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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **NADIA FITZGERALD,**

13 Plaintiff,

14 vs.

15 **JUUL LABS, INC.,**
16 **PAX LABS, INC., and**
17 **ALTRIA GROUP, INC.,**

18 Defendants.

) Case No. 3:20-cv-1354

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**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

19 Plaintiff NADIA FITZGERALD, by her attorneys, SIMMONS HANLY
20 CONROY, LLC, upon information and belief, at all times hereinafter mention, allege as
21 follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action under 28 U.S.C. § 1332, because
24 the matter in controversy as to the Plaintiff exceeds \$75,000, exclusive of interest and costs,
25 and because Defendants are incorporated and have their principle places of business in
26 states other than the state in which the named Plaintiff resides. Venue is proper in this
27 jurisdiction because many of the Defendants' acts and omission that gave rise to the causes
28 of action of the Complaint occurred in this judicial District

2. Plaintiff is filing this complaint as permitted by Case Management Order # 3 issued by Judge William H. Orrick of this Court. Plaintiff states that but for the Order permitting direct filing into the Northern District of California, Plaintiff would have filed in the United States District Court for the Eastern District of Michigan. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings this case be transferred to the United States District Court for the Eastern District of Michigan as set for in Case Management Order # 3.

NATURE OF THE CASE

3. This action is brought on behalf of Plaintiff, NADIA FITZGERALD, who used JUUL, an Electronic Nicotine Delivery System (“ENDS”) that produced an aerosol vapor that is inhaled by users. The JUUL is comprised of the JUUL Device and the JUUL Pod. The JUUL Device is a closed system that contains a rechargeable battery, temperature regulator, and light and sensor system. The JUUL Pod is a replaceable cartridge that contains an atomizer and a salt-based nicotine solution.

4. Defendants JUUL LABS, INC., PAX LABS, INC., and ALTRIA GROUP, INC. (hereinafter referred to as “Defendants”) designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed JUUL.

5. When warning of safety and risks of JUUL, Defendants negligently and/or fraudulently represented to Plaintiff and the public in general, that JUUL did not create a high risk of nicotine addiction in adolescents.

6. Defendants intentionally targeted adolescents in their marketing campaigns and through the production of flavored JUUL Pods that concealed the nicotine content contained in the JUUL Pods.

7. Defendants knowingly and/or intentionally sold JUUL Pods to minors through the use of an internet sales platform.

1 8. Defendants failed to place a nicotine warning on the packaging of JUUL
2 until August 2018.

3 9. As a result of the foregoing acts and omissions, the Plaintiff was and still is
4 caused to suffer serious and dangerous side effects including *inter alia* nicotine addiction, as
5 well as other severe and personal injuries which are lasting in nature, including diminished
6 enjoyment of life, as well as the need for lifelong treatment for addiction, monitoring,
7 and/or medications, and fear of developing other health consequences. Plaintiff herein has
8 sustained certain of the above health consequences due to Plaintiff's use of JUUL.

9 10. Defendants concealed their knowledge of the nicotine content and other
10 harmful chemicals contained in JUUL from the Plaintiff and the public in general.

11 11. Consequently, Plaintiff seeks compensatory damages as a result of Plaintiff's
12 use of JUUL, which has caused Plaintiff to suffer from nicotine addiction, as well as other
13 severe and personal injuries which are permanent and lasting in nature, physical pain and
14 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
15 medical treatment, monitoring and/or medications, and fear of developing other health
16 consequences.

17 **PARTY PLAINTIFF**

18 12. Plaintiff, NADIA FITZGERALD, is a citizen of the United States of
19 America, and is a resident of the State of Michigan.

20 13. Plaintiff, NADIA FITZGERALD, was born on April 4, 2001.

21 14. Plaintiff, NADIA FITZGERALD, first began using JUUL in or about 2016,
22 and used JUUL up through the present.

23 15. As a result of using Defendants' JUUL, Plaintiff NADIA FITZGERALD
24 was caused to suffer from nicotine addiction and was caused to sustain severe and permanent
25 personal injuries, pain, suffering, and emotional distress.
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1 16. The injuries and damages sustained by Plaintiff, NADIA FITZGERALD,
2 were caused by Defendants' JUUL and/or the conduct and actions and/or omissions of the
3 Defendants herein.

4 **PARTY DEFENDANTS**

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6 17. Upon information and belief, Defendant PAX LABS, INC. is a privately held
7 Delaware corporation with a principal place of business in California.

8 18. JUUL was brought to the market in 2015. PAX LABS, INC. applied for and holds the
9 patent associated with JUUL under U.S. Patent No. 9,215,895.

10 19. Upon information and belief Defendant PAX LABS, INC. has transacted and
11 conducted business in the State of California.

12 20. Upon information and belief, Defendant PAX LABS, INC. has derived substantial
13 revenue from goods and products used in the State of California.

14 21. Upon information and belief, Defendant, PAX LABS, INC., expected or should
15 have expected its acts to have consequence within the United States of America and the State of
16 California, and derived substantial revenue from interstate commerce within the United States and
17 the State of California, more particularly.

18 22. Upon information and belief, and at all relevant times, Defendant, PAX LAB, INC.,
19 was in the business of and did design, research, manufacture, test, advertise, promote, market, sell,
20 and distribute JUUL for use as an ENDS.

21 23. Upon information and belief, Defendant JUUL LABS, INC. is a privately in
22 Delaware corporation with a principal place of business in California. JUUL LABS, INC. was
23 part of its parent company PAX LABS, INC. until 2017, when JUUL LABS, INC. became its
24 own entity.

25 24. Upon information and belief, Defendant JUUL LABS, INC. has transacted and
26 conducted business in the State of California.

1 25. Upon information and belief, Defendant JUUL LABS, INC., has derived
2 substantial revenue from goods and products used in the State of California.

