.5% strength MarkTen products initially offered. Even
21 though JLI was already on store shelves and was rapidly gaining market share with its 5%
22 nicotine formulation, ALTRIA chose to bring a less potent 4% formulation to market.

23 148. Based on its own internal knowledge, ALTRIA knew that a 5% nicotine
24 formulation would carry more nicotine than one pack of cigarettes. In addition to data it received

25 ⁷¹ JUULpod, JUUL Labs, Inc. (Oct. 30, 2016),
26 <https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>.

27 ⁷² *What is Vaping?*, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/Whatis-Vaping-How-to-Vape>.

28 ⁷³ Juul Labs, Feb. 14, 2018, 10:35 a.m. Tweet,
<https://twitter.com/JUULvapor/status/963844069519773698>.

⁷⁴ *Id.*

1 from JLI, the ALTRIA DEFENDANTS' due diligence undoubtedly included a careful
2 examination of JLI's intellectual property, including the '895 patent, which provides a detailed
3 overview of nicotine benzoate's pharmacokinetic profile.

4 149. Thus, JLI DEFENDANTS and ALTRIA knew that the statement on JUUL pod
5 packaging that each JUUL pod contains 5% nicotine and about as much nicotine as a pack of
6 cigarettes is literally false and they intended such statements to mislead. Neither ALTRIA, nor the
7 JLI DEFENDANTS has made any effort to correct or retract the false and misleading statements
8 as to the true nicotine content in JUUL pods. Instead, they have continued to misrepresent the
9 product's nicotine content and design, with the goal of misleading and deceiving consumers.

10 150. Not only have JLI DEFENDANTS and ALTRIA misrepresented or concealed the
11 actual amount of nicotine consumed via JUUL pods, but they also did not effectively or fully
12 inform users about the risks associated with the potent dose of nicotine delivered by its products.
13 Despite making numerous revisions to JUUL packaging since 2015, the packaging did not
14 include nicotine addiction warnings until JLI was forced to add them in August 2018.

15 3. **Defendants Used Food and Coffee Themes to Give a False Impression**
16 **that JUUL Products Were Safe and Healthy.**

17 151. In late 2015, JLI DEFENDANTS employed a deceptive marketing scheme to
18 downplay the harms of e-cigarettes with a food-based advertising campaign called "Save Room
19 for JUUL." The campaign framed JUUL's addictive pods as "flavors" to be paired with foods.⁷⁵
20 JLI described its crème brûlée nicotine pods as "the perfect evening treat" that would allow users
21 to "indulge in dessert without the spoon."

22 152. None of these advertisements disclosed that JUUL was addictive and unsafe.

23 153. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee
24 and other caffeinated drinks, sometimes with what appear to be textbooks in the picture. JLI's
25 coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup
26 of coffee.

27 ⁷⁵ Erin Brodwin, *\$15 billion startup JUUL used 'relaxation, freedom, and sex appeal' to market*
28 *its crème-brulee-flavored e-cigs on Twitter and Instagram but its success has come at a big cost*,
Business Insider (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cigmarketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

1 4. **The “Make the Switch” Campaign Intentionally Misled and Deceived**
2 **Users to Believe that JUUL is a Cessation Device.**

3 154. JLI DEFENDANTS and ALTRIA recognized that one of the keys to growing and
4 preserving the number of nicotine-addicted e-cigarette users (and thus, JLI’s staggering market
5 share), was to mislead potential customers about the true nature of JUUL products. Defendants
6 knew that if it became public that JUUL was designed to introduce nicotine to youth and hook
7 new users with its potent nicotine content and delivery, it would not survive the public and
8 regulatory backlash. Therefore, JLI (with the knowledge and support of the MONSEES and
9 BOWEN) and ALTRIA repeatedly made false and misleading statements to the public that JUUL
10 was created and designed as a smoking cessation device. JLI DEFENDANTS and ALTRIA
11 committed these deceptive, misleading and fraudulent acts intentionally and knowingly. In
12 making these representations, JLI DEFENDANTS and ALTRIA intended that consumers, the
13 public, and regulators rely on misrepresentations that JUUL products were designed to assist
14 smoking cessation.

15 155. The most blatant evidence of the cover-up scheme was the January 2019, \$10
16 million “Make the Switch” television advertising campaign. This campaign, which was the
17 continuation of JLI’s web-based Switch campaign, was announced less than a month after
18 ALTRIA announced its investment in JLI.

19 156. The “Make the Switch” television ads featured former smokers aged 37 to 54
20 discussing “how JUUL helped them quit smoking.”⁷⁶ According to JLI’s Vice President of
21 Marketing, the “Make the Switch” campaign was “an honest, straight down the middle of the
22 fairway, very clear communication about what we’re trying to do as a company.”⁷⁷ These
23 statements were false as JUUL was not intended to be a smoking cessation device. JLI
24 DEFENDANTS and ALTRIA committed acts of deceit when they caused the “Make the Switch”
25 campaign to air on television with the fraudulent intent of deceiving and misleading the public,

26 _____
27 ⁷⁶ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers who*
28 *quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019),
[https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-](https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-adcampaign.html)
[adcampaign.html](https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-adcampaign.html)

⁷⁷ *Id.*

1 the United States Congress, and government regulators into believing that the company is and had
2 been focused solely on targeting adult smokers. ALTRIA also committed acts of deceit and fraud
3 when they caused tens of thousands, if not millions, of written versions of the “Make the Switch”
4 campaign to be distributed with packages of its combustible cigarettes.

5 157. DEFENDANTS continually sought to frame JUUL products as smoking cessation
6 devices in their public statements and on their website. MONSEES explained during his
7 testimony before Congress:

8 *The history of cessations products have extremely low efficacy. That*
9 *is the problem we are trying to solve here. So, if we can give*
10 *consumers an alternative and market it right next to other cigarettes,*
11 *then we can actually make something work.*

12 [T]raditional nicotine replacement therapies, which are generally
13 regarded as the gold standard for tools, right, for quitting, those are
14 nicotine in a patch or a gum form, typically, and the efficacy rates on
15 those hover just below about a 10 percent or so. JUUL—we ran a very
16 large study of JUUL consumers, ex-smokers who had picked up
17 JUUL, and looked at them, looked at their usage on a longitudinal
18 basis, which is usually the way that we want to look at this, in a
19 sophisticated fashion ... what we found was that after 90 days, 54
20 percent of those smokers had stopped smoking completely, for a
21 minimum of 30 days already. And the most interesting part of this
22 study is that if you follow it out further, to 180 days, that number
23 continues to go up dramatically, and that is quite the opposite of what
24 happens with traditional nicotine replacement therapies.⁷⁸

25 158. JLI has advertised cost-savings calculators as part of its Switch campaign. Those
26 calculators assume that a smoker who switches will continue consuming the same amount of
27 nicotine that he or she did as a smoker (i.e., a pack a day smoker is presumed to consume one
28 JUUL pod a day). DEFENDANTS know that the calculator is misleading because smokers who
switch to JUUL typically increase their nicotine intake or end up consuming cigarettes and JUUL
products, rendering the calculator misleading at best.

⁷⁸ Testimony of JAMES Monsees, Co-founder and Chief Product Officer, JUUL Labs, Inc.,
Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform,
Hearing on Examining JUUL 's Role in the Youth Nicotine Epidemic: Part 2 (July 25, 2019),
<https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotineepidemic-part-ii>.

1 159. The goal of these advertisements was to convey the deceptive, misleading and
2 false impression that JUUL products could help consumers quit smoking and break nicotine
3 addiction in a way that was healthy and safe. But, as noted above, that was simply not the case.
4 Defendants never disclosed to consumers that JUUL e-cigarettes and JUUL pods are at least as
5 addictive as, if not more addictive, than combustible cigarettes. And each of JLI, BOWEN,
6 MONSEES, and ALTRIA received this data and were aware of this fact.

7 160. The deceptive, misleading and fraudulent nature of the “Make the Switch”
8 campaign is evident when comparing the campaign’s advertisements to JUUL’s initial
9 advertising, as demonstrated below. The fact that these advertisements are for the same product
10 confirms that, notwithstanding the advice that JLI and ALTRIAS’ received from their media
11 consultants, the Defendants never intended to target only adult smokers.



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20 161. The FDA and other government regulators, enforcing existing laws addressing e-
21 cigarettes,⁷⁹ publicly criticized the “Make the Switch” campaign and other efforts by
22 DEFENDANTS to depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the
23 Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. § 387k(b)(2)(A)(i)) states that when
24 advertising or labeling of a cigarette product directly or indirectly suggests that the product has a
25

26
27 ⁷⁹ Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. § 387k(b)(2)(A)(i)) states that when
28 advertising or labeling of a cigarette product directly or indirectly suggests that the product has a
lower risk of cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise
‘safer’ than traditional cigarettes, then the product becomes a “modified risk tobacco product.”

1 lower risk of cigarette-related disease, is less harmful than combustible cigarettes, or is otherwise
2 ‘safer’ than combustible cigarettes, then the product becomes a “modified risk tobacco product.”

3 162. In late 2019, and in response to the House of Representatives hearings in which
4 JLI Executives testified, the FDA issued two warning letters to JLI detailing its concern that JLI
5 was unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco
6 products” within the meaning of the FDCA.⁸⁰

7 163. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its
8 advertising slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes
9 was “particularly concerning because [those] statements were made directly to children in
10 school.”⁸¹ The FDA concluded that in using advertising language that e-cigarettes were safer than
11 cigarettes, JLI had violated Sections 902(8) and 911 by marketing JUUL products as “modified
12 risk tobacco products” without prior approval.⁸²

13 **5. JLI, ALTRIA, and Others in the E-Cigarette Industry Coordinated**
14 **with Third-Party Groups to Mislead the Public About the Harms and**
15 **Benefits of E-Cigarettes.**

16 164. Defendants coordinated with the cigarette industry to engage consultants,
17 academics, reporters, and other friendly sources such as the American Enterprise Institute, to
18 serve as spokespersons and cheerleaders for e-cigarette products. Taking yet another page from
19 the cigarette industry’s playbook, these influencers masked their connection to the e-cigarette
20 industry as they created doubt about the product’s risks and misrepresented its benefits.

21 165. For example, just as JLI launched, cigarette company expert witness Sally Satel
22 published an article in Forbes Magazine touting the benefits of nicotine—claiming it helped
23 people concentrate and was harmless.⁸³ In another article, she lauded efforts by JLI and others to
24

25 ⁸⁰ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019),
26 [https://www.fda.gov/inspections-compliance-enforcement-and-criminal-
investigations/warningletters/juul-labs-inc-590950-09092019](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warningletters/juul-labs-inc-590950-09092019).

27 ⁸¹ *Id.*

28 ⁸² *Id.*

⁸³ Sally Satel, *Nicotine Itself Isn't The Real Villain*, FORBES (June 19, 2015),
<https://www.forbes.com/sites/sallysatel/2015/06/19/nicotine-can-save-lives/>.

1 develop nicotine-related products, and characterized doubters as hysterical and creating a
2 “panic.”⁸⁴

3 166. Numerous other articles, videos, and podcasts—also spread through social
4 media—echoed the same message that the public health community was overreacting to e-
5 cigarettes and in a panic about nothing.

6 167. JLI understood from the cigarette industry playbook that sowing doubt and
7 confusion about the benefits and risks of e-cigarettes was key to long-term success. First, by
8 creating a “two-sides-to-every-story” narrative, JLI was able to reduce barriers to reaching young
9 people and to encourage new users to try the product. JLI also gave addicted users permission to
10 keep using the products and avoid the pain of withdrawal. Second, by engaging people who
11 looked like independent experts, JLI staved off regulation and suppressed political opposition,
12 allowing it a long runway to capture market share. Third, by belittling the public health
13 community, JLI neutered its most vocal threat.

14 168. JLI coordinated with third parties to unfairly conceal the risks of e-cigarettes,
15 knowing that a campaign of doubt, misinformation and confusion benefitted them and would be
16 the key to the industry’s survival.

17 **6. ALTRIA Falsely Stated That It Intended to Use Its Expertise in**
18 **“Underage Prevention” Issues to Help JLI.**

19 169. ALTRIA’S announcement that it intended to invest in JLI came less than two
20 months after it told the FDA that ALTRIA “believe[s] that pod-based products significantly
21 contribute to the rise in youth use of e-vapor products” and that it accordingly would be removing
22 its own pod-based products from the market.⁸⁵ ALTRIA made the same representations to its
23 investors.⁸⁶

24 _____
25 ⁸⁴ Sally Satel, *Why The Panic Over JUUL And Teen Vaping May Have Deadly Results*, FORBES
(Apr. 11, 2018), www.forbes.com/sites/sallysatel/2018/04/11/why-the-panic-over-juul-and-teen-vaping-may-have-deadly-results/#6b1ec693ea48.

26 ⁸⁵ Letter from Howard A. Willard III, ALTRIA, to Dr. Scott Gottlieb, FDA, 2 (October 25,
27 2018).

28 ⁸⁶ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript, (October 25, 2018)
<https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>.

1 170. Although ALTRIA claimed its investment in JLI had an altruistic motive—“we
2 believed the transaction would give ALTRIA an unprecedented opportunity to share our
3 experience in underage tobacco prevention with JUUL to help address youth usage,” ALTRIA
4 recently confirmed that JLI has not even availed itself of that experience.

5 171. ALTRIA recognized JLI’s market share dominance in the e-cigarette market as the
6 path to ALTRIA’s continued viability and profitability. In a January 31, 2019 earnings call,
7 ALTRIA explained that “[w]hen you add to JUUL’s already substantial capabilities, our underage
8 tobacco prevention expertise and ability to directly connect with adult smokers, we see a
9 compelling future with long-term benefits for both adult tobacco consumers and our shareholders.
10 We are excited about JUUL’s domestic growth and international prospects and their potential
11 impact on our investment.”⁸⁷ JLI’s growth was, as ALTRIA well knew, due to the product’s viral
12 popularity among teens. Willard briefly acknowledged the youth vaping crisis, stating, “Briefly
13 touching on the regulatory environment, the FDA and many others are concerned about an
14 epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others in
15 the industry must continue to address aggressively and promptly.”⁸⁸

16 172. ALTRIA’s representations that it intended to help JLI curb the prevalence of
17 underage use was false and misleading. As discussed below, ALTRIA coordinated with JLI to
18 capture and maintain the youth market.

19 173. JLI DEFENDANTS deployed a sophisticated viral marketing campaign that
20 strategically laced social media with false and misleading messages to ensure their uptake and
21 distribution among young consumers. JLI’s campaign was wildly successful—burying their hook
22 into kids and initiating a public health crisis.

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

26 ⁸⁷ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the
27 period ending December 31, 2018. (Jan. 31, 2019),
28 [https://www.fool.com/earnings/calltranscripts/2019/02/01/altria-group-mo-q4-2018-earnings-
conference-call-t.aspx](https://www.fool.com/earnings/calltranscripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx).

⁸⁸ *Id.*

1 E. **Knowing That Its Products Were Unsafe for Anyone Under Age 26,**
2 **Defendants Deployed a Deceptive and Unfair Viral Marketing Campaign to**
3 **Entice Young People to Start JUULing.**

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

5 175. “Viral marketing” is defined as “marketing techniques that seek to exploit
6 preexisting social networks to produce exponential increases in brand awareness, through
7 processes similar to the spread of an epidemic.”⁸⁹ Viral marketing is a form of word-of-mouth
8 recommendation that harnesses the network effect of the internet to rapidly reach a large number
9 of people. Because the goal in a viral marketing campaign is to turn customers into salespeople
10 who repeat a company’s representations on its behalf, a successful viral marketing campaign may
11 look like millions of disconnected, grassroots communications, when in fact they are the result of
12 carefully orchestrated corporate advertising campaign.

13 176. Viral marketing campaigns tend to share similar features, including (1) a simple
14 message—typically implied by an image—that elicits an emotional response; (2) the strategic use
15 of marketing platforms, especially social media, to reach and engage the target audience; (3) use
16 of content that invites participation and engagement; and (4) use of third parties to magnify the
17 impact of a message.

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

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

24 178. To remain profitable, the tobacco industry must continually woo new customers.
25 Existing customers sometimes wean themselves from addiction and the others eventually die, so
26 replacement customers are needed. In recent years, tobacco usage in the United States has fallen
27 dramatically, with particularly large decreases in the youth smoking rates. This is a trend cigarette
28 companies have been trying to counteract vigorously. The cigarette industry knows that the
29 younger a person starts smoking, the longer it will have a customer. Historically, cigarette

⁸⁹ Rebecca J. Larson, *The Rise of Viral Marketing through the New Media of Social Media*, LIBERTY UNIVERSITY PUB. (Sept. 30, 2009), https://digitalcommons.liberty.edu/busi_fac_pubs/6/.

1 companies fought to increase share penetration among the 14-18 age group because “young
2 smokers have been the critical factor in the growth” of tobacco companies, and “the 14-18 year
3 old group is an increasing segment of the smoking population.”⁹⁰

4 179. It is well-established that “marketing is a substantial contributing factor to youth
5 smoking initiation.”⁹¹

6 180. Because teenagers are at a stage in their psychosocial development when they are
7 struggling to define their own identities, they are particularly vulnerable to image-heavy
8 advertisements providing cues for the “right” way to look and behave amongst peers.⁹²
9 Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco
10 product initiation.⁹³ By making smoking a signifier of a passage into adulthood, tobacco
11 companies turned smoking into a way for teenagers to enhance their image in the eyes of their
12 peers.⁹⁴

13 181. The landmark *USA v. Philip Morris* case revealed that tobacco companies targeted
14 adolescents for decades by: “(1) employ[ing] the concept of peers in order to market to teenagers;
15 (2) us[ing] images and themes in their marketing that appeal to teenagers; and (3) employ[ing]
16 advertising and promotion strategies to knowingly reach teenagers.”⁹⁵ In terms of images and
17 themes that cater to adolescents, the court found “overwhelming” evidence that tobacco
18 companies intentionally exploited adolescents’ vulnerability to imagery by creating advertising
19 emphasizing themes of “independence, adventurousness, sophistication, glamour, athleticism,
20 social inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being ‘cool.’”⁹⁶

21 182. Thus, the tobacco industry has long used viral marketing campaigns to push its
22 products on children, teens, and young adults. Prior to the advent of the Internet, cigarette
23 companies engaged in “viral advertising” or “influential seeding” by paying “cool people” to

24 ⁹⁰ Memo to: C.A. Tucker from: J.F. Hind Re: "Meet the Turk" (Jan. 23, 1978)
25 <http://legacy.library.ucsf.edu/tid/lve76b00>.

26 ⁹¹ *USA v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006).

27 ⁹² *Id.* at 578.

28 ⁹³ *Id.* at 570, 590

⁹⁴ *Id.* at 1072.

⁹⁵ No. 99-cv-2396, ECF 5732, ¶ 2682 (D.D.C. 2008).

⁹⁶ *Id.* at ¶ 2674.

1 smoke in select bars and clubs, with the “idea being that people will copy this fashion, which
2 would then spread as if by infection.”⁹⁷ By paying attractive, stylish third parties to use their
3 products in trendy public places, tobacco companies were able to create buzz and intrigue. As
4 word spread, the public would develop a strong association that smoking was what young, cool
5 adults were doing.

6 183. Today, cigarette manufacturers like ALTRIA are limited in their ability to
7 advertise in the United States, but actively use viral marketing techniques outside of the United
8 States. For example, Japan Tobacco International, one of JLI’s early investors, launched social
9 media campaigns including a “Freedom Music Festival” promoting Winston cigarettes in
10 Kazakhstan, Kyrgyzstan, and Jordan. Similarly, Phillip Morris International has used influencer
11 campaigns in multiple countries. A campaign in Indonesia called “I Decide To” has been viewed
12 more than 47 million times online. A hashtag marketing campaign called #NightHunters in
13 Uruguay used paid influencers to pose with menthol cigarettes and was seen by nearly 10 percent
14 of Uruguay’s population.⁹⁸

15 184. A study carried out by the Campaign for Tobacco-free Kids, reported that “tobacco
16 companies are secretly paying social media stars to flood your newsfeed with images of their
17 cigarette brands.”⁹⁹ In a nutshell, “young social media stars are paid to make smoking look
18 cool.”¹⁰⁰

19 **3. Because Advertising Fuels Youth Smoking, Tobacco Companies are**
20 **Prohibited from Viral Marketing Practices and Use of Flavors.**

21 185. Most of the activities described in the section above are now recognized as
22 violative of public policy, and thus forbidden for cigarette companies to engage in.

