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COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

LOS ANGELES UNIFIED SCHOOL DISTRICT,)
on behalf of itself and similarly situated school)
districts;)
)
Plaintiff,)
v.)
)
JUUL LABS, INC., f/k/a PAX Labs, Inc., and)
PAX LABS INC., and DOES 1-100,)
)
Defendants.)

Case No. **CIV DS 1932301**
CLASS ACTION COMPLAINT FOR:
1. Public Nuisance
2. Strict Liability – Design Defect
3. Strict Liability – Failure to Warn
4. Negligence
DEMAND FOR A JURY TRIAL

1 Plaintiff, on behalf of itself and all others similarly situated, alleges the following based on
2 information and belief:

3 **INTRODUCTION**

4 1. One of the great public health success stories over the past decade has been a reduction
5 in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to
6 7.6% in 2017.¹ This success has been the result of years of litigation and strict regulation. It is also due
7 to a public health message that Big Tobacco can no longer dispute or contradict, and which is simple,
8 stark, and effective: smoking kills.

9 2. This incredible progress towards eliminating youth tobacco use has now largely been
10 reversed due to JUUL's e-cigarette products and vaping. Between 2011 and 2015, e-cigarette use among
11 high school and middle school students increased 900%.² Between 2017 and 2018, e-cigarette use
12 increased 78% among high school students, from 11.7% of high school students in 2017 to 20.8% of
13 high schoolers in 2018.³ Among middle school students, e-cigarette use increased 48% between 2017
14 and 2018.⁴ In 2018, 4.9 million middle and high school students used tobacco products, with 3.6 million
15 of those students using e-cigarettes.⁵ Between 2017 and 2018, the number of youth e-cigarette users
16 increased by 1.5 million.⁶

17 3. Consistent with this trend, students in the Los Angeles Unified School District
18 ("Plaintiff," "LAUSD," or "District") are vaping at high rates, which continue to climb. On August 19,
19 2019, the Los Angeles County Department of Public Health announced that more than 30% of LA
20 County high school students reported using e-cigarette products, and 10% of those students are regular
21 users. This is up 6.4% from the previous year.

22
23 ¹ Meredith Berkman, Testimony of Meredith Berkman, Parents Against Vaping E-cigarettes, U.S. House Committee on
Oversight & Reform (July 24, 2019),

24 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20BerkmanPAVe%20Testimony.pdf>.

25 ² Jerome Adams, Surgeon General's Advisory on E-cigarette Use Among Youth, Ctrs. for Disease Control & Prevention
(Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-ecigarette-use-among-youth-2018.pdf>.

26 ³ *Id.*

27 ⁴ 2018 NYTS Data: A startling rise in youth e-cigarette use, U.S. Food & Drug Admin. (Feb. 2, 2019),

<https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

28 ⁵ *Id.*

⁶ *Id.*

1 4. According to the Centers for Disease Control and Prevention (“CDC”) Director Robert
2 Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to
3 erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine
4 addiction.”⁷ The U.S. Food and Drug Administration (“FDA”) Commissioner Scott Gottlieb described
5 the statistics related to youth vaping as “astonishing” and both the FDA and the U.S. Surgeon General
6 have appropriately characterized youth vaping as an “epidemic.”⁸ The National Institute on Drug Abuse
7 found that the 2018 spike in nicotine vaping was the largest for any substance recorded in 44 years, and
8 the Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen
9 use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”⁹

10 5. A major cause of this epidemic is JUUL Labs, Inc., the maker of the JUUL e-cigarette.
11 JUUL entered the e-cigarette market in 2015 and now controls over 70% of it.¹⁰ Over a million JUUL
12 e-cigarettes were sold between 2015 and 2017.¹¹ In 2017, JUUL generated over \$224 million in retail
13 sales, a 621% year-over-year increase.¹² By June 2018, sales had skyrocketed another 783%, reaching
14 \$942.6 million.¹³ The e-cigarette category as a whole grew 97% to \$1.96 billion in the same period,
15 largely based on JUUL’s market success.¹⁴ JUUL’s dominance of the e-cigarette market has been so
16 rapid, and so complete, that the act of vaping is now often referred to as “juuling.”

17
18
19 ⁷ Texas governor signs law increasing the age to buy tobacco products to 21, CNN (June 8, 2019),
https://m.cnn.com/en/article/h_b4cf0b92fd821251a4ae48df9b717145.

20 ⁸ Angelica LaVito, FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use doesn’t
21 slow, CNBC (Nov. 16, 2018), <https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html> ; Jayne O’Donnell, FDA declares youth vaping an epidemic, announces investigation, new enforcement, USA
Today (Sept. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/09/12/fdascott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/>.

22 ⁹ Jan Hoffman, Study Shows Big Rise in Teen Vaping This Year, N.Y. Times (Dec. 17, 2018),
<https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html> ; Rajiv Bahl, Teen Use of Flavored Tobacco
23 was Down, But E-Cigarettes Are Bringing It Back Up, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens>.

24 ¹⁰ Richard Craver, Juul ends 2018 with 76 percent market share, Winston-Salem J. (Jan. 8, 2019),
https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

25 ¹¹ Melia Robinson, How a startup behind the ‘iPhone of vaporizers’ reinvented the e-cigarette and generated \$224 million in
26 sales in a year, Bus. Insider (Nov. 21, 2017), <https://www.businessinsider.my/juul-e-cigarette-one-million-units-sold-2017-11/>.

27 ¹² *Id.*

28 ¹³ Angelica LaVito, Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year, CNBC Health & Sci.
(Sept. 11, 2018), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

¹⁴ *Id.*

1 6. JUUL’s market dominance has attracted the attention of government regulators,
2 including the FDA. On February 24, 2018, the FDA sent a letter to JUUL expressing concern about the
3 popularity of its products among youth and demanding that JUUL produce documents regarding its
4 marketing practices.¹⁵ On September 12, 2018, the FDA sent letters to JUUL and other e-cigarette
5 manufacturers putting them on notice that their products were being used by youth at disturbing rates.¹⁶
6 In October 2018, the FDA raided JUUL’s headquarters and seized more than a thousand documents
7 relating to JUUL’s sales and marketing practices.¹⁷ As of October 2019, the FDA, the Federal Trade
8 Commission, multiple state attorneys general, and the U.S. House of Representatives Committee on
9 Oversight and Reform have all commenced investigations into JUUL’s role in the youth vaping
10 epidemic and whether JUUL’s marketing practices purposefully targeted youth.

11 7. JUUL now insists it never marketed to young people. This assertion is patently false.
12 JUUL has compelled a generation of youth, who were never cigarette smokers, into nicotine addiction
13 and put them at risk for severe lung injury and/or other health harms resulting from aerosol inhalation.
14 JUUL is working to maintain JUUL’s record-breaking sales and market dominance—which would not
15 be possible if the customer base was truly only adults looking to quit smoking, or for a purported
16 healthier alternative to smoking.

17 8. In fact, JUUL does not have a legitimate basis to claim that its product is healthier than
18 cigarettes. On September 9, 2019, the FDA warned JUUL that it has violated federal law by making
19 unauthorized representations that JUUL products are safer than cigarettes.¹⁸

20 9. Plaintiff has already taken actions to reduce tobacco use among its students—but now it
21 must address the new epidemic of youth vaping. Plaintiff is the second largest school district in the
22 nation, serving approximately 600,000 students across 710 square miles. On September 10, 2019, the
23

24 ¹⁵ Matthew Holman, Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs,
25 Inc., U.S. Food & Drug Admin. (Apr. 14, 2018), <https://www.fda.gov/media/112339/download>.

26 ¹⁶ Letter From US FDA to Kevin Burns, U.S. Food & Drug Admin. (Sept. 12, 2018),
27 <https://www.fda.gov/media/119669/download>.

28 ¹⁷ 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/>.

¹⁸ Juul Labs, Inc. Warning Letter, U.S. Food and Drug Admin. (Sept. 9, 2019), <https://www.fda.gov/inspectionscompliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

1 District’s Superintendent Austin Beutner issued a statement emphasizing the danger of vaping: “The
2 impact on the students and communities we serve, totaling nearly 5 million people, is very real. . . . Los
3 Angeles Unified is taking action to inform students of the dangers, and is looking at other options to
4 better protect them against this health crisis.”¹⁹

5 PARTIES

6 10. Plaintiff Los Angeles Unified School District is a unified school district organized and
7 operating pursuant to the laws of the State of California.

8 11. Defendant JUUL Labs, Inc., f/k/a PAX Labs, Inc. (“JUUL”), is a Delaware corporation.
9 Its principal place of business is in San Francisco, California. JUUL manufactures, designs, sells,
10 markets, promotes, and distributes JUUL e-cigarettes, JUULpods and accessories.

11 12. PAX Labs, Inc., is a Delaware Corporation. Its principal place of business is in San
12 Francisco, California. PAX Labs, Inc.’s current website says it was founded in 2007. For much of the
13 relevant time period and until at least 2017, PAX Labs, Inc. and JUUL operated as the same company.
14 During that time, JUUL manufactured, designed, sold, marketed, promoted, and distributed JUUL e-
15 cigarettes, JUULpods, and accessories as a part of PAX Labs, Inc.

16 13. Plaintiff is ignorant of the names and capacities of Defendants Does 1 through 100, but
17 upon information and belief, Does 1 through 100 are the servants, consultants, contractors, employees,
18 or agents of the other defendants named herein and acted within the scope therein.

19 JURISDICTION AND VENUE

20 14. The Court has subject-matter jurisdiction over this action pursuant to California
21 Constitution, Article VI, § 10, and California Civil Code section 382.