3 26. Upon information and belief, Defendant, JUUL LABS, INC., expected
4 or should have expected its acts to have consequence within the United States of America
5 and the State of California, and derived substantial revenue from interstate commerce within
6 the United States and the State of California, more particularly.

7 27. Upon information and belief, and at all relevant times, Defendant, JUUL LABS,
8 INC., was in the business of and did design, research, manufacture, test, advertise, promote,
9 market, sell, and distribute JUUL for use as an ENDS.

10 28. Upon information and belief, and at all relevant times, Defendant, ALTRIA GROUP,
11 INC., is a Virginia corporation with a principal place of business in Virginia.

12 29. Defendant, ALTRIA GROUP, INC., acquired 35% ownership in JUUL to, among
13 other things, sell promote, market, and distribute JUUL for use as an ENDS. Pursuant to a services
14 agreement, JUUL will have access to Altria's industry infrastructure.

15 **FACTUAL BACKGROUND**

16 30. At all relevant times, Defendants were in the business of and did design, research,
17 manufacture, test, advertise, promote, market, sell and distribute JUUL.

18 31. PAX LABS, INC. applied for and holds the patent associated with JUUL under U.S.
19 Patent No. 9,215,895.

20 32. Defendants launched JUUL in the United States in 2015.

21 33. JUUL delivers a level of nicotine to the bloodstream as high or higher than
22 traditional combustible cigarettes. (Bowen A XC, Inventor; PAX Labs, Inc., assignee. Nicotine
23 Salt Formulations for Aerosol Devices and Methods Thereof. U.S. Patent 9,215,895).

24 34. Defendants launched an extensive marketing campaign which included
25 advertisements directly targeted towards adolescents and minors. Defendants targeted social
26 medial platforms and sponsored events primarily attended by teenagers.

1 35. Defendants’ advertising campaign focused on “vaporized” rather than smoking,
2 misleading adolescents about the products purpose – to deliver nicotine to the blood stream at the
3 same rate as combustible cigarettes. The advertisements showed healthy, attractive young men
4 and women using JUUL. The advertisements focused on the colorful devices and variety of flavors
5 with no mention of the nicotine content.

6 36. A study performed at Stanford University found that JUUL’s marketing “was
7 patently youth oriented.” Robert K. Jackler, MD. *JUUL Advertising Over its First Three Years on the*
8 *Market. (January 31, 2019)*. The study focused on the similarities between JUUL marketing and the
9 early marketing of cigarettes, such as the use of young models and hosting youth-oriented events.

10 37. Defendants particularly targeted social media platforms used by adolescents, such
11 as Instagram, Facebook, and Twitter. Defendants also launched email campaigns that directly
12 emailed advertisements to consumers, particularly minors.

13 38. Defendants hired attractive young people to pose as models in their advertisements
14 and to hand out free JUULS at events attended by adolescents, such as movie and music festivals.
15 These models were seen wearing clothing styles attributable to teenagers and adolescents.

16 39. The advertisements typically featured these young models at social events and dance
17 clubs, sharing JUUL with their friends and partners.

18 40. Defendants hired social media influencers, with large adolescent followings, to
19 promote JUUL on their social media platforms.

20 41. JUUL hosted multiple events and parties that featured youth-oriented music, free
21 “tastings” of JUUL, and free samples of JUUL.

22 42. Following the advertising campaign in 2015, JUUL began trending on social media
23 platforms, with adolescents and minors taking videos and pictures using their JUUL. Videos of
24 adolescents “vaping” or “JUULing” became a social media craze.

25 43. The FTC has made it illegal to advertise products in a deceptive or misleading
26 manner. Federal Trade Commission Act 15 U.S. Code §45.

1 44. The FTC has further noted the importance of practicing truth in advertising to
2 adolescents by passing the Children’s Online Privacy Protection Act.

3 45. The Act makes it illegal to use unfair or deceptive acts and practices with children’s
4 information online, such as contacting a child through email without the parent’s permission.
5 Children’s Online Privacy Protection Act 15 U.S. Code 15 U.S. Code §6502, et seq.

6 46. Defendants failed to include nicotine content warnings on any of their products until
7 August of 2018.

8 47. Defendants sold JUUL in stores and through an internet sales platform to minors.

9 48. As a result of Defendants’ aggressive marketing efforts, the FDA found that from
10 2017-2018 there was a 78% increase in high schoolers who used e-cigarettes and a 48% increase in
11 middle schoolers who used e-cigarettes.

12 49. A study performed by Truth Initiative revealed that adolescents were unaware of
13 the nicotine content in JUUL.

14 50. Nicotine addiction is a serious injury recognized by the medical community in the
15 Diagnostic and Statistical Manual (“DSM”), categorized by “a problematic pattern of tobacco use,
16 leading to clinically significant impairment or distress.” *American Psychiatric
17 Association. (2013), Diagnostic and Statistical Manual of Mental Disorders (5th ed.).*

18 51. The DSM also notes the difficulty of ceasing use of nicotine through nicotine
19 withdrawal. Nicotine withdrawal is categorized by irritability, anxiety, difficulty concentrating,
20 restlessness, decreased heart rate, increased appetite or weight gain, dysphoric or depressed mood
21 and insomnia. *American Psychiatric Association. (1994), Diagnostic and Statistical
22 Manual of Mental Disorders (4th ed.).*

23 52. Prior to and/or at the time of Plaintiff’s use of JUUL, Plaintiff became aware of the
24 promotional and/or marketing materials described herein.

25 53. Upon information and belief, Defendants made, distributed, marketed, and sold
26 JUUL without adequate warning to Plaintiff and the general public that JUUL presented a risk of
27

1 nicotine addiction and a markedly increased risk of nicotine addiction in adolescents until August
2 2018.

3 54. Upon information and belief, Defendants ignored the association between the use
4 of JUUL and the risk of developing nicotine addiction.