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25 ⁹⁷ GOLDEN HOLOCAUST, 119 (citing Ted Bates and Co., Copy of a Study of Cigarette Advertising
26 Made by J.W. Burgard); 1953, (Lorillard), n.d., Bates 04238374-8433.

27 ⁹⁸ *New Investigation Exposes How Tobacco Companies Market Cigarettes on Social Media in the*
28 *U.S. and Around the World* (Aug 27, 2019) Campaign For Tobacco-Free Kids
www.tobaccofreekids.org/press-releases/2018_08_27_ftc.

⁹⁹ *Id.*

¹⁰⁰ *Id.* A gallery of influencer posts is available at:
<https://www.takeapart.org/wheretheressmoke/gallery/>.

1 186. Under the Tobacco Master Settlement Agreement (“MSA”), reached in 1998,
2 participating manufacturers agreed not to “take any action, directly or indirectly, to target Youth
3 within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take
4 any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth
5 smoking within any Settling State.”¹⁰¹ They also agreed not to:

- 6 a. use outdoor advertising such as billboards,
- 7 b. sponsor events,
- 8 c. give free samples,
- 9 d. pay any person “to use, display, make reference to or use as a prop any
10 Tobacco Product, Tobacco Product package . . . in any “Media,” which includes “any motion
11 picture, television show, theatrical production or other live performance,” and any “commercial
12 film or video,”; and
- 13 e. pay any third party to conduct any activity which the tobacco manufacturer
14 is prohibited from doing.

15 187. More than ten years later, the FDA banned flavored cigarettes pursuant to its
16 authority under the Family Smoking Prevention and Tobacco Control Act of 2009. Then-FDA
17 commissioner Dr. Margaret A. Hamburg announced the ban because “flavored cigarettes are a
18 gateway for many children and young adults to become regular smokers.”¹⁰²

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

22 189. In 2017, a study found that the flavor ban was effective in lowering the number of
23 smokers and the amount smoked by smokers, but also was associated with an increased use of
24 menthol cigarettes.¹⁰³ The same study reported that 85% of adolescents who use e-cigarettes use
25 flavored varieties.

26 ¹⁰¹ MSA, § III(a).

27 ¹⁰² Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. TIMES (Sept. 22,
2009), www.nytimes.com/2009/09/23/health/policy/23fda.html.

28 ¹⁰³ Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, 52
AM. J. PREVENTATIVE MED. e139 (May 2017), www.ncbi.nlm.nih.gov/pubmed/28081999.

1 190. Because of its use of tactics expressly banned by the MSA and existing regulatory
2 structures, JLI's market dominance attracted the attention of government regulators, including the
3 FDA, the U.S. Surgeon General, and the CDC. On February 24, 2018, the FDA sent a letter to JLI
4 expressing concern about the popularity of its products among youth and demanding that JLI
5 produce documents regarding its marketing practices.¹⁰⁴ On September 12, 2018, the FDA sent
6 letters to JLI and other e-cigarette manufacturers putting them on notice that their products were
7 being used by youth at disturbing rates.¹⁰⁵ In October 2018, the FDA raided JLI's headquarters
8 and seized more than a thousand documents relating to the Company's sales and marketing
9 practices.¹⁰⁶ Since then, the FDA, the Federal Trade Commission, multiple state Attorneys
10 General and the U.S. House of Representatives Committee on Oversight and Reform have
11 commenced investigations into JLI's role in the youth vaping epidemic and whether JLI's
12 marketing practices purposefully targeted youth.

13 191. Recently, the FDA released its enforcement policy on flavored e-cigarettes that
14 appeal to children, including fruit and mint, warning: "companies that do not cease manufacture,
15 distribution and sale of unauthorized flavored cartridge-based e-cigarettes...within 30 days risk
16 FDA enforcement actions."¹⁰⁷

17 **4. JLI DEFENDANTS Intentionally Marketed JUUL to Young People.**

18 192. Following the successful model of the cigarette industry, since 2015, JLI
19 DEFENDANTS, in conjunction and in concert with unnamed Defendants DOES 21 through 40
20 involved in providing marketing services to JLI, has been operating a viral marketing campaign
21 targeting teenagers and young adults. This campaign extends and expands upon deceptive
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23 ¹⁰⁴ Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to*
24 *Zaid Rouag, at JUUL Labs, Inc.*, U.S. FOOD & DRUG ADMIN. (Apr. 14, 2018),
<https://www.fda.gov/media/112339/download>.

25 ¹⁰⁵ *Letter from US FDA to Kevin Burns*, U.S. FOOD & DRUG ADMIN. (Sept. 12, 2018),
<https://www.fda.gov/media/119669/download>.

26 ¹⁰⁶ Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of*
27 *Headquarters*, WASH. POST (Oct. 2, 2018),
[https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documentssurprise-inspection-headquarters/)
[documentssurprise-inspection-headquarters/](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documentssurprise-inspection-headquarters/).

28 ¹⁰⁷ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes*
That Appeal to Children, Including Fruit and Mint, FDA NEWS RELEASE (Jan. 2, 2020).

1 advertising tropes used by tobacco companies to exploit the psychological needs of consumers—
2 especially youth—and to convert them into smokers.



7 193. JLI’s reliance on strategies proved successful by the cigarette industry is apparent
8 when JLI advertisements are compared to historical cigarette advertisements. These comparisons
9 are available on Stanford’s Research into Impact of Tobacco Advertising (“SRITA”) website. The
10 side-by-side comparison of numerous JLI advertisements shows that its imagery directly parallels
11 that used by cigarette manufacturers, including imagery relating to attractiveness, stylishness, sex
12 appeal, fun, “belonging,” relaxation, and sensory pleasure, including taste.

13 194. JLI’s campaign incorporated the following tried and true strategies: (i) it was
14 intentionally designed to be simple and to trigger an emotional response, particularly with young
15 people; (ii) it was intentionally designed using flavored products that appealed to teenagers and
16 young adults; (iii) it targeted teenagers and young adults with advertising on social media; (iv) it
17 utilized third party influencers to amplify its message around the internet; (v) it utilized other
18 social media tools, such as hashtags, to encourage participation and word-of-mouth messaging by
19 its customers; (vi) it amplified the message through off-line advertising; and (vii) it used a pricing
20 and distribution model designed to put the products within reach of youth.

21 **5. JUUL Advertising Used Imagery that Exploited Young People’s**
22 **Psychological Vulnerabilities.**

23 195. Throughout the relevant period, JLI ran a consistent, simple message on social
24 media that communicated, in particular, to teenagers and young adults, that JLI’s products were
25 used by popular, attractive, and stylish young adults (i.e., an idealized version of an adolescent’s
26 future self) while conspicuously failing to disclose the risks of the products.

27 196. In designing the campaign, JLI knew that to increase the chances that content goes
28 viral amongst the teen demographic, it needed to design a campaign that was simple, would

1 generate an emotional response that would resonate with teenagers, and obscure the fact that the
2 products were unsafe and addictive.

3 197. To help design these ads, JLI relied on various social media marketing companies.
4 In 2015, JLI worked with Cult Collective, instructing Cult Collective to design an ad campaign
5 that would catch fire and reach customers who had “heard it all before.” At the time, JLI was a
6 young company, competing with bigger, more established companies with large advertising
7 budgets and high brand loyalty. The solution JLI and Cult Collective reached was to position JLI
8 as modern products that represented a better way of life for young people. That campaign was
9 highly effective.

10 6. **JUUL’s Launch Campaign Was Targeted to Create Buzz Among**
11 **Young Consumers.**

12 198. To announce the JUUL’s release in June 2015, JLI launched the “Vaporized”
13 advertising campaign aimed at a youth audience.¹⁰⁸ The campaign used young, stylish models,
14 bold colors, memorable imagery, and themes of sexual attractiveness, thinness, independence,
15 rebelliousness and being “cool.” The models were often using hand gestures or poses that
16 mimicked teenagers.



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

28 ¹⁰⁸ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized’ Campaign*, ADAGE (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

1 200. The color scheme chosen was similar to colors used by Natural Americans Spirit
2 Cigarettes, a leading brand of cigarettes among teenagers.

3 201. Nowhere in the Vaporized ads did JUUL include visible or prominent disclaimers
4 about the dangers of nicotine or e-cigarettes as described above or disclose that JUUL was unsafe
5 for anyone under age 26.

6 202. As Cult Collective’s creative director explained, “We created ridiculous
7 enthusiasm for the hashtag ‘Vaporized,’ and deployed rich experiential activations and a brand
8 sponsorship strategy that aligned perfectly with those we knew would be our best customers.”¹⁰⁹

9 203. As part of the Vaporized campaign, JLI advertised on a 12-panel display over
10 Times Square.



18 204. Billboard advertising of cigarettes has for years been unlawful under the MSA
19 reached between 46 states’ attorneys general and cigarette companies, but JLI took advantage of
20 that agreement’s failure to foresee the rise of vaping products and advertised its nicotine products
21 in a manner unequivocally deemed against public policy for other nicotine products.

22 205. To ensure that its message would spread, JLI utilized several other tools to put its
23 products in front of young people. First, it ran the Vaporized campaign in the front spread of Vice
24 magazine’s cover issue. Notably, Vice bills itself as the “#1 youth media brand” in the world and
25 is known for running edgy content that appeal to youth. JLI also implemented a series of pop-up

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¹⁰⁹ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*, STANFORD RESEARCH INTO THE IMPACT OF TOBACCO ADVERTISING (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (citing, Cult Creative JUUL case study. <http://cultideas.com/case-study/juul> (last accessed September 21, 2018)) (emphasis added).

1 “JUUL bars” in Los Angeles, New York, and the Hamptons, imitating pop-up restaurants and
2 bars typically aimed at attracting young, hip urban consumers. Again, cigarette companies are
3 expressly prohibited by law from such conduct because it is against public policy.



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11 206. JLI’s chief marketing officer, Richard Mumby said, “while other campaigns tend
12 to be ‘overtly reliant on just the product,’ [JUUL’s] effort features diverse 20-to-30-year-olds
13 using the product.”¹¹⁰ This reliance on images of young, diverse users was specifically aimed at
14 convincing young people who were not previously addicted cigarette smokers to purchase JUUL
15 products; to make the use of the JUUL devices appear fun and without long-term negative
16 consequences; to position the JUUL e-cigarette as the e-cigarette of choice for young adults; and,
17 to introduce youth to the “illicit pleasure” of using the JUUL products.¹¹¹

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

21 208. JLI also sponsored at least 25 live social events for its products in California,
22 Florida, New York and Nevada. The invitations to JLI’s events did not indicate that the JUUL
23 was intended for cigarette smokers, was unsafe for anyone under 26, contained nicotine, carried
24 significant health risks or was addictive. Instead, the promised attendees “free #JUUL starter
25 kit[s],” live music, or slumber parties. Photographs from these events confirm they drew a
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27 ¹¹⁰ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads*, *supra*.

28 ¹¹¹ Additional images and videos are available at
http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php.

1 youthful crowd. Use of such sponsored events was a long-standing practice for tobacco
2 companies but is now forbidden.

3 **7. JLI Gave Away Free Products to Get New Consumers Hooked.**

4 209. JLI distributed free starter packs at the live social events described above—
5 conduct that was expressly forbidden for a cigarette company under the MSA because it lured
6 young people into nicotine addiction and related harms. BeCore, one of the firms responsible for
7 designing and implementing JLI’s live events reported that “on average, BeCore exceeded the
8 sampling goals set by JUUL . . . average number of samples/event distributed equals 5,000+.”¹¹²
9 At these events, BeCore distributed the appropriately-named JUUL “Starter Kits,” which
10 contained a JUUL and 4 JUULpods of varying flavors. If BeCore indeed gave away 5,000 Starter
11 Kits per event, JLI effectively distributed the nicotine equivalent of 20,000 packs of cigarettes at
12 each of the 25 events described above—or the equivalent of 500,000 packs of cigarettes at all 25
13 events.



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28 ¹¹² Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*,
STANFORD RESEARCH INTO THE IMPACT OF TOBACCO ADVERTISING (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

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210. Although JLI publicly acknowledged in October 2017 that it was unlawful to distribute free samples of its products at live events, JLI continued to do so, sometimes through \$1 “demo events.” Again, promotions of this kind were expressly prohibited for cigarette companies by the MSA.

211. The effect—and purpose—of JUUL’s Vaporized giveaways was to flood major cities with free products that, by its addictive nature, would hook tens or hundreds of thousands of new users. It also generated buzz among urban trendsetters who would then spread JUUL’s message to their friends via word of mouth and social media. This campaign unconscionably flooded cities with free samples of an addictive product, with distribution focusing on the youth market. Similar campaigns have long been used by drug cartels.

212. As a foreseeable result, JUUL products ended up in the hands of non-smokers and many young people who used the products became addicted to nicotine and suffered severe health consequences.

8. JLI Portrayed Its Products as Status Symbols.

213. As tobacco companies have long known, young people—and adolescents in particular—find security and a sense of identity in status symbols. Even after the “Vaporized” campaign, JLI’s later advertisements mimicked the look and feel of the “Vaporized” ads to foster

1 the image of JUUL e-cigarettes and JUUL pods as sleek, stylish, status symbol. For example, JLI
2 developed and ran a series of advertisements that were simple images of stylish young people
3 using JUUL.

4 214. Other JLI advertisements relied on graphic images with the look and feel of
5 advertisements by Apple, Google, and similar tech companies with progressive and modern
6 reputations. Again, these ads resonated with teenagers as well, as they made JUUL, and
7 especially the flavored pods, look like cool gadgets or software, something akin to an iPhone or a
8 hot new app to download. Like the other ads, none prominently disclosed the dangers of using
9 JUUL.

10 215. JLI also consistently compared its products to the iPhone, using statements like
11 “the iPhone of e-cigarettes,” which JLI posted on its website, distributed through social media,
12 and disseminated in its email campaign. The iPhone is the most popular smartphone among
13 adolescents, with 82 percent of teenagers preferring Apple’s phone over the competition. JLI’s
14 advertising images frequently include pictures of iPhones and other Apple devices, including
15 iPads, Beats Headphones, MacBook laptops. Through these images, JLI presented its image as a
16 “must have” technology product and status symbol, instead of a nicotine delivery system with
17 serious health risks.

18 9. **JLI Equipped Social Media to Simultaneously Grab the Attention of**
19 **Teenagers and Obscure Any Warnings about Nicotine Content or**
20 **Health Effects.**

21 216. Beyond triggering an emotional response in teenagers, through the use of clean
22 lines, artistic arrangements, minimal text, and eye-catching graphics, JLI ensured that the
23 advertisements would jump out to distracted teenagers scrolling through crowded social media
24 pages on their phones and browsers.

25 217. All of JLI’s advertisements reflect an understanding that social media users in
26 general, and teenagers in particular, do not typically read long blocks of text on social media, and
27 rely more heavily on imagery instead of text to convey a message.

28 218. Many of the ads did not include any warning about the dangers of JUUL or
suggest to teenagers that the products contained nicotine. Moreover, where JLI’s advertisements

1 appeared to contain such a disclaimer, this disclaimer was not typically seen when viewing social
2 media due to the way the posts appear in phones and browsers. In particular, Facebook and
3 Instagram typically only present to users the image and a couple lines of text, and viewers who
4 want to see the entire post must click on it to open it up and read the entire content.

5 219. JLI's Instagram advertisements therefore obscured any nicotine warnings by
6 placing them in locations that required the user to open the post and read it. As can be seen in
7 JLI's Instagram ads, the company consistently used brief text at the beginning of a post so that it
8 would be a complete sentence with no further content.

9 220. Furthermore, on Twitter, a Social Media Platform that is geared towards reading
10 text, and on Facebook, where some users do read text, JLI typically did not even include the
11 disclaimer in its advertisements.

12 221. Finally, JLI's advertisements were typically creative, giving them the look and feel
13 of "art." Thus, teenagers were drawn to the advertisements, holding their gaze on the ads for
14 longer periods of time, and being more inclined to share the advertisement with others in their
15 networks, thus accomplishing JLI's goal: turning consumers into salespeople.

16 **10. JLI Purchased Advertising Space on Millions of Websites Across the**
17 **Internet, Including Websites that Appeal to Children.**

18 222. Upon information and belief, JLI engaged the services of numerous companies,
19 DOES 21-40, to place advertisements on websites across the internet. These companies, known
20 as programmatic media buyers, purchased "impressions" (i.e., the appearance of an advertisement
21 on a particular website when visited by a single user or device) from online advertising
22 exchanges.

23 223. Upon information and belief, JLI used these programmatic media buyers to
24 purchase space for JLI advertisements on websites that were highly attractive to children and that
25 were designed for children.

26 224. Upon information and belief, JLI marketed its products by purchasing banner
27 advertisements and video advertisements on nick.com and nickjr.com. These two Nickelodeon
28

1 websites feature shows and games from the Nickelodeon television network, which is a television
2 network for children.

3 225. Upon information and belief, JLI purchased banner advertisements on the Cartoon
4 Network's website at cartoonnetwork.com. This website offers children's television programs and
5 games for children.

6 226. Upon information and belief, JLI also purchased banner advertisements on other
7 websites generally designed for children, including allfreekidscraft.com, hellokids.com, and
8 kidgameheroes.com; on websites providing games targeted to younger girls, such as
9 dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and
10 girlsgogames.com; and on websites designed to help middle school and high school students
11 develop their mathematics and social studies skills, including basic-mathematics.com,
12 coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com,
13 purplemath.com, and socialstudiesforkids.com; websites designed for teenagers, such as
14 teen.com, seventeen.com, justjaredjr.com, and hireteen.com; and websites for high school
15 students hoping to attend college such as collegeconfidential.com and collegeview.com.

16 227. JLI knew or should have known that its advertisements would be viewed by
17 underage consumers.

18 **11. JLI Used Flavors and Food Imagery to Attract Teenagers and**
19 **Downplay Risks.**

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

22 229. Until the FDA's recent ban on most flavors, JLI sold its pods in a variety of
23 sweetened flavors, which they advertised as desserts in themselves. For example, it used tag
24 lines like "save room for JUUL" and "indulge in dessert without the spoon." JLI used imagery
25 that looked like ads for a trendy coffee shop or restaurant.

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

231. Moreover, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”¹¹³ Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their non-vaping peers, a new study has found.”¹¹⁴

232. The use of attractive flavors foreseeably increases the risk of nicotine addiction, and e-cigarette related injuries, as traditional cigarette product designs aimed at reducing the unpleasant characteristics of cigarette smoke (e.g., addition of menthol to mask unpleasant flavors) have previously been shown to contribute to the risk of addiction.¹¹⁵ Worse still, adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was tobacco-flavored.

¹¹³ Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 J. AM. MED. ASS’N 1871 (Oct. 26, 2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690>.

¹¹⁴ Brian A. Primack et al., *Initiation of Traditional Cigarette Smoking After Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 AM. J. MED. 443 (Apr. 2018).

¹¹⁵ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and Present (2010) www.ncbi.nlm.nih.gov/books/NBK53017/.

1 233. JLI’s kid-friendly flavors included Mango, “Cool Mint,” and Menthol. 74 percent
2 of youth surveyed in a recent study indicated that their first use of a JUUL was of a flavored
3 pod.¹¹⁶ More than half of teens in a nationwide survey by the Wall Street Journal stated that they
4 use ENDS because they liked the flavors.

5 234. When JLI released what became two most popular flavors among youth, Mango
6 and “Cool” Mint (“Cool Mint”), JLI promoted those flavors on Instagram, Twitter, YouTube and
7 Facebook—all of which are skewed toward young audiences.