22 15. The Court has personal jurisdiction over JUUL under California Code of Civil Procedure
23 section 410.10, as the principal places of business of both JUUL and PAX LABS, Inc. are in California.

24 16. Venue in San Bernardino County is proper under California Code of Civil Procedure
25 section 394, as the action is brought by the District and the District is not situated in this County.
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27

28 ¹⁹ <https://achieve.lausd.net/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=4466&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=82038&PageID=1>

1 **FACTUAL ALLEGATIONS**

2 **A. Following Big Tobacco’s lead**

3 17. JUUL was founded by Adam Bowen and James Monsees. The company’s beginnings
4 can be traced to the pair’s collaboration on a product design master’s thesis when they were graduate
5 students at Stanford University in 2004—Monsees completing a Master of Fine Arts in Product Design,
6 and Bowen a Master of Science in Mechanical Engineering in Product Design.²⁰ Their proposed
7 product? A better cigarette.

8 18. Monsees has described the cigarette as “the most successful consumer product of all time
9 . . . an amazing product.”²¹ But years of anti-smoking campaigns have successfully denormalized
10 cigarette smoking. As part of their product design research, Monsees and Bowen interviewed smokers
11 who talked about feeling self-conscious of the signs of smoking, for example, coming back into a room
12 after a smoke break and smelling like smoke, or having their hands smell like cigarettes even after
13 washing them multiple times.²² They ended their presentation with a clip from an episode of South Park,
14 a satirical cartoon, showing the characters assembled at the Museum of Tolerance and shaming a
15 smoker.²³ Monsees and Bowen set out to “deliver[] solutions that refresh the magic and luxury of the
16 tobacco category” and recreate the lost “ritual and elegance that smoking once exemplified.”²⁴

17 19. Essentially, Monsees and Bowen saw a market opportunity in a generation of consumers
18 brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the cigarette “to meet
19 the needs of people who want to enjoy tobacco but don’t self-identify with—or don’t necessarily want
20 to be associated with—cigarettes.”²⁵ Monsees saw “a huge opportunity for products that speak directly
21 to those consumers who aren’t perfectly aligned with traditional tobacco products.”²⁶

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23
24 ²⁰ Allison Keeley, Vice Made Nice?, Stanford Mag., (Aug. 2012), <https://stanfordmag.org/contents/vice-made-nice>.

25 ²¹ Gabriel Montoya, Pax Labs: Origins with James Monsees, Social Underground,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited Sept. 7, 2019).

26 ²² Jordan Crook, This is the Stanford thesis presentation that launched Juul, Tech Crunch (Feb. 27, 2019),
<https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

27 ²³ *Id.*

28 ²⁴ Onboardly Interview with Ploom Cofounder and CEO James Monsees, Pax.com (Apr. 30, 2014),
<https://www.pax.com/blogs/press/onboardly>.

²⁵ *Id.*

²⁶ *Id.*

1 20. At one point during their thesis presentation, Monsees states, “The cigarette is actually a
2 carefully engineered product for nicotine delivery and addiction.”²⁷ This description applies just as well
3 to the product he and Bowen would launch a decade later—JUUL.

4 21. The outcome of Monsees and Bowen’s thesis project was a “heat-not-burn” e-cigarette,
5 which uses loose-leaf tobacco. The device heated tobacco contained in pods to a constant temperature,
6 vaporizing nicotine and flavor without burning the materials or producing smoke.

7 22. After graduation, Bowen and Monsees worked on bringing their thesis project to the
8 market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of time talking
9 about what Bowen called “the kind of typical thoughts of evil Big Tobacco companies like coming down
10 and squashing you.”²⁸ But ultimately, that “was not really an issue.”²⁹ In fact, not only did Big Tobacco
11 not squash them, but the opposite. Although Bowen and Monsees characterized their products as aimed
12 toward consumers not aligned with traditional tobacco products, they themselves have aligned with Big
13 Tobacco on at least two occasions: first, with Japan Tobacco and then with JUUL.

14 23. In 2010, Ploom launched its e-cigarette as the ModelOne, using pods of loose-leaf
15 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand units. By then a company
16 with a dozen employees, Ploom was faltering, in need of money, technological expertise, and marketing
17 savvy.³⁰

18 24. Help came from Japan Tobacco International (“JTI”), a division of Japan Tobacco Inc.,
19 the fourth-largest tobacco company in the world. In December 2011, JTI and Ploom entered into a
20 strategic agreement, which gave JTI a minority stake in Ploom and made it a strategic partner. In a
21 statement regarding the agreement, Monsees said, “We are very pleased to partner with JTI as their deep
22 expertise, global distribution networks and capital resources will enable us to enter our next phase of
23
24

25 ²⁷ See *supra* note 20

26 ²⁸ Keeley, *supra* note 18.

27 ²⁹ *Id.*

28 ³⁰ David H. Freedman, How Do You Sell a Product When You Can't Really Say What It Does?, Inc.com,
<http://area51.thedct.net/project102-startupdhaka/business/how-do-you-sell-a-product-when-you-cant-really-say-what-it-does/> (accessed Oct. 22, 2019).

1 growth and capitalize on global expansion opportunities.”³¹ As Bowen explained in an interview, “We
2 were still doing a lot of our own internal product development, but now we had access to floors of
3 scientists at JTI.”

4 25. In 2012, Ploom unveiled the PAX, a loose-leaf vaporizer that didn’t use pods, but which
5 was much more successful. The following year, Ploom combined elements of the PAX with the pod
6 system as the ModelTwo. Although consumers were enthusiastic about both the PAX and the
7 ModelTwo, the products were limited to a small, high-end market. The PAX, for example, retailed for
8 \$250 when it was first marketed. But, as one of Ploom’s investors remarked in 2014, “The company is
9 going to invade the bigger, lower-end market now dominated by e-cigarettes.” He explained that Ploom
10 had “lots of products in the works” and that “we know we need something cheaper than PAX to go after
11 the mass market. There are still huge opportunities out there.”³²

12 26. In February 2015, Ploom and JTI ended their relationship, with Ploom buying back JTI’s
13 minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the Ploom
14 name, while Ploom kept its open-system PAX vaporizer and changed its name to PAX Labs Inc.
15 Monsees characterized the partnership as having “afforded both parties many mutual benefits,” but said
16 that the new arrangement would “fuel continued growth” and that PAX intended “rapid rollouts of new
17 products.”³³

18 27. PAX made good on its promise of new products and invading the bigger, lower-end
19 market. As discussed further below, PAX launched the JUUL in June 2015 with a well-publicized launch
20 party in New York City and a viral social media marketing campaign.

21 28. The company renamed itself JUUL Labs, Inc. in 2017.

25 ³¹ Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in Ploom, Japan Tobacco
26 Int’l, [https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-](https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-minority)
27 [minority](https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-minority) (accessed Oct. 22, 2019).

³² Freedman, supra note 28.

³³ JTI to Acquire Ploom Product Line, Convenient Store News (Feb. 16, 2015), [https://csnews.com/jti-acquire-ploom-](https://csnews.com/jti-acquire-ploom-product-line)
28 [product-line](https://csnews.com/jti-acquire-ploom-product-line).

29. By the close of 2017, according to Nielsen data, JUUL had surpassed its competitors in capturing 32.9 percent of the e-cigarette market. The total e-cigarette market itself expanded 40 percent to \$1.16 billion.³⁴

30. In 2018, JUUL’s gross profit margins were 70%³⁵ and it represented 76.1% of the national e-cigarette market.³⁶ In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JUUL asserted that it was “now responsible for over 95% of the growth in the ENDS pod refill market in the United States” and included the following chart:³⁷

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

³⁴ Ari Levy, E-cigarette maker Juul is raising \$150 million after spinning out of vaping company, CNBC (Dec. 19, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

³⁵ Dan Primack, Scoop: The Numbers Behind Juul’s Investor Appeal, Axios (July 2, 2018), <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

³⁶ Robert K. Jackler et al., JUUL Advertising Over Its First Three Years on the Market 2, Stanford Res. into the Impact of Tobacco Advert. (2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf

³⁷ Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018)

1 31. JUUL shattered previous records for reaching decacorn status, reaching valuation of over
2 \$10 billion in a matter of months—four times faster than Facebook.³⁸ This all came just three years after
3 its product launch.

4 32. JUUL’s staggering commercial success didn’t come from a blank slate. Under the Master
5 Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of
6 thousands of Big Tobacco’s internal documents. In creating JUUL, Monsees and Bowen carefully
7 studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees
8 candidly acknowledged, the internal tobacco documents “became a very intriguing space for us to
9 investigate because we had so much information that you wouldn’t normally be able to get in most
10 industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started
11 building prototypes.”³⁹

12 33. Monsees and Bowen reviewed documents in the Big Tobacco archive that included
13 information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while
14 minimizing the “throat hit” that may potentially deter new smokers. Other records related to tobacco
15 industry market strategies and advertisements designed to lure non-smoking youth. Monsees and Bowen
16 were able to take advantage of an extensive online tobacco advertising research database maintained by
17 the Stanford Research into the Impact of Tobacco Advertising (“SRITA”), an inter-disciplinary research
18 group devoted to researching the promotional activities of the tobacco industry. SRITA’s database
19 contains approximately 50,000 original tobacco advertisements. According to Monsees, JUUL’s
20 advertising was informed by traditional tobacco advertisements, and SRITA in particular had been very
21 useful to JUUL.⁴⁰

22 34. It is no secret that a good portion of the Big Tobacco playbook involved targeting youth.
23 Beginning in the 1950s, JUUL’s now corporate affiliate, Philip Morris, intentionally marketed cigarettes
24 to young people under the age of 21 to recruit “replacement smokers” to ensure the economic future of
25

26 ³⁸ Zack Guzman, Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status, Yahoo! Fin. (Oct. 9, 2019),
27 <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

³⁹ Montoya, supra note 19.