5 55. By reason of the foregoing acts and omissions, the Plaintiff was caused to suffer
6 from nicotine addiction, as well as other severe and personal injuries which are permanent and
7 lasting in nature, physical pain and mental anguish, including diminished enjoyment of life, as
8 well as the need for lifelong medical treatment, monitoring and/or medications, and fear of
9 developing any of the above named health consequences.

10 56. Plaintiff has endured and continues to suffer the mental anguish and psychological
11 trauma of living with the knowledge that Plaintiff has suffered serious and dangerous side effects
12 including, *inter alia* nicotine addiction, as well as other severe and personal injuries which are
13 permanent and lasting in nature, physical pain and mental anguish, including diminished
14 enjoyment of life, as well as the need for lifelong medical treatment, and monitoring and/or
15 medications.

16 57. By reason of the foregoing, Plaintiff has been severely and permanently injured, and
17 will require constant and continuous medical monitoring and treatment than prior to Plaintiff's
18 use of Defendants' JUUL.

19 **FIRST CAUSE OF ACTION**
20 **AS AGAINST THE DEFENDANTS**
21 **(NEGLIGENCE)**

22 58. Plaintiff repeats, reiterates and realleges each and every allegation of this Complaint
23 contained in each of the foregoing paragraphs inclusive, with the same force and effect as if more
24 fully set forth herein.

25 59. Defendants had a duty to exercise reasonable care in the designing, manufacturing,
26 marketing, supplying, promoting, packaging, sale and/or distribution of JUUL into the stream of
27 commerce, including a duty to assure that the product would not cause users to suffer unreasonable,
28 dangerous side effect.

1 60. Defendants failed to exercise ordinary care in the designing,
2 manufacturing, marketing, supplying, promoting, packaging, sale, testing, quality
3 assurance, quality control, and/or distribution of JUUL into interstate commerce in that
4 Defendants knew or should have known that using JUUL created a high risk of
5 unreasonable, dangerous side effects including, nicotine addiction in minors, as well as
6 other severe and personal injuries which are permanent and lasting in nature, physical pain
7 and mental anguish, including diminished enjoyment of life, as well as the need for
8 lifelong medical treatment, and monitoring and/or medications.

9 61. The negligence of the Defendants, their agents, servants, and/or employees,
10 included but was not limited to the following acts and/or omissions:

- 11 (a) Negligently failing to adequately and correctly warn the Plaintiff
12 and the public of the dangers of JUUL;
- 13 (b) Negligently advertising and recommending the use of JUUL to
14 minors with sufficient knowledge as to its dangerous propensities;
- 15 (c) Negligently designing JUUL in a manner which was dangerous
16 to its users;
- 17 (d) Negligently manufacturing JUUL in a manner which was
18 dangerous to its users;
- 19 (e) Negligently producing JUUL in a manner which was dangerous
20 to its users;
- 21 (f) Negligently assembling JUUL in a manner which was
22 dangerous to its users;
- 23 (g) Concealing information from the Plaintiff in knowing that JUUL
24 was unsafe, dangerous, and/or contained a higher risk of nicotine
25 addiction in adolescents;

26 62. Defendants were negligent in the designing, packaging, distributing,
27 testing, advertising, warning, marketing and sale of JUUL in that they:

- 1 (a) Failed to accompany their product with proper and/or accurate
2 warnings regarding all possible adverse side effects associated with
3 the use of JUUL;
- 4 (b) Failed to accompany their product with accurate warnings
5 regarding the risks of all possible adverse side effects concerning
6 JUUL;
- 7 (c) Failed to warn Plaintiff of the severity and duration of such
8 adverse effects, as the warnings given did not accurately reflect the
9 symptoms, or severity of the side effects;
- 10 (d) Failed to accompany their product with proper and/or accurate
11 warning regarding the high nicotine content in JUUL;
- 12 (e) Failed to restrict sale of the JUUL to non-minors, with knowledge
13 that minors were using and purchasing JUUL;
- 14 (f) Were otherwise careless and/or negligent.

15 63. Despite the fact that Defendants knew or should have known that JUUL
16 caused unreasonably dangerous side effects, Defendants continued and continue to
17 market, manufacture, distribute and/or see JUUL to minor consumers, including the
18 Plaintiff.

19 64. Defendants knew or should have known that consumers such as the
20 Plaintiff would foreseeably suffer injury as a result of Defendants' failure to exercise
21 ordinary care, as set forth above.

22 65. Defendants' negligence was the proximate cause of Plaintiff's injuries,
23 harm and economic loss which Plaintiff suffered and/or will continue to suffer.

24 66. As a result of the foregoing acts and omissions, the Plaintiff was caused to
25 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
26 severe and personal injuries which are permanent and lasting in nature, physical pain and
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1 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
2 medical treatment, and monitoring and/or medications.

3 67. As a result of the forgoing acts and omissions the Plaintiff requires and/or
4 will require more health care and services and did incur medical, health, incidental and
5 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
6 in the future be required to obtain further medical and/or hospital care, attention, and
7 services.

8 **SECOND CAUSE OF ACTION**
9 **AS AGAINST THE DEFENDANTS**
10 **(NEGLIGENCE PER SE)**

11 68. Plaintiff repeats, reiterates and realleges each and every allegation of this
12 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
13 effect as if more fully set forth herein.

14 69. Defendants violated the Federal Trade Commission Act 15 U.S. Code §45,
15 *et seq.*, and the Children's Online Privacy Act 15 U.S. Code §6502, *et seq.*

16 70. These statutes are aimed at protecting consumers, such as the
17 Plaintiff, from deceptive or misleading advertisements.

18 71. Defendants' acts and omissions were the proximate cause and/or a
19 substantial factor in bringing about the harm the Plaintiff has alleged herein.

20 72. Plaintiff is among the class of individuals that these statutes were
21 designed to protect.

22 73. Plaintiff's injuries are the type that these federal statutes were intended to
23 prevent.

