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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SAN DIEGO UNIFIED SCHOOL DISTRICT, a) Case No.: 37-2020-00000935-CU-MT-CTL
unified school district organized and operating)
pursuant to the laws of the State of California;)

Plaintiff,
v.

JUUL LABS, INC., f/k/a PAX Labs, Inc. and
PAX Labs Inc.,

Defendants.

COMPLAINT FOR DAMAGES:

- 1. Public Nuisance**
- 2. Strict Liability – Design Defect**
- 3. Strict Liability – Failure to Warn**
- 4. Negligence**

DEMAND FOR A JURY TRIAL

1 Plaintiff SAN DIEGO UNIFIED SCHOOL DISTRICT (“Plaintiff,” “SDUSD,” or “District”)
2 hereby brings the following complaint for damages against JUUL Labs, Inc., f/k/a PAX Labs, Inc.
3 (collectively, “JUUL” or “Defendants”), as a result of the injuries and damage it sustained as a result of
4 the JUUL youth vaping crisis.

5 **INTRODUCTION**

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

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

19 3. Consistent with this trend, students in SDUSD are vaping at high rates, which continue
20

21 ¹ Meredith Berkman, Testimony of Meredith Berkman, Parents Against Vaping E-cigarettes, U.S.
22 House Committee on Oversight & Reform (July 24, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20BerkmanPAVe%20Testimony.pdf>.

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

25 ³ *Id.*

26 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>.

27 ⁵ *Id.*

28 ⁶ *Id.*

1 to climb. SDUSD has seen a dramatic increase in student vaping in just two short years the percentage
2 of students who currently use electronic vapor products frequently increased over 300% from 2017 –
3 2019.

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

13 5. A major cause of this epidemic is JUUL Labs, Inc., the maker of the JUUL e-cigarette.
14 JUUL entered the e-cigarette market in 2015 and now controls over 70% of it.¹⁰ Over a million JUUL
15 e-cigarettes were sold between 2015 and 2017.¹¹ In 2017, JUUL generated over \$224 million in retail
16
17

18 ⁷ Texas governor signs law increasing the age to buy tobacco products to 21, CNN (June 8, 2019),
19 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
21 teen use doesn’t slow, CNBC (Nov. 16, 2018), [https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-](https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html)
22 [threatens-to-pull-e-cigarettes-off-market.html](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
23 epidemic, announces investigation, new enforcement, USA Today (Sept. 12, 2018),
24 [https://www.usatoday.com/story/news/politics/2018/09/12/fdascott-gottlieb-youth-vaping-e-cigarettes-](https://www.usatoday.com/story/news/politics/2018/09/12/fdascott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/)
25 [epidemic-enforcement/1266923002/](https://www.usatoday.com/story/news/politics/2018/09/12/fdascott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/).

26 ⁹ Jan Hoffman, Study Shows Big Rise in Teen Vaping This Year, N.Y. Times (Dec. 17, 2018),
27 <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html> ; Rajiv Bahl, Teen Use of
28 Flavored Tobacco 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>.

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-](https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html)
[50be-8b0c-d3df18d08759.html](https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html).

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

1 sales, a 621% year-over-year increase.¹² By June 2018, sales had skyrocketed another 783%, reaching
2 \$942.6 million.¹³ The e-cigarette category as a whole grew 97% to \$1.96 billion in the same period,
3 largely based on JUUL's market success.¹⁴ JUUL's dominance of the e-cigarette market has been so
4 rapid, and so complete, that the act of vaping is now often referred to as "juuling."

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

15 7. JUUL now insists it never marketed to young people. This assertion is patently false.
16 JUUL has compelled a generation of youth, who were never cigarette smokers, into nicotine addiction
17 and put them at risk for severe lung injury and/or other health harms resulting from aerosol inhalation.
18 JUUL is working to maintain JUUL's record-breaking sales and market dominance—which would not
19
20

21 ¹² *Id.*

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

24 ¹⁴ *Id.*

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

27 ¹⁶ Letter From US FDA to Kevin Burns, U.S. Food & Drug Admin. (Sept. 12, 2018),
<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-documentssurprise-inspection-headquarters/>.

1 be possible if the customer base was truly only adults looking to quit smoking, or for a purported
2 healthier alternative to smoking.

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

6 9. SDUSD has already taken actions to reduce tobacco use among its students—but now it
7 must address the new epidemic of youth vaping. Serving a population of nearly 121,000 students in the
8 second largest district in California, SDUSD experiences the dangers of vaping, firsthand. SDUSD
9 school nurses have seen an increase in student health issues connected to vaping, including but not
10 limited to dizziness and syncope, shortness of breath, rapid heartrate, and nausea and vomiting. SDUSD
11 has had to divert resources in an ongoing effort to educate students of the consequences of using vaping
12 products and continues to address the epidemic on a daily basis.

13 **PARTIES**

14 10. Plaintiff San Diego Unified School District is a unified school district organized and
15 operating pursuant to the laws of the State of California. SDUSD serves more than 121,000 students
16 and is the second largest district in California.

17 11. Defendant JUUL Labs, Inc., f/k/a PAX Labs, Inc. is a Delaware corporation. Its principal
18 place of business is in San Francisco, California. JUUL manufacturers, designs, sells, markets,
19 promotes, and distributes JUUL e-cigarettes, JUULpods and accessories.

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

25 ///

26
27 ¹⁸ Juul Labs, Inc. Warning Letter, U.S. Food and Drug Admin. (Sept. 9, 2019),
28 <https://www.fda.gov/inspectionscompliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

1 **JURISDICTION AND VENUE**

2 13. This Court has subject-matter jurisdiction over this action pursuant to California
3 Constitution, Article VI, §10, and under California Code of Civil Procedure Section 410.10.

4 14. The Court has jurisdiction over Defendants because Defendants have their principal
5 places of business in California. Each of the Defendants intentionally avails itself of the California
6 market so as to render the exercise of jurisdiction over it by the California courts consistent with the
7 traditional notions of fair play and substantial justice.

8 15. Venue in San Diego County is proper as Defendants have their principal place of
9 business in California and a substantial part of the events, acts, omissions, and transactions complained
10 of herein occurred in this County.

11 **FACTUAL ALLEGATIONS**

12 **A. Following Big Tobacco's lead**

13 16. JUUL was founded by Adam Bowen and James Monsees. The company's beginnings
14 can be traced to the pair's collaboration on a product design master's thesis when they were graduate
15 students at Stanford University in 2004—Monsees completing a Master of Fine Arts in Product Design,
16 and Bowen a Master of Science in Mechanical Engineering in Product Design.¹⁹ Their proposed
17 product? A better cigarette.

18 17. Monsees has described the cigarette as “the most successful consumer product of all time
19 . . . an amazing product.”²⁰ But years of anti-smoking campaigns have successfully denormalized
20 cigarette smoking. As part of their product design research, Monsees and Bowen interviewed smokers
21 who talked about feeling self-conscious of the signs of smoking, for example, coming back into a room
22 after a smoke break and smelling like smoke, or having their hands smell like cigarettes even after
23

24
25
26 ¹⁹ Allison Keeley, Vice Made Nice?, Stanford Mag., (Aug. 2012),
<https://stanfordmag.org/contents/vice-made-nice>.