⁴⁰ Jackler et al., supra note 34 at 27.

1 the tobacco industry.⁴¹ Philip Morris knew that youth smoking was essential to the tobacco industry’s
2 success and longevity, as an internal Philip Morris document makes clear: “It is important to know as
3 much as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential
4 regular customer, and the overwhelming majority of smokers first begin to smoke while still in their
5 teens.”⁴² For this reason tobacco companies focused on the 14-24 year-old age group, because “young
6 smokers have been the critical factor in the growth” of tobacco companies and the 14-18 year-old group
7 is an increasing segment of the smoking population.⁴³ As the Vice-President of Marketing at R.J.
8 Reynolds Tobacco Company [“RJR”] explained in 1974, the “young adult market . . . represent[s]
9 tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the
10 total cigarette volume—for at least the next 25 years.”⁴⁴

11 35. Big Tobacco is now prohibited from employing these tactics and strategies to market
12 traditional cigarettes. Nothing prevented JUUL from doing so.

13 36. Restrained from its historical playbook, Big Tobacco has looked for opportunities for
14 growth in the e-cigarette market. In December 2018, Altria, the maker of Marlboro cigarettes and a
15 Tobacco giant, took a 35% stake in JUUL and invested billions into the company. Seeing JUUL as a
16 proven gateway to other substances, including cigarettes, Altria saw an opportunity to expand JUUL's
17 market share and grow the e-cigarette market in the hopes of ultimately driving more cigarette and
18 tobacco use and nicotine addiction. Altria could use JUUL to circumvent the regulatory and legal
19 restrictions on Big Tobacco's marketing tactics.

20 **B. JUUL targeted kids**

21 37. Because of Big Tobacco’s demonstrated effectiveness at addicting youth to nicotine,
22 cigarette manufacturers operate under tight restrictions regarding their advertising and marketing
23 activities. By way of example, cigarette companies may not:

24 A. Use outdoor advertising such as billboards;

25 _____
26 ⁴¹ Amended Final Opinion at 972, U.S. v. Philip Morris, No. 99-cv-2496 (D.D.C. Aug. 17, 2006), ECF 5750.

27 ⁴² Tobacco Company Quotes on Marketing to Kids, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

28 ⁴³ *Id.*

⁴⁴ C.A. Tucker, Marketing Plans Presentation to RJRI B of D, Truth Tobacco Industry Documents, U. of S.F. (Sept. 30,
1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091>.

- 1 B. Sponsor events;
2 C. Give free samples;
3 D. Pay any person to use, display, make reference to or use as a prop any tobacco
4 product, tobacco product package in any media;
5 E. Pay any third party to conduct any activity which the tobacco manufacturer is
6 prohibited from doing; or
7 F. Sell “flavored” cigarettes.

8 38. All of these above activities were prohibited because of their effectiveness at appealing
9 to youth. As described below, all of these activities figured prominently in JUUL’s marketing campaign.

10 39. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford University
11 School of Medicine and principal investigator for SRITA, JUUL’s initial marketing was “patently youth
12 oriented.”⁴⁵ JUUL’s 2015 ad campaign, called “Vaporized” was designed to create a “cult-like
13 following.”⁴⁶ Its imagery featured a vivid color scheme and models in their twenties in poses that
14 researchers note are evocative of behaviors more characteristic of underage teens than mature adults.⁴⁷
15 Dr. Jackler and his colleagues found it “clear” that this imagery resonated with underage teens who
16 aspire to emulate trendsetting young adults.⁴⁸

25 ⁴⁵ Robert K. Jackler, The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the House
26 Subcommittee on Economic and Consumer Policy (July 24, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf> at 2 [“Jackler Testimony”]

27 ⁴⁶ Id. at 4

⁴⁷ Jackler et al., supra note 34

28 ⁴⁸ Id. at 7

1 40. Tobacco advertisers have long understood that teens are attracted to such imagery. The
2 Vaporized campaign was
3 featured on the front page of
4 VICE magazine, “the #1
5 youth media company in the
6 world.”⁴⁹ In the summer of
7 2015, an animated series of
8 Vaporized billboards, with the
9 campaign’s youth-appealing
10 imagery, were displayed in
11 New York’s Times Square.⁵⁰



12 41. Over the first year after JUUL launched its ad campaign in June 2015, it held a series of
13 at least 50 highly stylized parties,
14 typically with music entertainment, in
15 cities across the United States.⁵¹
16 Thousands of young people were given
17 free nicotine-filled JUULpods
18 (appropriately named “JUUL starter
19 kits”), and JUUL posted photos of
20 various young people enthusiastically
21 puffing on JUULs across their social
22 media channels.⁵² JUUL advertising
23 also featured popular stars such as Katy



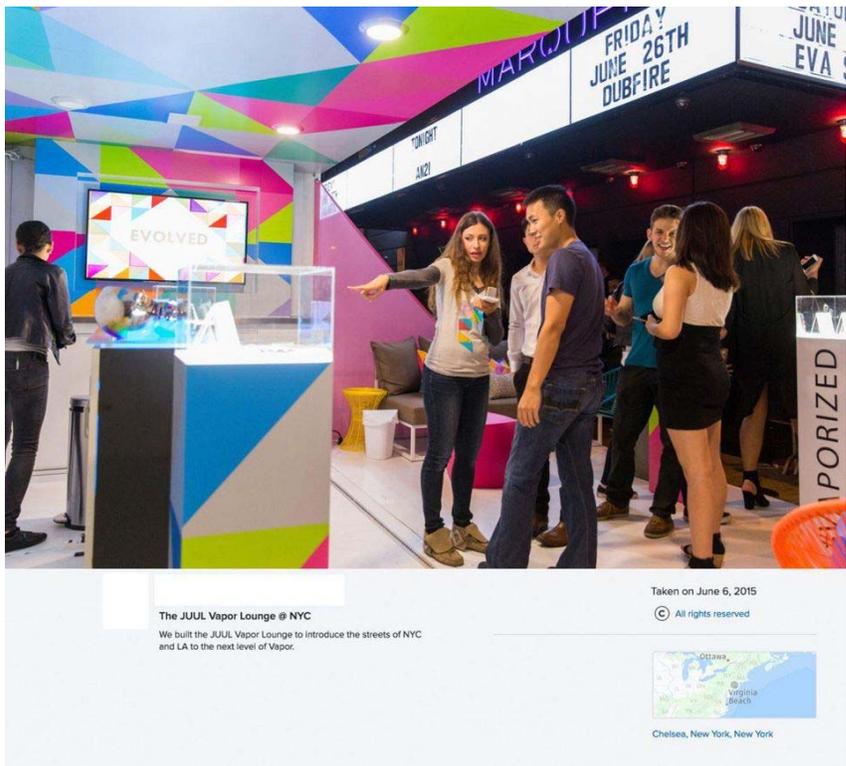
26 ⁴⁹ Id. at 5

27 ⁵⁰ Id. at 17-18

28 ⁵¹ Id. at 3.

⁵² Id.

1 Perry holding a JUUL at the Golden Globes.⁵³



15 (Source: Kathleen Chaykowski, The Disturbing Focus of Juul’s Early Marketing Campaigns, Forbes
16 (Nov. 16, 2018), [https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-](https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketingcampaigns/#3da1e11b14f9)
17 [of-juuls-early-marketingcampaigns/#3da1e11b14f9](https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketingcampaigns/#3da1e11b14f9)).

18 42. JUUL knew these images would be successful in achieving the intended result because
19 it intentionally crafted them to mimic specific traditional tobacco advertisements that Big Tobacco had
20 used to target teens. In fact, many of JUUL’s ads are nearly identical to old cigarette ads that were
21 designed to get teens to smoke. Like its Big Tobacco predecessors, the focus of JUUL’s initial marketing
22 was on colorful ad campaigns using eye-catching designs and youth-oriented imagery with themes of
23 being cool, carefree, stylish, attractive, sexy and popular—unusual themes and images if one’s objective
24 is to promote an adult-only smoking cessation device.⁵⁴

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27 ⁵³ Jackler Testimony at 8

28 ⁵⁴ Virginia Slims vs Juul Advertisement, Stanford U. Res. into the Impact of Tobacco Advert. (2015),
[http://tobacco.stanford.edu/tobacco_main/imagescomp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&them](http://tobacco.stanford.edu/tobacco_main/imagescomp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL)
[e_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL](http://tobacco.stanford.edu/tobacco_main/imagescomp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL)

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1 (Source: Julia Belluz, The Vape Company Juul Said It Doesn't Target Teens. Its Early Ads Tell a
2 Different Story, Vox (Jan. 25, 2019), [https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-
4 marketing](https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-
3 marketing).)