24 74. As a result of the foregoing acts and omissions, the Plaintiff was caused to
25 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
26 severe and personal injuries which are permanent and lasting in nature, physical pain and
27 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
28 medical treatment, and monitoring and/or medications.

1 75. As a result of the forgoing acts and omissions the Plaintiff requires and/or
2 will require more health care and services and did incur medical, health, incidental and
3 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
4 in the future be required to obtain further medical and/or hospital care, attention, and
5 services.

6 **THIRD CAUSE OF ACTION**
7 **AS AGAINST THE DEFENDANTS**
8 **(STRICT PRODUCTS LIABILITY)**

9 76. Plaintiff repeats, reiterates and realleges each and every allegation of this
10 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
11 effect as if more fully set forth herein.

12 77. At all times herein mentioned, the Defendants designed, researched,
13 manufactured, tested, advertised, promoted, marketed, sold, and distributed JUUL as
14 hereinabove described that was used by the Plaintiff.

15 78. That JUUL was expected to and did reach the usual consumers,
16 handlers, and persons coming into contact with said product without substantial change in
17 the condition in which it was produced, manufactured, sold, distributed, and marketed by
18 the Defendants.

19 79. At those times, JUUL was in an unsafe, defective, and inherently
20 dangerous condition which was dangerous to users, and in particular, the Plaintiff herein.

21 80. The JUUL designed, researched, manufactured, tested, advertised,
22 promoted, marketed, sold and distributed by Defendants was defective in design or
23 formulation in that, when it left the hands of the manufacturer and/or suppliers, the
24 foreseeable risks exceeded the benefits associated with the design or formulation of
25 JUUL.

26 81. The JUUL designed, researched, manufactured, tested, advertised,
27 promoted, marketed, sold and distributed by Defendants was defective in design or
28 formulation in that, when it left the hands of the Defendants manufacturers and/or

1 suppliers, it was unreasonably dangerous and it was more dangerous than an ordinary
2 consumer would expect.

3 82. At all times herein mentioned, JUUL was in a defective condition and
4 unsafe, and Defendants knew or had reason to know that said product was defective and
5 unsafe, especially when used in the form and manner as provided by the Defendants.

6 83. Defendants knew, or should have known, that at all times herein
7 mentioned its JUUL was in a defective condition, and was and is inherently dangerous and
8 unsafe.

9 84. At the time of the Plaintiff's use of JUUL, JUUL was being used for the
10 purposes and in a manner normally intended.

11 85. Defendants with this knowledge voluntarily designed its JUUL in a
12 dangerous condition for use by the public, and in particular the Plaintiff.

13 86. Defendants had a duty to create a product that was not unreasonably
14 dangerous for its normal, intended use.

15 87. Defendants created a product unreasonably dangerous for its normal,
16 intended use.

17 88. The JUUL designed, researched, manufactured, tested, advertised,
18 promoted, marketed, sold and distributed by Defendants was manufactured defectively in
19 that JUUL left the hands of Defendants in a defective condition and was unreasonably
20 dangerous to its intended users.

21 89. The JUUL designed, researched, manufactured, tested, advertised,
22 promoted, marketed, sold and distributed by Defendants reached their intended users in
23 the same defective and unreasonably dangerous condition in which the Defendants' JUUL
24 was manufactured.

25 90. Defendants designed, researched, manufactured, tested, advertised,
26 promoted, marketed, sold and distributed a defective product which created an
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1 unreasonable risk to the health of consumers and to the Plaintiff in particular, and
2 Defendants are therefore strictly liable for the injuries sustained by the Plaintiff.

3 91. The Plaintiff could not, by the exercise of reasonable care, have discovered
4 JUUL's defects herein mentioned and perceived its danger.

5 92. The JUUL designed, researched, manufactured, tested, advertised,
6 promoted, marketed, sold and distributed by Defendants was defective due to
7 inadequate warnings or instructions as the Defendants knew or should have known
8 that the product created a risk of serious and dangerous side effects including, nicotine
9 addiction, as well as other severe and personal injuries which are permanent and
10 lasting in nature and the Defendants failed to adequately warn of said risk.

11 93. The JUUL designed, researched, manufactured, tested, advertised,
12 promoted, marketed, sold and distributed by Defendants was defective due to
13 inadequate warning and/or inadequate testing.

14 94. The JUUL designed, researched, manufactured, tested, advertised,
15 promoted, marketed, sold and distributed by Defendants was defective due to
16 inadequate post-marketing surveillance and/or warnings because, after Defendant knew
17 or should have known of the risks of serious side effects including, nicotine addiction, as
18 well as other severe and permanent health consequences from JUUL, they failed to
19 provide adequate warnings to users or consumers of the product, and continued to
20 improperly advertise, market and/or promote their product, JUUL, to adolescents and
21 minors.

22 95. By reason of the foregoing, the Defendants have become strictly liable in
23 tort to the Plaintiff for the manufacturing, marketing, promoting, distribution, and
24 selling of a defective product, JUUL.

25 96. Defendants' defective design, manufacturing defect, and inadequate
26 warnings of JUUL were acts that amount to willful, wanton, and/or reckless conduct by
27 Defendants.

1 97. That said defects in Defendants' drug JUUL were a substantial factor in
2 causing Plaintiff's injuries.

3 98. As a result of the foregoing acts and omissions, the Plaintiff was caused to
4 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
5 severe and personal injuries which are permanent and lasting in nature, physical pain and
6 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
7 medical treatment, and monitoring and/or medications.

8 99. As a result of the foregoing acts and omissions the Plaintiff requires and/or
9 will require more health care and services and did incur medical, health, incidental and
10 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
11 in the future be required to obtain further medical and/or hospital care, attention, and
12 services.

13 **FOURTH CAUSE OF ACTION**
14 **AS AGAINST THE DEFENDANTS**
15 **(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)**

16 100. Plaintiff repeats, reiterates and realleges each and every allegation of this
17 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
18 effect as if more fully set forth herein.

