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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14
15 TAMARA MCMULLAN, individually and
as Guardian of her minor child, K.B.,

16 Plaintiff,

17 v.

18 JUUL LABS, INC. and DOES 1-100,

19 Defendants.
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San Francisco County Superior Court

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CGC-19-579612

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff, Tamara McMullan, individually and on behalf of her minor child K.B., by and
2 through her undersigned counsel, brings this complaint against Defendant JUUL Labs, Inc. and
3 alleges as follows:

4 **I. INTRODUCTION**

5 1. K.B. is a victim of Defendant’s orchestrated efforts to addict a new generation of
6 teenagers to nicotine. Although she is only 16 years old, K.B. has already suffered not one, but
7 *two* seizures as a result of using JUUL, an electronic nicotine delivery system (“ENDS”) or e-
8 cigarette. This extreme outcome, particularly in her vulnerable, developing brain, has resulted in a
9 serious injury. Defendant’s wrongful conduct in marketing, promoting, manufacturing, designing
10 and selling JUUL substantially contributed to K.B.’s life-altering injuries.

11 2. In 2015, JUUL set out to recapture the magic of the most successful product ever
12 made—the cigarette. Due to regulations and court orders preventing the major cigarette
13 manufacturers from marketing to young people, youth smoking had decreased to its lowest levels
14 in decades. While the public health community celebrated this decline as a victory, JUUL saw an
15 opportunity. Seizing on regulatory inaction and loopholes for e-cigarettes, JUUL set out to
16 develop and market a highly addictive product that could be packaged and sold to young people.
17 Youth is and has always been the most sought-after market for cigarette companies, because they
18 are the most vulnerable to nicotine addiction and are most likely to become customers for life.

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

1 4. Defendant designed JUUL to addict young people. Nicotine is one of the most
2 addictive chemicals in the world. By studying cigarette industry archives, JUUL learned how to
3 manipulate the nicotine in its products to maximize addictiveness, particularly among new users
4 and young people, and thereby increase sales. JUUL designed its products to have maximum
5 inhale-ability, without any “throat hit” or irritation that would serve as a natural deterrent to new
6 users. The sole purpose of this design element was to initiate new smokers, since those who
7 already smoke cigarettes are tolerant to the throat hit sensation and associate it with smoking and
8 nicotine satisfaction. At the same time, JUUL designed its device to deliver substantially higher
9 concentrations of nicotine per puff than traditional cigarettes and most other e-cigarettes. This
10 combination of ease of inhalation and high nicotine delivery makes JUUL both powerfully
11 addictive and dangerous.

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

15 6. Nicotine addiction causes repeated exposure to the toxins and aerosols contained
16 in JUUL’s vapor.

17 7. Several studies, including one recently released by the American Stroke
18 Association, have shown that e-cigarettes increase the risk of stroke, heart attack and coronary
19 artery disease.¹

20 8. Other studies have shown that e-cigarettes containing nicotine significantly
21 increase blood pressure, heart rate and arterial stiffness, and also cause vascular damage, which
22 can lead to strokes and other cardiovascular injuries.²

23 ¹ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries* (Jan. 30, 2019)
24 American Stroke Association News Release, Abstract 9, Session A2,
25 [https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries)
26 [diseased-arteries](https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries) (as of July 5, 2019).

27 ² Bhatta and Glantz, *Electronic cigarette use and myocardial infarction among adults in the US*
28 *population assessment of tobacco and health*, J. of Am. Heart Assoc. (2019); Caporale, *et al.*,
 Acute effects of electronic cigarette aerosol inhalation on vascular function detected at
 quantitative MRI, Radiology (2019); Franzen, *et al.*, *E-cigarettes and cigarettes worsen*
 peripheral and central hemodynamics as well as arterial stiffness, Vasc. Med. (2018); Lee, *et al.*,
 Modeling cardiovascular risks of e-cigarettes with human-induced pluripotent stem cell-derived

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9. These studies build on the well-established research that nicotine increases blood pressure.³

10. Nicotine consumption has also been associated with causing seizures.⁴

11. In April of 2019, following dozens of reports that users of JUUL, including young adults, were suffering debilitating seizures after using JUUL, the FDA began an ongoing investigation into the connection between these seizures and Defendant's JUUL products.⁵

12. The United States Surgeon General has concluded that e-cigarettes, including JUUL, are not safe for anyone under age 26.⁶

13. Even though e-cigarettes are unsafe for anyone under 26, JUUL heavily promoted its products to young people. Following the wildly successful playbook laid out in historic cigarette industry documents, Defendant leveraged social media and utilized other marketing and promotion tactics, long outlawed for cigarette companies, to capture the highly-lucrative youth market. JUUL preyed on youth using media and themes that exploit teenagers' vulnerabilities to create and sustain nicotine addiction, all for financial gain, and without giving kids any warnings about the serious risks of addiction, seizure, and other permanent injuries.