4 43. JUUL used Big Tobacco's effective advertising imagery, but coupled it with a modern,
5 state-of-the-art marketing campaign designed to target youth. It relied heavily on social media, crafting
6 a powerful online presence, which persists even after JUUL deleted its accounts in the face of mounting
7 public scrutiny. JUUL was particularly active on Instagram, which is the most popular social media site
8 among teens.⁵⁵ JUUL cultivated hashtags, allowing it to blend its ads in with wide range of user content,
9 increasing exposure while concealing the commercial nature of the content.⁵⁶ JUUL then used hashtags
10 to reinforce the themes it crafted in its product design, like #style, #technology, #smart, and #gadget.
11 JUUL's hashtags attracted an enormous community of youthful posts on a wide array of subjects.
12 According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and numerous
13 Instagram hashtags contain the JUUL brand name.⁵⁷

14 44. Even after JUUL halted its own social media posts in November 2018, viral peer-to-peer
15 promotion among teens insured continued corporate and product visibility among young people.⁵⁸ In
16 fact, community posts about JUUL increased after JUUL itself quit social media in the Fall of 2018.
17 Prior to November 2018, over a quarter of a million posts appeared. In the eight months after JUUL
18 halted its promotional postings, the rate of community postings increased significantly, resulting in the
19 number of posts doubling to over half a million.⁵⁹

20 45. JUUL also paid social media influencers to post photos of themselves with JUUL devices
21 and to use the hashtags that it was cultivating.⁶⁰ JUUL entered a contract with an advertising agency
22 specifically to identify and recruit social media influencers that had at least 30,000 followers to,
23 according to an internal JUUL email, "establish a network of creatives to leverage as loyalists" for the
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⁵⁵ Jackler et al.

26 ⁵⁶ Id. at 23

27 ⁵⁷ Jackler Testimony at 10.

28 ⁵⁸ Id. at 11.

⁵⁹ Id.

⁶⁰ Jackler et al.

1 JUUL brand.⁶¹ One such influencer was Christina Zayas, whom JUUL paid \$1,000 for just one blog
2 post and one Instagram post in the Fall of 2017.

3 46. JUUL instituted an “affiliate program” to recruit those who authored favorable reviews
4 of its products by providing such reviewers with a 20% discount of purchases of JUUL products.⁶² It
5 even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and
6 get a discount.”⁶³

7 47. Such tactics masked JUUL advertisements as user content, further increasing exposure
8 and ultimately solidifying the company in teen pop culture as a form of cultural currency. JUUL’s
9 strategy was so successful in embedding its products into pop culture that it entered the vernacular as a
10 verb. The JUUL device and the term “juuling” are so pervasive that JUUL effectively eliminated not
11 only competitors, but also any potentially alarming terms like “smoking” or “e-cigarette,” which could
12 alert users to the true nature of the device or activity. A recent study found that 63% of adolescent JUUL
13 users did not know that JUULpods contain nicotine.⁶⁴ This has worked to JUUL’s advantage and was a
14 deliberate part of its strategy. In the first year after its launch, not one of JUUL’s 171 promotional emails
15 said anything about nicotine content,⁶⁵ and it did not include nicotine warnings on the JUUL packaging
16 until August 2018, only after it was forced to do so.

17 48. The design of JUUL’s product is also acutely attractive to youth. Unlike most of its
18 predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and seems like the
19 latest tech invention. This is not surprising, given the founders’ Silicon Valley product design education
20 and training. JUUL co-founder Adam Bowen drew on his experience as a design engineer at Apple to
21 make JUUL’s design mimic technology children were already familiar with, like Apple’s iPhone.⁶⁶ This
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23 ⁶¹ Kenrick Cai, Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges,
24 Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#1ea8bcd33e2>.

25 ⁶² Jackler Testimony at 9-10

26 ⁶³ Id. at 9.

27 ⁶⁴ Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low, Truth Initiative
(Apr. 18, 2018), <https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettesGain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf>.

28 ⁶⁵ Jackler et al. at 25

⁶⁶ How JUUL made nicotine go viral, Vox (Aug. 10, 2018), <https://www.youtube.com/watch?v=AF0poKBUyok>.

1 made JUULs look “more like a cool gadget and less like a drug delivery device. This wasn’t smoking
2 or vaping, this was JUULing.”⁶⁷ The evocation of technology makes the JUUL device familiar and
3 desirable to the younger, tech-savvy generation, particularly teenagers. According to 19-year-old
4 Michelle Williams, “our Grandma’s have iPhones now, normal kids have JUULs now. Because it looks
5 so modern, we kind of trust modern stuff a little bit more so we’re like, we can use it, we’re not going
6 to have any trouble with it because you can trust it.” 15-year-old Sam Friedman agrees: “The tech aspect
7 definitely helps people get introduced to it and then once they’re introduced to it, they’re staying,
8 because they are conditioned to like all these different products. And then this is another product. And
9 it’s just another product. Until you’re addicted to nicotine.”⁶⁸

10 49. The JUUL device even has features reminiscent of youth-oriented tech culture and
11 gaming, like “secret” features users can unlock, such as making the indicator light flash rainbow colors
12 in “party mode.” JUUL has been so successful in emulating technology that the small, rectangular
13 devices are often mistaken for—or passed off as—flash drives.

14 50. The ability to conceal a JUUL is also part of the appeal for adolescents. The devices are
15 small and slim, so they fit easily in a closed hand or a pocket. The ease and simplicity of use—there is
16 nothing to light or unwrap, or even an on-off switch—also make it possible to covertly use a JUUL
17 behind a turned back, which has become a trend in many schools. Finding new ways to hide the ever-
18 concealable JUUL has spawned products designed just for that purpose, such as apparel that allows the
19 wearer to use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.⁶⁹

20 51. JUUL also created special flavors that make its addictive, high-tech device even more
21 attractive to adolescents. Tobacco companies have known for decades that flavored products are key to
22 nicotine adoption by youth. A 1972 Brown & Williamson memorandum: “Youth Cigarette – New
23 Concepts,” specifically noted the “well known fact that teenagers like sweet products.”⁷⁰ According to
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25 ⁶⁷ Id.

26 ⁶⁸ Id.

27 ⁶⁹ Evie Blad, ‘Juuling’ and Teenagers: 3 Things Principals and Teachers Need to Know, Educ. Wk. (July 18, 2018),
<https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

28 ⁷⁰ Marketing Innovations, Inc., Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New Concepts,
U.C.S.F. Truth Tobacco Industry Documents (Sept. 1972),
<https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hzpd0040>.

1 2004 data, 17-year-old smokers were more than three times likely as those over 25 to smoke flavored
2 cigarettes and viewed flavored cigarettes as safer.⁷¹ For this reason, in 2009 the FDA banned flavored
3 cigarettes pursuant to its new authority under the Family Smoking Prevention and Tobacco Control Act
4 of 2009. In announcing the ban, FDA Commissioner Dr. Margaret Hamburg declared that “flavored
5 cigarettes are a gateway for many children and young adults to become regular smokers.”⁷²

6 52. There is no reason to believe that flavors play any different role with respect to e-
7 cigarettes and youth. In fact, a 2017 study of the cigarette flavor ban found that the ban was effective in
8 lowering the number of smokers and the amount smoked by smokers, though it was associated with an
9 increased use of menthol cigarettes (the only flavor still available).⁷³ According to the Surgeon General,
10 85% of adolescents who use e-cigarettes use flavored varieties.⁷⁴ Studies also show that flavors motivate
11 e-cigarette initiation among youth,⁷⁵ and that youth are much more likely to use flavored tobacco
12 products than adults are.⁷⁶ Despite JUUL’s claims that its target market is adult smokers, JUUL sold its
13 product in flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors
14 were the reason countless adolescents started using JUUL products.

15 53. The flavors pose dangers beyond luring young people into trying nicotine. Studies now
16 show these sweet and fruity flavors present distinct additional health hazards. Researchers have found
17 that some of the chemicals JUUL uses for flavor and perfume contain relatively high levels of acetals.
18 Acetals are airway-irritating chemicals that may cause lung damage. Dr. Robert Jackler said that test
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22 ⁷¹ Gardiner Harris, Flavors Banned From Cigarettes to Deter Youth, N.Y. Times (Sept. 22, 2009)
<https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

23 ⁷² Id.

24 ⁷³ Charles J. Courtemanche et al., Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use, *American Journal of Preventive Medicine* 52(5):e139 - e146 (2017), <https://tobacco.ucsf.edu/more-evidence-supporteliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use>; MB. Harrell, et al., Flavored e-cigarette use: Characterizing youth, young adult, and adult users, *Prev Med Rep.* 2017; 5: 33–40 (Nov. 11, 2016), doi: 10.1016/j.pmedr.2016.11.001 PMID: PMC5121224.

25 ⁷⁴ E-Cigarette Use Among Youth and Young Adults, U.S. Dept. of Health and Human Services (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf (accessed Oct. 22, 2019).

26 ⁷⁵ Karl Paul, Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows, MarketWatch (Feb. 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addictionstudy-shows-2019-02-25>

27 ⁷⁶ A.C. Villanti et al., Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study, *53 Am. J. of Preventative Med.* 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>.

1 results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of evidence
2 documenting toxicological effects of e-cig vapor.”⁷⁷

3 54. It is clear that JUUL targeted youth as a key business demographic. A recent study
4 showed that 15 through 17-year-olds are 16 times more likely to use JUUL than 25-34 year olds.⁷⁸

5 55. JUUL was well aware from the beginning that its products would appeal to youth. A
6 former JUUL manager, who spoke to The New York Times on the condition that his name not be used
7 because he worried about facing retribution from the company, said that within months of JUUL’s 2015
8 introduction, it became evident that teenagers were either buying JUULs online or finding others who
9 made the purchases for them. Some people bought more JUUL kits on the company’s website than they
10 could individually use—sometimes 10 or more devices at a time. “First, they just knew it was being
11 bought for resale,” said the former senior manager, who was briefed on the company’s business strategy.
12 “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”⁷⁹

13 56. This “suspicion” has been confirmed by the U.S. Surgeon General, who found that
14 JUUL’s Twitter account was being followed by adolescents and that 25% of those retweeting official
15 JUUL tweets were under 18 years old.⁸⁰

16 57. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United States
17 senators wrote JUUL’s CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL device and
18 JUULpods “are undermining our nation’s efforts to reduce tobacco use among youth and putting an
19 entire new generation of children at risk of nicotine addiction and other health consequences.”⁸¹ Less
20 than a week later, then FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth
21 access to e-cigarettes and enforcement actions against JUUL in particular.⁸² At the same time, the FDA
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23 ⁷⁷ Susie Neilson, Irritating Compounds Can Show Up in ‘Vape Juice’, NPR (July 30, 2019),

24 <https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vapejuice>.