19 101. As commercial manufacturers, sellers, and distributors of JUUL,
20 Defendants knew or should have known that exposure to nicotine was hazardous to
21 human health.

22 102. Defendants knew or should have known that the manner in which
23 they were manufacturing, marketing, and selling JUUL was hazardous to human health.

24 103. Defendants knew or should have known that the manner in which
25 they were manufacturing, marketing, and selling JUUL would result in nicotine addiction
26 and other injuries amongst users.

27 104. Though Defendants knew or should have known about the
28 seriousness of the consequences of failing to warn about the inherent dangers

1 associated with JUUL, Defendants failed to warn of the dangers inherent in the use of the
2 product.

3 105. Though Defendants knew or should have known about the reasonably
4 foreseeable hazards to human health and welfare associated with the use of JUUL,
5 Defendants failed to provide adequate warnings of, or take any precautionary measures to
6 mitigate, those hazards.

7 106. Defendants communicated to consumers information that failed to contain
8 relevant warnings, hazards, contraindications, efficacy, side effects, and
9 precautions. In particular, Defendants:

- 10 (a) disseminated information that was inaccurate, false, and
11 misleading, and which failed to communicate accurately or
12 adequately the comparative severity, duration, and extent of the
13 risk of injuries with use of JUUL;
- 14 (b) continued to aggressively promote JUUL even after Defendants
15 knew or should have known of the unreasonable risks from use;
- 16 (c) failed to accompany their product with proper or adequate
17 warnings or labeling regarding adverse side effects and health
18 risks associated with the use of JUUL and the comparative severity
19 of such adverse effects;
- 20 (d) failed to provide warnings, instructions or other information that
21 accurately reflected the symptoms, scope, and severity of the
22 side effects and health risks, including but not limited to those
23 associated with the severity of JUUL's effect on nicotine
24 addiction; and
- 25 (e) overwhelmed, downplayed, or otherwise suppressed, through
26 aggressive marketing and promotion, the risks associated with the
27 use of JUUL.

1 107. Adequate instructions and warnings on the JUUL product could have
2 reduced or avoided these foreseeable risks of harm to Plaintiff.

3 108. Had Defendants properly disclosed and disseminated the risks
4 associated with JUUL, Plaintiff would have avoided the risk of developing injuries as
5 alleged herein.

6 109. Defendants' failure to provide adequate and sufficient warnings for the
7 JUUL that they manufactures, marketed, and sold renders JUUL a defective product.

8 110. Defendants' failure to warn was a direct and proximate cause of Plaintiff's
9 injuries as alleged herein.

10 111. The Defendants are strictly liable to Plaintiff for injuries caused by their
11 negligent or willful failure to provide adequate warnings or other clinically relevant
12 information and data regarding the risks associated with its use.

13 112. As a result of the foregoing acts and omissions, the Plaintiff was caused to
14 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
15 severe and personal injuries which are permanent and lasting in nature, physical pain and
16 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
17 medical treatment, and monitoring and/or medications.

18 113. As a result of the forgoing acts and omissions the Plaintiff requires and/or
19 will require more health care and services and did incur medical, health, incidental and
20 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
21 in the future be required to obtain further medical and/or hospital care, attention, and
22 services.

23 **FIFTH CAUSE OF ACTION**
24 **AS AGAINST THE DEFENDANTS**
25 **(STRICT PRODUCTS LIABILITY – DEFECTIVE DESIGN)**

26 114. Plaintiff repeats, reiterates and realleges each and every allegation of this
27 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
28 effect as if more fully set forth herein.

1 115. By virtue of manufacturing, marketing, and selling JUUL, Defendants has
2 a strict duty not to place an unreasonably dangerous product into the stream of
3 commerce that would injure consumers, such as Plaintiff.

4 116. Defendants knew or should have known that exposure to nicotine was
5 hazardous to human health, particular to adolescent and minor users when it, or products
6 containing it, were used in their foreseeable and intended manner.

7 117. Knowing of the dangerous and hazardous properties of JUUL due to
8 research and testing, Defendants could have manufactured, marketed, and sold alternative
9 designs or formulations of JUUL.

10 118. These alternative designs were already available, practical, and
11 technologically feasible.

12 119. The use of these alternative designs would have reduced or prevented the
13 reasonably foreseeable harm resulting from Defendants' manufacture, marketing, and sale
14 of JUUL.

15 120. As manufacturers of JUUL, Defendants not only had the ability to alter the
16 product in such a way that abilities of the product while eliminating its inherently unsafe
17 character, but also were in the best position to do so.

18 121. JUUL's high nicotine content and links to numerous serious medical
19 conditions are not open and obvious conditions or part of the general public knowledge of
20 JUUL.

21 122. The inherent risks associated with JUUL's use far outweigh any benefits,
22 thereby rendering JUUL unreasonably dangerous.

23 123. The manufacture, sale, and distribution of unreasonably dangerous JUUL
24 renders the Defendants' product defective.

25 124. Defendants' defective design of JUUL is the direct and proximate cause of
26 Plaintiff's injuries complained of herein.

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1 125. As a direct result of Defendants' design of a defective product,
2 Defendants are strictly liable in damages to the Plaintiff.

3 126. Defendants' acts were willful, wanton, reckless and/or conducted with a
4 reckless indifference to the rights of Plaintiff.

5 127. As a result of the forgoing acts and omissions the Plaintiff was caused to
6 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
7 severe and personal injuries which are permanent and lasting in nature, physical pain and
8 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
9 medical treatment, and monitoring and/or medications.

10 128. As a result of the forgoing acts and omissions the Plaintiff requires and/or
11 will require more health care and services and did incur medical, health, incidental and
12 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
13 in the future be required to obtain further medical and/or hospital care, attention, and
14 services.