27 ²⁰ Gabriel Montoya, Pax Labs: Origins with James Monsees, Social Underground,
28 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited Sept. 7, 2019).

1 washing them multiple times.²¹ They ended their presentation with a clip from an episode of South Park,
2 a satirical cartoon, showing the characters assembled at the Museum of Tolerance and shaming a
3 smoker.²² Monsees and Bowen set out to “deliver[] solutions that refresh the magic and luxury of the
4 tobacco category” and recreate the lost “ritual and elegance that smoking once exemplified.”²³

5 18. Essentially, Monsees and Bowen saw a market opportunity in a generation of consumers
6 brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the cigarette “to meet
7 the needs of people who want to enjoy tobacco but don’t self-identify with—or don’t necessarily want
8 to be associated with—cigarettes.”²⁴ Monsees saw “a huge opportunity for products that speak directly
9 to those consumers who aren’t perfectly aligned with traditional tobacco products.”²⁵

10 19. At one point during their thesis presentation, Monsees states, “The cigarette is actually a
11 carefully engineered product for nicotine delivery and addiction.”²⁶ This description applies just as well
12 to the product he and Bowen would launch a decade later—JUUL.

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

16 21. After graduation, Bowen and Monsees worked on bringing their thesis project to the
17 market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of time talking
18 about what Bowen called “the kind of typical thoughts of evil Big Tobacco companies like coming down
19 and squashing you.”²⁷ But ultimately, that “was not really an issue.”²⁸ In fact, not only did Big Tobacco
20 not squash them, but the opposite. Although Bowen and Monsees characterized their products as aimed
21

22 ²¹ Jordan Crook, This is the Stanford thesis presentation that launched Juul, Tech Crunch (Feb. 27,
23 2019), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

24 ²² *Id.*

25 ²³ Onboardly Interview with Ploom Cofounder and CEO James Monsees, Pax.com (Apr. 30, 2014),
<https://www.pax.com/blogs/press/onboardly>.

26 ²⁴ *Id.*

27 ²⁵ *Id.*

28 ²⁶ *See supra* note 20

²⁷ Keeley, *supra* note 18.

²⁸ *Id.*

1 toward consumers not aligned with traditional tobacco products, they themselves have aligned with Big
2 Tobacco on at least two occasions: first, with Japan Tobacco and then with JUUL.

3 22. In 2010, Ploom launched its e-cigarette as the ModelOne, using pods of loose-leaf
4 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand units. By then a company
5 with a dozen employees, Ploom was faltering, in need of money, technological expertise, and marketing
6 savvy.²⁹

7 23. Help came from Japan Tobacco International (“JTI”), a division of Japan Tobacco Inc.,
8 the fourth-largest tobacco company in the world. In December 2011, JTI and Ploom entered into a
9 strategic agreement, which gave JTI a minority stake in Ploom and made it a strategic partner. In a
10 statement regarding the agreement, Monsees said, “We are very pleased to partner with JTI as their deep
11 expertise, global distribution networks and capital resources will enable us to enter our next phase of
12 growth and capitalize on global expansion opportunities.”³⁰ As Bowen explained in an interview, “We
13 were still doing a lot of our own internal product development, but now we had access to floors of
14 scientists at JTI.”

15 24. In 2012, Ploom unveiled the PAX, a loose-leaf vaporizer that didn’t use pods, but which
16 was much more successful. The following year, Ploom combined elements of the PAX with the pod
17 system as the ModelTwo. Although consumers were enthusiastic about both the PAX and the
18 ModelTwo, the products were limited to a small, high-end market. The PAX, for example, retailed for
19 \$250 when it was first marketed. But, as one of Ploom’s investors remarked in 2014, “The company is
20 going to invade the bigger, lower-end market now dominated by e-cigarettes.” He explained that Ploom
21 had “lots of products in the works” and that “we know we need something cheaper than PAX to go after
22 the mass market. There are still huge opportunities out there.”³¹

24 ²⁹ David H. Freedman, How Do You Sell a Product When You Can't Really Say What It Does?,
25 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).

26 ³⁰ Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in
27 Ploom, Japan Tobacco Int’l, <https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-minority> (accessed Oct. 22, 2019).

28 ³¹ Freedman, supra note 28.

1 25. In February 2015, Ploom and JTI ended their relationship, with Ploom buying back JTI's
2 minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the Ploom
3 name, while Ploom kept its open-system PAX vaporizer and changed its name to PAX Labs Inc.
4 Monsees characterized the partnership as having "afforded both parties many mutual benefits," but said
5 that the new arrangement would "fuel continued growth" and that PAX intended "rapid rollouts of new
6 products."³²

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

10 27. The company renamed itself JUUL Labs, Inc. in 2017.

11 28. By the close of 2017, according to Nielsen data, JUUL had surpassed its competitors in
12 capturing 32.9 percent of the e-cigarette market. The total e-cigarette market itself expanded 40 percent
13 to \$1.16 billion.³³

14 29. In 2018, JUUL's gross profit margins were 70%³⁴ and it represented 76.1% of the
15 national e-cigarette market.³⁵ In a complaint it filed in November 2018 against 24 vape companies for
16 alleged patent infringement, JUUL asserted that it was "now responsible for over 95% of the growth in
17 the ENDS pod refill market in the United States" and included the following chart:³⁶

21 ³² JTI to Acquire Ploom Product Line, Convenient Store News (Feb. 16, 2015), <https://csnews.com/jti-acquire-ploom-product-line>.

22 ³³ Ari Levy, E-cigarette maker Juul is raising \$150 million after spinning out of vaping company,
23 CNBC (Dec. 19, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

24 ³⁴ Dan Primack, Scoop: The Numbers Behind Juul's Investor Appeal, Axios (July 2, 2018),
25 <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

26 ³⁵ Robert K. Jackler et al., JUUL Advertising Over Its First Three Years on the Market 2, Stanford Res.
27 into the Impact of Tobacco Advert. (2019),
28 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf

³⁶ 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)

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%

30. JUUL shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.³⁷ This all came just three years after its product launch.