25 ⁷⁸ D.M. Vallone et al., Prevalence and correlates of Juul use among a national sample of youth and young adults, Tobacco
Control (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

26 ⁷⁹ Matt Richtel & Sheila Kaplan, Did Juul Lure Teenagers and Get ‘Customers for Life’? N.Y. Times (Aug. 27, 2019),
<https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

27 ⁸⁰ Adams, supra note 2.

28 ⁸¹ Richard Durbin et al., Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc., United States Senate
(April 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

⁸² Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth
Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes, U.S. Food and Drug Admin.

1 sent JUUL a request for documents relating to marketing, product design, and public health impact.⁸³ In
2 July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JUUL
3 regarding marketing and sale to minors.⁸⁴ In September 2018, FDA Commissioner Gottlieb called youth
4 vaping an “epidemic” and sent letters to JUUL and other e-cigarette manufacturers demanding a plan to
5 reduce youth use.⁸⁵ Then, in October 2018, as alleged above, the FDA raided JUUL’s headquarters and
6 seized more than a thousand documents relating to JUUL’s sales and marketing practices.⁸⁶

7 **C. Addictive By Design**

8 58. In addition to designing its devices to be particularly attractive to youth, JUUL designed
9 its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase nicotine, JUUL
10 uses patented nicotine salts from which it makes liquid nicotine cartridges, or JUULpods.⁸⁷ Each
11 JUULpod is, according to the Company, the equivalent of a pack of cigarettes. Each pod contains an
12 alarming amount of nicotine, with up to 59 mg per ml—an amount that is roughly three times the amount
13 of nicotine that can be sold to consumers in the European Union in a JUULpod. On top of ramping up
14 the amount of nicotine, JUULpods enabled the Company to increase the rate and amount of nicotine
15 delivery to the JUUL user, roughly doubling the concentration and tripling the delivery speed of nicotine
16 of the average e-cigarette.⁸⁸

17 59. Big Tobacco spent decades manipulating nicotine in order to foster and maintain
18 addiction in their customers. RJR developed and patented nicotine salt additives, including nicotine
19 benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide an additional

20
21 (April 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fdacommissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobaccoprevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

22 ⁸³ Id.

23 ⁸⁴ 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/ag-healey-announces-investigation-into-juulother-online-e-cigarette-retailers-over-marketing>.

24 ⁸⁵ Letters to Manufacturers Regarding Plans to Address Youth Access and Use, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youthaccess>.

25 ⁸⁶ McGinley, supra note 17

26 ⁸⁷ Rachel Becker, Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electroniccigarettes-myblu-vuse-markten>.

27 ⁸⁸ How Much Nicotine is In Juul?, Truth Initiative (Feb. 26, 2019), <https://truthinitiative.org/researchresources/emerging-tobacco-products/how-much-nicotine-juul>.

1 “nicotine kick” based on increased nicotine absorption associated with lower pH. JUUL uses this very
2 same concept for its market-dominating e-cigarettes. The Company’s patent for its nicotine salts
3 describes a process for combining benzoic acids with nicotine, a formulation that mimics the nicotine
4 salt additive developed by RJR. JUUL’s use of benzoic acid and manipulation of pH affect the
5 palatability of nicotine inhalation by reducing the “throat hit” that users experience when vaping. Indeed,
6 this was the objective behind using nicotine salts (as compared to “free base nicotine” which has a higher
7 pH). According to Ari Atkins, one of the inventors of the JUUL device, “[i]n the tobacco plant, there
8 are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes
9 it . . . I’ve got to choose my words carefully here: Appropriate for inhalation.”⁸⁹

10 60. Because smokers are already accustomed to a certain level of harshness and throat hit,
11 developing a product with low levels of harshness and minimal “throat hit” is only a critical concern if
12 your goal is to appeal to non-smokers, and specifically, young people. Minimizing the harshness of
13 nicotine also allows one to vape more frequently and for longer periods of time and masks the amount
14 of nicotine being delivered by eliminating the unpleasant throat hit normally associated with large doses
15 of nicotine. The harshness of free base nicotine makes prolonged vaping difficult; the use of nicotine
16 salts solves that problem. Put another way, the nicotine salt technology behind JUULpods makes JUUL
17 “smoke” highly potent yet hardly perceptible.

18 61. The increased nicotine exposure facilitated by the JUUL device has serious health
19 consequences. The ease of use and “smoothness” strip away external inhibitors and enable extreme
20 levels of unfettered use. Using the JUUL’s own calculations, consuming two JUULpods in a day is the
21 equivalent of consuming two to four packs of cigarettes a day. In this way, JUUL has not only created
22 a new generation of e-cigarette smokers, but has also pioneered a new style of smoking—vaping—that
23 is more nicotine-saturated than ever before.

24 62. Increased rates and duration of smoking lead to greater overall exposure to nicotine.
25 Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets brain areas involved in
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27 ⁸⁹ David Pierce, This Might Just Be the First Great E-Cig, Wired.com (Apr. 21, 2015), <https://www.wired.com/2015/04/pax-juul-ecig/>.
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1 emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain,
2 as it can “derange the normal course of brain maturation and have lasting consequences for cognitive
3 ability, mental health, and even personality.”⁹⁰ Animal researchers from the Yale University School of
4 Medicine has found that vaping during adolescence can lead to long-term brain changes, like attention
5 deficit hyperactivity disorder.⁹¹

6 63. Studies also show that exposure to nicotine as a teen—even minimal exposure—
7 biologically primes the brain for addiction and greatly increases likelihood of dependence on nicotine
8 as well as other substances later in life.⁹² In a study done on mice, even “very brief, low-dose exposure
9 to nicotine in early adolescence increases the rewarding properties of other drugs, including alcohol,
10 cocaine, methamphetamine—and these are long-term changes.”⁹³

11 64. JUUL’s use of flavors only amplifies its addictive qualities. Research done by Nii Addy,
12 associate professor of psychiatry and cellular and molecular physiology at the Yale School of Medicine,
13 found that “sweet flavors can make the nicotine more palatable . . . but also act in the brain to increase
14 nicotine taking.”⁹⁴ This effective is especially troubling for teenage brains, which are more sensitive
15 than adult brains to rewards. According to University of Pennsylvania psychologist Janet Audrain-
16 McGovern, research shows that “if the first e-cigarette you used was flavored, then you’re more likely
17 to go on and use an e-cigarette again.”⁹⁵

18 65. According to congressional testimony from Dr. Jonathan Winickoff, a professor of
19 pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco Research
20 and Treatment Center, “[n]icotine addiction can take hold in only a few days, especially in the
21 developing adolescent brain that is particularly vulnerable to addiction to nicotine. . . Many of my
22

23 ⁹⁰ N.A. Goriounova & H.D. Mansvelder, Short- and Long-Term Consequences of Nicotine Exposure during Adolescence
24 for Prefrontal Cortex Neuronal Network Function, *Cold Spring Harbor Persp. in Med.* 2(12) (Dec. 2012),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

25 ⁹¹ Jon Hamilton, *How Vaping Nicotine Can Affect A Teenage Brain*, NPR (Oct. 10, 2019),
<https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

26 ⁹² National Institute on Drug Abuse, *Principles of Adolescent Substance Use Disorder: A Research Based Guide* (2014),
[https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatmentresearch-based-](https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatmentresearch-based-guide/introduction)
27 [guide/introduction](https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatmentresearch-based-guide/introduction).

27 ⁹³ Hamilton, *supra* note 92

28 ⁹⁴ *Id.*

⁹⁵ *Id.*

1 patients find Juul nearly impossible to stop. Nicotine withdrawal can cause headaches, insomnia,
2 irritability, anxiety, and depression, and these withdrawal symptoms are one of the primary reasons a
3 nicotine addiction is difficult to overcome.” Moreover, there is a lack of effective tools to help
4 adolescents overcome nicotine addiction: there is no good data on how to treat adolescents with e-
5 cigarette dependence; there has not been enough research on youth tobacco cessation strategies; and
6 most of the pharmacological therapies approved for adults have been shown to be ineffective or only
7 marginally effective in adolescents.⁹⁶

8 66. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is much
9 more likely to continue than daily cigarette smoking. Out of the surveyed students who reported ever
10 using cigarettes, only 17% indicated that they remained daily smokers. Out of the surveyed students
11 who reported ever using e-cigarettes daily, 58% remained daily users. This data demonstrates both that
12 e-cigarette use in teens is very persistent, a result consistent with the addictiveness of JUUL and the
13 difficulty teens have in trying to quit.⁹⁷

14 67. E-cigarette use also puts adolescents at increased risk for cigarette smoking. Compared
15 to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to begin smoking
16 cigarettes

17 68. The dangerous and destructive nature of nicotine is not a recent discovery. As a key
18 ingredient in tobacco products, the drug and its deleterious effects have been the subject of scientific
19 research and public health warnings for decades. Nicotine causes cardiovascular, reproductive, and
20 immunosuppressive problems with devastating effects. Part of the reason the national decline in cigarette
21 use in recent years was such a victory for public health was because there was a corresponding decline
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26 ⁹⁶ Jonathan Winickoff, Testimony of Jonathan Winickoff before the U.S. House of Representatives Committee on Oversight
27 and Reform Subcommittee on Economic and Consumer Policy, U.S. House Committee on Oversight & Reform (July 24,
28 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf> at 2 [hereinafter “Winickoff Testimony”].