15 **SIXTH CAUSE OF ACTION**
16 **AS AGAINST THE DEFENDANTS**
17 **(BREACH OF EXPRESS WARRANTY)**

18 129. Plaintiff repeats, reiterates and realleges each and every allegation of this
19 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
20 effect as if more fully set forth herein.

21 130. Defendants expressly warranted that JUUL was safe.

22 131. JUUL does not conform to these express representations because JUUL is
23 not safe d has numerous serious side effects, many of which were not accurately
24 warned about by Defendants. As a direct and proximate result of the breach of said
25 warranties, Plaintiff suffered and/or will continue to suffer severe and permanent personal
26 injuries, harm and economic loss.

27 132. Plaintiff did rely on the express warranties of the Defendants herein.
28

1 133. The Defendants herein breached the aforesaid express warranties, as
2 JUUL was unsafe, particularly for minors and adolescents.

3 134. Defendants expressly represented to Plaintiff, that JUUL was safe and fit for
4 use for the purposes intended, that it was of merchantable quality, that it did not produce
5 any dangerous e effects, that the side effects it did produce were accurately reflected in the
6 warnings and that it was adequately tested and fit for its intended use.

7 135. Defendants knew or should have known that, in fact, said representations
8 and warranties were false, misleading and untrue in that JUUL was not safe and fit for the
9 use intended, and, in fact, produced serious injuries to the users that were not
10 accurately identified and represented by Defendants, such as nicotine addiction.

11 136. As a result of the forgoing acts and omissions the Plaintiff was caused to
12 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
13 severe and personal injuries which are permanent and lasting in nature, physical pain and
14 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
15 medical treatment, and monitoring and/or medications.

16 137. As a result of the forgoing acts and omissions the Plaintiff requires and/or
17 will require more health care and services and did incur medical, health, incidental and
18 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
19 in the future be required to obtain further medical and/or hospital care, attention, and
20 services.

21 **SEVENTH CAUSE OF ACTION**
22 **AS AGAINST THE DEFENDANTS**
23 **(BREACH OF IMPLIED WARRANTIES)**

24 138. Plaintiff repeats, reiterates and realleges each and every allegation of this
25 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
26 effect as if more fully set forth herein.

27 139. At all times herein mentioned, the Defendants manufactured,
28 compounded, portrayed, distributed, recommended, merchandized, advertised, promoted

1 and sold JUUL and/or previously manufactured, compounded, portrayed, distributed,
2 recommended, merchandized, advertised, promoted and sold JUUL.

3 140. At the time Defendants marketed, sold, and distributed JUUL for use by
4 Plaintiff, Defendants knew of the use for which JUUL was intended and impliedly
5 warranted the product to be of merchantable quality and safe and fit for such use.

6 141. The Defendants impliedly represented and warranted to the users of JUUL
7 that the product was safe and of merchantable quality and fit for the ordinary purpose
8 for which said product was to be used.

9 142. That said representations and warranties aforementioned were false,
10 misleading, and inaccurate in that JUUL was unsafe, unreasonably dangerous,
11 improper, not of merchantable quality, and contained a highly addictive substance.

12 143. Plaintiff did rely on said implied warranty of merchantability of
13 fitness for a particular use and purpose.

14 144. Plaintiff reasonably relied upon the skill and judgment of Defendants as to
15 whether JUUL was of merchantable quality and safe and fit for its intended use.

16 145. JUUL was injected into the stream of commerce by the Defendants in a
17 defective, unsafe, and inherently dangerous condition and the products and materials
18 were expected to and did reach users, handlers, and persons coming into contact with said
19 products without substantial change in the condition in which they were sold.

20 146. The Defendants herein breached the aforesaid implied warranties, as
21 JUUL was not fit for its intended purposes and uses.

22 147. As a result of the forgoing acts and omissions the Plaintiff was caused to
23 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
24 severe and personal injuries which are permanent and lasting in nature, physical pain and
25 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
26 medical treatment, and monitoring and/or medications.

1 148. As a result of the forgoing acts and omissions the Plaintiff requires and/or
2 will require more health care and services and did incur medical, health, incidental and
3 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
4 in the future be required to obtain further medical and/or hospital care, attention, and
5 services.

6 **EIGHTH CAUSE OF ACTION**
7 **AS AGAINST THE DEFENDANTS**
8 **(FRAUDULENT MISREPRESENTATION)**

9 149. Plaintiff repeats, reiterates and realleges each and every allegation of this
10 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
11 effect as if more fully set forth herein.

12 150. The Defendants falsely and fraudulently represented to the Plaintiff and
13 the public in general, that said product, JUUL, had been tested and was found to be safe.

14 151. That representations made by Defendants were, in fact, false.

15 152. When said representations were made by Defendants, they knew those
16 representations to be false and it willfully, wantonly and recklessly disregarded whether the
17 representations were true.

18 153. These representations were made by said Defendants with the intent of
19 defrauding and deceiving the Plaintiff and the public in general, and were made with the
20 intent of inducing the public in general, particularly adolescents and minors, to purchase
21 said product, all of which evinced a callous, reckless, willful, depraved indifference to the
22 health, safety and welfare of the Plaintiff herein.

23 154. At the time the aforesaid representations were made by the Defendants
24 and, at the time the Plaintiff used JUUL, the Plaintiff was unaware of the falsity of said
25 representations and reasonably believed them to be true.

26 155. In reliance upon said representations, the Plaintiff was induced to and did use
27 JUUL, thereby sustaining severe and permanent personal injuries, and/or being at an
28 increased risk or sustaining severe and permanent personal injuries in the future.

1 156. Said Defendants knew and were aware or should have been aware that
2 JUUL lacked adequate and/or sufficient warnings.

3 157. Defendants knew or should have known that JUUL had a potential to,
4 could, and would cause severe and grievous injury to the users of said product, and that
5 it was inherently dangerous in a manner that exceeded any purported, inaccurate, down-
6 played warnings and/or failed to warn against any such injuries.