8 235. JLI’s mango pods quickly became the runaway favorite among youth, and were so
9 popular that, incredibly, they noticeably increased the use of the word “mango” on the internet as
10 a whole. Starting in early 2017, Google Trends reports a nearly 5 percent increase in year-over-
11 year use of the word “mango” online.¹¹⁷

12 236. “Cool Mint” became youths’ second youth favorite flavor. The 2018 Duell Study
13 found 94 mg/mL nicotine in a JUUL “Cool Mint” pod – nearly double the amount on JUUL’s
14 “5% strength” label would suggest. In addition to its nicotine content, the “Cool Mint” pods pose
15 additional risks. The FDA’s Tobacco Products Scientific Advisory Committee in March 2011
16 issued a report on menthol cigarettes, concluding that the minty additive was not just a flavoring
17 agent but had drug-like effects, including “cooling and anesthetic effects that reduce the
18 harshness of cigarette smoke.”¹¹⁸ Mint could also “facilitate deeper and more prolonged
19 inhalation,” resulting in “greater smoke intake per cigarette.”¹¹⁹

20 237. JLI’s advertising emphasized the flavors of its sweetened nicotine pods.
21 Leveraging the flavors, JLI advertised pods as part of a meal, to be paired with other foods. In late
22 2015, JLI began a food-based advertising campaign called “Save Room for JUUL,” a play on the
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25 ¹¹⁶ Karma McKelvey et al., *Adolescents’ and Young Adults’ Use and Perceptions of Pod-Based*
Electronic Cigarettes, 1 J. Am. Med. Ass’n (Oct. 19, 2018),
www.ncbi.nlm.nih.gov/pmc/articles/PMC6324423/.

26 ¹¹⁷ [https://trends.google.com/trends/explore?date=2014-06-01%202018-12-](https://trends.google.com/trends/explore?date=2014-06-01%202018-12-05&geo=US&q=mango)
27 [05&geo=US&q=mango](https://trends.google.com/trends/explore?date=2014-06-01%202018-12-05&geo=US&q=mango) (as of July 5, 2019).

28 ¹¹⁸ STEPHEN PROCTOR, *GOLDEN HOLOCAUST: ORIGINS OF THE CIGARETTE CATASTROPHE AND THE*
CASE FOR ABOLITION, 500.

¹¹⁹ *Id.* at 500-01.

1 expression “save room for dessert.” JLI described its nicotine pods as “the perfect evening treat,”
2 using tag lines like “indulge in dessert without the spoon.”

3 238. JLI similarly promoted the Fruit Medley pods using images of ripe berries. JLI
4 described its “Cool Mint” pods as “crisp mint with a pleasant aftertaste”; encouraged consumers
5 to “Beat The August Heat With Cool Mint”; and in a Facebook advertisement dated July 10,
6 2017, JLI urged customers to “Start Your Week With Cool Mint JUULpods.”¹²⁰ Along with the
7 bright green caps of the “Cool Mint” JUUL pods, the Facebook ad included an image of a latte
8 and an iPad.

9 239. JLI even hired celebrity chefs to provide pairing suggestions for JUUL flavors. On
10 Instagram and Twitter, JLI boasted about “featured chef” Bobby Hellen creating a “seasonal
11 recipe” to pair with JUUL pods. On Facebook, JLI posted a link to an article on porhomme.com
12 about “what our featured chefs created to pair with our pod flavors.”¹²¹



240. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee
and other caffeinated drinks, sometimes with what appear to be textbooks in the picture. JLI’s
coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup
of coffee. This comparison to coffee was an intentional effort to downplay and minimize the risks
of JUUL, suggesting it was no more risky than coffee.

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¹²⁰ See “Beat the August Heat With Cool Mint” ad; “Start Your Week With Cool Mint JUULPods” ad (July 10, 2017).

¹²¹ JUUL Facebook Account, *JUUL’s ‘Save Room’ Campaign Yields 3 Special JUUL Recipes* (Jan. 4, 2016); Por Homme, *JUUL’s ‘Save Room’ Campaign Yields 3 Special JUUL Recipes*, JUUL (Dec. 14, 2015). See also “Seasonal Recipe to Pair With Our Brulee Pod.”

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

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

12 243. By 2017, JLI knew that the foreseeable risks posed by fruit and candy-flavored e-
13 liquids had materialized. A significant percentage of JLI's customers included adolescents who
14 overwhelmingly preferred Fruit Medley and Crème Brûlée over Tobacco or Menthol.¹²² Instead
15 of taking corrective action or withdrawing the sweet flavors, JLI capitalized on youth enthusiasm
16 for its products.

17 244. After eleven senators sent a letter to JLI questioning its marketing approach and
18 kid-friendly e-cigarette flavors like Fruit Medley, Crème Brûlée Mango, JLI visited Capitol Hill
19 and told senators it never intended its products to appeal to kids and did not realize they were
20 using the products, according to a staffer for Sen. Dick Durbin (D-Ill.). JLI's statements to
21 Congress—which paralleled similar protests of innocence by cigarette company executives—
22 were false.

23 245. In November 2018, in response to litigation and other mounting public pressures,
24 JLI announced that it had “stopped accepting retail orders” for many of its flavored JUUL pods,
25 such as mango, crème brûlée, and cucumber.¹²³ But JLI's promise was misleading. JLI only

26 ¹²² *JUUL Fails to Remove All of Youth's Favorite Flavors from Stores*, TRUTH INITIATIVE
27 (Nov. 15, 2018), <https://truthinitiative.org/news/juulfails-remove-all-youths-favorite-flavors-stores>.

28 ¹²³ Sheila Kaplan & Jan Hoffman, *Juul Suspends Selling Most E-Cigarette Flavors in Stores*,
Footnote continued on next page

1 refused to sell them directly to retailers; it still manufactured and sold the JUUL pods. The pods
2 could still be purchased on its website by persons under age 26. JLI also continued to sell “Cool
3 Mint” in gas stations knowing that the flavor was incredibly popular with youth and would
4 become the de facto favorite if access to other flavors was removed.

5 246. With increasing media and scientific studies raising the alarm about the health
6 risks of JUUL products, in September of 2019, JLI announced that it suspended all broadcast,
7 print, and digital product advertising in the United States.¹²⁴

8 247. On January 2, 2020, the FDA released its enforcement policy on flavored e-
9 cigarettes that appealed to children, including fruit and mint.¹²⁵

10 248. The only responsible solution to prevent flavored JUUL pods from getting into the
11 hands of young people is to stop manufacturing them.

12 **12. JLI Developed Point-of-Sale Advertising That Emphasized the**
13 **Products’ Positive Image Without Adequately Disclosing Its Dangers**
14 **and Risks.**

15 249. The cigarette industry spends \$8.6 billion a year in point-of-sale (“POS”)
16 promotions—or almost \$990,000 every hour.¹²⁶ In a 2009 study of adult daily smokers,
17 unintended cigarette purchases were made by 22 percent of study participants, and POS displays
18 caused nearly four times as many unplanned purchases as planned purchases.¹²⁷ Younger
19 smokers, in particular, are more likely to make unplanned tobacco purchases in the presence of
20 POS advertising.

21 250. Studies show that tobacco use is associated with exposure to retail advertising and
22 relative ease of in-store access to tobacco products. Some studies have shown that youth who
23 were frequently exposed to POS tobacco marketing were twice as likely to try or initiate smoking

24 N.Y. TIMES (Nov. 13, 2018), www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html.

25 ¹²⁴ Megan Graham, *Juul Suspends Broadcast, Print and Digital Product Advertising in the US*,
CNBC (Sept. 25, 2019, 9:19 AM EDT), <https://www.cnbc.com/2019/09/25/juul-suspends-broadcast-print-and-digital-product-ads-in-the-us.html>.

26 ¹²⁵ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes*
27 *That Appeal to Children, Including Fruit and Mint*, FDA NEWS RELEASE (Jan. 2, 2020).

28 ¹²⁶ *The Truth About Tobacco Industry Retail Practices*, TRUTH INITIATIVE,
https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-2017_0.pdf.

¹²⁷ *Id.* at 4.

1 than those who were not as frequently exposed. Frequent exposure to tobacco product advertising
2 and marketing at retail normalizes tobacco and smoking for youth over time and makes them
3 more likely to smoke. POS marketing is also associated with youth brand preference. Research
4 shows that young adult smokers prefer the tobacco brands marketed most heavily in the
5 convenience store closest to their schools. Before its launch in 2015, JLI and Cult Collective
6 developed innovative packaging and creative in-store displays of JUUL products that would carry
7 their message through into stores.

8 251. In particular, they designed bright, white packages. The packaging looked similar
9 to iPhone packaging, which JLI knew would resonate with young people, and because it was solid
10 white, the packaging stood out when displayed in store shelves. This packaging buttressed JLI's
11 online marketing of JUUL e-cigarette as "the i-Phone of Ecigs," thereby framing them as a cool,
12 fashionable item to own and use. JLI posters and signs at the point of sale also promoted JUUL's
13 flavors. From 2015 through late 2018, JLI promoted JUUL products and JUUL flavors at the
14 point of sale without disclosing that the products contained nicotine or warning that the products
15 could lead to addiction.



25 252. For many, JLI's POS materials provided an introduction to the brand. Because
26 JLI's POS materials omitted the most material features of JUUL's products—that they include a
27 powerfully addictive nicotine delivery system, unsafe for anyone under age 26—adolescents who
28

1 saw JLI's POS and were later offered JUUL products would have no reason to think what they
2 were being offered contained nicotine, or posed risks of addiction, or was unsafe.

3 **13. JLI Used Paid Advertising on Social Media to Inundate Target**
4 **Consumers, Particularly Youth, With Messaging Promoting Its**
5 **Nicotine Products.**

6 253. JLI was able to deliver content directly on social media using two approaches.
7 First, it could post its advertisements directly to its own page, where it would be viewed by those
8 who followed JUUL, and those who shared its posts ("Unpaid Advertising"), discussed more
9 below. And it could engage in paid advertising, whereby it could target specific demographics of
10 people to ensure they received its advertisements ("Paid Advertising").

11 254. In disseminating Paid Advertising, the Social Media Platforms allow companies
12 like JLI to engage in micro-targeting, i.e., to select precisely what demographics of people should
13 be exposed to its advertising. Social Media Platforms create internal profiles for the consumers
14 that use them, tracking their online activity to determine their likes, habits, and purchasing power.
15 When advertisers pay to disseminate ads, they can choose to target those ads so that they are
16 received only by people whose digital footprint suggests an interest or predisposition to the
17 products. JLI would have had the option to exclude teenagers. It also could have elected to
18 narrow its target audience to people with an interest in tobacco products, if it in fact wanted only
19 to reach and convert non-smokers. Or it could target a broader audience of people whose digital
20 footprints revealed they were smokers.

21 255. JLI's use of Paid Advertising was aggressive, and had the inevitable result of
22 reaching teenagers. Paid advertising can be shared and liked just as Unpaid Advertising. JLI
23 relentlessly advertised to its targeted audience, across all Social Media Platforms. Young people
24 saw JUUL advertising on a near daily basis, regardless of what platform they used. The continual
25 use of Paid Advertising increased the pressure to buy, and made quitting harder because young
26 people were continually exposed to the advertising through their phone and other electronic
27 devices.
28

1 **14. JLI Utilized Viral Marketing Tools to Turn Customers, Especially**
2 **Teenagers, Into JUUL Promoters**

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

11 257. JLI’s hashtag marketing played a central role in the viral spread of JUUL among
12 teenagers. The use of hashtags in social media advertisements “can be used to get your content in
13 front of a bigger audience, raise awareness about your brand, target a very specific group of
14 people, ... and use hot trends and topics to your advantage.”¹²⁸ Hashtags are “the best weapon in
15 your arsenal, aside from influencer marketing” for getting content “in front of its intended
16 audience.”¹²⁹ Through hashtag marketing, brands can join in on trending topics, engaging “an
17 insane amount of readers” by using “hashtags which aren’t closely related to your industry” by,
18 e.g., using holiday-related hashtags.¹³⁰ By using “branded hashtags” that include the company’s
19 name or a specific product, advertisers can monitor the performance of specific campaigns.
20 Another advantage of branded hashtags is user-generated content: “Every time a user puts one of
21 your branded hashtags inside one of their posts, they are increasing your presence on social
22 media” by promoting the branded hashtag, and the related content, to the user’s followers.¹³¹
23 Through successful hashtag marketing campaign, brands can create communities through which

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26 ¹²⁸ Olivia Ryan, *Hashtag Marketing: How to Use Hashtags for Better Marketing Campaigns*,
27 MENTION [https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-](https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-marketing-campaigns/)
28 [marketing-campaigns/](https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-marketing-campaigns/) (last visited Jan. 8, 2020).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

1 “followers will not only be able to communicate via chat or messages, but also connect with each
2 other by using your hashtag.”¹³²

3 258. From 2015 through 2018, JLI used hashtag marketing consistently on Twitter,
4 Instagram, and Facebook to promote its products. In various posts, JLI would slip in hashtags so
5 that their posts would be found by young people. This post is not a paid advertisement, but a post
6 to JUUL’s Instagram feed. JUUL often used #TBT, which is an acronym for “Throwback
7 Thursday.” Throwback Thursday is a popular meme on social media, and teenagers are especially
8 likely to understand it and use it. Thus, any teenager who had elected to follow the hashtag TBT
9 would see this post when they logged into Instagram that day. Moreover, as discussed above, no
10 one would see any warning regarding nicotine unless they actually opened the post.

11 259. JLI frequently used other hashtags that would be used by teenagers to push their
12 products to them across social media, such as #icymi (“in case you missed it”), and many
13 referencing JUUL and vaping (e.g., #juul, #juulvapor, #switchtojuul, #vaporized, #juulnation,
14 #juullife, #juulmoment), as well as trending topics unrelated to JUUL, as well as topics
15 #mothersday, #goldenglobes, #nyc, etc.

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

19 261. While JLI typically used a few different hashtags in all of its posts on Instagram
20 and Twitter, JLI nearly always included #juul as one of those hashtags. JLI also encouraged or
21 instructed its influencers and those in its affiliate program to use the #juul hashtag when posting
22 about JUUL. Thus, by consistently using that hashtag in all parts of its viral marketing campaign,
23 JLI not only branded its posts, but invited its consumers to do the same.

24 262. One prominent campaign promoted by JLI from 2015 through 2018,
25 #JUULmoment, featured what facially appeared to be user-generated content relating to JUUL
26 products and invited users to generate their own content. Many of these social media posts were
27 actually placed by models and/or influencers acting at JLI’s behest.

28 _____
¹³² *Id.*

1 263. By inviting the creation of user-generated content related to JLI’s age restricted
2 product, JLI invited the indiscriminate promotion of its ENDS on youth-filled social media
3 platform. An 18-year-old who posted a #JUULmoment, for example, would likely have followers
4 who were under the legal age to purchase tobacco products, resulting in the sharing of a
5 #JUULmoment—and the promotion of JUUL—to minors.

6 264. JLI’s plan worked. JUUL users began taking photos of themselves using JUUL
7 and putting them on social media, with the hashtag #juul. As JLI intended by designing this viral
8 campaign, their customers turned themselves into salespeople. They were creating JUUL ads that
9 looked and felt like real JUUL ads; they featured young people having fun, and using JUUL. And
10 they triggered the same emotional response that the JUUL ads and the JUUL influencer ads
11 triggered; people saw their friends participating in a trendy activity and they became interested.

12 265. For example, the flavor-based #MangoMonday and #coolmint campaigns
13 generated hundreds of thousands of user-generated posts. During the same period, mango and
14 mint pods quickly became the most popular flavors among 12 to 17 year olds.

15 266. Because JLI was almost certainly monitoring the uses of its hashtags, JLI would
16 have seen the tens of thousands of posts being made by minors using things like #juul and
17 #juulmoment since 2015. JLI knew that kids were picking up on its campaign and mimicking it,
18 and thus, advertising JUUL to their underage friends. At no time, however, did JLI take any
19 serious steps to discourage the use of the JUUL hashtag by teenagers.

20 267. Because JUUL is a trademark, JLI could have stepped in and attempted to stop the
21 use of its mark in posts directed to underage audiences, including the use of all the hashtags that
22 contain the word “JUUL” with respect to such posts, and it could have shut down infringing
23 accounts such as @doit4juul and @JUULgirls. It did not do so.

24 268. In a similar vein, Defendant used the #JUUL branded hashtag in a significant
25 number of its hashtagged posts on Instagram and Twitter, leading #JUUL to become the most
26 popular JUUL-related hashtag. Though JLI has stopped marketing on social media platforms, the
27 #JUUL branded hashtag it launched continues to spread and be used by JUUL users on social
28

1 media platforms. Today, the #JUUL hashtag spreads images of youth using JUULs and youth-
2 oriented JUUL content and is used to promote sellers of JUUL products and JUUL accessories.

3 **15. JLI Used ‘Influencers,’ Third Party Promoters, Affiliates, and**
4 **Celebrities to Target Young People.**

5 269. To broaden the reach of its campaign, JLI used “influencers” to push the products
6 to young people. Influencers are “high-social net worth” individuals who have developed large
7 social media followings – i.e., the “cool kids” of the social media world. People follow
8 influencers because they tend to deliver lots of high quality, interesting photos and content, and
9 because they are known to be trend-setters.

10 270. Companies seeking to market products often will pay influencers to advertise their
11 products, similar to the ways in which they utilize “product placement” in movies. They seek out
12 influencers with large amounts of followers in their target demographic, and will offer these
13 influencers money or other deals to promote their products. The influencer then will create
14 various posts on social media using the products. Typically, these posts are images of them using
15 the products, but sometimes these posts will include videos, longer written reviews, or other
16 information about the products. Influencers often include in these posts company-endorsed
17 hashtags or links to the company’s website to try to direct their followers to learn more. The
18 company gets the benefit of having word-of-mouth advertising, and the influencer is able to
19 attract more followers because those followers want to stay in the loop about new products and
20 deals. While influencers operate on all Social Media Platforms, most of them rely primarily on
21 Instagram.

22 271. JLI’s reliance on influencers appears to have begun around June 2015, when JLI
23 listed a position on its website for a three-month Influencer Marketing Intern.¹³³ JLI described the
24 position as follows: “The Influencer Marketing Intern will create and manage blogger, social
25 media and celebrity influencer engagements . . . to build and nurture appropriate relationships
26 with key influencers in order to drive positive commentary and recommendations through word

27 ¹³³ *Influencer Marketing Intern*, PAX LABS (June 2015),
28 <https://www.internships.com/marketing/influencer-marketing-intern-i7391759> (last accessed
Nov. 14, 2018). See also Robert K. Jackler et al., *JUUL Advertising Over its First Three Years on
the Market*, at Fig. 21, STANFORD UNIVERSITY SCHOOL OF MEDICINE (Jan. 31, 2019).

1 of mouth and social media channels, etc.” JLI’s efforts to solicit influencers appears to have been
2 underway for years; until December 2018, JLI’s website still called for individuals to “Join the
3 JUUL influencers.” Applicants were required to disclose their profile information for Instagram,
4 Twitter, and Facebook, as well as various other blog and vlog platforms, suggesting that JLI was
5 interested in understanding whether the influencers could help JLI reach its targeted youth
6 demographic.

7 272. JLI’s outreach had its desired impact, as it was able to line up influencers to
8 promote its products to teenagers, while spreading pictures of cool, young people using JUUL.
9 For example, Christina Zayas (@christinazayas on Instagram) was, as of 2018, a Brooklyn-based
10 influencer with over 57,700 followers, many of whom are under 18. Under JLI’s direction, a
11 marketing firm invited Zayas to join a JUUL campaign in September 2017, asking her to “try
12 JUUL’s premium e-cigarette and share your experience” with her many followers.¹³⁴ JLI no
13 doubt knew that Zayas could be a powerful advertiser for its brand; her Instagram feed and blog
14 show reveal that she is a stylish young woman, who showcases fashionable clothing, makeup
15 trends, and a hip urban lifestyle. Indeed, Zayas herself stated that her primary appeal to JUUL
16 was that she attracted a younger market, in line with JLI’s previously aggressive targeting of
17 underage individuals. And Zayas also lists herself as vegan, and includes “Spiritual Wellness” in
18 her bio, and thus was a logical target for JLI marketing teams looking to distance the company
19 from the harms typically associated with smoking and convince young people that the products
20 were safe. Zayas was paid \$1,000 for one blog post and one Instagram post. Zayas reported that
21 she wanted to talk about her struggle with addiction in her JLI-promoted posts but was told to
22 instead promote the positive characteristics of the JUUL.