⁹⁷ Id.

1 in teen exposure to nicotine. From 2000 to 2017, the smoking rate among high school students fell by
2 73%.⁹⁸

3 69. That trend has completely reversed. In 2018, more than one in four high school students
4 in the United States reported using a tobacco product in the past thirty days, a dramatic increase from
5 just one year before.⁹⁹ But there was no increase in the use of cigarettes, cigars, or hookahs during that
6 same time period.¹⁰⁰ There was only increased use in a single tobacco product: e-cigarettes. While use
7 of all other tobacco products continued to decrease as it had been for decades, e-cigarette use increased
8 78% in just one year.¹⁰¹ This drastic reversal caused the CDC to describe youth vaping an “epidemic.”¹⁰²

9 70. The teen vaping epidemic, of which JUUL is the architect, has and will continue to have
10 significant costs, both for individual users and for society. Nicotine addiction alone has significant health
11 care costs, and these costs are exacerbated when adolescents are involved. Adolescent nicotine addiction
12 leads to memory and attention problems, and increase chances of addiction later in life, all of which will
13 continue to have long-lasting impacts on society.

14 71. Science is also beginning to show that e-cigarettes have the potential to cause even more,
15 distinct health risks and costs. The very same liquids that enable e-cigarettes to deliver nicotine with
16 such potency are proving to be increasingly dangerous. When heated, the vape liquid turns into aerosol,
17 which may contain, in addition to nicotine, ultrafine toxic particles such as lead, additional chemicals,
18 and volatile organic compounds.¹⁰³ These chemicals have the potential to be deadly. Vaping is now
19 linked to conditions like chronic obstructive pulmonary disease and seizures, and there were 193

21 ⁹⁸ Matthew L. Myers, Press Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It’s Time for Bold
22 Action to Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids (Nov. 26, 2018),
https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

23 ⁹⁹ Progress Erased: Youth Tobacco Use Increased During 2017-2018, Ctrs. for Disease Control and Prevention (Feb. 11,
2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

24 ¹⁰⁰ Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason, Ctrs. for Disease Control & Prevention (Feb. 2019),
<https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

25 ¹⁰¹ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by
26 preventing access to flavored tobacco products and banning menthol in cigarettes, U.S. Food & Drug Admin. (Nov. 15,
2018), [https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-preventing-access)
[new-steps-protect-youth-preventing-access](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-preventing-access).

27 ¹⁰² Adams, supra note 2.

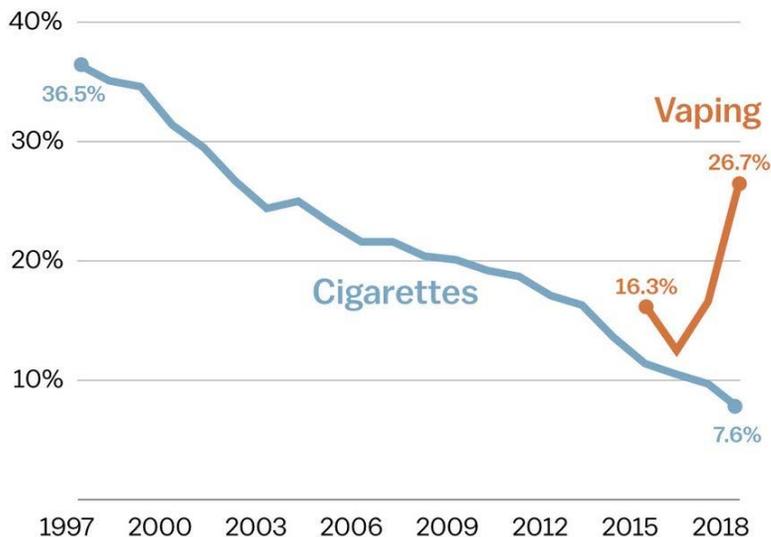
28 ¹⁰³ Lena H. Sun, He went from hiking enthusiast to ‘on death’s door’ within days. Doctors blamed vaping, Wash. Post (Aug.
24, 2019), [https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vapingrelated-lung-](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vapingrelated-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true)
[failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vapingrelated-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true).

possible cases of severe lung illness associated with e-cigarette product use in 22 states in less than two months in the summer of 2019 alone.¹⁰⁴ Public health officials reported the first known death from a vaping-related illness on August 23, 2019.¹⁰⁵ On September 11, 2019, a teenager in King County became the first person in Washington State to be diagnosed with a severe lung disease associated with vaping.¹⁰⁶ By October 10, 2019, lung illness tied to vaping had killed 26 people, and there were over 1,300 possible cases of serious illness reported from 49 states.¹⁰⁷ Only Alaska has not yet seen a case. 16% of these patients have been under the age of

18.¹⁰⁸ In October 2019, a 17-year-old boy from the Bronx, New York, became the first child to die from vaping-related respiratory illness.¹⁰⁹

Teen vaping is surging

Trends in use of cigarettes and vape devices in the past 30 days among 12th-graders



Source: "National Adolescent Drug Trends in 2018," NEJM



¹⁰⁴ CDC, FDA, States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes, Ctrs. for Disease Control & Prevention (Aug. 21, 2019), <https://www.cdc.gov/media/releases/2019/s0821-cdc-fdastates-e-cigarettes.html>.

¹⁰⁵ Matt Richtel & Sheila Kaplan, First Death in a Spate of Vaping Sicknesses Reported by Health Officials, N.Y. Times (Aug. 23, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

¹⁰⁶ Nicole Brodeur & Ryan Blethen, King County teen is first in state diagnosed with severe lung disease related to vaping, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-isfirst-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

¹⁰⁷ Nicole Brodeur & Ryan Blethen, King County teen is first in state diagnosed with severe lung disease related to vaping, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-isfirst-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

¹⁰⁸ Denise Grady, Vaping Illnesses Top 1,000, C.D.C., N.Y. Times (Oct. 3, 2019), <https://www.nytimes.com/2019/10/03/health/vaping-illnesses-cdc.html>.

¹⁰⁹ Ed Shanahan and Azi Paybarah, Bronx Teenager's Death Is the Youngest Vaping Fatality in U.S., N.Y. TIMES (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/nyregion/vaping-death.html>

1 72. Many teenagers are simply unaware of these risks, an ignorance that JUUL preys on.
2 According to Dr. Winickoff, many of his patients believe JUULing is harmless:

3 Counseling teens and preteens on e-cigarette use is challenging. Many of my
4 patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes
5 are dangerous, but assume that Juul—since it’s ubiquitous, comes in childfriendly
6 flavors, and is marketed as a healthier alternative to smoking—must be harmless. I
7 have to explain to kids that e-cigarettes do not have the same positive health benefits
8 as the fruits whose flavor they copy. Even the term vapor calls to mind harmless
9 water vapor. There is no water in these products.

10 Winickoff Testimony at 1.

11 73. In a clear admission of responsibility, JUUL's former CEO Kevin Burns has apologized
12 to all the parents for the vaping epidemic. Mr. Burns said, "I'd tell [the parents] that I'm sorry that their
13 child's using the product." After this apology and in response to the growing number of vape-related
14 health incidences and the threats of legal action, JUUL replaced Mr. Burns with K.C. Crosthwaite. Mr.
15 Crosthwaite was the chief growth officer at Altria, the makers of Marlboro cigarettes. Replacing Mr.
16 Burns with a "growth executive" from Big Tobacco is a clear sign that JUUL does not plan to stop its
17 obsession with growth regardless of public health impacts.

18 **D. JUUL and School**

19 74. In addition to severe health consequences, widespread “JUULing” has placed severe
20 burdens on society, and school districts in particular. It is not an overstatement to say that JUUL has
21 changed the educational experience of students across California.
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1 75. JUUL use has invaded school
2 bathrooms—now known as “the Juul room.”¹¹⁰
3 As one high school student explained, “it’s just
4 a cloud.”¹¹¹ The ubiquity of JUUL use in high
5 school bathrooms has generated numerous
6 online spoofs about “the juul room.”¹¹²

7 76. Kids have also coined the term
8 “nic sick”—which, as one high school student
9 explained to CBS News, “kinda seems like a
10 really bad flu, like, just out of nowhere. Your
11 face goes pale, you start throwing up and stuff,
12 and you just feel horrible.”¹¹³

13 77. Such rampant JUUL use has effectively added another category to teachers’ and school
14 administrators’ job descriptions; many now receive special training to respond to the various problems
15 that JUUL use presents, both in and out of the classroom. A national survey of middle schools and high
16 schools found that 43.3% of schools have had to implement not only an e-cigarette policy but a JUUL-
17 specific policy. Participants in the survey reported multiple barriers to enforcing these policies, including
18 the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive nature
19 of the product.¹¹⁴



21 ¹¹⁰ Moriah Balingit, In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents and
22 schools, Wash. Post (July 26, 2019), [https://www.washingtonpost.com/local/education/helpless-to-the-drawof-nicotine-
doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a11e9-933d-
7501070ee669_story.html](https://www.washingtonpost.com/local/education/helpless-to-the-drawof-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a11e9-933d-7501070ee669_story.html).

23 ¹¹¹ Greta Jochem, Juuling in School: e-Cigarette Use Prevalent Among Local Youth, Daily Hampshire Gazette (Nov. 13,
24 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.

25 ¹¹² Juul Hashtag Meme, Stanford U. Res. into the Impact of Tobacco Advert. (2018),
[http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_im%20g37610.
php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul](http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_im%20g37610.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul).