31. JUUL's staggering commercial success didn't come from a blank slate. Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco's internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents "became a very intriguing space for us to investigate because we had so much information that you wouldn't normally be able to get in most

³⁷ Zack Guzman, Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status, Yahoo! Fin. (Oct. 9, 2019), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

1 industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started
2 building prototypes.”³⁸

3 32. Monsees and Bowen reviewed documents in the Big Tobacco archive that included
4 information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while
5 minimizing the “throat hit” that may potentially deter new smokers. Other records related to tobacco
6 industry market strategies and advertisements designed to lure non-smoking youth. Monsees and Bowen
7 were able to take advantage of an extensive online tobacco advertising research database maintained by
8 the Stanford Research into the Impact of Tobacco Advertising (“SRITA”), an inter-disciplinary research
9 group devoted to researching the promotional activities of the tobacco industry. SRITA’s database
10 contains approximately 50,000 original tobacco advertisements. According to Monsees, JUUL’s
11 advertising was informed by traditional tobacco advertisements, and SRITA in particular had been very
12 useful to JUUL.³⁹

13 33. It is no secret that a good portion of the Big Tobacco playbook involved targeting youth.
14 Beginning in the 1950s, JUUL’s now corporate affiliate, Philip Morris, intentionally marketed cigarettes
15 to young people under the age of 21 to recruit “replacement smokers” to ensure the economic future of
16 the tobacco industry.⁴⁰ Philip Morris knew that youth smoking was essential to the tobacco industry’s
17 success and longevity, as an internal Philip Morris document makes clear: “It is important to know as
18 much as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential
19 regular customer, and the overwhelming majority of smokers first begin to smoke while still in their
20 teens.”⁴¹ For this reason tobacco companies focused on the 14-24 year-old age group, because “young
21 smokers have been the critical factor in the growth” of tobacco companies and the 14-18 year-old group
22 is an increasing segment of the smoking population.⁴² As the Vice-President of Marketing at R.J.

24 ³⁸ Montoya, supra note 19.

25 ³⁹ Jackler et al., supra note 34 at 27.

26 ⁴⁰ Amended Final Opinion at 972, U.S. v. Philip Morris, No. 99-cv-2496 (D.D.C. Aug. 17, 2006), ECF
5750.

27 ⁴¹ Tobacco Company Quotes on Marketing to Kids, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

28 ⁴² *Id.*

1 Reynolds Tobacco Company [“RJR”] explained in 1974, the “young adult market . . . represent[s]
2 tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the
3 total cigarette volume—for at least the next 25 years.”⁴³

4 34. Big Tobacco is now prohibited from employing these tactics and strategies to market
5 traditional cigarettes. Nothing prevented JUUL from doing so.

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

13 **B. JUUL targeted kids**

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

- 17 A. Use outdoor advertising such as billboards;
- 18 B. Sponsor events;
- 19 C. Give free samples;
- 20 D. Pay any person to use, display, make reference to or use as a prop any tobacco
21 product, tobacco product package in any media;
- 22 E. Pay any third party to conduct any activity which the tobacco manufacturer is
23 prohibited from doing; or
- 24 F. Sell “flavored” cigarettes.

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

27 _____
28 ⁴³ 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>.

38. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford University School of Medicine and principal investigator for SRITA, JUUL's initial marketing was "patently youth oriented."⁴⁴ JUUL's 2015 ad campaign, called "Vaporized" was designed to create a "cult-like following."⁴⁵ Its imagery featured a vivid color scheme and models in their twenties in poses that researchers note are evocative of behaviors more characteristic of underage teens than mature adults.⁴⁶ Dr. Jackler and his colleagues found it "clear" that this imagery resonated with underage teens who aspire to emulate trendsetting young adults.⁴⁷

39. Tobacco advertisers have long understood that teens are attracted to such imagery. The Vaporized campaign was featured on the front page of VICE magazine, "the #1 youth media company in the world."⁴⁸ In the summer of 2015, an animated series of Vaporized billboards, with the campaign's youth-appealing imagery, were displayed in New York's Times Square.⁴⁹



⁴⁴ Robert K. Jackler, The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the House 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"]

⁴⁵ Id. at 4

⁴⁶ Jackler et al., supra note 34

⁴⁷ Id. at 7

⁴⁸ Id. at 5

⁴⁹ Id. at 17-18

1 40. Over the first year after JUUL launched its ad campaign in June 2015, it held a series of
2 at least 50 highly stylized parties, typically with music entertainment, in cities across the United States.⁵⁰
3 Thousands of young people were given free nicotine-filled JUULpods (appropriately named “JUUL
4 starter kits”), and JUUL posted photos of various young people enthusiastically puffing on JUULs across
5 their social media channels.⁵¹ JUUL advertising also featured popular stars such as Katy Perry holding
6 a JUUL at the Golden Globes.⁵²



21 ///

22 ///

23 ///

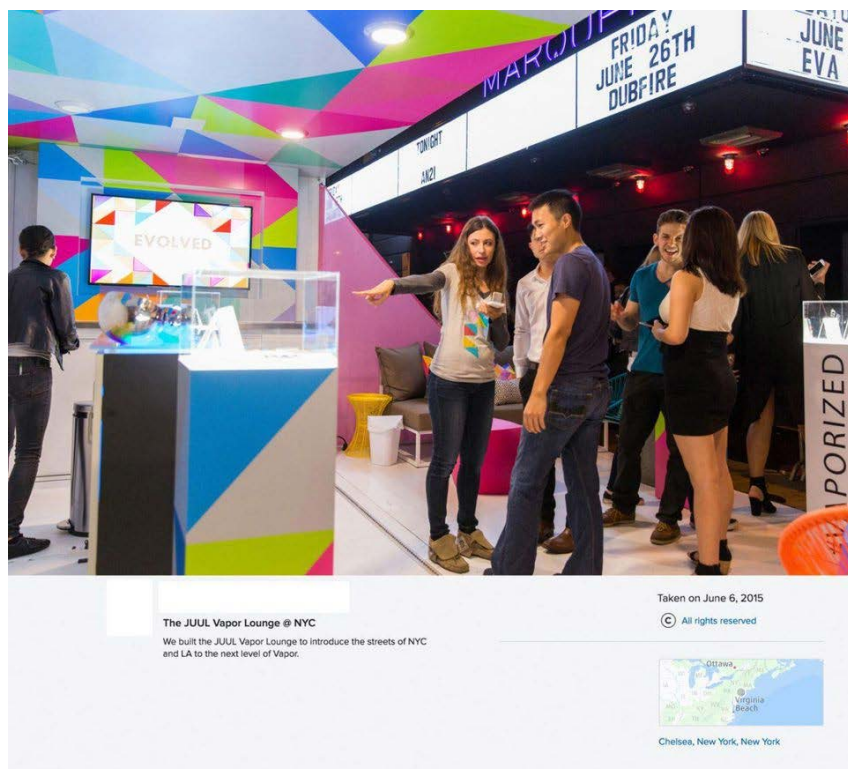
24 ///

25 ///

27 ⁵⁰ Id. at 3.

28 ⁵¹ Id.