23 273. Like JLI’s own advertising on its own site, the Instagram post did not contain any
24 information about the safety of JUUL and worked to convince young people that using JUUL was
25 a thing that cool, Brooklyn fashionistas were doing. The Instagram post would have been seen by
26 many, if not all, of Zayas’ 57,000 thousand followers, as well as by any users searching the

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28 ¹³⁴ Michael Nedelman et al., *#JUUL, How Social Media Hyped Nicotine for a New Generation*,
CNN (Dec. 19, 2018, 5:30 PM ET), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

1 hashtag “#JUULmoment.” At least 1,509 people “liked” the post and 46 commented on it. As
2 Instagram provides a way for users to see posts their friends engaged with, for each person who
3 “liked” or commented on the post, the number of people who saw it increased exponentially.

4 274. JLI benefited from influencers on other Social Media Platforms as well. On
5 information and belief, JLI encouraged its distributors, wholesalers, and other resellers—either
6 explicitly or implicitly— to hire affiliates and influencers to promote JLI’s brand and products
7 (“Third Party JUUL Promoters”). Even if not paid directly by JLI, these Influencers profited from
8 the promotion of JUUL products either because they were paid by JLI resellers, JLI accessory
9 sellers, or sellers of JLI-compatible products. JLI knew of these third party promotional practices,
10 and it monitored the specific JLI promotions being distributed by these Third Party JUUL
11 Promoters.

12 275. For example, on YouTube, user Donnysmokes (Donny Karle, age 21) created a
13 JUUL “unboxing” YouTube video in 2017, in which he opened up a box of JUUL products and
14 described them for his audience, garnered roughly 52,000 views, many of which were from users
15 under 18. Since that time, Karle has begun making a series of videos in which he tries various e-
16 cigarette products, especially JUUL products. While Karle recently claimed that he that “knows
17 for a fact that JUUL is way too cheap to pay what I charge for a review,” Karle has admitted to
18 earning approximately \$1200 a month from unspecified sources simply from posting vaping
19 videos, especially of JUUL products, online, suggesting that JUUL has, at a minimum,
20 approached him, and may have at one point paid him, or that he is paid by third-party resellers of
21 JUUL products, to which resellers he regularly links in his posts.¹³⁵

22 276. DonnySmokes also created a number of JUUL videos on YouTube, including the
23 JUUL Challenge, which is a play on the viral Ice Bucket Challenge. In the JUUL Challenge, the
24 goal is to suck down as much nicotine as possible within a predetermined amount of time. The
25 JUUL Challenge, which promotes nicotine abuse and adolescent use of JUUL products, like the
26 Ice Bucket Challenge it mimicked, went viral. Soon, youth across the country were posting their

27
28 ¹³⁵ Allie Conti, *This 21-Year-Old Is Making Thousands A Month Vaping on YouTube*, VICE
(Feb. 5, 2018, 5:30 PM), https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-monthvaping-on-youtube.

1 own JUUL Challenge videos – a practice that continues to this day on YouTube, Instagram,
2 Snapchat and other social media platforms. In one JUUL Challenge on YouTube, which received
3 556,450 views, the two teenagers filming themselves discuss the hundreds of thousands of views
4 their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge
5 content.¹³⁶

6 277. Another popular YouTube Influencer, OG Nick, promotes JUUL on YouTube.
7 The graphical component of many of his videos consists of recorded video gram footage,
8 presumably so that the adolescent viewer can put on headphones and conceal the nature of
9 content being consumed from adults within eyeshot. OG Nick maintains accounts on YouTube,
10 Instagram and Snapchat. OG Nick’s JUUL videos have generated well in excess of one million
11 views.

12 278. Collectively, OG Nick and DonnySmokes’ JUUL-promoting videos and posts
13 have generated millions of views, and the viral content their posts have spawned have almost
14 certainly generated many millions of additional views. Even if not directly affiliated with JUUL,
15 OG Nick and DonnySmokes are frequently sponsored by websites that sell JUUL products.
16 Through the end of 2018, DonnySmokes personal website also linked to a webstore that sold
17 JUULpods. JUUL thus profited not only from the brand awareness of Third Party JUUL
18 Promoters like DonnySmokes and OG Nick, but also from JUUL sales generated directly through
19 JUUL-selling retailers that sponsor these young influencers.

20 279. JLI knowingly accepted the benefits of these promotional activities, both in terms
21 of brand awareness and in terms of sales generated through sponsored links on Third Party JUUL
22 Promoters’ advertisements. At no time did JLI take independent action to remove the Third Party
23 JUUL Promoters’ unlawful advertising content or to discipline the JUUL-selling sponsors of
24 Third Party JUUL Promoters. Only in response to FDA scrutiny in 2018, did JLI take action to
25 remove the unlawful JUUL promotions such as the JUUL Challenge. By that time, the viral
26 content had spread, nullifying the effect of removing the original post.

28 ¹³⁶ Nate420, *JUUL Challenge* (Apr. 22, 2018), https://youtu.be/gnM8hqW_2oo (last visited Jan. 27, 2020).

1 280. JLI allowed third parties, like @JUULnation to use its trademark.
2 @JUULnation’s Instagram post included tips on how to conceal JUUL in school supplies and
3 ridiculed efforts to combat JUUL use among young people. JLI promoted @JUULnation on its
4 own Instagram account.

5 281. One recent study concluded that JLI was “taking advantage” of the reach and
6 accessibility of multiple social media platforms to “target the youth and young adults . . . because
7 there are no restrictions” on social media advertising.¹³⁷ Again, cigarette companies are
8 prohibited by the MSA from conducting any of the practices described above. Activities such as
9 product placement in performances and professional videos have been identified as against public
10 policy for nicotine products.

11 282. To further spread its message, JLI also offered to influencers and other bloggers on
12 social media the option to make additional money by posting links to JLI’s website. JLI used at
13 least two companies to manage its affiliate marketing programs, Commission Junction and Impact
14 Radius (the “Affiliate Services”). Under the terms of these programs, bloggers and influencers
15 could receive payment if they referred individuals to JLI’s website, who in turn purchased the
16 products. The programs had the effect of encouraging even more people to post and advertise
17 about JUUL on the internet and social media, exposing even more teenagers to the campaign.

18 283. Each affiliate received a unique hyperlink to embed in the affiliate’s promotions.
19 The Affiliate Services also provided the affiliates with analytics services, sales tracking, and a
20 bank of graphics, logos, and other promotional materials for use in affiliate promotions.

21 284. In or around 2017, Impact Radius began managing JLI’s affiliate program. The
22 Impact Radius application indicated that JLI “auto-approve[d]” applications. The Impact Radius
23 application did not ask the affiliate’s age or require affiliates to confirm that they are at least 18
24 years old. JLI actively courted would-be affiliates through its Twitter account, inviting nearly 20
25 individuals to join the program through public messages.

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28 ¹³⁷ Laura Kelly, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, WASH. TIMES (June 4, 2018), www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/.

1 285. JLI’s affiliates promoted JUUL on social media platforms including YouTube,
2 Instagram, Facebook, Snapchat, and Twitter. JLI’s affiliates routinely failed to disclose or
3 adequately disclose that the affiliate had a commercial relationship with JLI and was being paid to
4 promote JUUL products.

5 286. Many of the apparently user-generated advertisements JLI posted to its accounts
6 pictured models or influencers being paid by JLI without disclosure of the commercial
7 relationship between JLI and the model.

8 287. These posts were misleadingly presented without disclosure of the payment to the
9 party posting them. By presenting JLI advertisements featuring compensated models as
10 unsolicited “#JUULmoment” posts, JLI misled its target audience into believing that JUUL use
11 was more widely used than it was, that attractive, popular people used JUUL, and that these same
12 attractive, popular people endorsed creating and posting JUUL-related social media content on
13 Instagram and other platforms. JLI also led consumers to believe these endorsements were
14 unsolicited, when they were in fact bought and paid for. To the extent that JLI’s affiliates and
15 influencers disclosed that they were being paid, JLI subverted these disclosures by reposting the
16 images to JLI’s timeline without disclosing that the image was from a paid advertiser.

17 288. JLI also used celebrities to promote JUUL use. In 2016, JLI’s social media
18 accounts promoted multiple images of pop star Katy Perry with a JUUL. By including Perry’s
19 Twitter handle in its post, JLI sought to introduce the JUUL, and Ms. Perry’s apparent affinity for
20 the JUUL, to Ms. Perry’s 107,000,000 followers on Twitter, and to JLI’s followers on its social
21 media accounts. Ms. Perry has a large youth audience.

22 289. In September 2018, Vapor Vanity posted that JLI was canceling payments to vape
23 reviewers. Vanity Vapor posted an email it had purportedly received from JLI indicating that as
24 of October 21, 2018 “JUUL Labs” affiliate program which is operated by Impact Radius and any
25 other affiliate efforts will be on hold indefinitely until further notice.”¹³⁸

27
28 ¹³⁸ J.R. Reynoldson, *JUUL Labs Cancels Payments to Vape Reviewers: Here’s the Email They Sent Us*, VAPOR VANITY (Oct. 30, 2018) <https://www.vaporvanity.com/juul-labs-cancels-payments-vape-reviewers-email-they-sent/>.

1 290. While JLI publicly announced that it was officially halting all social media activity
2 in late 2018, it continued to call for applications for social media influencers for at least one
3 month after its public cessation of internet advertising. It was not until after CNN published a
4 negative news article about JLI’s advertising practices on December 15, 2018, that JLI removed
5 from its website its advertisement seeking influencers.

6 **16. JLI Tracked the Efficacy of Its Youth Marketing.**

7 291. Tracking the behaviors and preferences of youth under twenty-one, and especially
8 those under eighteen, has long been essential to the successful marketing of tobacco products.
9 Whether the activity is called “tracking” or “targeting,” the purpose has always been the same:
10 getting young people to start smoking and keeping them as customers.¹³⁹

11 292. As early as 1953, Philip Morris was gathering survey data on the smoking habits
12 of "a cross section of men and women 15 years of age and over." Commenting on these data,
13 George Weissman, then-Vice President of Philip Morris, observed that “we have our greatest
14 strength in the 15-24 age group.”¹⁴⁰

15 293. Traditional approaches to youth tracking (e.g., interviews conducted face-to-face
16 or over the telephone) were limited, however, and often failed to capture data from certain subsets
17 of the target market. As a Philip Morris employee noted in a June 12, 1970 memorandum,
18 Marlboro smokers were “among the types of young people our survey misses of necessity (on
19 campus college students, those in the military and those under 18 years of age).”¹⁴¹

20 294. Taking a page from the Big Tobacco playbook, JLI has consistently tracked and
21 monitored its target youth market, including those below the minimum legal age to purchase or
22 use JUUL products. Moreover, modern technology has removed many of the hurdles that made
23 youth tracking difficult in decades past. With e-mail, social media and online forums, JLI can
24 track and monitor its target audience anywhere and at any time.

25
26
27 ¹³⁹ *Philip Morris*, 449 F. Supp. 2d at 1006.

28 ¹⁴⁰ *Id.* at 581.

¹⁴¹ *Id.* at 1007.

1 **17. JLI Utilized a Pricing and Distribution Model Designed to Put the**
2 **Product Within Reach of Youth Without Disclosing Harms.**

3 295. Cigarette companies for years sold youth-brand cigarettes at lower prices and used
4 discounts and other promotions to ensnare younger smokers. JLI is no different. It not only
5 designed a marketing campaign to reach young people and entice new smokers, it priced its
6 products to ensure they would buy them.

7 296. A pack of four JUUL pods, which, according to JUUL, is the equivalent of four
8 packs of cigarettes, costs approximately \$13-\$20. JUUL's website charges \$15.99 for a pack of
9 JUUL pods, or about \$4 per JUUL pod. By contrast, a single pack of cigarettes in Connecticut
10 costs approximately \$9, and \$13 in New York.

11 297. For years, JLI directed all of its products to gas stations, instead of smoke shops,
12 vape shops, and other age-restricted stores. JLI knows that teenagers and those new to smoking
13 are likely to frequent gas stations and convenience stores rather than smoke shops. By distributing
14 in those kinds of stores, JLI increased the chances these people would purchase the products.

15 298. To further drive curiosity and interest, and make it so its target audience, and
16 especially teenagers, would purchase JUUL, JLI instructed retailers to display the products in an
17 unusual fashion. Whereas cigarettes and other tobacco products have long been kept behind the
18 counter, JLI designed display cases that would sit on store shelves. JLI intentionally designed the
19 clear display cases so that the bright white, sleek packaging and the flavors would catch
20 consumers' eyes and interest them in purchasing the products.

21 299. JLI knew that by asking retailers to display JUUL products separate from other
22 tobacco products, and within arms' reach, it would also suggest to consumers that JUUL was
23 safer than traditional cigarettes and that it was not an addictive drug.

1 **18. The JLI DEFENDANTS Directed and Participated in the Youth**
2 **Marketing Schemes.**

3 **a. BOWEN and MONSEES Oversaw The Youth Marketing**
4 **Scheme.**

5 300. BOWEN and MONSEES were well aware that JUUL branding was oriented
6 toward teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine.
7 After launch, executives and directors discussed whether to rein in the advertising to teenagers.

8 301. But some company leaders opposed any actions to curb youth sales. Youth sales
9 were a large potential source of revenue.¹⁴² As one manager explained, perhaps “people internally
10 had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people had no problem with 500
11 percent year-over-year growth.”¹⁴³ And company leaders understood that teenagers who were
12 hooked on nicotine were the most likely segment to become lifelong addicts and thus were the
13 most profitable customers to target.¹⁴⁴

14 302. In October 2015, JLI leadership resolved the debate in favor of selling to teens. JLI
15 pressed ahead with its youth-oriented Vaporized ad campaign through early 2016.¹⁴⁵

16 303. By March 2016, however, JLI employees internally recognized that its efforts to
17 market to children were too obvious. Around this time, Pax Labs, Inc. reoriented its JUUL
18 advertising from the explicitly youth-oriented Vaporized campaign to a more subtle approach to
19 appeal to the young. The advertising’s key themes continued to include pleasure/relaxation,
20 socialization/romance, and flavors¹⁴⁶—all of which still appealed to teenagers.

21 304. BOWEN and MONSEES continued to direct and approve misleading marketing
22 campaigns long after launch. For example, JLI deceptively marketed mint to youth, through
23 flavor-driven advertising, hashtag campaigns and ads cross-promoting mango and mint. Through

24 ¹⁴² Chris Kirkham, Juul Disregarded Early Evidence it was Hooking Teens, Reuters (Nov. 5,
25 2019, 11:00 AM GMT), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

26 ¹⁴³ *Id.*

27 ¹⁴⁴ *Id.*

28 ¹⁴⁵ The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler et
al., JUUL Advertising Over Its First Three Years on the Market, Stanford Research Into the
Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 7.

¹⁴⁶ Robert K. Jackler et al., JUUL Advertising Over Its First Three Years on the Market, Stanford
Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 9.

1 their positions on the JLI Board of Directors, BOWEN and MONSEES were directly responsible
2 for this marketing, as they had “final say” over all of JLI’s marketing activities.¹⁴⁷ In other words,
3 JLI DEFENDANTS controlled the messaging around JUUL products.

4 **F. The JLI DEFENDANTS Knew Their Scheme to Attract Young Smokers Had**
5 **Worked.**

6 305. Within a few months of the JUUL’s commercial release in June 2015, a former
7 JUUL executive reportedly told the New York Times that JUUL “quickly realized that teenagers
8 were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social
9 media.”¹⁴⁸

10 306. JLI tracked and closely monitored usage among youth through social media,
11 online surveys, YouTube videos, hashtags, likes, email lists, and myriad other sources.

12 307. From the outset, JLI was well-aware that a huge portion of its sales was going to
13 persons under age 21, but did nothing to curb, prevent, or mitigate the harms that its products
14 could cause.

15 308. As time continued, and JLI became aware of the numbers of young people
16 purchasing and using its products, JLI eventually announced that it suspended its broadcast, print,
17 and digital product advertising in the United States.¹⁴⁹

18 309. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice
19 that their practices of marketing to minors needed to stop. It issued a series of *Warnings Letters*
20 and enforcement actions:

21 310. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette
22 manufacturers putting them on notice that their products were being used by youth at disturbing

23 ¹⁴⁷ Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the
24 Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform,
25 House of Representatives, 116th Cong. 70 (2019) (statement of JAMES MONSEES, CPO, JLI
26 Labs).

27 ¹⁴⁸ Matt Richtel & Shiela Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The*
28 *E-cigarette Company Says It Never Sought Teenage Users, But the F.D.A. is Investigating*
Whether Juul Intentionally Marketed its Devices to Youth, N.Y. TIMES (Aug. 27, 2018),
www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html.

¹⁴⁹ Megan Graham, *Juul Suspends Broadcast, Print and Digital Product Advertising in the US*,
CNBC (Sept. 25, 2019, 9:19 AM EDT), <https://www.cnbc.com/2019/09/25/juul-suspends-broadcast-print-and-digital-product-ads-in-the-us.html>.

1 rates.¹⁵⁰ The FDA additionally requested manufacturers to enhance their compliance monitoring
2 mechanisms, implement stricter age verification methods, and limit quantities and volume of e-
3 cigarette products that could be purchased at a time.¹⁵¹

4 311. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the
5 popularity of its products among youth and demanding that JLI produce documents regarding its
6 marketing practices.¹⁵²

7 312. In April 2018, the FDA conducted an undercover enforcement effort, which
8 resulted in fifty-six warning letters issued to online retailers, and six civil money complaints to
9 retail establishments, all of which were related to the illegal sale of e-cigarettes to minors.¹⁵³
10 Manufacturers such as JLI were also sent letters requesting documents regarding their marketing
11 and sales methods.¹⁵⁴

12 313. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than
13 a thousand documents relating to JLI's sales and marketing practices.¹⁵⁵ Since then, the FDA, the
14 Federal Trade Commission, multiple state attorneys general and the U.S. House of
15 Representatives Committee on Oversight and Reform have all commenced investigations into
16
17

18 ¹⁵⁰ *Letter from US FDA to Kevin Burns*, U.S. Food & Drug Admin. (Sept. 12, 2018),
<https://www.fda.gov/media/119669/download>.

19 ¹⁵¹ Press Release, *FDA takes new steps to address epidemic of youth e-cigarette use, including a*
20 *historic action against more than 1,300 retailers and 5 major manufacturers for their roles*
21 *perpetuating youth access: Warning letters and civil money penalty complaints to retailers are*
22 *largest coordinated enforcement effort in agency history; FDA requests manufacturers provide*
plan for mitigating youth sales within 60 days; warns it may restrict flavored e-cigarettes to, US
Food & Drug Administration (Sept. 11, 2018), [https://www.fda.gov/news-
events/pressannouncements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-
including-historicaction-against-more](https://www.fda.gov/news-events/pressannouncements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historicaction-against-more).

23 ¹⁵² Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to*
24 *Zaid Rouag, at JUUL Labs, Inc.*, U.S. Food & Drug Admin. (Apr. 24, 2018),
<https://www.fda.gov/media/112339/download>.

25 ¹⁵³ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
26 *Products on the Market Without Premarket Authorization*, U.S. Food & Drug Admin. (Jan. 2020),
<https://www.fda.gov/media/133880/download>.

27 ¹⁵⁴ *Id.*

28 ¹⁵⁵ Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of*
Headquarters, Wash. Post (Oct. 2, 2018),
[https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-
cigarette-documents-surprise-inspection-headquarters/](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/).

1 JLI's role in the youth vaping epidemic and whether JLI's marketing practices purposefully
2 targeted youth.

3 **G. ALTRIA Provided Services to JLI to Expand JUUL Sales and Maintain**
4 **JUUL's Position as the Dominant E-Cigarette.**

5 **1. JLI DEFENDANTS and ALTRIA Coordinated to Market JUUL in**
6 **Highly-Visible Retail Locations.**

7 314. When ALTRIA announced its \$12.8 billion investment in JUUL, part of the
8 agreement was that ALTRIA would provide JUUL with this premium shelf space.¹⁵⁶

9 315. Throughout 2018, while ALTRIA was in active discussions with JUUL regarding
10 a significant investment by ALTRIA, ALTRIA recognized that antitrust concerns would require it
11 to wind down sales of its signature ENDS, the MarkTen, if it were to acquire a stake in JUUL.