7 158. Defendants brought JUUL to the market, and acted fraudulently,
8 wantonly and maliciously to the detriment of the Plaintiff.

9 159. As a result of the forgoing acts and omissions the Plaintiff was caused to
10 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
11 severe and personal injuries which are permanent and lasting in nature, physical pain and
12 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
13 medical treatment, and monitoring and/or medications.

14 160. As a result of the forgoing acts and omissions the Plaintiff requires and/or
15 will require more health care and services and did incur medical, health, incidental and
16 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
17 in the future be required to obtain further medical and/or hospital care, attention, and
18 services.

19 **NINTH CAUSE OF ACTION**
20 **AS AGAINST THE DEFENDANTS**
21 **(FRAUDULENT CONCEALMENT)**

22 161. Plaintiff repeats, reiterates and realleges each and every allegation of this
23 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
24 effect as if more fully set forth herein.

25 162. At all times during the course of dealing between Defendants and
26 Plaintiff, Defendants misrepresented the safety of JUUL for its intended use.

27 163. Defendants knew or were reckless in not knowing that its representations
28 were false.

1 164. In representations to Plaintiff, Defendants fraudulently concealed and
2 intentionally omitted the following material information:

- 3 (a) that JUUL contained nicotine;
- 4 (b) that nicotine content in JUUL pods are as high as or higher than the
5 nicotine content in combustible cigarettes;
- 6 (c) that the use of JUUL placed adolescents at a markedly increased
7 risk for addiction to nicotine;
- 8 (d) that Defendants were aware of the danger associated with the use
9 of JUUL.

10 165. Defendants were under a duty to disclose to Plaintiff the dangerous nature of
11 JUUL, including but not limited to the heightened risks of nicotine addiction.

12 166. Defendants had sole access to material facts concerning the dangerous
13 nature of the product and its propensity to cause serious and dangerous side effects, and
14 hence, cause damage to persons who used JUUL, including the Plaintiff, in particular.

15 167. Defendants' concealment and omissions of material facts concerning, *inter*
16 *alia*, the y of JUUL was made purposefully, willfully, wantonly, and/or recklessly, to
17 mislead Plaintiff and the general public, into reliance, continued use of JUUL, and
18 actions thereon, and to cause them to purchase JUUL and/or use the product.

19 168. Defendants knew that Plaintiff had no way to determine the truth behind
20 Defendants' concealment and omissions, and that these included material omissions
21 of facts surrounding JUUL, as set forth herein.

22 169. Plaintiff reasonably relied on facts revealed which negligently,
23 fraudulently and/or purposefully did not include facts that were concealed and/or omitted
24 by Defendants.

25 170. As a result of the forgoing acts and omissions the Plaintiff was caused to
26 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
27 severe and personal injuries which are permanent and lasting in nature, physical pain and
28

1 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
2 medical treatment, and monitoring and/or medications.

3 171. As a result of the forgoing acts and omissions the Plaintiff requires and/or
4 will require more health care and services and did incur medical, health, incidental and
5 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
6 in the future be required to obtain further medical and/or hospital care, attention, and
7 services.

8 **TENTH CAUSE OF ACTION**
9 **AS AGAINST THE DEFENDANTS**
10 **(NEGLIGENT MISREPRESENTATION)**

11 172. Plaintiff repeats, reiterates and realleges each and every allegation of this
12 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
13 effect as if more fully set forth herein.

14 173. Defendants had a duty to represent to the Plaintiff and the public in general
15 that said product, JUUL, had been tested and found safe.

16 174. The representations made by Defendants were, in fact, false.

17 175. Defendants failed to exercise ordinary care in the representation of
18 JUUL, while involved in its manufacture, sale, testing, quality assurance, quality control,
19 and/or distribution of said product into interstate commerce, in that Defendants negligently
20 misrepresented JUUL's high risk of unreasonable, dangerous side effects.

21 176. Defendants breached their duty in representing JUUL's serious side
22 effects to the Plaintiff and the public in general.

23 177. As a result of the forgoing acts and omissions the Plaintiff was caused to
24 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
25 severe and personal injuries which are permanent and lasting in nature, physical pain and
26 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
27 medical treatment, and monitoring and/or medications.

1 178. As a result of the forgoing acts and omissions the Plaintiff requires and/or
2 will require more health care and services and did incur medical, health, incidental and
3 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
4 in the future be required to obtain further medical and/or hospital care, attention, and
5 services.

6 **ELEVENTH CAUSE OF ACTION**
7 **AS AGAINST THE DEFENDANTS**
8 **(FRAUD AND DECEIT)**

9 179. Plaintiff repeats, reiterates and realleges each and every allegation of this
10 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
11 effect as if more fully set forth herein.

12 180. Defendants conducted research and used JUUL as part of their research.

13 181. As a result of Defendants' research and testing, or lack thereof, Defendants
14 blatantly and intentionally distributed false information, including but not limited to
15 assuring the public and the Plaintiff that JUUL was safe and did not contain nicotine.

16 182. As a result of Defendants' research and testing, or lack thereof,
17 Defendants intentionally omitted certain results of testing and research to the public,
18 including the Plaintiff.

19 183. Defendants had a duty when disseminating information to the public to
20 disseminate truthful information and a parallel duty not to deceive the public and the
21 Plaintiff.

22 184. The information distributed to the public and the Plaintiff by Defendants,
23 including but not limited to reports, press releases, advertising campaigns, social media
24 ads, print ads, magazine ads, billboards, and all other commercial media contained
25 material representations of fact and/or omissions.

26 185. The information distributed to the public and the Plaintiff by Defendants
27 intentionally included representations that Defendants' JUUL product was safe and
28 effective for use.

1 186. The information distributed to the public and the Plaintiff by Defendants
2 intentionally included false representations that JUUL was not injurious to the health
3 and/or safety of its intended users.

4 187. These representations were all false and misleading.