⁵² Jackler Testimony at 8



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

41. JUUL knew these images would be successful in achieving the intended result because it intentionally crafted them to mimic specific traditional tobacco advertisements that Big Tobacco had used to target teens. In fact, many of JUUL’s ads are nearly identical to old cigarette ads that were designed to get teens to smoke. Like its Big Tobacco predecessors, the focus of JUUL’s initial marketing was on colorful ad campaigns using eye-catching designs and youth-oriented imagery with themes of being cool, carefree, stylish, attractive, sexy and popular—unusual themes and images if one’s objective is to promote an adult-only smoking cessation device.⁵³

⁵³ 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&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL





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

42. JUUL used Big Tobacco's effective advertising imagery, but coupled it with a modern, state-of-the-art marketing campaign designed to target youth. It relied heavily on social media, crafting a powerful online presence, which persists even after JUUL deleted its accounts in the face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the most popular social media site

1 among teens.⁵⁴ JUUL cultivated hashtags, allowing it to blend its ads in with wide range of user content,
2 increasing exposure while concealing the commercial nature of the content.⁵⁵ JUUL then used hashtags
3 to reinforce the themes it crafted in its product design, like #style, #technology, #smart, and #gadget.
4 JUUL's hashtags attracted an enormous community of youthful posts on a wide array of subjects.
5 According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and numerous
6 Instagram hashtags contain the JUUL brand name.⁵⁶

7 43. Even after JUUL halted its own social media posts in November 2018, viral peer-to-peer
8 promotion among teens insured continued corporate and product visibility among young people.⁵⁷ In
9 fact, community posts about JUUL increased after JUUL itself quit social media in the Fall of 2018.
10 Prior to November 2018, over a quarter of a million posts appeared. In the eight months after JUUL
11 halted its promotional postings, the rate of community postings increased significantly, resulting in the
12 number of posts doubling to over half a million.⁵⁸

13 44. JUUL also paid social media influencers to post photos of themselves with JUUL devices
14 and to use the hashtags that it was cultivating.⁵⁹ JUUL entered a contract with an advertising agency
15 specifically to identify and recruit social media influencers that had at least 30,000 followers to,
16 according to an internal JUUL email, "establish a network of creatives to leverage as loyalists" for the
17 JUUL brand.⁶⁰ One such influencer was Christina Zayas, whom JUUL paid \$1,000 for just one blog
18 post and one Instagram post in the Fall of 2017.

19 45. JUUL instituted an "affiliate program" to recruit those who authored favorable reviews
20 of its products by providing such reviewers with a 20% discount of purchases of JUUL products.⁶¹ It
21

22 ⁵⁴ Jackler et al.

23 ⁵⁵ Id. at 23

24 ⁵⁶ Jackler Testimony at 10.

25 ⁵⁷ Id. at 11.

26 ⁵⁸ Id.

27 ⁵⁹ Jackler et al.

28 ⁶⁰ Kenrick Cai, Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges, Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#1ea8bcd33e2>.

⁶¹ Jackler Testimony at 9-10

1 even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and
2 get a discount.”⁶²

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

13 47. The design of JUUL’s product is also acutely attractive to youth. Unlike most of its
14 predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and seems like the
15 latest tech invention. This is not surprising, given the founders’ Silicon Valley product design education
16 and training. JUUL co-founder Adam Bowen drew on his experience as a design engineer at Apple to
17 make JUUL’s design mimic technology children were already familiar with, like Apple’s iPhone.⁶⁵ This
18 made JUULs look “more like a cool gadget and less like a drug delivery device. This wasn’t smoking
19 or vaping, this was JUULing.”⁶⁶ The evocation of technology makes the JUUL device familiar and
20 desirable to the younger, tech-savvy generation, particularly teenagers. According to 19-year-old
21 Michelle Williams, “our Grandma’s have iPhones now, normal kids have JUULs now. Because it looks
22 so modern, we kind of trust modern stuff a little bit more so we’re like, we can use it, we’re not going
23

24 ⁶² Id. at 9.

25 ⁶³ Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low,
26 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](https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettesGain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf).

27 ⁶⁴ Jackler et al. at 25

28 ⁶⁵ How JUUL made nicotine go viral, Vox (Aug. 10, 2018),
<https://www.youtube.com/watch?v=AFOpKBUyok>.

⁶⁶ Id.

1 to have any trouble with it because you can trust it.” 15-year-old Sam Friedman agrees: “The tech aspect
2 definitely helps people get introduced to it and then once they’re introduced to it, they’re staying,
3 because they are conditioned to like all these different products. And then this is another product. And
4 it’s just another product. Until you’re addicted to nicotine.”⁶⁷

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

9 49. The ability to conceal a JUUL is also part of the appeal for adolescents. The devices are
10 small and slim, so they fit easily in a closed hand or a pocket. The ease and simplicity of use—there is
11 nothing to light or unwrap, or even an on-off switch—also make it possible to covertly use a JUUL
12 behind a turned back, which has become a trend in many schools. Finding new ways to hide the ever-
13 concealable JUUL has spawned products designed just for that purpose, such as apparel that allows the
14 wearer to use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.⁶⁸

15 50. JUUL also created special flavors that make its addictive, high-tech device even more
16 attractive to adolescents. Tobacco companies have known for decades that flavored products are key to
17 nicotine adoption by youth. A 1972 Brown & Williamson memorandum: “Youth Cigarette – New
18 Concepts,” specifically noted the “well known fact that teenagers like sweet products.”⁶⁹ According to
19 2004 data, 17-year-old smokers were more than three times likely as those over 25 to smoke flavored
20 cigarettes and viewed flavored cigarettes as safer.⁷⁰ For this reason, in 2009 the FDA banned flavored
21 cigarettes pursuant to its new authority under the Family Smoking Prevention and Tobacco Control Act

23 ⁶⁷ Id.

24 ⁶⁸ Evie Blad, ‘Juuling’ and Teenagers: 3 Things Principals and Teachers Need to Know, Educ. Wk.
25 (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

26 ⁶⁹ Marketing Innovations, Inc., Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—
27 New Concepts, U.C.S.F. Truth Tobacco Industry Documents (Sept. 1972),
<https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hazpd0040>.

28 ⁷⁰ 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>.

of 2009. In announcing the ban, FDA Commissioner Dr. Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young adults to become regular smokers.”⁷¹

51. There is no reason to believe that flavors play any different role with respect to e-cigarettes and youth. In fact, a 2017 study of the cigarette flavor ban found that the ban was effective in lowering the number of smokers and the amount smoked by smokers, though it was associated with an increased use of menthol cigarettes (the only flavor still available).⁷² According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored varieties.⁷³ Studies also show that flavors motivate e-cigarette initiation among youth,⁷⁴ and that youth are much more likely to use flavored tobacco products than adults are.⁷⁵ Despite JUUL’s claims that its target market is adult smokers, JUUL sold its product in flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors were the reason countless adolescents started using JUUL products.

52. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers have found that some of the chemicals JUUL uses for flavor and perfume contain relatively high levels of acetals. Acetals are airway-irritating chemicals that may cause lung damage. Dr. Robert Jackler said that test results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of evidence

⁷¹ Id.

⁷² 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.

⁷³ 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).

⁷⁴ 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>

⁷⁵ 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>.

documenting toxicological effects of e-cig vapor.”⁷⁶

53. It is clear that JUUL targeted youth as a key business demographic. A recent study showed that 15 through 17-year-olds are 16 times more likely to use JUUL than 25-34 year olds.⁷⁷

54. JUUL was well aware from the beginning that its products would appeal to youth. A former JUUL manager, who spoke to The New York Times on the condition that his name not be used because he worried about facing retribution from the company, said that within months of JUUL’s 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company’s website than they could individually use—sometimes 10 or more devices at a time. “First, they just knew it was being bought for resale,” said the former senior manager, who was briefed on the company’s business strategy. “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”⁷⁸

55. This “suspicion” has been confirmed by the U.S. Surgeon General, who found that JUUL’s Twitter account was being followed by adolescents and that 25% of those retweeting official JUUL tweets were under 18 years old.⁷⁹

56. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United States senators wrote JUUL’s CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL device and JUULpods “are undermining our nation’s efforts to reduce tobacco use among youth and putting an entire new generation of children at risk of nicotine addiction and other health consequences.”⁸⁰ Less than a week later, then FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth

⁷⁶ Susie Neilson, Irritating Compounds Can Show Up in ‘Vape Juice’, NPR (July 30, 2019), <https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vapejuice>.