12 316. Notwithstanding its plans to cease manufacturing and selling its then-existing e-
13 vapor products, ALTRIA spent approximately \$100 million in 2018 to secure shelf-space at
14 retailers for e-vapor products— purportedly for the MarkTen ENDS that it stopped manufacturing
15 in 2018, although sales data suggests this was not the true reason for purchasing the shelf space:
16 ALTRIA's short-lived 2018 launch of its pod-based MarkTen Elite put that product in only
17 25,000 stores, whereas its 2014 launch of the original MarkTen saw the MarkTen reaching
18 60,000 stores in the first month in the western United States alone. ALTRIA's payments for shelf
19 space were a mixture of “cash and display fixtures in exchange for a commitment that its e-
20 cigarettes would occupy prime shelf space for at least two years.”¹⁵⁷ But ALTRIA had no need
21 for two years of prominent shelf space while it was actively scaling back sales of the original
22 MarkTen and had no true plans for a wide launch of the MarkTen Elite.

23 317. ALTRIA's purchase of shelf space in 2018 shows how ALTRIA and JLI
24 DEFENDANTS were coordinating even before ALTRIA announced its investment in JLI.
25 ALTRIA's actions ensured that, even after public and regulatory scrutiny forced JLI to stop its
26 youth-oriented advertising, JUUL products would still be placed where kids are most likely to see

27 ¹⁵⁶ *Id.*

28 ¹⁵⁷ Jennifer Maloney & John McKinnon, *Altria-Juul Deal Is Stuck in Antitrust Review*, Wall St. J. (Jan. 17, 2020), <https://www.wsj.com/articles/altria-juul-deal-is-stuck-in-antitrust-review-11579257002>.

1 them—next to Marlboros, the most iconic, popular brand of cigarettes among underage users—in
2 a location they are most likely to buy them -- retail establishments.¹⁵⁸

3 **2. ALTRIA Contributes to the Success of the JLI DEFENDANTS’**
4 **Scheme Through a Range of Coordinated Activities.**

5 318. While JLI and ALTRIA remain separate corporate entities, following its equity
6 investment in JLI, ALTRIA publicly acknowledged at least some of the systemic links between
7 ALTRIA and JLI – i.e., contractual relationships, financial ties, and continuing coordination of
8 activities. ALTRIA provided services to JLI in the areas of “direct marketing; sales, distribution
9 and fixture services; and regulatory affairs.”¹⁵⁹ These services included:

- 10 • “Piloting a distribution program to provide long haul freight, warehouse
11 storage and last mile freight services.”
- 12 • “Making available [ALTRIA’s] previously contracted shelf space with certain
13 retailers,” thus allowing JLI products to receive prominent placement
14 alongside a top-rated brand of combustible cigarettes, Marlboro, favored by
15 youth.
- 16 • “Executing direct mail and email campaigns and related activities. . . .”
- 17 • “Leveraging Altria’s field sales force to . . . provide services such as limited
18 initiative selling, hanging signs, light product merchandising, and surveys of a
19 subset of the retail stores that Altria calls upon.”
- 20 • “Providing regulatory affairs consulting and related services to [JUUL] as it
21 prepares its PMTA application.”¹⁶⁰

22
23 319. ALTRIA of course also brings lobbying muscle to the table, which has played an
24 important role in staving off regulation by preventing new federal or state legislation targeting
25 JUUL or the ENDS category more broadly. ALTRIA “has a potent lobbying network in
26

27 ¹⁵⁸ Laura Bach, *Where Do Youth Get Their E-Cigarettes?*, Campaign for Tobacco Free Kids
(Dec. 3, 2019), <https://www.tobaccofreekids.org/assets/factsheets/0403.pdf>.

28 ¹⁵⁹ Letter from Howard A. Willard III to Senator Richard J. Durbin, 11 (October 14, 2019).

¹⁶⁰ *Id.* at 13.

1 Washington [D.C.] and around the country.”¹⁶¹ While an ALTRIA spokesman has denied that
2 there was any contractual services agreement for lobbying between JLI and ALTRIA, he admitted
3 that he did not know what informal advice and conversations ALTRIA has had with JLI about
4 lobbying and efforts. Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids,
5 which has been involved in many state lobbying battles, said, “It’s hard to say where Altria ends
6 and Juul begins.”¹⁶² Since JLI and ALTRIA joined forces, JLI’s spending on lobbying has risen
7 significantly. JLI spent \$4.28 million on lobbying in 2019, compared to \$1.64 million in 2018.¹⁶³

8 320. In addition to these services, ALTRIA and JLI share leadership. ALTRIA’s
9 investment allowed it to appoint one third of JLI’s board, and in October 2019, JLI CEO resigned
10 to be replaced by an ALTRIA career executive, K.C. Crosthwaite.

11 321. Another example of ALTRIA’s efforts to aid JLI in misleading regulators is
12 ALTRIA’s role in the FDA’s criticism of JLI. By the fall of 2018, JLI was under intense scrutiny.
13 In April 2018, a group of eleven United States senators wrote JLI’s CEO, Kevin Burns, a letter
14 declaring that the JUUL device and JUUL pods “are undermining our nation’s efforts to reduce
15 tobacco use among youth and putting an entire new generation of children at risk of nicotine
16 addiction and other health consequences.”¹⁶⁴ Less than one week later, then FDA Commissioner
17 Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and enforcement
18 actions against JLI in particular.¹⁶⁵ At the same time, the FDA sent JLI a request for documents
19 relating to marketing, product design, and public health impact.¹⁶⁶ In July 2018, Massachusetts

20 _____
21 ¹⁶¹ Shelia Kaplan, *In Washington, Juul Vows to Curb Youth Vaping. Its Lobbying in States Runs
Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019),
<https://www.nytimes.com/2019/04/28/health/juul-lobbying-statesecigarettes.html>.

22 ¹⁶² *Id.*

23 ¹⁶³ Center for Responsive Politics, Client Profile: JUUL Labs,
<https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920>
(last visited February 6, 2020).

24 ¹⁶⁴ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*,
U.S. SENATE (Apr. 18, 2018),
<https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

26 ¹⁶⁵ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D.*, (Apr. 23, 2018),
https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-newenforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

28 ¹⁶⁶ *Id.*

1 Attorney General Maura Healey announced an investigation into JLI regarding marketing and
2 sale to minors.¹⁶⁷ In September 2018, FDA Commissioner Gottlieb called youth vaping an
3 “epidemic” and sent letters to JLI, ALTRIA, and other e-cigarette manufacturers demanding a
4 plan to reduce youth use.¹⁶⁸ In October 2018, the FDA raided JLI’s headquarters and seized more
5 than a thousand documents relating to JLI’s sales and marketing practices.¹⁶⁹

6 322. On November 13, 2018, JLI responded with an “Action Plan,” declaring its intent
7 to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors on the
8 JLI website to adults age 21 and over, and shut down its social media accounts.¹⁷⁰

9 323. This was more talk than action. Under JLI’s “Action Plan,” JLI continued to offer
10 the full range of flavors (including the popular mango) online—a market which teens are
11 particularly adept at navigating. Also because many minors using e-cigarettes get them from
12 social sources, such as older friends,¹⁷¹ as long as mango and other flavors were available for sale
13 somewhere, children would find a way to get them.

14 324. As the pressure on JLI intensified, ALTRIA stepped in to assist – despite its
15 previous clear criticism of JLI’s conduct in its October 25th letter to the FDA.¹⁷² ALTRIA
16 characterized its investment as one intended to “accelerate harm reduction and drive growth.”¹⁷³

17
18
19
20 ¹⁶⁷ *AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over*
Marketing and Sale to Minors, MASS.GOV (July 24, 2018), <https://www.mass.gov/news/aghealey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

21 ¹⁶⁸ *See Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, FOOD &
22 DRUG ADMIN. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

23 ¹⁶⁹ *See Letter from US FDA to Kevin Burns, supra.*

24 ¹⁷⁰ JUUL Labs, Inc., *JUUL Labs Action Plan* (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

25 ¹⁷¹ *See* Jessica K. Pepper et al., *How Do Adolescents Get Their E-Cigarettes and Other Electronic*
Vaping Devices?, 33 *Am. J. Health Promotion* 420 (Aug. 1, 2018),
26 <https://doi.org/10.1177/0890117118790366>.

27 ¹⁷² *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*
Drive Growth, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST),
<https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

28 ¹⁷³ *Id.*

1 In an investor presentation in 2019, ALTRIA described JLI as having a “unique and compelling
2 product” and included the following graphic:¹⁷⁴



10

11 325. The hypocrisy is striking: ALTRIA made this investment only *seven weeks* after
12 sending a letter to the FDA acknowledging that “pod-based [vaping] products significantly
13 contribute to the rise in youth use of e-vapor products,” and expressly criticizing the marketing
14 practices employed by JLI.¹⁷⁵

15 326. As the president of the Campaign for Tobacco-Free Kids observed upon
16 announcement of the deal, “Altria has no interest in seriously reducing the number of people who
17 smoke cigarettes.”¹⁷⁶

18 327. ALTRIA would not have made such an investment if it did not intend to grow
19 JLI’s already enormous market even more. In fact, ALTRIA said as much when it announced its
20 investment, explaining that its investment in JLI “enhances future growth prospects.” ALTRIA
21 committed to apply “its logistics and distribution experience to help JLI expand its reach and
22 efficiency.”¹⁷⁷ Since the deal was inked in December 2018, ALTRIA’s actions clearly helped JLI

23 ¹⁷⁴ Altria Group, Inc. 2019 CAGNY Investor Presentation, Available at
24 <http://investor.altria.com/Cache/1500117496.PDF?O=PDF&T=&Y=&D=&FID=1500117496&iid=4087349>.

25 ¹⁷⁵ Letter from Howard A. Willard III, Altria Group, Inc., to Scott Gottlieb, M.D., FDA
26 Commissioner (Oct. 25, 2018), <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

27 ¹⁷⁶ Sheila Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. TIMES
28 (Dec. 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

¹⁷⁷ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*
Footnote continued on next page

1 maintain, if not expand, its market share—a market share that, based on ALTRIA’s own October
2 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising
3 practices that directly contributed to youth vaping. ALTRIA’s Second Quarter 2019 Earnings Call
4 reported that JLI continued to grow in the first half of 2019, from a 33 percent category share in
5 2018 to 48 percent by the second quarter 2019. JLI’s expected revenue for 2019 is \$3.4 billion,
6 nearly triple what it was in 2018.¹⁷⁸

7 328. From JLI’s beginnings, ALTRIA had “followed Juul’s journey rather closely.”¹⁷⁹
8 ALTRIA Chairman and CEO Howard Willard said that for years, his company “watched Juul
9 carefully to see if it had staying power.”¹⁸⁰ ALTRIA decided it did. As Willard explained:
10 “During 2018, we concluded that JLI had not only become the retail share leader in the U.S. e-
11 vapor category, but that no other brand was close to it in share or future growth potential.”¹⁸¹

12 329. Notwithstanding ALTRIA’s statements to the FDA that JLI was marketing and
13 advertising its products in a way that contributed to the youth vaping epidemic, upon
14 announcement of ALTRIA’s investment in JLI, Willard stated that the deal would allow ALTRIA
15 to “work[] with JLI to accelerate its mission.”¹⁸² ALTRIA committed to applying “its logistics
16 and distribution experience to help JLI expand its reach and efficiency” and offering JLI the
17 support of “Altria’s sales organization, which covers approximately 230,000 retail locations.” It
18 also gave JLI access to its “premier” retail shelf space while allowing it to continue to sell its
19 flavored products online and provided JLI with access to the databases of all of ALTRIA’s

20 *Drive Growth*, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST),
21 [https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-
Investment-JUUL-Accelerate](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate).

22 ¹⁷⁸ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite*
Flavored Vape Restrictions, BLOOMBERG (Feb. 22, 2019),
23 [https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketingsales-
of-3-4-billion-despite-flavored-vape-ban](https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketingsales-of-3-4-billion-despite-flavored-vape-ban).

24 ¹⁷⁹ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 (Feb. 20, 2019),
25 [https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-
2019cagnyremarks.htm](https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm) at 4.

26 ¹⁸⁰ *Id.* at 4.

27 ¹⁸¹ *Id.* at 4.

28 ¹⁸² *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*
Drive Growth, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST),
[https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-
Investment-JUUL-Accelerate](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate).

1 companies. According to Willard, ALTRIA was “excited to support JLI’s highly-talented team
2 and offer [Altria’s] best-in-class services to build on their tremendous success.” ALTRIA
3 admitted that minors were using JUUL products and that “underage use of e-cigarette product is a
4 problem.” Nevertheless, ALTRIA believed its investment in JLI “strengthens its financial profile
5 and enhances future growth prospects.”

6 330. ALTRIA’s decision to prioritize profits over continuing to contribute to the
7 dangers of youth vaping did not go unnoticed. On February 6, 2019, former FDA Commissioner
8 Gottlieb sent ALTRIA another letter “regarding representations” made by ALTRIA
9 acknowledging that it “has an obligation to take action to help address the mounting epidemic of
10 youth addiction to tobacco products.”¹⁸³ Then-Commissioner Gottlieb told ALTRIA that its
11 recent purchase of a 35 percent ownership of JLI “contradict[s] the commitments you made to the
12 FDA.” The FDA demanded ALTRIA be prepared to explain itself regarding its “plans to stop
13 marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Commissioner
14 Gottlieb told ALTRIA that “deeply concerning data” shows that “youth use of JUUL represents a
15 significant proportion of overall use of e-cigarette products by children” and despite any steps the
16 companies had taken to address the issue he “ha[d] no reason to believe these youth patterns of
17 use are abating in the near term, and they certainly do not appear to be reversing.”

18 331. In March 2019, ALTRIA and JLI met with Gottlieb in a meeting the
19 Commissioner described as “difficult.”¹⁸⁴ Gottlieb “did not come away with any evidence that
20 public health concerns drove ALTRIA’s decision to invest in JLI, and instead said it looks like “a
21 business decision.” According to reporting by the *New York Times*, Gottlieb criticized JLI’s
22 lobbying of Congress and the White House, stating, “We have taken your meetings, returned your
23 calls and I had personally met with you more times than I met with any other regulated company,
24 and yet you still tried to go around us to the Hill and White House and undermine our public
25

26 _____
27 ¹⁸³ Scott Gottlieb, *Letter to Howard Willard*, U.S. FOOD & DRUG ADMIN. (Feb. 6, 2019),
<https://www.fda.gov/media/122589/download>.

28 ¹⁸⁴ Kate Rooney & Angelica LaVito, *Altria Shares Fall After FDA’s Gottlieb Describes
‘Difficult’ Meeting on Juul*, CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficultmeeting-on-juul.html>.

1 health efforts. I was trying to curb the illegal use by kids of your product and you are fighting me
2 on it.”¹⁸⁵

3 332. Just a few weeks later, Gottlieb resigned his position.

4 333. In February 2020, the Securities and Exchange Commission (“SEC”) opened a
5 probe into ALTRIA’s investment in JLI to determine “whether Altria adequately disclosed to
6 shareholders the risks when it spent \$12.8 billion in 2018 to take a 35% stake in Juul.”¹⁸⁶

7 334. ALTRIA has since revised its agreement with JLI, and “will no longer provide
8 marketing and retail distribution for the startup as the companies had originally agreed. ALTRIA
9 will now focus on helping Juul with regulatory affairs, including the submission of its products
10 for approval by the Food and Drug Administration.”¹⁸⁷

11 335. The Federal Trade Commission has now filed an administrative complaint alleging
12 that JLI and ALTRIA entered a series of agreements that eliminated competition in violation of
13 federal antitrust laws.¹⁸⁸

14 **H. JLI DEFENDANTS, ALTRIA, and Others Have Successfully Caused More**
15 **Young People to Start Using E-Cigarettes, Creating a Youth E-Cigarette**
16 **Epidemic and Public Health Crisis.**

17 336. Defendants’ tactics have misled the public regarding the addictiveness and safety
18 of e-cigarettes generally, and JUUL products specifically, resulting in an epidemic of e-cigarette
19 use among youth in particular.

20 337. Defendants’ advertising and third-party strategy, as discussed above, ensured that
21 everyone from adults to young children, would believe JUULing was a cool, fun, and safe
22 activity.

23 ¹⁸⁵ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES
24 (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

25 ¹⁸⁶ Jennifer Maloney & Dave Michaels, *SEC Investigates Altria’s Investment in Juul*, WALL ST. J.
26 (Feb. 21, 2020, 3:37 PM ET), <https://www.wsj.com/articles/sec-investigates-altrias-investment-in-juul-11582317475>.

27 ¹⁸⁷ Jennifer Maloney, *Altria Takes \$4.1 Billion Charge on Juul Investment*, WALL ST. J. (Jan. 30,
28 2018, 1:18 PM ET), <https://www.wsj.com/articles/altria-takes-4-1-billion-writedown-on-juul-investment-11580386578>.

¹⁸⁸ *FTC Sues to Unwind Altria’s \$12.8 Billion Investment in Competitor JUUL*, FTC (Apr. 1,
2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul>.

1 338. To this day, JLI has not fully disclosed the health risks associated with its
2 products, has not recalled or modified its products despite the known risks, and continues to foster
3 a public health crisis, placing millions of people in harm’s way.

4 339. The vaping epidemic caused by JLI has swept the entire nation in a short period of
5 time. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends for
6 2018 reported that increases in adolescent Electronic Nicotine Delivery System (“ENDS”) vaping
7 from 2017 to 2018 were the “largest ever recorded in the past 43 years for any adolescent
8 substance use outcome in the U.S.”¹⁸⁹

9 340. The percentage of 12th grade students who reported vaping nicotine almost
10 doubled between 2017 and 2018, rising from 11 percent to 21 percent. The ten-percentage-point
11 increase in 12th grade students who reported vaping nicotine (an indicator of nicotine addiction)
12 is “twice as large as the previous record for largest-ever increase among past 30-day outcomes in
13 12th grade.”¹⁹⁰ Indeed: “One in five 12th graders vaped nicotine in the last 30 days in 2018.” And
14 because JLI controls over 50 percent of the e-cigarette market, and was released immediately
15 prior to the jump in vaping prevalence from 11 percent of teens to 21 percent, the entire increase
16 in vaping prevalence since 2016 is attributable to JLI.

17 341. Former FDA Commissioner Gottlieb has described the increase in e-cigarette
18 consumption as an “almost ubiquitous – and dangerous – trend” that is responsible for an
19 “epidemic” of nicotine use among teenagers.¹⁹¹ The rapid –indeed infectious-- adoption of e-
20 cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to
21 tobacco products.” The Commissioner identified the two primary forces driving the epidemic as
22 “youth appeal and youth access to flavored tobacco products.”¹⁹²

23
24 ¹⁸⁹ Nicholas Prieur, *National Adolescent Drug Trends in 2018*, U. OF MICH. INST. FOR SOC.
25 RESEARCH (Dec. 17, 2018), <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/>.

26 ¹⁹⁰ *Id.*

27 ¹⁹¹ *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of E-
Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply
Rising Use Among Kids*, U.S. FOOD & DRUG ADMINISTRATION (Sept. 18, 2018),
28 www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm.

¹⁹² *Id.*

1 342. Within days of the FDA’s declaration of an epidemic, U.S. Surgeon General Dr.
2 Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a
3 generation to “a lifetime of nicotine addiction and associated health risks.”¹⁹³

4 343. Even more troubling are the challenges associated with getting kids to quit JUUL
5 once they start. JLI’s aggressive social media campaign puts JLI advertisements before them
6 every day, all day. Those that want to stop thinking about it are faced with advertising when
7 engaging in their regular activities.

8 344. Moreover, many medications for breaking nicotine addictions are approved only
9 for adults.

10 **I. JLI Unraveled Decades of Progress in Reducing Teen Smoking by Exploiting**
11 **Regulatory Loopholes.**

12 345. The teen e-cigarette epidemic was by design, not by accident.

13 346. When JUUL was first developed, the FDA’s regulations on tobacco products were
14 vague as to whether they applied to vaping and e-cigarette devices. Because the regulations did
15 not explicitly identify electronic devices that dispensed tobacco and nicotine as a regulated
16 product, JLI interpreted those regulations to mean it could sell its dangerous products to anyone,
17 regardless of their age, and that it did not have to comply with the advertising and labeling
18 restrictions that restricted other tobacco companies.