26 ¹¹³ High school students say about 20% of their peers are vaping, some as young as 8th grade, CBS News (Aug. 31, 2019),
<https://www.cbsnews.com/news/high-school-students-say-about-20-of-their-peers-are-vaping-some-as-young-as-8th-grade/>.

27 ¹¹⁴ Barbara A. Schillo, et al., JUUL in School: Teacher and Administrator Awareness and Policies of E-Cigarettes and JUUL
28 in U.S. Middle and High Schools, Truth Initiative (Sep. 2019),
[https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid
:crossref.org&rfr_dat=cr_pub%3dpubmed](https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid::crossref.org&rfr_dat=cr_pub%3dpubmed).

1 78. Across the United States, schools have had to divert resources and administrators have
2 had to go to extreme lengths to respond to the ever-growing number of students using JUULs on school
3 grounds. According to the Truth Initiative, more than 40 percent of all teachers and administrators
4 reported that their school uses camera surveillance near the school’s restroom, almost half (46 percent)
5 reported camera surveillance elsewhere in the school, and 23 percent reported using assigned teachers
6 for restroom surveillance.¹¹⁵ Some schools have responded by removing bathroom doors or even
7 shutting bathrooms down,¹¹⁶ and schools have banned flash drives to avoid any confusion between flash
8 drives and JUULs.¹¹⁷ Schools have also paid thousands of dollars to install special monitors to detect
9 vaping, which they say is a small price to pay compared to the plumbing repairs otherwise spent as a
10 result of students flushing vaping paraphernalia down toilets.¹¹⁸ Other school districts have sought to
11 create new positions for tobacco prevention supervisors, who get phone alerts when vape smoke is
12 detected in bathrooms.¹¹⁹

13 79. Many schools have shifted their disciplinary policies in order to effectively address the
14 JUUL epidemic. Rather than immediately suspending students for a first offense, school districts have
15 created anti-vaping curricula which students are required to follow in sessions held outside of normal
16 school hours, including on Saturdays.¹²⁰ Teachers prepare lessons and study materials for these sessions
17 with information on the marketing and health dangers of vaping¹²¹—extra work which requires teachers
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20 ¹¹⁵ How are schools responding to JUUL and the youth e-cigarette epidemic?, Truth Initiative, (Jan. 18, 2019),
21 [https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-andyouth-e-](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-andyouth-e-cigarette)
cigarette.

22 ¹¹⁶ Ana B. Ibarra, The Juul’s So Cool, Kids Smoke It In School, Kaiser Health News (Mar. 26, 2018),
23 <https://khn.org/news/the-juuls-so-cool-kids-smoke-it-in-school/>; Evie Blad, ‘Juuling’ Craze: Schools Scramble to Deal With
Student Vaping, Educ. Wk. (May 4, 2018), [https://www.edweek.org/ew/articles/2018/05/09/juuling-craze-schools-scramble-](https://www.edweek.org/ew/articles/2018/05/09/juuling-craze-schools-scramble-to-deal-with.html)
to-deal-with.html.

24 ¹¹⁷ Ana B. Ibarra, Why ‘juuling’ has become a nightmare for school administrators, Kaiser Health News (Mar. 26, 2018),
<https://www.nbcnews.com/health/kids-health/why-juuling-has-become-nightmare-school-administratorsn860106>.

25 ¹¹⁸ Suzanne Monaghan, Many schools installing vape detectors in bathrooms to discourage e-cigarette use, KYW Newsradio
(June 10, 2019), [https://kywnewsradio.radio.com/articles/news/many-schools-installing-vapedetectors-bathrooms-address-](https://kywnewsradio.radio.com/articles/news/many-schools-installing-vapedetectors-bathrooms-address-rise-e-cigarette-use)
rise-e-cigarette-use.

26 ¹¹⁹ Lauren Katims, California Fights Vaping in Schools, U.S. News & World Report (Apr. 30, 2019),
27 <https://www.usnews.com/news/best-states/articles/2019-04-30/california-focuses-on-education-to-curb-vaping-in-schools>.

¹²⁰ Id.

28 ¹²¹ Pat Eaton-Robb, Discipline or treatment? Schools rethinking vaping response, Concord Monitor (May 26, 2019),
<https://www.concordmonitor.com/Discipline-or-treatment-Schools-rethinking-vaping-response-25822972>.

1 to work atypical hours early in the mornings and on weekends.¹²² Some schools will increase their drug-
2 testing budget to include random nicotine tests for students before they join extracurricular activities.
3 Under this drug testing protocol, first offenders will undergo drug and alcohol educational programming;
4 second and third offenders will be forced to sit out from extracurriculars and attend substance abuse
5 counseling.¹²³

6 80. JUUL actively sought to enter school campuses. The Subcommittee on Economic and
7 Consumer Policy (“Subcommittee”) conducted a months-long investigation of JUUL, including
8 reviewing tens of thousands of internal documents, and concluded that JUUL “deliberately targeted
9 children in order to become the nation’s largest seller of e-cigarettes.”¹²⁴ The Subcommittee found that
10 “(1) Juul deployed a sophisticated program to enter schools and convey its messaging directly to teenage
11 children; (2) Juul also targeted teenagers and children, as young as eight years-old, in summer camps
12 and public out-of-school programs; and (3) Juul recruited thousands of online “influencers” to market
13 to teens.”¹²⁵

14 81. According to the Subcommittee, JUUL was willing to pay schools and organizations
15 hundreds of thousands of dollars to have more direct access to kids. Such attempts included paying a
16 Baltimore charter school organization \$134,000 to start a summer camp to teach kids healthy lifestyles,
17 for which JUUL itself would provide the curriculum; offering schools \$10,000 to talk to students on
18 campus; and giving the Police Activities League in Richmond, California, \$90,000 to provide JUUL’s
19 own vaping education program, “Moving On,” to teenage students suspended for using cigarettes.¹²⁶
20 Meanwhile, JUUL would collect data about test scores, surveys, and activity logs about the students.

23 ¹²² Kathy Brown, School trustees OK discipline for juuling/vaping offenses, Gillette News Record (Aug. 29, 2019),
24 https://www.gillette newsrecord.com/news/local/article_5ec28c96-fd48-5ae0-b267-4e417272d020.html.

25 ¹²³ Christine Hauser, This School District Has a Way to Combat Vaping: Random Nicotine Tests, N.Y. Times (June 17,
26 2019), <https://www.nytimes.com/2019/06/17/us/nebraska-vaping-schools.html>.

27 ¹²⁴ Supplemental Memorandum for Hearing on ‘Examining JUUL’s Role in the Youth Nicotine Epidemic: Parts I & II’ from
28 Committee Staff, to Democratic Members of the Subcommittee on Economic and Consumer Policy (July 25, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf> . [hereinafter “JUUL’s
Role in Youth Nicotine Epidemic”]

¹²⁵ Id

¹²⁶ Sheila Kaplan, Juul Targeted Schools and Youth Camps, House Panel on Vaping Claims, N.Y. Times (July 25, 2019),
<https://www.nytimes.com/2019/07/25/health/juul-teens-vaping.html>.

1 82. Among the more egregious incidents reported by the Subcommittee was a July 24, 2019
2 presentation -- during which no parents or teachers were in the room – which conveyed the message that
3 the JUUL product was “totally safe,” and the presenter even demonstrated to the students how to use a
4 JUUL.¹²⁷ The school was presumably paid for this meeting, which was marketed to the school as an
5 anti-smoking initiative. A JUUL spokesman said JUUL is no longer funding such programs.¹²⁸

6 **E. Impact on Los Angeles Unified School District.**

7 83. The epidemic has severely impacted the District. On August 19, 2019, the Los Angeles
8 County Department of Public Health announced that more than 30% of LA County high school students
9 reported using e-cigarette products, and 10% of those students are regular users. This is up 6.4% from
10 the previous year.¹²⁹

11 84. JUUL use has interrupted the educational environment – and is impeding learning – in
12 schools throughout the District. The District has suffered at least four types of harm.

13 85. *First*, the surge of vaping disrupts the learning environment as educators have to deal
14 with the prevention and detection of student vaping and modify school property and school operations
15 in response to the problem. With respect to students who are caught vaping, administrators must expend
16 time and resources to deal with the problem and provide supports (e.g., positive behavioral
17 interventions). From 2013 to the present, vaping incidents on school campuses in the District increased
18 tenfold. In fact, there have been 435 critical incidents reported related to vaping and e-cigarettes in the
19 2018-2019 academic year. That number is expected to be substantially higher in the 2019-2020 year,
20 with closer to 500 such critical incidents reported at the current pace. These numbers dramatically
21 underestimate the total incidence of vaping and e-cigarette use on campus, as they reflect only critical
22 incidents reported by principals. Los Angeles School Police estimate they respond to over a thousand
23 vaping incidents each year. For example, bathrooms cannot be utilized as designed due to the high
24 incidence of bathroom vaping. As another example, because standard smoke detectors are not
25 sufficiently sensitive to detect vape smoke and interferes with fire alarm detectors, the District would

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¹²⁷ JUUL’s Role in Youth Nicotine Epidemic, supra note 125.

¹²⁸ Id.

¹²⁹ <http://publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2117>

1 need to retrofit its detector systems or procure vaping detectors to fully monitor and prevent in-school
2 vaping on middle school and high school campuses.

3 86. *Second*, the vaping epidemic hurts individual student learning. Vaping has led to a rise
4 in student absences due to sickness or absenteeism. Research shows that students who attend school
5 more often do better in school.¹³⁰ In Massachusetts, the National Bureau of Economic Research found
6 “poor attendance can account for up to a quarter of the math achievement gap between poor and non-
7 poor students.”¹³¹ A study of Chicago Public Schools shows “course attendance is eight times more
8 predictive of ninth grade failure than eighth grade test scores.”¹³² In sum, vaping-related school absences
9 directly impact the academic achievement of the District's students.