⁷⁷ 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>.

⁷⁸ 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>.

⁷⁹ Adams, supra note 2.

⁸⁰ 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>.

1 access to e-cigarettes and enforcement actions against JUUL in particular.⁸¹ At the same time, the FDA
2 sent JUUL a request for documents relating to marketing, product design, and public health impact.⁸² In
3 July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JUUL
4 regarding marketing and sale to minors.⁸³ In September 2018, FDA Commissioner Gottlieb called youth
5 vaping an “epidemic” and sent letters to JUUL and other e-cigarette manufacturers demanding a plan to
6 reduce youth use.⁸⁴ Then, in October 2018, as alleged above, the FDA raided JUUL’s headquarters and
7 seized more than a thousand documents relating to JUUL’s sales and marketing practices.⁸⁵

8 **C. Addictive By Design**

9 57. In addition to designing its devices to be particularly attractive to youth, JUUL designed
10 its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase nicotine, JUUL
11 uses patented nicotine salts from which it makes liquid nicotine cartridges, or JUULpods.⁸⁶ Each
12 JUULpod is, according to the Company, the equivalent of a pack of cigarettes. Each pod contains an
13 alarming amount of nicotine, with up to 59 mg per ml—an amount that is roughly three times the amount
14 of nicotine that can be sold to consumers in the European Union in a JUULpod. On top of ramping up
15 the amount of nicotine, JUULpods enabled the Company to increase the rate and amount of nicotine
16
17

18
19 ⁸¹ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement
20 actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-
21 cigarettes, U.S. Food and Drug Admin. (April 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

22 ⁸² Id.

23 ⁸³ AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing
24 and Sale to Minors, Mass.gov (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

25 ⁸⁴ Letters to Manufacturers Regarding Plans to Address Youth Access and Use, U.S. Food & Drug
26 Admin. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youthaccess>.

26 ⁸⁵ McGinley, *supra* note 17

27 ⁸⁶ Rachel Becker, Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In,
28 The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>.

1 delivery to the JUUL user, roughly doubling the concentration and tripling the delivery speed of nicotine
2 of the average e-cigarette.⁸⁷

3 58. Big Tobacco spent decades manipulating nicotine in order to foster and maintain
4 addiction in their customers. RJR developed and patented nicotine salt additives, including nicotine
5 benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide an additional
6 “nicotine kick” based on increased nicotine absorption associated with lower pH. JUUL uses this very
7 same concept for its market-dominating e-cigarettes. The Company’s patent for its nicotine salts
8 describes a process for combining benzoic acids with nicotine, a formulation that mimics the nicotine
9 salt additive developed by RJR. JUUL’s use of benzoic acid and manipulation of pH affect the
10 palatability of nicotine inhalation by reducing the “throat hit” that users experience when vaping. Indeed,
11 this was the objective behind using nicotine salts (as compared to “free base nicotine” which has a higher
12 pH). According to Ari Atkins, one of the inventors of the JUUL device, “[i]n the tobacco plant, there
13 are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes
14 it . . . I’ve got to choose my words carefully here: Appropriate for inhalation.”⁸⁸

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

23 60. The increased nicotine exposure facilitated by the JUUL device has serious health
24 consequences. The ease of use and “smoothness” strip away external inhibitors and enable extreme
25

26 ⁸⁷ How Much Nicotine is In Juul?, Truth Initiative (Feb. 26, 2019),
27 <https://truthinitiative.org/researchresources/emerging-tobacco-products/how-much-nicotine-juul>.

28 ⁸⁸ 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/>.

1 levels of unfettered use. Using the JUUL’s own calculations, consuming two JUULpods in a day is the
2 equivalent of consuming two to four packs of cigarettes a day. In this way, JUUL has not only created
3 a new generation of e-cigarette smokers, but has also pioneered a new style of smoking—vaping—that
4 is more nicotine-saturated than ever before.

5 61. Increased rates and duration of smoking lead to greater overall exposure to nicotine.
6 Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets brain areas involved in
7 emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain,
8 as it can “derange the normal course of brain maturation and have lasting consequences for cognitive
9 ability, mental health, and even personality.”⁸⁹ Animal researchers from the Yale University School of
10 Medicine has found that vaping during adolescence can lead to long-term brain changes, like attention
11 deficit hyperactivity disorder.⁹⁰

12 62. Studies also show that exposure to nicotine as a teen—even minimal exposure—
13 biologically primes the brain for addiction and greatly increases likelihood of dependence on nicotine
14 as well as other substances later in life.⁹¹ In a study done on mice, even “very brief, low-dose exposure
15 to nicotine in early adolescence increases the rewarding properties of other drugs, including alcohol,
16 cocaine, methamphetamine—and these are long-term changes.”⁹²

17 63. JUUL’s use of flavors only amplifies its addictive qualities. Research done by Nii Addy,
18 associate professor of psychiatry and cellular and molecular physiology at the Yale School of Medicine,
19 found that “sweet flavors can make the nicotine more palatable . . . but also act in the brain to increase
20 nicotine taking.”⁹³ This effective is especially troubling for teenage brains, which are more sensitive

22 ⁸⁹ N.A. Goriounova & H.D. Mansvelder, Short- and Long-Term Consequences of Nicotine Exposure
23 during Adolescence for Prefrontal Cortex Neuronal Network Function, Cold Spring Harbor Persp. in
24 Med. 2(12) (Dec. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

24 ⁹⁰ Jon Hamilton, How Vaping Nicotine Can Affect A Teenage Brain, NPR (Oct. 10, 2019),
25 <https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

26 ⁹¹ National Institute on Drug Abuse, Principles of Adolescent Substance Use Disorder: A Research
27 Based Guide (2014), <https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatmentresearch-based-guide/introduction>.

27 ⁹² Hamilton, supra note 92

28 ⁹³ Id.