19 347. Notwithstanding ALTRIA’s professed concern about flavors attracting youth
20 customers, ALTRIA submitted comments in August 2014 opposing a rule proposed by the FDA
21 (“2014 Proposed Rule”) deeming e-cigarettes for regulation under the Tobacco Act. ALTRIA
22 asserted that restrictions could result in more illicit sales, and that adults also liked fruity and
23 sweet e-cigarette flavors.¹⁹⁴

25 ¹⁹³ Surgeon General’s Advisory on E-cigarette Use Among Youth, CDC (last updated Apr. 9,
26 2019), [www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html)
27 [advisory/index.html](http://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html).

28 ¹⁹⁴ ALTRIA Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco Products
to be Subject to the Federal Food, Drug, and Cosmetic Act at 47-48 (August 8, 2014),
[https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federalregulation-](https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federalregulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf)
[of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf](https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federalregulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf).

1 348. As other e-cigarette companies began to enter the market, JLI no doubt knew this
2 gray area was unlikely to stay gray for long. Knowing the clock was ticking, JLI wasted no effort
3 getting as many young people addicted as possible while it still viewed itself as “unregulated.”
4 The aggressive advertising described above was designed not just to sell the products to
5 teenagers, but to sell the products to as many teenagers as possible while it still had a plausible
6 defense to any assertion it was violating FDA regulations. By hooking teens, JLI not only ensured
7 it would have loyal customers for decades, but those teens would influence their friends.

8 349. Even after the FDA issued its final deeming rule in 2016, e-cigarette industry
9 lobbying continued to pay dividends to companies like JLI. In 2017, when Dr. Scott Gottlieb took
10 over as the FDA Commissioner, one of his first major acts was to grant e-cigarette companies a
11 four-year extension to comply with the deeming rule, even as data indicated sharp increases in
12 teen e-cigarette use.¹⁹⁵ Gottlieb had previously served on the board of Kure, a chain of e-cigarette
13 lounges in the United States.¹⁹⁶

14 350. JLI DEFENDANTS and ALTRIA successfully shielded the popular mint flavor
15 from regulation. They publicly defended mint flavoring as a substitute for menthol cigarette
16 smokers, when in fact JLI’s studies indicated that mint users are not former menthol cigarette
17 smokers. By fighting to keep mint as the last flavor on the market, the cigarette industry could
18 continue to appeal to non-smokers, including youth. JLI DEFENDANTS coordinated with
19 ALTRIA to pursue a fraudulent scheme to convince the FDA into leaving the mint flavor on the
20 market, sacrificing other flavors in the process.

21 351. JLI knew that mint was the most popular JUUL pod. Though other flavors might
22 draw new customers, JLI’s most addictive “flavor” predictably became its most popular.

23
24
25
26 ¹⁹⁵ Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal*
27 *Inaction*, NY Times.com (2019), <https://www.nytimes.com/2019/10/14/health/vaping-ecigarettes-fda.html> (last visited Mar 4, 2020).

28 ¹⁹⁶ Zeke Faux & Dune Lawrence, *Vaping Venture Poses Potential Conflict for Trump's FDA*
Nominee, Bloomberg (2017), <https://www.bloomberg.com/news/articles/2017-04-19/vaping-venture-poses-potential-conflict-for-trump-s-fda-nominee>.

1 352. JLI and ALTRIA coordinated their efforts in misleading the FDA with the “Action
2 Plan” discussed above, and successfully saved mint JUUL pods, at least until November 2019
3 when JLI withdrew it from the market in the face of growing scrutiny.¹⁹⁷

4 353. JLI continues to sell menthol-flavored products.¹⁹⁸

5 **J. JUUL Usage Increases the Risk of Cardiovascular, Pulmonary, Neurological,**
6 **and Other Bodily Injuries.**

7 **1. JUUL Products Cause Acute and Chronic Lung (Pulmonary) Injuries.**

8 354. The use of e-cigarettes, including JUUL, cause significant lung toxicity¹⁹⁹ and
9 have been implicated in multiple severe pathological lung injuries.

10 355. The flavoring compounds used in e-cigarettes include chemicals known to be
11 toxins if inhaled, such as diacetyl, acetyl propionyl, and benzaldehyde. These chemicals are
12 linked to serious lung disease.²⁰⁰ In addition, ultrafine metal particles from the heating device
13 have been found in e-cigarette aerosol, and in e-cigarette user’s lungs.²⁰¹

14 356. Very recently, researchers discovered in some JUUL nicotine pods a microbial
15 toxin, glucan, which can cause inflammation in the airway and may lead to long-term lung
16 damage.²⁰²

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19 ¹⁹⁷ Ellen Huet, *JLI Pulls Mint-Flavor Vaping Products, but Menthol Remains*, Bloomberg (Nov.
20 7, 2019), <https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mintflavored-vaping-products>.

21 ¹⁹⁸ Sheila Kaplan, *Juul Ends E-Cigarette Sales of Mint-Flavored Pods*, N.Y. Times (Nov. 7,
22 2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

23 ¹⁹⁹ Lauren F. Chun et al., *Pulmonary Toxicity of E-cigarettes*, 313 Am. J. Physio. Lung Cell Mol.
24 Physiol L193 (May 18, 2017), <https://www.ncbi.nlm.nih.gov/pubmed/28522559>.

25 ²⁰⁰ Centers for Disease Control & Prevention, *Flavorings-Related Lung Disease* (2017),
26 <https://www.cdc.gov/niosh/topics/flavorings/default.html>; Lee, *Modeling Cardiovascular Risks of*
27 *E-Cigarettes, supra*; Sheila Kaplan & Matt Richtel, *Mysterious Vaping Illness That’s ‘Becoming*
28 *an Epidemic,* N.Y. TIMES (Aug. 31, 2019), <https://www.nytimes.com/2019/08/31/health/vaping-marijuana-ecigarettes-sickness.html?auth=login-email&login=email>.

29 ²⁰¹ Caporale, *Acute Effects of Electronic Cigarette Aerosol Inhalation on Vascular Function,*
30 *supra.*

31 ²⁰² Forty-six percent of the samples contained detectable levels of glucan. Diane Caruna, *A*
32 *Microbial Toxin Found in Some Juul Products*, VAPING POST (Jan. 8, 2020); Abby Haglage,
33 *Harvard Researchers Discovery Toxin in Juul Pods That Can Cause Longterm Lung Damage,*
34 YAHOO LIFESTYLE (Jan. 7, 2020); *Glucan, A Microbial Toxin, Found in Juul’s Nicotine Vaping*
35 *Liquids*, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH (Jan. 2, 2020).

1 357. Recent studies also have linked lung inflammation, poor immune response,
2 weakened lung structure, ‘liquid pneumonia,’ chest abnormalities, and clinical respiratory
3 symptoms, some requiring intubation and mechanical ventilation, to e-cigarette use.²⁰³
4 Spontaneous pneumothorax (lung collapse) is also linked to vaping and use of e-cigarettes.²⁰⁴

5 358. It is well-established that endothelial dysfunction and injury from direct toxic
6 effects of inhalants such as cigarette smoke, cause lung injuries such as chronic obstructive
7 pulmonary disease (COPD), emphysema, asthma and chronic bronchitis.²⁰⁵

8 359. Recent epidemiological and toxicological studies detected links between asthma
9 frequency and e-cigarette use in adolescents and reported that vaporized e-liquids containing the
10 same flavor aldehydes found in JUUL induce inflammation in human respiratory epithelia.²⁰⁶

11 360. Over the summer of 2019, healthcare providers started to note an influx of acute
12 respiratory failure and a myriad of lung injuries in patients who were using e-cigarettes. This
13 prompted a Center for Disease Control (“CDC”) investigation of an outbreak of vaping-
14 associated lung injuries. The reported injuries mirrored the injuries that had been reported in the
15 medical literature since 2012.

16 361. Recognizing the seriousness of the vaping epidemic, in October 2019, the CDC
17 issued treatment guidelines to assist doctors in clinical practice including a protocol for inquiring

18 ²⁰³ Travis S. Henry, et al., *Imaging of Vaping-Associated Lung Disease*, 381 NEW ENGLAND J. OF
19 MED. 1486 (Sept. 6, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1911995>; Jennifer E.
20 Layden et al., *Pulmonary Illness Related to E-Cigarette Use in Illinois and Wisconsin—*
21 *Preliminary Report*, 381 NEW ENGLAND J. OF MED. (Sept. 6, 2019),
22 <https://www.nejm.org/doi/full/10.1056/NEJMoa1911614>; Matthew C. Madison, *Electronic*
23 *Cigarettes Disrupt Lung Lipid Homeostasis and Innate Immunity Independent of Nicotine*, 129 J.
24 CLINICAL INVESTIGATION 4290 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31483291>; Sean
25 D. Maddock, et al., *Pulmonary Lipid-Laden Macrophages and Vaping*, 381 NEW ENGLAND J. OF
26 MED. 1488 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1912038>; Martin, et
27 al., *E-Cigarette Use Results in Suppression of Immune and Inflammatory-Response Genes in*
28 *Nasal Epithelial Cells Similar to Cigarette Smoke*, 311 AM. J. OF PHYSIOLOGY L135 (July 2016),
<https://www.ncbi.nlm.nih.gov/pubmed/27288488>.

²⁰⁴ Alex Bonilla et al., *Recurrent Spontaneous Pneumothoraces and Vaping in an 18-year-old*
Man: a Case Report and Review of the Literature, 13 J. OF MED. CASE REPORTS 283 (Sept. 9,
2019), <https://doi.org/10.1186/s13256-019-2215-4>.

²⁰⁵ Francesca Polverino et al. *COPD as an Endothelial Disorder: Endothelial Injury Linking*
Lesions in the Lungs and Other Organs? 8 Pulm. Circ. 2045894018758528 (2018),
<https://www.ncbi.nlm.nih.gov/pubmed/29468936>.

²⁰⁶ Phillip W. Clapp and Ilona Jaspers, *Electronic Cigarettes: Their Constituents and Potential*
Links to Asthma, 79 Curr Allergy Asthma Rep. 17 (2017),
<https://www.ncbi.nlm.nih.gov/pubmed/28983782>.

1 about vaping or e-cigarette history of use. The CDC defined a new recognized medical condition
2 referred to as E-cigarette, or Vaping, Product Use Associated Lung Injury illnesses (EVALI).

3 362. Hypersensitivity pneumonitis is a disease of the lungs in which the lungs become
4 inflamed as a result of an allergic reaction to inhaled dust, fungus, molds or chemicals.

5 Hypersensitivity pneumonitis has been linked to the use of e-cigarettes, such as JUUL, since
6 2015.²⁰⁷

7 363. The multiple pathological lung injuries and toxicity associated with e-cigarette use,
8 including JUUL, can lead to acute respiratory failure, intubation with mechanic ventilation and
9 death.

10 364. It has been established that the use of e-cigarettes, including JUUL, can lead to
11 acute and chronic lung injuries such as EVALI, lipoid pneumonia, organizing pneumonia,
12 chemical pneumonitis, alveolar hemorrhage, bronchiolitis obliterans (popcorn lung),
13 pneumothorax, acute respiratory failure, acute respiratory distress syndrome (ARDS), asthma,
14 emphysema and COPD. Defendants never warned the public of the risk of serious acute and
15 chronic lung injuries that were associated with the use of e-cigarettes, including JUUL. In fact,
16 JLI downplayed any risk associated with the inhalation of JUUL aerosol and continues to overtly
17 promote JUUL as safe.

18 **2. JUUL Products Cause Cardiovascular Injuries.**

19 365. In addition to severe lung injuries and addiction, JUUL products cause significant
20 and severe risks of cardiovascular injuries. Studies have shown that use of e-cigarettes such as
21 JUUL increase the risk of strokes and heart attacks.²⁰⁸

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23
24 ²⁰⁷ Graham Atkins et al., *Acute Inhalational Lung Injury Related to the Use of Electronic Nicotine
Delivery Systems (ENDS)*, 148 Chest 83A (2015).

25 ²⁰⁸ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries*, American Stroke
26 Association News Release, Abstract 9, Session A2 (Jan. 30, 2019),
[https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-
27 attack-diseased-arteries](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries); Mohindar R. Vindhyaal et al., *Impact on Cardiovascular Outcomes Among
E-cigarette Users: A Review From National Health Interview Surveys*, 73 J. of the Am. College
28 of Cardiology Suppl. 2 (2019), www.onlinejacc.org/content/73/9_Supplement_2/11.; Paul M.
Ndunda & Tabitha M. Muutu, *Electronic Cigarette Use is Associated with a Higher Risk of
Stroke*, 50 Int'l Stroke Conference 2019 Oral Abstracts: Community/Risk Factors, Suppl. 1,
Abst. 9, www.ahajournals.org/doi/10.1161/str.50.suppl_1.9.

1 366. Research has demonstrated that e-cigarettes significantly increase blood pressure
2 and arterial stiffness, which also increases the risk of for strokes and heart attacks.²⁰⁹ Further,
3 scientists have found that e-cigarettes cause oxidative stress, which leads to vascular disease and
4 damage, known risk factors for cardiovascular injuries.²¹⁰

5 367. The overarching conclusion from dozens of studies published in the past 8 years is
6 that use of e-cigarettes, including JUUL, increases the risk of cardiovascular injury which can
7 lead to strokes, heart attacks and death.

8 368. JLI never warned the public or consumers of the serious and significant risk of
9 cardiovascular injuries associated with its products.

10 **3. JUUL Products Cause and Contribute to Seizure(s).**

11 369. On April 3, 2019 the FDA Center for Tobacco Products issued a Special
12 Announcement notifying the public of an increase in reports of tobacco-related seizures,
13 specifically relating to an increase in e-cigarette use, particularly among youth.²¹¹

14 370. It is well-documented that nicotine poisoning can cause seizures, including
15 ingestion of e-cigarette fluid.²¹²

16 371. Nicotine has proconvulsive actions and, when overdosed, induces convulsive
17 seizures both in humans and animals.²¹³ JUUL's high nicotine content and addictive nature cause
18 JUUL users to be highly susceptible to seizures.

20
21 ²⁰⁹ Charalambos Vlachopoulos et al., *Electronic Cigarette Smoking Increases Aortic Stiffness and Blood Pressure in Young Smokers*, 67 J. Am. Coll. Cardiol. (2016).

22 ²¹⁰ Dennis Thompson, *Vaping May Hurt the Lining of Your Blood Vessels*, WebMD HealthDay
23 Reporter (May 28, 2019), www.webmd.com/mental-health/addiction/news/20190528/vapingmay-hurt-the-lining-of-your-blood-vessels#1; JUUL e-cigarettes and JUUL pods deliver dangerous
24 toxins and carcinogens to users. The ingredients in JUUL pods include glycerol, propylene glycol, nicotine, benzoic acid, and flavoring chemicals, www.juul.com/learn/pods.

25 ²¹¹ *Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults*, U.S. Food & Drug Administration (April 10, 2019), <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involvingyouth-and-young-adults>.

27 ²¹² Gerdinique C. Maessen et al., *Nicotine Intoxication by E-cigarette Liquids: A Study of Case Reports*, Pathophysiology, 58 Clinical Toxicology 1 (2020), <https://www.tandfonline.com/doi/full/10.1080/15563650.2019.1636994>.

28 ²¹³ Higor Iha et al. *Nicotine Elicits Convulsive Seizures by Activating Amygdalar Neurons*, 8 Frontiers in Pharmacology 57 (2017).

1 372. Seizures following e-cigarette use are a significant cause for concern due to the
2 unnecessarily high levels of nicotine delivered, by design, via JUUL. As described herein, JLI
3 intentionally designed its products to deliver a higher amount of nicotine, particularly targeting
4 young people, and then failed to warn of the subsequent risks. JUUL devices were deliberately
5 designed to deliver higher concentrations of nicotine per puff as compared to cigarettes, creating
6 the risk for addiction as well as the risk of seizure due to potentially toxic levels of nicotine
7 exposure.

8 373. JLI never warned the public or consumers of the risk of seizures associated with
9 the use of e-cigarettes including JUUL.

10 **K. ZLAB DEFENDANTS Designed E-Liquid Pods to Profit from JLI's Design**
11 **and Marketing Scheme**

12 374. ZLAB DEFENDANTS began designing, manufacturing, supplying, distributing,
13 marketing and selling their e-liquid pod products as of 2016, after JLI had established its presence
14 in the electronic cigarette market and honed its marketing scheme.

15 375. ZLAB DEFENDANTS offer for sale, through their own website or through third-
16 party vendors, various e-liquid pod and e-cigarette devices. ZLAB DEFENDANTS market and
17 sell their e-liquid pod product under the brand name “Plus Pods” and offered these products in
18 flavors identical to those researched, marketed, and sold by JLI DEFENDANTS.²¹⁴

19 376. ZLAB DEFENDANTS sought to capitalize on and profit from the youth-targeting
20 advertising tactics and the youth-dominant market created by JLI DEFENDANTS. ZLAB
21 DEFENDANTS designed and marketed their product to be similar and interchangeable with JLI
22 DEFENDANTS’ Juul pods. For example, on the website Ziip Stock, a disposable variant of
23 ZLAB DEFENDANTS’ product claims to offer “6% nicotine” strength and “1.2 mL of e-liquid”
24 which is “Equal to 2 JUUL Compatible Pods.”²¹⁵

27 _____
28 ²¹⁴ [https://ziipstock.com/products/plus-bar-disposable-vape-device](https://ziipstock.com/products/plus-bar-disposable-vape-device;);
<https://www.premiumejuice.com/products/plus-pods-juul-compatible>

²¹⁵ <https://ziipstock.com/products/plus-bar-disposable-vape-device>

1 377. On another website, ZLAB DEFENDANTS tout the similarity of their product to
2 JUUL products, stating that “We offer 4 nicotine levels and 12 amazing flavors. Compatible with
3 Juul*. Try it now!”²¹⁶

4 378. ZLAB DEFENDANTS leveraged the similarities and interchangeability of their
5 product with that of JLI DEFENDANTS’ Juul pods in order to market and sell their pod products.
6 ZLAB DEFENDANTS relied on popular e-cigarette and vaping websites to evaluate their
7 product in comparison to Juul pods. Such reviews would advance ZLAB DEFENDANTS’
8 products as an interchangeable alternative to JUUL pods, offering the same flavor profile and
9 nicotine strengths.

10 379. For example, on September 5, 2019, popular e-cigarette website “Vaping360”
11 posted a review of ZLAB DEFENDANTS’ Plus Pod product, noting that they were “alternative
12 JUUL pods” and “hold more liquid and are stronger than the original [JUUL] pods.”²¹⁷ The
13 review described how “Plus Pod Mango tastes a lot like the original JUUL version” and the
14 similarities between ZLAB DEFENDANTS’ Iced Mint flavor and JLI DEFENDANTS’ Cool
15 Mint flavor.²¹⁸ The reviewer noted that they had “no issues clicking the Plus Pods into my JUUL
16 battery.”²¹⁹ The review offered a coupon to purchase Plus Pods.

17 380. ZLAB DEFENDANTS’ product design is substantially similar to that designed
18 and marketed by JLI DEFENDANTS:

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25 _____
26 ²¹⁶ <https://wholesales.ziiplab.com/>

27 ²¹⁷ [https://vaping360.com/reviews/plus-pods-
review/#:~:text=Plus%20pods%20are%20alternative%20JUUL,whole%20bunch%20of%20new
%20ones.](https://vaping360.com/reviews/plus-pods-review/#:~:text=Plus%20pods%20are%20alternative%20JUUL,whole%20bunch%20of%20new%20ones.)

28 ²¹⁸ *Id.*

²¹⁹ *Id.*



381. JLI DEFENDANTS were aware that ZLAB DEFENDANTS designed and manufactured their product to profit from the design and marketing scheme that JLI DEFENDANTS’ developed. JLI DEFENDANTS had actual notice that ZLAB DEFENDANTS were marketing their product as “Juul-compatible” in order to attract JUUL product users to ZLAB products, such as the Plus Pod. Between 2018 and 2019, JLI DEFENDANTS filed five separate intellectual property infringement lawsuits against ZLAB DEFENDANTS, alleging that ZLAB DEFENDANTS.²²⁰

382. ZLAB DEFENDANTS’ product is similar in its design, look, and feel to JLI DEFENDANTS’ JUUL products. ZLAB DEFENDANTS’ product also purports to be similar in its content and functionality—namely, that it is “Juul-compatible”—to that of JLI DEFENDANTS. At least as of the first sale of their product, ZLAB DEFENDANTS had actual or constructive notice that their product was highly addictive, like JUUL products. At least as of the date that JLI DEFENDANTS’ had actual or constructive notice that their JUUL products were harmful, ZLAB DEFENDANTS had actual or constructive notice that their product was just as or more harmful than JLI DEFENDANTS’ product.