5 188. Upon information and belief, Defendants intentionally suppressed,
6 ignored and disregarded information not favorable to the Defendants, such as the
7 nicotine content contained in JUUL.

8 189. Defendants intentionally made material representations the public and the
9 Plaintiff, regarding the safety of JUUL, specifically but not limited to JUUL not
10 having dangerous and serious health and/or safety concerns.

11 190. That it was the purpose of Defendants in making these representations to
12 deceive and defraud the public and the Plaintiff, to gain the confidence of the public
13 and/or the Plaintiff, to falsely ensure the quality and fitness for use of JUUL and induce the
14 public, and/or the Plaintiff to purchase and/or continue to use JUUL.

15 191. That these representations and others made by Defendants were false
16 when made, and/or were made with a pretense of actual knowledge when knowledge
17 did not actually exist, and/or were made recklessly and without regard to the actual facts.

18 192. That these representations and others, made by Defendants, were made
19 with the intention of deceiving and defrauding the Plaintiff and were made in order to
20 induce the Plaintiff to rely upon misrepresentations and caused the Plaintiff to purchase
21 and use JUUL.

22 193. That Defendants, recklessly and intentionally falsely represented the
23 dangerous and serious health and/or safety concerns of JUUL to the public at large and the
24 Plaintiff in particular, for the purpose of influencing the marketing of a product known to
25 be dangerous and defective and/or not safe.

26 194. That Defendants willfully and intentionally failed to disclose the
27 material facts regarding the dangerous and serious safety concerns of JUUL by
28

1 concealing and suppressing material facts regarding the dangerous and serious health
2 and/or safety concerns of JUUL.

3 195. That Defendants willfully and intentionally failed to disclose the truth,
4 failed to disclose material facts and made false representations with the purpose and
5 design of deceiving and lulling the Plaintiff into a sense of security so that Plaintiff would
6 rely on the representations and purchase and use JUUL.

7 196. Defendants, through their public relations efforts, which included but
8 were not limited to advertisements, knew or should have known that the public,
9 including the Plaintiff, would rely upon the information being disseminated.

10 197. Defendants utilized direct to consumer advertising to market,
11 promote, and/or advertise JUUL.

12 198. That the Plaintiff did in fact rely on and believe the Defendants'
13 representations to be true at the time they were made and relied upon the representations
14 and were thereby induced to purchase and use JUUL.

15 199. That at the time the representations were made, the Plaintiff did not know
16 the truth with regard to the dangerous and serious health and/or safety concerns of JUUL.

17 200. That the Plaintiff did not discover the true facts with respect to the
18 dangerous and serious health and/or safety concerns, and the false representations of
19 Defendants, nor could the Plaintiff with reasonable diligence have discovered the true
20 facts.

21 201. That had the Plaintiff known the true facts with respect to the dangerous and
22 serious health and/or safety concerns of JUUL, Plaintiff would not have purchased and
23 used JUUL.

24 202. That the Defendants' aforementioned conduct constitutes fraud and deceit,
25 and was committed and/or perpetrated willfully, wantonly and/or purposefully on the
26 Plaintiff.

1 203. As a result of the forgoing acts and omissions the Plaintiff was caused to
2 suffer serious and dangerous side effects including, addiction to nicotine, as well as other
3 severe and personal injuries which are permanent and lasting in nature, physical pain and
4 mental anguish, including diminished enjoyment of life, as well as the need for lifelong
5 medical treatment, and monitoring and/or medications.

6 204. As a result of the forgoing acts and omissions the Plaintiff requires and/or
7 will require more health care and services and did incur medical, health, incidental and
8 related expenses. Plaintiff is informed and believes and further alleges that Plaintiff will
9 in the future be required to obtain further medical and/or hospital care, attention, and
10 services.

11 **CLAIM FOR PUNITIVE DAMAGES**

12 205. Plaintiff repeats, reiterates and realleges each and every allegation of this
13 Complaint contained in each of the foregoing paragraphs inclusive, with the same force and
14 effect as if more fully set forth herein.

15 206. Plaintiff asserts a claim for punitive damages under California law.

16 207. Upon information and belief, Defendants engaged in willful, wanton,
17 malicious, and/or reckless conduct that was done without regard to the consequences or
18 the safety of the Plaintiff and caused injuries upon Plaintiff, disregarding her protected
19 right.

20 208. Defendants' willful, wanton, malicious, and/or reckless conduct includes
21 but is not limited to Defendants' failure to provide consumers with available materials,
22 information and warnings that would have ultimately dissuaded consumers, including the
23 Plaintiff, from purchasing and using JUUL, thus depriving consumers from weighing the
24 true risks against the benefits of purchasing and using JUUL.

25 209. Defendants have caused significant harm to Plaintiff and have
26 demonstrated a conscious and outrageous disregard for their safety with implied malice,
27 warranting the imposition of punitive damages.

CLAIM FOR PUNITIVE DAMAGES

WEHEREFORE, Plaintiff demands judgment against the Defendants on each of the above-referenced claims and Causes of Action and as follows:

- a. Awarding Plaintiff compensatory damages against Defendants in an amount sufficient to fairly and completely compensate Plaintiff for all damages;
- b. Awarding Plaintiff treble damages against Defendants so to fairly and completely compensate Plaintiff for all damages, and to deter similar wrongful conduct in the future;
- c. Awarding Plaintiff punitive damages against Defendants in an amount sufficient to punish Defendants for its wrongful conduct and to deter similar wrongful conduct;
- d. Awarding Plaintiff costs and disbursements, costs of investigations, attorneys' fees and all such other relief available under California Law;
- e. Awarding that the costs of this action to taxed to Defendants; and
- g. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of any and all issues in this matter so triable pursuant to Federal Rule of Civil Procedure 38(b).

Dated: February 22, 2020

Respectfully submitted,

SIMMONS HANLY CONROY, LLC

/s/ John J. Foley
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