1 than adult brains to rewards. According to University of Pennsylvania psychologist Janet Audrain-
2 McGovern, research shows that “if the first e-cigarette you used was flavored, then you’re more likely
3 to go on and use an e-cigarette again.”⁹⁴

4 64. According to congressional testimony from Dr. Jonathan Winickoff, a professor of
5 pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco Research
6 and Treatment Center, “[n]icotine addiction can take hold in only a few days, especially in the
7 developing adolescent brain that is particularly vulnerable to addiction to nicotine. . . Many of my
8 patients find Juul nearly impossible to stop. Nicotine withdrawal can cause headaches, insomnia,
9 irritability, anxiety, and depression, and these withdrawal symptoms are one of the primary reasons a
10 nicotine addiction is difficult to overcome.” Moreover, there is a lack of effective tools to help
11 adolescents overcome nicotine addiction: there is no good data on how to treat adolescents with e-
12 cigarette dependence; there has not been enough research on youth tobacco cessation strategies; and
13 most of the pharmacological therapies approved for adults have been shown to be ineffective or only
14 marginally effective in adolescents.⁹⁵

15 65. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is much
16 more likely to continue than daily cigarette smoking. Out of the surveyed students who reported ever
17 using cigarettes, only 17% indicated that they remained daily smokers. Out of the surveyed students
18 who reported ever using e-cigarettes daily, 58% remained daily users. This data demonstrates both that
19 e-cigarette use in teens is very persistent, a result consistent with the addictiveness of JUUL and the
20 difficulty teens have in trying to quit.⁹⁶

21 66. E-cigarette use also puts adolescents at increased risk for cigarette smoking. Compared
22 to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to begin smoking
23 cigarettes

24
25 ⁹⁴ Id.

26 ⁹⁵ Jonathan Winickoff, Testimony of Jonathan Winickoff before the U.S. House of Representatives
27 Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy, U.S. House
28 Committee on Oversight & Reform (July 24, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AA%20Testimony.pdf> at 2 [hereinafter “Winickoff Testimony”].

⁹⁶ Id.

1 67. The dangerous and destructive nature of nicotine is not a recent discovery. As a key
2 ingredient in tobacco products, the drug and its deleterious effects have been the subject of scientific
3 research and public health warnings for decades. Nicotine causes cardiovascular, reproductive, and
4 immunosuppressive problems with devastating effects. Part of the reason the national decline in cigarette
5 use in recent years was such a victory for public health was because there was a corresponding decline
6 in teen exposure to nicotine. From 2000 to 2017, the smoking rate among high school students fell by
7 73%.⁹⁷

8 68. That trend has completely reversed. In 2018, more than one in four high school students
9 in the United States reported using a tobacco product in the past thirty days, a dramatic increase from
10 just one year before.⁹⁸ But there was no increase in the use of cigarettes, cigars, or hookahs during that
11 same time period.⁹⁹ There was only increased use in a single tobacco product: e-cigarettes. While use
12 of all other tobacco products continued to decrease as it had been for decades, e-cigarette use increased
13 78% in just one year.¹⁰⁰ This drastic reversal caused the CDC to describe youth vaping an “epidemic.”¹⁰¹

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

19
20 ⁹⁷ Matthew L. Myers, Press Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It’s
21 Time for Bold Action to Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids (Nov. 26,
22 2018), https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

23 ⁹⁸ Progress Erased: Youth Tobacco Use Increased During 2017-2018, Ctrs. for Disease Control and
24 Prevention (Feb. 11, 2019), [https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-](https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html)
25 [increased.html](https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html).

26 ⁹⁹ Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason, Ctrs. for Disease Control &
27 Prevention (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

28 ¹⁰⁰ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to
protect youth by 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-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-preventing-access)
[announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-preventing-access)
[preventing-access](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scottgottlieb-md-proposed-new-steps-protect-youth-preventing-access).

¹⁰¹ Adams, supra note 2.

70. Science is also beginning to show that e-cigarettes have the potential to cause even more, distinct health risks and costs. The very same liquids that enable e-cigarettes to deliver nicotine with such potency are proving to be increasingly dangerous. When heated, the vape liquid turns into aerosol, which may contain, in addition to nicotine, ultrafine toxic particles such as lead, additional chemicals, and volatile organic compounds.¹⁰² These chemicals have the potential to be deadly. Vaping is now linked to conditions like chronic obstructive pulmonary disease and seizures, and there were 193 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.¹⁰³ Public health officials reported the first known death from a vaping-related illness on August 23, 2019.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ Only Alaska has not yet seen a case. 16% of these patients have been under the age of 18.¹⁰⁷ In October 2019, a 17-year-old boy from the Bronx, New York, became the first child to die from vaping-related respiratory illness.¹⁰⁸

¹⁰² 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-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true.

¹⁰³ 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>.

¹⁰⁴ 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>.

¹⁰⁵ 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/>.

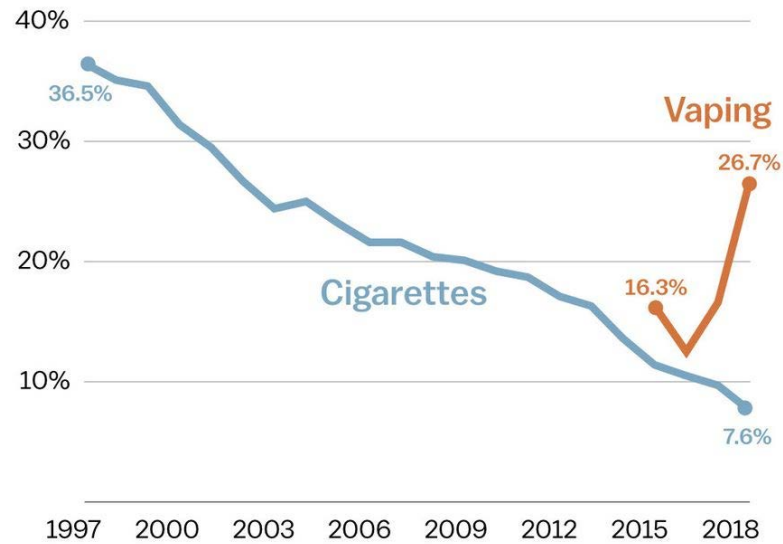
¹⁰⁶ Nicole Brodeur & Ryan Blethen, King County teen is first in state diagnosed with severe lung disease related to vaping, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-isfirst-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

¹⁰⁷ 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>.

¹⁰⁸ 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>

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

Vox

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

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

Winickoff Testimony at 1.

72. In a clear admission of responsibility, JUUL's former CEO Kevin Burns has apologized to all the parents for the vaping epidemic. Mr. Burns said, "I'd tell [the parents] that I'm sorry that their child's using the product." After this apology and in response to the growing number of vape-related

health incidences and the threats of legal action, JUUL replaced Mr. Burns with K.C. Crosthwaite. Mr. Crosthwaite was the chief growth officer at Altria, the makers of Marlboro cigarettes. Replacing Mr. Burns with a "growth executive" from Big Tobacco is a clear sign that JUUL does not plan to stop its obsession with growth regardless of public health impacts.

D. JUUL and School

73. In addition to severe health consequences, widespread "JUULing" has placed severe burdens on society, and school districts in particular. It is not an overstatement to say that JUUL has changed the educational experience of students across California.

74. JUUL use has invaded school bathrooms—now known as "the Juul room."¹⁰⁹ As one high school student explained, "it's just a cloud."¹¹⁰ The ubiquity of JUUL use in high school bathrooms has generated numerous online spoofs about "the juul room."¹¹¹

75. Kids have also coined the term "nic sick"—which, as one high school student explained to CBS News, "kinda seems like a really bad flu, like, just out of



¹⁰⁹ Moriah Balingit, In the 'Juul room': E-cigarettes spawn a form of teen addiction that worries doctors, parents and 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.