²²⁰ See, e.g., First Amended Complaint, *JUUL Labs, Inc. v. Ziip Lab Co. Ltd., et al.*, No. 18-cv-06094 (N.D. Cal. Oct. 26, 2018); Complaint, *JUUL Labs, Inc. v. Driptip Vapes LLC, et al.*, No. 18-cv-62836 (S.D. Fla. Nov. 20, 2018); Complaint, *JUUL Labs Inc. v. Vaprez LLC, et al.*, No. 18-cv-7715 (N.D. Ill. Nov. 20, 2018); *JUUL Labs Inc. v. Eonsmoke LLC*, No. 19-cv-8405 (D.N.J. Mar. 12, 2019).

1 **L. DEFENDANTS Never Warned PLAINTIFF that JUUL or ZLAB Products**
2 **Were Unsafe, Addictive, and Dangerous.**

3 383. At no time before PLAINTIFF suffered his injuries did JLI, MONSEES, BOWEN,
4 ALTRIA, ZLAB DEFENDANTS, or E-LIQUID MANUFACTURING DEFENDANTS, all of
5 whom were involved in the research, development, marketing and distribution of JUUL products
6 and/or ZLAB DEFENDANTS' e-liquid pod products provide any warnings about the risks of
7 addiction, lung collapse or other pulmonary injury, strokes or other cardiovascular injury, or
8 seizures or other neurological injury.

9 384. At no time before PLAINTIFF suffered his injuries did JLI or any other
10 DEFENDANTS warn PLAINTIFF that JUUL and/or ZLAB DEFENDANTS' e-liquid pod
11 products were unsafe for them and anyone under age 26, nor instruct them on how much JUUL
12 would be safe to consume.

13 385. At no time before PLAINTIFF suffered his injuries did JLI or any other
14 DEFENDANTS correct their misrepresentations about the nicotine content of their JUULpods.

15 386. Instead, JUUL marketed its JUUL products as an "alternative to cigarettes,"
16 thereby giving the false impression that they are not harmful like traditional cigarettes and safe to
17 use.

18 387. Plaintiff did not and could have known the risks associated with JUUL or ZLAB
19 DEFENDANTS' products, because DEFENDANTS had exclusive knowledge about their
20 product, including its design, and concealed that information from them.

21 388. Instead, as a result of JUUL's wildly successful marketing campaign, based on
22 tactics developed by the cigarette industry and amplified in social media, PLAINTIFF reasonably
23 believed that JUUL was safe, harmless, fun, and cool—a thing to do with friends. By capitalizing
24 on and leveraging JUUL's marketing campaign to market its own products, ZLAB
25 DEFENDANTS also led PLAINTIFF to reasonably believe that ZLAB DEFENDANTS' product
26 was safe, harmless, and fun.

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28

1 **M. DEFENDANTS' Conduct Harmed PLAINTIFF.**

2 **1. DEFENDANTS' Conduct Harmed Mr. BURNS.**

3 389. From approximately when Mr. BURNS began using JUUL, up to and including
4 when he suffered cardiovascular and pulmonary injuries, Mr. BURNS was exposed to advertising
5 and promotions for JUUL on social media, through ads on the video platform YouTube, and
6 company messages through JUUL store displays, through displays at the gas stations and smoke
7 shops near his home, and via print and other sources. These ads and promotions made JUULing
8 seem fun, healthy and cool.

9 390. Mr. BURNS first tried JUUL when he was 19 years old.

10 391. Mr. BURNS started using JUUL largely because the available flavors were
11 appealing to him, such as mango and menthol. That many individuals in his social circles were
12 using JUUL made Mr. BURNS believe that it was cool and socially desirable to do so.

13 392. Mr. BURNS purchased JUUL devices and pods at smoke shops in Alaska and
14 Kentucky.

15 393. Mr. BURNS became addicted to JUUL, and his JUUL use steadily increased until
16 he began using JUUL throughout the day. The level of nicotine his body required increased over
17 time, and by the time he experienced cardiovascular and pulmonary injuries, he was purchasing
18 refill pods every week and using one JUUL pod every other day.

19 394. Mr. BURNS also purchased and used pod products manufactured by ZLAB
20 DEFENDANTS, including the Plus Pod product manufactured and marketed by ZLAB
21 DEFENDANTS as "Juul compatible".

22 395. As a result of using JUUL and ZLAB DEFENDANTS' products, Mr. BURNS
23 suffered cardiovascular and pulmonary injuries.

24 396. As a direct and proximate result of DEFENDANTS' conduct, Mr. BURNS
25 suffered severe injuries, including: cardiovascular and pulmonary injuries.

26 397. As a result of the injuries caused by DEFENDANTS, Mr. BURNS has incurred
27 and will incur significant medical expenses, pain and suffering, and emotional distress.
28

1 **2. DEFENDANTS' Conduct Harmed PLAINTIFF.**

2 398. PLAINTIFF was not aware when he first began "JUULing" that the device
3 contained so much nicotine, nor that ZLAB DEFENDANTS' product contained so much
4 nicotine. He did not know how much nicotine the device contained.

5 399. PLAINTIFF relied to his detriment on JLI DEFENDANTS' representations their
6 ads and labeling that the product was safe, not harmful, fun, and that each JUULpod contained no
7 more nicotine than approximately a pack of cigarettes. PLAINTIFF likewise relied to his
8 detriment on ZLAB DEFENDANTS' representations that their product was similar in content and
9 safety to JLI DEFENDANTS' product.

10 400. DEFENDANTS never warned PLAINTIFF that their JUUL and ZLAB product
11 was addictive, dangerous, could cause him to suffer pulmonary, cardiovascular, and/or
12 neurological injuries, or would permanently alter his brain.

13 401. Had PLAINTIFF known that JUUL and ZLAB DEFENDANTS' product was
14 addictive or increased his risk for having pulmonary, cardiovascular, and/or neurological injuries
15 such as those suffered by PLAINTIFF, he never would have tried it.

16 402. DEFENDANTS never disclosed that they had manipulated the nicotine in JUUL
17 and in ZLAB products to deliver massive doses of nicotine that could addict PLAINTIFF quickly,
18 fill his lungs with chemicals and toxins, and cause pulmonary, cardiovascular, and/or neurological
19 injuries.

20 403. DEFENDANTS never instructed PLAINTIFF that the product was unsafe for him,
21 nor how much JUUL or ZLAB pod products were safe to consume.

22 404. Had PLAINTIFF known that JUUL and ZLAB DEFENDANTS' product was not
23 safe, was addictive, dangerous, could cause pulmonary, cardiovascular, and/or neurological
24 injuries, could permanently alter their brains and impair their moods and minds, that JUUL and
25 ZLAB DEFENDANTS had manipulated nicotine to maximize addiction, or that each JUULpod
26 or ZLAB pod product delivered substantially more nicotine than a pack of cigarettes, he would
27 not have used or continued to use JUUL or ZLAB DEFENDANTS' products.
28

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Strict Products Liability - Design Defect - Consumer Expectations Test**
4 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING**
5 **DEFENDANTS)**

6 405. Plaintiff incorporate the above and below allegations by reference.

7 406. At all relevant times, JLI DEFENDANTS, and E-LIQUID MANUFACTURING
8 DEFENDANTS manufactured, distributed, and/or sold the JUUL Devices and Pods (“JUUL
9 Products”) that Plaintiff consumed.

10 407. At all relevant times, ZLAB DEFENDANTS manufactured, distributed, and/or
11 sold the Devices and Pods (“ZLAB Products”) that Plaintiff consumed.

12 408. JUUL Products were defective in design in that they did not perform as safely as
13 an ordinary consumer would have expected them to perform when used in an intended or
14 reasonably foreseeable way.

15 409. ZLAB Products were defective in design in that they did not perform as safely as
16 an ordinary consumer would have expected them to perform when used in an intended or
17 reasonably foreseeable way.

18 410. JLI DEFENDANTS and E-LIQUID MANUFACTURING DEFENDANTS had
19 constructive notice or knowledge and knew, or in the exercise of reasonable care should have
20 known, that its JUUL Products were dangerous, had risks, and were defective in design,
21 including because delivering high doses of nicotine to a young person could cause addiction to
22 nicotine, permanently alter the structure of the developing brain, significantly increase blood
23 pressure, repeatedly expose users to toxic chemicals, and cause seizures and other neurological
24 injuries, strokes and other cardiovascular injuries, and lung collapse and other pulmonary
25 injuries, resulting in catastrophic, life-altering injuries. The dangers posed by JLI
26 DEFENDANTS and E-LIQUID MANUFACTURING DEFENDANTS’ products were not
27 scientifically unknowable when they designed their products and when they marketed, sold, and
28 distributed their products.

1 418. The benefits of JUUL Products’ design are not outweighed by their risks,
2 considering the gravity of the potential harm resulting from the use of the products, the
3 likelihood that the harm would occur, the feasibility and cost of an alternative safer design at the
4 time of manufacture, and the disadvantages of an alternative design. Instead, as described
5 herein, JLI DEFENDANTS and E-LIQUID MANUFACTURING DEFENDANTS made their
6 products available in youth-friendly colors and flavors. JLI DEFENDANTS and E-LIQUID
7 MANUFACTURING DEFENDANTS also designed their products to be more palatable to youth
8 and nonsmokers by increasing JUUL’s inhale-ability, and increased the level of nicotine that is
9 absorbed by users, making them even more addictive and dangerous. There were and are
10 alternative designs available to JUUL. For example, JLI DEFENDANTS and E-LIQUID
11 MANUFACTURING DEFENDANTS could have designed the product to appeal to adult
12 smokers over age 26 who smoked conventional cigarettes without using the flavors or reduced
13 “harshness” to attract young people and create their addiction to nicotine. Further, JLI
14 DEFENDANTS and E-LIQUID MANUFACTURING DEFENDANTS could have significantly
15 lowered the nicotine content, while still delivering sufficient levels to cigarette smokers, to
16 reduce the risks from high exposure to nicotine and repeated exposures to the toxic chemicals in
17 JUUL.

18 419. The benefits of ZLAB Products’ design are not outweighed by their risks,
19 considering the gravity of the potential harm resulting from the use of the products, the
20 likelihood that the harm would occur, the feasibility and cost of an alternative safer design at the
21 time of manufacture, and the disadvantages of an alternative design. Instead, as described
22 herein, ZLAB DEFENDANTS modeled their products after JLI DEFENDANTS’ products, and
23 made them available in youth-friendly colors and flavors. ZLAB DEFENDANTS designed their
24 product to be similar to JLI DEFENDANTS’ products—that is, to be more palatable to youth
25 and nonsmokers by increasing inhale-ability, and increased the level of nicotine that is absorbed
26 by users, making them even more addictive and dangerous. There were and are alternative
27 designs available to ZLAB DEFENDANTS. For example, ZLAB DEFENDANTS could have
28 designed the product to appeal to adult smokers over age 26 who smoked conventional cigarettes

1 without using the flavors or reduced “harshness” to attract young people and create their
2 addiction to nicotine. Further, ZLAB DEFENDANTS could have significantly lowered the
3 nicotine content, while still delivering sufficient levels to cigarette smokers, to reduce the risks
4 from high exposure to nicotine and repeated exposures to the toxic chemicals in their products.

5 420. JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
6 MANUFACTURING DEFENDANTS had constructive notice or knowledge and knew, or in the
7 exercise of reasonable care should have known, that its Products were dangerous, had risks, and
8 were defective in design, including because delivering high doses of nicotine to a young person
9 could cause addiction to nicotine, permanently alter the structure of the developing brain,
10 significantly increase blood pressure, repeatedly expose users to toxic chemicals, and cause
11 seizures and other neurological injuries, strokes and other cardiovascular injuries, and lung
12 collapse and other pulmonary injuries, resulting in catastrophic, life-altering injuries. The
13 dangers posed by JLI DEFENDANTS, ZLAB DEFENDANTS and E-LIQUID
14 MANUFACTURING DEFENDANTS’ products were not scientifically unknowable when they
15 designed their products and when they marketed, sold, and distributed their products.

16 421. As a result of the defect in JLI DEFENDANTS’, ZLAB DEFENDANTS’ and E-
17 LIQUID MANUFACTURING DEFENDANTS’ Products, PLAINTIFF was harmed as described
18 herein.

19 422. As a result of his injuries caused by JLI DEFENDANTS, ZLAB DEFENDANTS,
20 and E-LIQUID MANUFACTURING DEFENDANTS, PLAINTIFF has incurred and will incur
21 significant medical expenses, pain and suffering, and emotional distress.

22 423. The defect(s) in JLI DEFENDANTS’, ZLAB DEFENDANTS’, and E-LIQUID
23 MANUFACTURING DEFENDANTS’ Products was a substantial contributing factor in causing
24 the harms and losses that PLAINTIFF has suffered.

25 **THIRD CAUSE OF ACTION**
26 **Strict Products Liability - Failure to Warn**
27 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, ALTRIA DEFENDANTS, and E-**
28 **LIQUID MANUFACTURING DEFENDANTS)**

424. Plaintiff incorporate the above and below allegations by reference.

1 425. At all relevant times, all DEFENDANTS named herein designed, manufactured,
2 assembled, inspected, tested (or not), packaged, labeled, marketed, advertised, promoted,
3 supplied, distributed, and/or sold the JUUL and/or ZLAB Products that Plaintiff consumed.

4 426. The JUUL and/or ZLAB Products that Plaintiff consumed had potential risks that
5 were known or knowable in light of the scientific and medical knowledge that was generally
6 accepted in the scientific community at the time of manufacture, distribution, or sale.

7 427. The potential risks presented a substantial danger when the JUUL and/or ZLAB
8 Products were used or misused in an intended or reasonably foreseeable way.

9 428. The ordinary consumer of JUUL and/or ZLAB Products would not have
10 recognized the potential for risks.

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

21 430. ZLAB Products were defective and unreasonably dangerous when they left ZLAB
22 DEFENDANTS' possession because they did not contain adequate warnings, including warnings
23 that the products are not safe for anyone under 26 years old, may cause strokes, heart attacks and
24 other cardiovascular injuries, seizures and other neurological injuries, lung collapse and other
25 pulmonary injuries, are powerfully addictive, may cause permanent brain changes and mood
26 disorders, may impair learning and cognition. Instead, as described herein, DEFENDANTS made
27 their products available in youth-friendly colors and flavors. DEFENDANTS also designed their
28 products to be more palatable to youth and nonsmokers by increasing inhale-ability, and

1 increased the level of nicotine that is absorbed by users, making them even more addictive and
2 dangerous.

3 431. JUUL Products were defective and unreasonably dangerous when they left JLI
4 DEFENDANTS' possession because they lacked sufficient instructions, including instructions
5 that the products should not be used by anyone under age 26, should not be used concurrently
6 with cigarettes, and instructions regarding how many pods are safe to consume in a day.

7 432. ZLAB Products were defective and unreasonably dangerous when they left ZLAB
8 DEFENDANTS' possession because they lacked sufficient instructions, including instructions
9 that the products should not be used by anyone under age 26, should not be used concurrently
10 with cigarettes, and instructions regarding how many pods are safe to consume in a day.

11 433. DEFENDANTS had constructive notice or knowledge and knew, or in the
12 exercise of reasonable care should have known, that their Products were dangerous, had risks,
13 and were defective without adequate warnings or instructions, including because delivering high
14 doses of nicotine to a young person could cause addiction to nicotine, permanently alter the
15 structure of the developing brain, cause seizures and other neurological injuries, cause lung
16 collapse and other pulmonary injuries, and cause strokes and other cardiovascular injuries
17 resulting in catastrophic, life-altering injuries.

18 434. DEFENDANTS failed to adequately warn or instruct concerning the potential
19 risks of the JUUL and ZLAB Products.

20 435. As a result of DEFENDANTS' failures to adequately warn and/or instruct,
21 PLAINTIFF was harmed as described herein.

22 436. As a result of his injuries caused by DEFENDANTS, PLAINTIFF has incurred
23 and will incur significant medical expenses, pain and suffering, and emotional distress.

24 437. The defect(s) in JUUL Products and ZLAB Products was a substantial
25 contributing factor in causing the harms and losses that PLAINTIFF has suffered.

26 438. The lack of sufficient instructions and warnings was a substantial contributing
27 factor in causing PLAINTIFF's harm and losses.
28

1 **FOURTH CAUSE OF ACTION**
2 **Negligence and/or Gross Negligence**
3 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, ALTRIA DEFENDANTS, and E-**
4 **LIQUID MANUFACTURING DEFENDANTS)**

5 439. Plaintiff incorporate the above and below allegations by reference.

6 440. JLI DEFENDANTS, in concert with and aided by ALTRIA DEFENDANTS and
7 E-LIQUID MANUFACTURING DEFENDANTS designed, produced, manufactured,
8 assembled, packaged, labeled, advertised, promoted, marketed, sold, supplied and/or otherwise
9 placed JUUL Products into the stream of commerce, and therefore owed a duty of reasonable
10 care to avoid causing harm to those consumed it, such as Plaintiff.

11 441. ZLAB DEFENDANTS designed, produced, manufactured, assembled, packaged,
12 labeled, advertised, promoted, marketed, sold, supplied and/or otherwise placed ZLAB Products
13 into the stream of commerce, and therefore owed a duty of reasonable care to avoid causing
14 harm to those consumed it, such as Plaintiff.

15 442. JUUL Products were the types of products that could endanger others if
16 negligently made or promoted. JLI DEFENDANTS, ALTRIA DEFENDANTS, and E-LIQUID
17 MANUFACTURING DEFENDANTS knew the risks that young people would be attracted to
18 their electronic cigarette devices and JUULpods and knew or should have known the importance
19 of ensuring that the products were not sold and/or distributed to anyone under age 26.

20 443. ZLAB Products were the types of products that could endanger others if
21 negligently made or promoted. ZLAB DEFENDANTS knew the risks that young people would
22 be attracted to their electronic cigarette devices and ZLAB products and knew or should have
23 known the importance of ensuring that the products were not sold and/or distributed to anyone
24 under age 26.

25 444. JLI DEFENDANTS, ALTRIA DEFENDANTS, and E-LIQUID
26 MANUFACTURING DEFENDANTS were negligent in designing, manufacturing, supplying,
27 inspecting, testing (or not testing), marketing, promoting, advertising, packaging, and/or labeling
28 JUUL's Products.

1 445. ZLAB DEFENDANTS were negligent in designing, manufacturing, supplying,
2 inspecting, testing (or not testing), marketing, promoting, advertising, packaging, and/or labeling
3 ZLAB Products.

4 446. As a powerfully addictive and dangerous nicotine-delivery device, JLI
5 DEFENDANTS, ZLAB DEFENDANTS, ALTRIA DEFENDANTS, and E-LIQUID
6 MANUFACTURING DEFENDANTS knew or should have known that JUUL and/or ZLAB
7 Products needed to be researched, tested, designed, advertised, marketed, promoted, produced,
8 packaged, labeled, manufactured, inspected, sold and supplied properly, without defects and with
9 due care to avoid needlessly causing harm. JLI DEFENDANTS, ZLAB DEFENDANTS,
10 ALTRIA DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS knew or
11 should have known that their JUUL and/or ZLAB Products could cause serious risk of harm,
12 particularly to young persons like Plaintiff.

13 447. JLI DEFENDANTS, ALTRIA DEFENDANTS, ZLAB DEFENDANTS, and E-
14 LIQUID MANUFACTURING DEFENDANTS were negligent, reckless and careless and failed
15 to take the care and duty owed to Plaintiff, thereby causing Plaintiff to suffer harm.