10 87. *Third*, vaping hurts all students in the District, not just those who do it, through less
11 school funding from the State for school operations. The vast majority of revenue the District receives
12 is tied to daily student attendance. Student absences due to vaping related issues cause a reduction in
13 state funding for the District, which inherently results in a reduction in school-site staff for all students.
14 The District receives funding from the State only if students attend school. The more vaping-related
15 students absences from school, the less funding the District gets to spend on learning for all students.

16 88. *Fourth*, vaping hurts all students by diverting funding away from learning toward
17 educational campaigns, prevention, and treatment. For example, the District would divert services and
18 funding away from implementing specialized programs, lower class size, improved technology,
19 enhanced curricular materials, and academic reading and math instructional intervention programs for
20 students who are struggling academically. The District has instead had to launch an internal task force
21 to specifically address vaping.¹³³ The task force is made up of administrators and staff including health
22 and counseling professionals, representatives from after school programs, school police, environmental
23 health and safety, and the District’s instruction division. The task force actively seeks to prevent the use
24

25 ¹³⁰ Department of Education, 2013-14 Civil Rights Data Collection, [https://www2.ed.gov/datastory/
chronicabsenteeism.html#intro](https://www2.ed.gov/datastory/chronicabsenteeism.html#intro)

26 ¹³¹ Joshua Goodman, “Flaking out: Student absences and snow days as disruptions of instructional time.” No. w20221.
National Bureau of Economic Research (2014).

27 ¹³² Elaine M. Allensworth, & John Q. Easton, “What Matters for Staying On-Track and Graduating in Chicago Public High
Schools: A Close Look at Course Grades, Failures, and Attendance in the Freshman Year. Research Report.” Consortium on
28 Chicago School Research (2007).

¹³³ <https://www.latimes.com/california/story/2019-09-29/vaping-students-california-schools>

1 of JUUL and other vaping materials through coordination of a public awareness campaign. But that's
2 not all. The task force must also address the number of other problems that accompany JUUL use among
3 students; for example, the task force is developing a procedure for disposing of confiscated JUULpods
4 and other vaping paraphernalia. The District will continue to incur extensive costs to orchestrate
5 outreach regarding the risks of vaping, to enforce restrictions regarding vaping in school (for example,
6 through vape smoke detectors), and to develop and carry out protocol associated with the collection and
7 disposal of vape products. In the absence of student vaping, these funds could have gone to the District's
8 core activity – educating LA's youth.

9 **FIRST CAUSE OF ACTION**

10 **PUBLIC NUISANCE**

11 89. Plaintiff hereby re-alleges and incorporates by reference each and every allegation
12 contained above as though the same were set forth herein in full.

13 90. Defendants created a condition that is harmful to human health; indecent and offensive
14 to the senses; obstructed the free use of property and resources, so as to interfere with the comfortable
15 enjoyment of such property and resources.

16 91. Defendants' actions and omissions have caused an unreasonable and substantial
17 interference in the educational environments in schools across the State of California, including those
18 within the District. This interference is ongoing and continuing.

19 92. Defendants created a condition that affected a substantial number of people at the same
20 time – specifically, Defendants have created a vaping epidemic that affects hundreds of thousands, if
21 not millions, of students and all school districts throughout California.

22 93. An ordinary person would be reasonably annoyed and disturbed by Defendants actions
23 as described throughout this Complaint, including marketing and promoting the use of e-cigarettes by
24 minors and the disruption of normal school operations.

25 94. The social utility of Defendants' products do not outweigh the gravity of the harm
26 inflicted on the District and other school districts throughout California.

27 95. The District did not consent to Defendants' conduct.

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1 **FOURTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 115. Plaintiff hereby re-alleges and incorporates by reference each and every allegation
4 contained above as though the same were set forth herein in full.

5 116. Defendant had a duty to Plaintiff to exercise due care.

6 117. Defendant breached that duty, as set forth throughout the Complaint.

7 118. Plaintiff was and continues to be harmed by Defendants' negligent conduct as described
8 throughout the Complaint.

9 119. Plaintiff's harm was foreseeable result of Defendants conduct.

10 120. Defendants' negligence was a substantial factor in causing Plaintiff's harm.

11 121. Defendants' above-described conduct was willful, knowing, and reckless, warranting
12 punitive and exemplary damages.

13 **CLASS ACTION ALLEGATIONS**

14 122. Plaintiff and members of the Class have all suffered injury in fact as a result of JUUL
15 and its products, which was the result of JUUL's unlawful, intentional, and grossly negligent conduct.

16 123. Plaintiff brings this lawsuit on behalf of itself and all other California school districts that
17 are similarly situated. Subject to additional information obtained through further investigation and/or
18 discovery, the proposed "Class" consists of the following: "All school districts in the State of California
19 that have spent resources addressing, or whose property or operations have been affected by, student use
20 of JUUL products."

21 124. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff
22 can prove the elements of its claims regarding liability and entitlement to injunctive relief, abatement,
23 and damages on a classwide basis using the same evidence as would be used to prove those elements in
24 individual actions alleging the same claim.

25 125. Plaintiff reserves the right to modify the Class definition prior to class certification

26 126. **Ascertainability.** The members of the Class are readily ascertainable through public
27 records held by the California Department of Education. In fact, the Department's website contains a
28 list of all public school districts (<https://www.cde.ca.gov/ds/si/ds/pubschls.asp>). Members of the Class

1 may be notified of the pendency of this action by recognized, Court-approved notice dissemination
2 methods, which may include U.S. mail, electronic mail, Internet postings, social media, and/or published
3 notice.

4 127. **Numerosity.** The members of the Class are so numerous that their individual joinder is
5 impracticable. There are several hundred school districts in California.

6 128. **Existence and predominance of Common Questions of Law and Fact.** Common
7 questions of law and fact that exist as to all members of the Class predominate over any questions
8 affecting only individual class members. All members of the Class have been subject to the same
9 conduct and exposure. The common legal and factual questions include, but are not limited to, the
10 following:

- 11 a. Whether Defendants engaged in the conduct alleged herein;
- 12 b. Whether Defendants created a public nuisance;
- 13 c. Whether Defendants unlawfully contributed to a public nuisance;
- 14 d. Whether Defendants failed to sufficiently test their vaping products;
- 15 e. Whether Defendants' warnings were sufficient;
- 16 f. Whether Defendants' actions constitute violations of California common law, as plead
17 herein;
- 18 g. Whether the rise in youth vaping and nicotine addiction was substantially caused by
19 Defendants' conduct;
- 20 h. Whether Defendants' conduct injures or endangers the health and safety of students
21 across California;
- 22 i. Whether Defendants continued to market JUUL products to minors after they were on
23 notice that JUUL products were being used in schools;
- 24 j. Whether Defendants' conduct was negligent and/or grossly negligent;
- 25 k. Whether Defendants' conduct was intentional, malicious, or reckless;
- 26 l. Whether Defendants should be liable for compensatory damages.

27 129. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class in that
28 Plaintiff is a member of the Class that Plaintiff seeks to represent. Plaintiff, and the other members of

1 information in their advertising, in furtherance of their conspiracy and concerted action was outrageous
2 because of Defendants' willful a reckless indifference to the safety of users of JUUL e-cigarettes and
3 pods.

4 134. Plaintiff is entitled to punitive damages because Defendants' failure to warn and other
5 actions as described herein were malicious, wanton, willful or oppressive or were done with reckless
6 indifference to the Plaintiff and the public's safety and welfare. Defendants misled both the FDA and
7 the public at large, including the Plaintiff herein, by making false representations about the safety of
8 their product. In their advertising, Defendants downplayed, understated and/or disregarded their
9 knowledge of the serious and permanent side effects associated with the use of their product, despite
10 available information demonstrating that JUUL e-cigarettes and pods were likely to cause serious side
11 effects.

12 135. Defendants were or should have been in possession of evidence demonstrating that their
13 products caused serious side effects. Nonetheless, they continued to advertise the products by providing
14 false and misleading information with regard to safety and efficacy.

15 136. Defendants' actions described above were performed willfully, intentionally and with
16 reckless disregard for the rights of Plaintiff and the public. As a direct and proximate result of the willful,
17 wanton, evilly, motivated and/or reckless conduct of Defendants, Plaintiff sustained damages as set forth
18 above. Accordingly, Plaintiff seeks and is entitled to punitive damages in an amount to be determined
19 at trial.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, on its own behalf, and on behalf of the Class Members, prays for
22 judgment as follows:

- 23 a. For an order certifying the proposed Class as requested herein;

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- 1 b. That Plaintiff be appointed as the representative of the Class, and counsel for Plaintiff
2 be appointed as class counsel;
3 c. Compensatory damages as allowable by law;
4 d. Costs to abate and/or mitigate the continuing nuisance;
5 e. Injunctive relief and abatement;
6 f. Punitive damages;
7 g. Reasonable attorneys' fees as allowed by law;
8 h. Statutory pre-judgment and post-judgment interest allowable by law;
9 i. Costs of this suit allowable by law; and,
10 j. Any and all other relief that this Court deems necessary or appropriate.

11 DATED: October 28, 2019

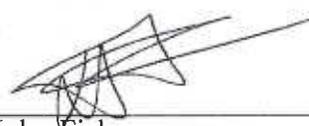
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17 DATED: October 28, 2019

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LOS ANGELES UNIFIED SCHOOL DISTRICT

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