¹¹⁰ Greta Jochem, Juuling in School: e-Cigarette Use Prevalent Among Local Youth, Daily Hampshire Gazette (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.

¹¹¹ 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.

nowhere. Your face goes pale, you start throwing up and stuff, and you just feel horrible.”¹¹²

76. Such rampant JUUL use has effectively added another category to teachers’ and school administrators’ job descriptions; many now receive special training to respond to the various problems that JUUL use presents, both in and out of the classroom. A national survey of middle schools and high schools found that 43.3% of schools have had to implement not only an e-cigarette policy but a JUUL-specific policy. Participants in the survey reported multiple barriers to enforcing these policies, including the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive nature of the product.¹¹³

77. Across the United States, schools have had to divert resources and administrators have had to go to extreme lengths to respond to the ever-growing number of students using JUULs on school grounds. According to the Truth Initiative, more than 40 percent of all teachers and administrators reported that their school uses camera surveillance near the school’s restroom, almost half (46 percent) reported camera surveillance elsewhere in the school, and 23 percent reported using assigned teachers for restroom surveillance.¹¹⁴ Some schools have responded by removing bathroom doors or even shutting bathrooms down,¹¹⁵ and schools have banned flash drives to avoid any confusion between flash drives and JUULs.¹¹⁶ Schools have also paid thousands of dollars to install special monitors to detect

¹¹² 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/>.

¹¹³ Barbara A. Schillo, et al., JUUL in School: Teacher and Administrator Awareness and Policies of E-Cigarettes and JUUL 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.

¹¹⁴ How are schools responding to JUUL and the youth e-cigarette epidemic?, Truth Initiative, (Jan. 18, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-and-youth-e-cigarette>.

¹¹⁵ Ana B. Ibarra, The Juul’s So Cool, Kids Smoke It In School, Kaiser Health News (Mar. 26, 2018), <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-to-deal-with.html>.

¹¹⁶ 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>.

vaping, which they say is a small price to pay compared to the plumbing repairs otherwise spent as a result of students flushing vaping paraphernalia down toilets.¹¹⁷ Other school districts have sought to create new positions for tobacco prevention supervisors, who get phone alerts when vape smoke is detected in bathrooms.¹¹⁸

78. Many schools have shifted their disciplinary policies in order to effectively address the JUUL epidemic. Rather than immediately suspending students for a first offense, school districts have created anti-vaping curricula which students are required to follow in sessions held outside of normal school hours, including on Saturdays.¹¹⁹ Teachers prepare lessons and study materials for these sessions with information on the marketing and health dangers of vaping¹²⁰—extra work which requires teachers to work atypical hours early in the mornings and on weekends.¹²¹ Some schools will increase their drug-testing budget to include random nicotine tests for students before they join extracurricular activities. Under this drug testing protocol, first offenders will undergo drug and alcohol educational programming; second and third offenders will be forced to sit out from extracurriculars and attend substance abuse counseling.¹²²

79. JUUL actively sought to enter school campuses. The Subcommittee on Economic and Consumer Policy (“Subcommittee”) conducted a months-long investigation of JUUL, including reviewing tens of thousands of internal documents, and concluded that JUUL “deliberately targeted

¹¹⁷ 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-rise-e-cigarette-use>.

¹¹⁸ Lauren Katims, California Fights Vaping in Schools, U.S. News & World Report (Apr. 30, 2019), <https://www.usnews.com/news/best-states/articles/2019-04-30/california-focuses-on-education-to-curb-vaping-in-schools>.

¹¹⁹ Id.

¹²⁰ 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>.

¹²¹ Kathy Brown, School trustees OK discipline for juuling/vaping offenses, Gillette News Record (Aug. 29, 2019), https://www.gillettenewsrecord.com/news/local/article_5ec28c96-fd48-5ae0-b267-4e417272d020.html.

¹²² Christine Hauser, This School District Has a Way to Combat Vaping: Random Nicotine Tests, N.Y. Times (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/nebraska-vaping-schools.html>.

1 children in order to become the nation’s largest seller of e-cigarettes.”¹²³ The Subcommittee found that
2 “(1) Juul deployed a sophisticated program to enter schools and convey its messaging directly to teenage
3 children; (2) Juul also targeted teenagers and children, as young as eight years-old, in summer camps
4 and public out-of-school programs; and (3) Juul recruited thousands of online “influencers” to market
5 to teens.”¹²⁴

6 80. According to the Subcommittee, JUUL was willing to pay schools and organizations
7 hundreds of thousands of dollars to have more direct access to kids. Such attempts included paying a
8 Baltimore charter school organization \$134,000 to start a summer camp to teach kids healthy lifestyles,
9 for which JUUL itself would provide the curriculum; offering schools \$10,000 to talk to students on
10 campus; and giving the Police Activities League in Richmond, California, \$90,000 to provide JUUL’s
11 own vaping education program, “Moving On,” to teenage students suspended for using cigarettes.¹²⁵
12 Meanwhile, JUUL would collect data about test scores, surveys, and activity logs about the students.

13 81. Among the more egregious incidents reported by the Subcommittee was a July 24, 2019
14 presentation -- during which no parents or teachers were in the room – which conveyed the message that
15 the JUUL product was “totally safe,” and the presenter even demonstrated to the students how to use a
16 JUUL.¹²⁶ The school was presumably paid for this meeting, which was marketed to the school as an
17 anti-smoking initiative. A JUUL spokesman said JUUL is no longer funding such programs.¹²⁷

18 **E. Impact on San Diego Unified School District.**

19 82. The epidemic has severely impacted the District. JUUL use has interrupted the
20 educational environment – and is impeding learning – in schools throughout the District. The District
21 has suffered at least four types of harm.

23 ¹²³ Supplemental Memorandum for Hearing on ‘Examining JUUL’s Role in the Youth Nicotine
24 Epidemic: Parts I & II’ from Committee Staff, to Democratic Members of the Subcommittee on
25 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”]

26 ¹²⁴ Id

27 ¹²⁵ 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>.

28 ¹²⁶ JUUL’s Role in Youth Nicotine Epidemic, supra note 125.

¹²⁷ Id.

83. *First*, the surge of vaping disrupts the learning environment as educators have to deal with the prevention and detection of student vaping and modify school property and school operations in response to the problem. With respect to students who are caught vaping, administrators must expend time and resources to deal with the problem and provide supports (e.g., positive behavioral interventions. In addition, bathrooms cannot be utilized as designed due to the high incidence of bathroom vaping. As another example, because standard smoke detectors are not sufficiently sensitive to detect vape smoke and interferes with fire alarm detectors, the District would need to retrofit its detector systems or procure vaping detectors to fully monitor and prevent in-school vaping on middle school and high school campuses.

84. *Second*, the vaping epidemic hurts individual student learning. Vaping has led to a rise in student absences due to sickness or absenteeism. Research shows that students who attend school more often do better in school.¹²⁸ In Massachusetts, the National Bureau of Economic Research found “poor attendance can account for up to a quarter of the math achievement gap between poor and non-poor students.”¹²⁹ A study of Chicago Public Schools shows “course attendance is eight times more predictive of ninth grade failure than eighth grade test scores.”¹³⁰ In sum, vaping-related school absences directly impact the academic achievement of the District's students.