16 448. The negligence and extreme carelessness of JLI DEFENDANTS, ALTRIA
17 DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS
18 includes, but is not limited to, the following:

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

22 b. Failure to take reasonable care in the design of JUUL and/or ZLAB
23 Products;

24 c. Failure to use reasonable care in the production of JUUL and/or ZLAB
25 Products;

26 d. Failure to use reasonable care in the manufacture of J JUUL and/or ZLAB
27 Products;

28

- 1 e. Failure to use reasonable care in the assembly of JUUL and/or ZLAB
2 Products;
- 3 f. Failure to use reasonable care in supplying JUUL and/or ZLAB Products;
- 4 g. Failure to use reasonable care in advertising, promoting, and marketing
5 JUUL and/or ZLAB Products;
- 6 h. Promotion of JUUL and/or ZLAB Products to young people under age 26;
- 7 i. Use of flavors and design to appeal to young people under age 26, in that
8 the products smell good, look cool and are easy to conceal from parents and teachers;
- 9 j. Use of design that maximizes nicotine delivery while minimizing
10 “harshness”, thereby easily creating and sustaining addiction;
- 11 k. Failure to prevent JUUL and/or ZLAB Products from being sold to young
12 people under age 26;
- 13 l. Failure to prevent JUUL and/or ZLAB Product use among young people
14 under age 26;
- 15 m. Failure to curb JUUL and/or ZLAB Product use among young people
16 under age 26;
- 17 n. Failure to develop tools or support to help people addicted to JUUL cease
18 using the product;
- 19 o. Failure to reasonably and properly test and properly analyze the testing of
20 JUUL and/or ZLAB Products under reasonably foreseeable circumstances;
- 21 p. Failure to warn its customers about the dangers associated with use of
22 JUUL and/or ZLAB Products, in that it was unsafe for anyone under age 26, significantly
23 increases blood pressure, causes vascular damage, carries risks of stroke, heart attacks, and
24 cardiovascular injuries, causes lung collapse and other pulmonary injuries, causes seizures and
25 other neurological injuries, is powerfully addictive, can cause permanent brain changes, mood
26 disorders, and impairment of thinking and cognition.
- 27
28

1 q. Failure to instruct customers not to use the product if they were under 26,
2 and failing to provide any instructions regarding a safe amount of JUUL and/or ZLAB pods to
3 consume in a day.

4 r. Failure to warn customers that JLI DEFENDANTS and ZLAB
5 DEFENDANTS had not adequately tested or researched JUUL and/or ZLAB Products prior to
6 marketing to ensure safety, including long-term testing of the product, and testing for injury to the
7 brain and cardiovascular systems, and other related medical conditions;

8 s. Failure to utilize proper materials and components in the design of JUUL
9 and/or ZLAB Products to ensure they would not deliver unsafe doses of nicotine;

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

11 u. Failure to take necessary steps to modify JUUL and/or ZLAB Products to
12 avoid delivering high doses of nicotine to young people and repeatedly exposing them to toxic
13 chemicals;

14 v. Failure to recall JUUL and/or ZLAB Products; and

15 w. Failure to inspect JUUL and/or ZLAB Products for them to operate
16 properly and avoid delivering unsafe levels of nicotine to young persons.

17 449. JLI DEFENDANTS', ALTRIA DEFENDANTS', ZLAB DEFENDANTS', and
18 E-LIQUID MANUFACTURING DEFENDANTS' acts and omissions constitute gross
19 negligence, because they constitute a total lack of care and an extreme departure from what a
20 reasonably careful person would do in the same situation to prevent foreseeable harm to young
21 persons, like Plaintiff.

22 450. JLI DEFENDANTS, ALTRIA DEFENDANTS, ZLAB DEFENDANTS, and E-
23 LIQUID MANUFACTURING DEFENDANTS acted and/or failed to act willfully, and with
24 conscious and reckless disregard for the rights and interests of Plaintiff. JLI DEFENDANTS',
25 ALTRIA DEFENDANTS', ZLAB DEFENDANTS', and E-LIQUID MANUFACTURING
26 DEFENDANTS' acts and omissions had a great probability of causing significant harm and in
27 fact resulted in such harm.
28

1 451. As a result of JLI DEFENDANTS', ALTRIA DEFENDANTS', ZLAB
2 DEFENDANTS', and E-LIQUID MANUFACTURING DEFENDANTS' negligence and/or
3 gross negligence, PLAINTIFF was harmed as described herein.

4 452. As a result of their injuries caused by JLI DEFENDANTS, ALTRIA
5 DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING DEFENDANTS
6 PLAINTIFF has incurred and will incur significant medical expenses, pain and suffering, and
7 emotional distress.

8 453. JLI DEFENDANTS,' ALTRIA DEFENDANTS,' ZLAB DEFENDANTS', and
9 E-LIQUID MANUFACTURING DEFENDANTS' negligence and/or gross negligence were a
10 contributing substantial factor in causing PLAINTIFF'S harms and losses.

11 **FIFTH CAUSE OF ACTION**
12 **Negligent Failure to Recall**
13 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING**
14 **DEFENDANTS)**

15 454. Plaintiff incorporate the above and below allegations by reference.

16 455. JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
17 MANUFACTURING DEFENDANTS acted negligently by failing to recall the JUUL and/or
18 ZLAB Products prior to Plaintiff's injuries.

19 456. JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
20 MANUFACTURING DEFENDANTS designed, manufactured, assembled, produced,
21 distributed, maintained and/or sold the JUUL and/or ZLAB Products.

22 457. JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
23 MANUFACTURING DEFENDANTS knew or reasonably should have known that, when used
24 as intended, the JUUL and/or ZLAB Products presented or were likely to present a danger to
25 users, including young persons like Plaintiff. JLI DEFENDANTS, ZLAB DEFENDANTS, and
26 E-LIQUID MANUFACTURING DEFENDANTS knew or reasonably should have known that
27 their JUUL and/or ZLAB Products were unsafe for anyone under the age of 26, delivered
28 excessive doses of nicotine, significantly increase blood pressure, cause vascular damage, cause

1 addiction, lung collapse and pulmonary injuries, seizures and permanent brain changes, mood
2 disorders, strokes, heart attacks, and other cardiovascular injuries.

3 458. After JUUL Products were placed on the market in 2015 and ZLAB Products
4 were placed on the market in 2016, JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
5 MANUFACTURING DEFENDANTS knew or reasonably should have known their JUUL
6 and/or ZLAB Products were being consumed by young people under age 26, that such use was
7 unsafe, that their Products delivered excessive doses of nicotine, significantly increase blood
8 pressure, cause vascular damage, cause addiction, lung collapse and pulmonary injuries, seizures
9 and permanent brain changes, mood disorders, strokes, heart attacks, and other cardiovascular
10 injuries. Nevertheless, at no point during this time period did J JLI DEFENDANTS, ZLAB
11 DEFENDANTS, or E-LIQUID MANUFACTURING DEFENDANTS recall, repair, or warn of
12 the danger posed by their Products.

13 459. A reasonable designer, manufacturer, distributor, or seller facing the same or
14 similar circumstances as JLI DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID
15 MANUFACTURING DEFENDANTS in the exercise of reasonable care, would have recalled
16 JUUL and ZLAB Products to ensure young people including Plaintiff were not harmed.

17 460. JLI DEFENDANTS', ZLAB DEFENDANTS', and E-LIQUID
18 MANUFACTURING DEFENDANTS' failure to timely recall their Products was a substantial
19 factor in causing harm to Plaintiff. Had JLI DEFENDANTS, ZLAB DEFENDANTS, and E-
20 LIQUID MANUFACTURING DEFENDANTS recalled their Products when it knew or should
21 have known of the risks to young people like Plaintiff, he would not have used it, and he would
22 not have become so powerfully addicted to the product and would not have suffered his injuries.

23 **SIXTH CAUSE OF ACTION**
24 **Fraudulent Concealment**
25 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, ALTRIA DEFENDANTS, JLI**
26 **DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING**
27 **DEFENDANTS)**

28 461. Plaintiff incorporate the above and below allegations by reference.

462. DEFENDANTS had a duty to disclose material facts about JUUL and/or ZLAB
Products to Plaintiff, as:

1 a. DEFENDANTS disclosed some facts to Plaintiff about the nature and
2 safety of its products but intentionally failed to disclose other facts, making the disclosures it did
3 make misleading or deceptive; and

4 b. DEFENDANTS intentionally failed to disclose certain facts about the
5 nature and safety of JUUL and ZLAB Products that were known only to DEFENDANTS and that
6 DEFENDANTS knew Plaintiff could not have known or reasonably discovered.

7 463. At all times relevant, DEFENDANTS fraudulently and deceptively sold or
8 partnered to sell JUUL and ZLAB Products to Plaintiff as safe or not harmful, when
9 DEFENDANTS knew it to be untrue.

10 464. DEFENDANTS fraudulently and deceptively downplayed or minimized any risk
11 associated with e-cigarettes generally and JUUL and ZLAB Products in particular for young
12 persons under age 26. At all relevant times, JLI DEFENDANTS represented its products on its
13 website as a “smarter” choice. At all relevant times, ZLAB DEFENDANTS represented its
14 products on its website as compatible with and similar to JLI DEFENDANTS’ products. JLI
15 DEFENDANTS pitched investors by claiming that the product was not harmful, and therefore
16 any concern about addiction was irrelevant. JLI DEFENDANTS and ALTRIA DEFENDANTS
17 worked together to pitch news stories or other media content designed to downplay the risks of e-
18 cigarettes, suggesting that any concern was overblown, or a panic. These tactics mimic those
19 used by the tobacco industry to sow seeds of doubt and confusion among the public, to initiate
20 new users, to keep customers buying JUUL products, and to avoid regulation or legislative efforts
21 to control sales. ZLAB DEFENDANTS leveraged JLI DEFENDANTS’ and ALTRIA
22 DEFENDANTS’ conduct to market and sell their product, profiting from and endorsing JLI
23 DEFENDANTS’ and ALTRIA DEFENDANTS’ claims and representations.

24 465. DEFENDANTS failed to disclose to Plaintiff that JUUL Products significantly
25 increase blood pressure, and can cause strokes, seizures, lung collapse, and other adverse health
26 effects.

27
28

1 466. DEFENDANTS failed to disclose that they had not adequately researched or tested
2 JUUL or ZLAB Products to assess their safety before placing them on the market and promoting
3 them to young people under age 26.

4 467. At all times relevant to Plaintiff, DEFENDANTS failed to disclose that JUUL and
5 ZLAB Products were addictive.

6 468. DEFENDANTS also failed to disclose to Plaintiff that the JUUL nicotine salts and
7 ZLAB pods purchased were highly addictive in nature, making it extremely difficult for one to
8 cease purchasing JUULpod or ZLAB Product refills.

9 469. DEFENDANTS further failed to disclose to Plaintiff that JUUL and ZLAB
10 Products are designed to create and sustain an addiction to nicotine. DEFENDANTS also
11 manipulated the formulations of JUUL devices, JUULpods and ZLAB Products in ways that
12 could and would impact their potency and addictiveness, and DEFENDANTS did so without
13 notifying Plaintiff. DEFENDANTS actively concealed the nicotine content and nicotine potency
14 of JUUL and ZLAB e-cigarettes.

15 470. DEFENDANTS fraudulently misrepresented to users the amount of nicotine
16 consumed by using JUUL and/or ZLAB Products. As previously explained, JLI DEFENDANTS
17 claim that one JUULPod is “approximately equivalent to about 1 pack of cigarettes,” but that is
18 false and misleading. The amount of nicotine consumed from one JUULPod is actually equivalent
19 to the amount of nicotine consumed through at least two packs of traditional cigarettes. ZLAB
20 DEFENDANTS made similarly false and misleading claims by claiming that their product was
21 similar to and compatible with JUUL products.

22 471. Each of these misrepresentations and omissions were material at the time they
23 were made. In particular, each of the misrepresentations and omissions concerned material facts
24 that were essential to the analysis undertaken by Plaintiff as to whether to purchase or consume
25 JUUL and/or ZLAB Products.

26 472. Plaintiff did not know of the facts that DEFENDANTS concealed.

27 473. DEFENDANTS intended to deceive Plaintiff and the public by concealing these
28 facts.

1 474. DEFENDANTS had a duty to accurately provide this information to Plaintiff. In
2 not so informing Plaintiff, DEFENDANTS breached their duty. DEFENDANTS also gained
3 financially from, and as a result of their breach.

4 475. DEFENDANTS had ample opportunities to disclose these facts to Plaintiff,
5 through packaging, advertising, retail outlets, on its website, via emails to Plaintiff, and on social
6 media. DEFENDANTS concealed material information at all relevant times, through today.
7 DEFENDANTS have yet to disclose the truth about JUUL or ZLAB products.

8 476. Plaintiff relied to his detriment on DEFENDANTS' fraudulent omissions. Had
9 Plaintiff been adequately informed of the material facts concealed from him regarding the safety
10 of JUUL and ZLAB, and not intentionally deceived by DEFENDANTS, he would not have
11 purchased or used JUUL or ZLAB products.

12 477. DEFENDANTS' fraudulent concealment was a substantial factor in Plaintiff's
13 harm as described herein. He also suffered economic harm in that they would not have purchased
14 JUUL or ZLAB Products if he had known the true facts.

15 478. DEFENDANTS' acts and omissions as described herein were committed
16 maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of
17 Plaintiff's rights, interests, and well-being to enrich DEFENDANTS. DEFENDANTS' conduct
18 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
19 future, which amount is to be determined according to proof.

20 **SEVENTH CAUSE OF ACTION**
21 **Conspiracy to Commit Fraudulent Concealment**
22 **(against JLI DEFENDANTS and ALTRIA DEFENDANTS)**

23 479. Plaintiff incorporates the above and below allegations by reference.

24 480. During all relevant times, including before Plaintiff consumed JUUL, JLI
25 DEFENDANTS were part of a conspiracy with tobacco and e-cigarette industry players, and
26 ALTRIA DEFENDANTS, to fraudulently conceal, misrepresent, and downplay the risks of e-
27 cigarettes to boost profits at the expense of public health, for research and development,
28 marketing, and distribution purposes, engaged consultants, pundits, academics, lobbyists, media
personalities, reporters, researchers and other influencers to tout the safety of e-cigarettes, and

1 benefits of nicotine, while minimizing or downplaying the dangers, particularly to those under
2 age 26. These tactics mimic those used by the tobacco industry to sow seeds of doubt and
3 confusion among the public, to initiate new users, to keep customers buying JUUL products, and
4 to avoid regulation or legislative efforts to control sales.

5 481. JLI DEFENDANTS, and ALTRIA DEFENDANTS, sought to protect and expand
6 JLI's massive, ill-gotten, share of the e-cigarette market. They sought to achieve this objective by
7 (1) designing a product that delivered nicotine in a manner and in doses that were intended to
8 addict or exacerbate the nicotine addiction of its users; (2) marketing, advertising, promoting and
9 misbranding that potent product to consumers, including the vulnerable youth market; and
10 (3) defrauding regulators and the public to advance their interests.

11 482. Plaintiff's addiction to nicotine was a primary object of the Conspiracy. JLI
12 DEFENDANTS, and ALTRIA DEFENDANTS, orchestrated efforts with a unity of purpose to
13 addict this new generation of teenagers and young adults to nicotine by way of unlawful conduct
14 in marketing, promoting, manufacturing, designing, and selling JUUL products that substantially
15 contributed to the Plaintiff's injuries as alleged herein.

16 483. JLI DEFENDANTS, and ALTRIA DEFENDANTS, further conspired with one
17 another by setting out to entice and lure new users of tobacco as a wrongful, unlawful and tortious
18 means to make a profit.

19 484. JLI DEFENDANTS and ALTRIA DEFENDANTS were aware that others in the
20 e-cigarette and tobacco industry planned to engage in a campaign of doubt to mislead, downplay,
21 and deflect concerns about the risks of e-cigarettes and nicotine, and to fraudulently conceal
22 material information about the safety of these products and compounds.

23 485. JLI DEFENDANTS and ALTRIA DEFENDANTS agreed with others in the e-
24 cigarette and tobacco industry and intended that the conspiracy to commit fraudulent concealment
25 be committed.

26 486. JLI DEFENDANTS and ALTRIA DEFENDANTS well-understood and continues
27 to understand that by working in concert with other e-cigarette manufacturers and the tobacco
28

1 industry, they can more effectively mislead and fraudulently conceal material facts from the
2 public, including Plaintiff, regarding risks of its products, as described herein.

3 487. JLI DEFENDANTS and ALTRIA DEFENDANTS' participation in this
4 conspiracy was a substantial factor in causing Plaintiff's harm as alleged herein.

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

11 **EIGHTH CAUSE OF ACTION**
12 **Intentional Misrepresentation**
13 **(against JLI DEFENDANTS, ZLAB DEFENDANTS, ALTRIA DEFENDANTS, JLI**
14 **DEFENDANTS, ZLAB DEFENDANTS, and E-LIQUID MANUFACTURING**
15 **DEFENDANTS)**

16 489. Plaintiff incorporates the above and below allegations by reference.

17 490. DEFENDANTS represented to Plaintiff via the media, advertising, website, social
18 media, packaging, and promotions that:

- 19 a. JUUL Products were safe or not harmful; and
- 20 b. That one JUULPod is "approximately equivalent to about 1 pack of
21 cigarettes"
- 22 c. That ZLAB Products were safe or not harmful; and
- 23 d. That ZLAB pod Products were similar, comparable to, and compatible with
24 JUULPod and JUUL Products.

25 491. These representations were false. JUUL and ZLAB Products are unsafe for
26 anyone under age 26. The amount of nicotine consumed from one JUULPod or one ZLAB Pod is
27 actually equivalent to the amount of nicotine consumed through at least two packs of traditional
28 cigarettes.

492. DEFENDANTS knew these representations were false, or made them recklessly
without regard for their truth. For example, JUUL claims that it did not study the safety of its

1 products, acknowledging that it had a vested interest, and instead left it to others to analyze their
2 risks.

3 493. DEFENDANTS intended for Plaintiff to rely on these representations.

4 494. Each of these misrepresentations were material at the time they were made. In
5 particular, each of the misrepresentations concerned material facts that were essential to the
6 analysis undertaken by Plaintiff as to whether to purchase or consume JUUL or ZLAB Products.

7 495. DEFENDANTS have yet to disclose correct these misrepresentations about JUUL
8 and ZLAB products.

9 496. Plaintiff reasonably relied on these representations and was harmed as described
10 herein. Plaintiff's reliance on DEFENDANTS' representations was a substantial factor in causing
11 his harms. Had DEFENDANTS told Plaintiff the truth about the safety and composition of JUUL
12 and ZLAB Products, he would not have purchased them.

13 497. DEFENDANTS' fraud was a substantial factor in Plaintiff's harm as described
14 herein. He also suffered economic harm in that he would not have purchased JUUL or ZLAB
15 Products if he had known the true facts.

16 498. DEFENDANTS' acts and omissions as described herein were committed
17 maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of
18 Plaintiff's rights, interests, and well-being to enrich DEFENDANTS. DEFENDANTS' conduct
19 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
20 future, which amount is to be determined according to proof.

21
22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests that the Court:

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

27 a. General Damages;

28

- 1 b. Special Damages, including all expenses, including incidental past and
2 future expenses, including medical expenses, and loss of earnings and earning capacity;
- 3 2. Award prejudgment interest as permitted by law;
- 4 3. Enter an appropriate injunction against DEFENDANTS and their officers, agents,
5 successors, employees, representatives, and assigns;
- 6 4. Appoint a monitor and retain jurisdiction to ensure that DEFENDANTS comply
7 with the injunctive provisions of any decree of this Court;
- 8 5. Enter other appropriate equitable relief;
- 9 6. Award reasonable attorneys' fees and costs, as provided for by law; and
- 10 7. Grant such other and further relief as the Court deems just and proper.

11

12 **VIII. JURY TRIAL DEMAND**

13 Plaintiff demands a trial by jury.

14

15 Dated: November 16, 2020

16 /s/Peter A. Sandberg

17 Peter A. Sandberg
AK Bar No. 0611084

18 Robert J. Nelson
Lexi J. Hazam
Sarah R. London
19 Fabrice N. Vincent (*Pro Hac Vice* anticipated)
Reilly T. Stoler
20 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
21 San Francisco, CA 94111-3339
Telephone: 415.956.1000
22 Facsimile: 415.956.1008
slondon@lchb.com

23

24 Wendy R. Fleishman
Kartik S. Madiraju (*Pro Hac Vice* anticipated)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
25 250 Hudson Street, 8th Floor
New York, NY 10013-1413
26 Telephone: 212.355.9500
Facsimile: 212.355.9592

27 *Attorneys for Plaintiff*

28