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

¹²⁸ Department of Education, 2013-14 Civil Rights Data Collection, <https://www2.ed.gov/datastory/chronicabsenteeism.html#intro>

¹²⁹ Joshua Goodman, “Flaking out: Student absences and snow days as disruptions of instructional time.” No. w20221. National Bureau of Economic Research (2014).

¹³⁰ 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 Chicago School Research (2007).

86. *Fourth*, vaping hurts all students by diverting funding away from learning toward educational campaigns, prevention, and treatment. For example, the District would divert services and funding away from implementing specialized programs, lower class size, improved technology, enhanced curricular materials, and academic reading and math instructional intervention programs for students who are struggling academically. The District will continue to incur extensive costs to orchestrate outreach regarding the risks of vaping, to enforce restrictions regarding vaping in school (for example, through vape smoke detectors), and to develop and carry out protocol associated with the collection and disposal of vape products. In the absence of student vaping, these funds could have gone to the District's core activity – educating San Diego's youth.

FIRST CAUSE OF ACTION

PUBLIC NUISANCE

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

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

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

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

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

92. The social utility of Defendants' products do not outweigh the gravity of the harm inflicted on the District.

1 93. The District did not consent to Defendants' conduct.

2 94. The District suffered and continues to suffer harm different from the type of harm
3 suffered by the general public. Among other reasons discussed throughout the Complaint, vaping has
4 interfered with the educational environment within the District's schools and has required the District
5 to take certain measures to prevent continued vaping on District campuses.

6 95. Defendants' conduct was a substantial factor in causing the District's harm.

7 96. Defendants' conduct was willful, knowing, and reckless, warranting punitive and
8 exemplary damages.

9 **SECOND CAUSE OF ACTION**

10 **STRICT LIABILITY – DESIGN DEFECT**

11 97. 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 98. Plaintiff was and continues to be harmed by Defendants' vaping products, which were
14 designed, manufactured, sold, and distributed by Defendants, and which were defectively designed; did
15 not include sufficient instructions; were not properly researched, inspected, or tested; and did not include
16 sufficient warning of potential safety hazards.

17 99. The design of Defendants' vaping products were defective because the vaping products
18 did not perform as safely as an ordinary consumer would have expected them to perform, especially
19 when Defendants' misrepresentations are taken into consideration.

20 100. The gravity of the harm resulting from Defendants' vaping products was, is, and will be
21 enormous. Defendants have created an epidemic among young people that will take enormous
22 resources, time, and effort to curb.

23 101. Defendants' vaping products' failure to incorporate sufficient safety features is a
24 substantial factor in causing Plaintiff's harm.

25 102. Defendants' design of vaping products has resulted in increased harm to young people,
26 such as Plaintiff's students. As a result, school districts, including Plaintiff, must take extensive action
27 – incurring significant costs -- to address in-school vaping.

28 103. Defendants knew that their vaping products cause the type of harm suffered by Plaintiff.

1 104. At all times, there have been safer alternative designs that were and are feasible, cost
2 effective, and advantageous.

3 105. Defendants' conduct lacked any care and was an extreme departure from what a
4 reasonably careful company would do in the same situation to prevent harm to others, and thus
5 Defendants were and are grossly negligent.

6 106. Defendants, its officers, directors, and managing agents, engaged in despicable conduct
7 and acted or failed to act with malice, oppression, and fraud, warranting punitive or exemplary damages.

8 **THIRD CAUSE OF ACTION**

9 **STRICT LIABILITY - FAILURE TO WARN**

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

12 108. At all times, Defendants' vaping products have been defective as a result of Defendants'
13 failure to adequately test for safety, failure to give adequate warnings or instructions regarding the
14 possibility of adverse health consequences. Defendants also failed to inform and warn consumers and
15 users through their advertising that they had failed to perform adequate testing of the JUUL e-cigarettes
16 and pods to ensure safety, including long-term testing of the product, testing for injury to the lungs,
17 brain, and cardiovascular systems, and other related medical conditions.

18 109. Defendants failed to both adequately test JUUL e-cigarettes and pods before making it
19 available to consumers and users and failed to disclose through their advertising that extensive health-
20 related testing had not been done and which testing would have disclosed the magnitude of the potential
21 risks associated with the use of the JUUL e-cigarettes and pods.

22 110. In the alternative, Defendants conducted adequate testing but failed to warn about the
23 dangers of using JUUL e-cigarettes and pods in their advertising.

24 111. Defendants' failure to warn was intentional, willful, and malicious. The conduct was
25 carried on with a conscious disregard for the safety and the rights of others, such as Plaintiff.

26 112. As a proximate cause of Defendants' actions, Plaintiff has and will continue to incur
27 substantial expense to address the vaping epidemic at its schools.
28

1 **FOURTH CAUSE OF ACTION**

2 **NEGLIGENCE**

3 113. 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.

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

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

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

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

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

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

13 **PUNITIVE DAMAGES ALLEGATION**

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

16 121. Defendants expressed a reckless indifference to the safety of users of JUUL e-cigarettes
17 and pods, including students attending Plaintiff's schools. Defendants' conduct, as described herein,
18 knowing the dangers and risks of JUUL e-cigarettes and pods, yet concealing and/or omitting this
19 information in their advertising, in furtherance of their conspiracy and concerted action was outrageous
20 because of Defendants' willful a reckless indifference to the safety of users of JUUL e-cigarettes and
21 pods.

22 122. Plaintiff is entitled to punitive damages because Defendants' failure to warn and other
23 actions as described herein were malicious, wanton, willful or oppressive or were done with reckless
24 indifference to the Plaintiff and the public's safety and welfare. Defendants misled both the FDA and
25 the public at large, including the Plaintiff herein, by making false representations about the safety of
26 their product. In their advertising, Defendants downplayed, understated and/or disregarded their
27 knowledge of the serious and permanent side effects associated with the use of their product, despite
28

1 available information demonstrating that JUUL e-cigarettes and pods were likely to cause serious side
2 effects.

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

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

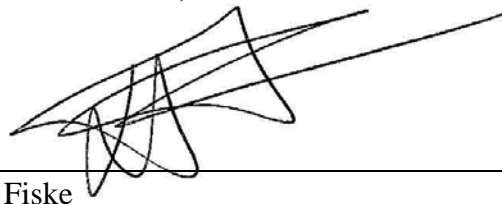
11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 13 a. Compensatory damages as allowable by law;
14 b. Costs to abate and/or mitigate the continuing nuisance;
15 c. Injunctive relief and abatement;
16 d. Punitive damages;
17 e. Reasonable attorneys' fees as allowed by law;
18 f. Statutory pre-judgment and post-judgment interest allowable by law;
19 g. Costs of this suit allowable by law; and,
20 h. Any and all other relief that this Court deems necessary or appropriate.

21
22 DATED: January 7, 2020

BARON & BUDD, P.C.

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26 John Fiske
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Attorneys for Plaintiff San Diego Unified School District

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