14. At the time K.B. used JUUL, none of JUUL's advertising, marketing, promotion, packaging or website disclosed any of the dangerous health effects and risks that JUUL knew or

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endothelial cells, J. Am College of Cardiology (2019); Middlekauff, *Cardiovascular impact of electronic cigarette use*, Trends in Cardiovascular Medicine (2019); Ndunda, *et al.*, Abstract 9: *Electronic cigarette use is associated with a higher risk of stroke*, Abstract 9 (2019); Vlachopoulos, *et al.*, *Electronic cigarette smoking increases aortic stiffness and blood pressure in young smokers: increased aortic stiffness and blood pressures in young smokers*, J. Am. Coll. Cardiol. (2016).

³ Vlachopoulos, *et al.*, *Electronic cigarette smoking increases aortic stiffness and blood pressure in young smokers: increased aortic stiffness and blood pressures in young smokers*, J. Am. Coll. Cardiol. (2016).

⁴ Iha, *et al.*, *Nicotine elicits convulsive seizures by activating amygdalar neurons*, Frontiers Pharmacol. (2017); U.S. National Library of Medicine, Toxicology Data Network, *Nicotine: Human Health Effects* (2019) <https://toxnet.nlm.nih.gov/cgi-bin/sis/search2/r?dbs+hsdb:@term+@rn+@rel+54-11-5> (as of September 25th, 2019).

⁵ Food and Drug Administration, *Some E-cigarette Users Are Having Seizures* (2019) <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults> (as of September 25th, 2019).

⁶ U.S Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on Smoking and Health, *Know The Risks: E-cigarettes and Young People* (2019) <https://e-cigarettes.surgeongeneral.gov/> (as of July 5th, 2019).

1 should have known would occur from use of its products. These dangerous and potentially lethal
2 risks include nicotine addiction, significant increases in blood pressure, vascular damage,
3 increased risk of stroke, heart attacks and other cardiovascular injuries, seizures, permanent brain
4 changes, mood disorders, heightened risk of cancer, and other harms. JUUL never disclosed that
5 it its products were unsafe for anyone under age 26. Instead, the imaging, advertising, promotion,
6 packaging and overall marketing represented the product as safe, fun, and not harmful. As one of
7 the JUUL founders has said: “We don’t think a lot about addiction here because we’re not trying
8 to design a cessation product at all...anything about health is not on our mind”.⁷

9 15. Since 2015 when JUUL hit the market, JUUL has become pervasive in schools
10 across the country and adolescent use is rampant. JUUL not only dominates the multi-billion
11 dollar e-cigarette market, but has expanded the size of that market significantly—mostly via
12 young non-smokers. The cigarette company Altria acquired a 35% stake in JUUL for \$12.8
13 billion, giving Altria access to the new generation of customers JUUL has groomed.⁸

14 16. JUUL has created an epidemic. According to Alex Azar, the Secretary of the U.S.
15 Department of Health and Human Services, “We have never seen use of any substance by
16 America’s young people rise as rapidly as e-cigarette use is rising.”⁹ JUUL’s conduct has led to a
17 surge in teen e-cigarette use, creating the “largest ever recorded [increase in substance abuse] in
18 the past 43 years for any adolescent substance use outcome in the U.S.”¹⁰ In a mere two years,
19 Defendant undid more than a decade of progress in reducing teen smoking, thereby increasing
20
21

22 ⁷ Tiku, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette: Surprise,*
23 *it's a rectangle*, The Verge (April 21, 2015) [www.theverge.com/2015/4/21/8458629/PAX-labs-e-](http://www.theverge.com/2015/4/21/8458629/PAX-labs-e-cigarette-juul)
[cigarette-juul](http://www.theverge.com/2015/4/21/8458629/PAX-labs-e-cigarette-juul) (as of July 5, 2019).

24 ⁸ Boyles, *Surgeon general calls for new e-cig restrictions: ‘I am officially declaring e-cigarette*
25 *use among youth an epidemic*, MedPage Today (Dec. 18, 2018) www.medpagetoday.com/primarycare/smoking/77000 (as of Sept. 25, 2019).

26 ⁹ *Surgeon General releases advisory on E-cigarette epidemic among youth*, U.S. Department of
27 Health & Human Services (Dec 18, 2018) [www.hhs.gov/about/news/2018/12/18/surgeon-general-](http://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html)
[releases-advisory-e-cigarette-epidemic-among-youth.html](http://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html) (as of July 5, 2019).

28 ¹⁰ Boyles, *Surgeon General Calls for New E-Cig Restrictions: ‘I am officially declaring e-*
cigarette use among youth an epidemic (Dec 28, 2018) [www.medpagetoday.com/](http://www.medpagetoday.com/primarycare/smoking/77000)
[primarycare/smoking/77000](http://www.medpagetoday.com/primarycare/smoking/77000) (as of July 5, 2019).

1 nicotine use among teenagers to levels not seen since the early 2000s. Plaintiff was a target and a
2 victim of JUUL's conduct.

3 17. As a result of Defendant's conduct, Plaintiff has suffered catastrophic personal
4 injuries and seeks all appropriate remedies and relief.

5 **II. JURISDICTION AND VENUE**

6 18. This Court has personal jurisdiction over the Defendants, because JUUL is a
7 resident and/or does business in the State of California. JUUL and Does 1-100 purposely availed
8 themselves of the benefits, protections and privileges of the laws of the State of California in
9 conducting their business, and have purposely directed their activities in this State. JUUL and
10 Does 1-100 have sufficient minimum contacts with this State to render the exercise of
11 jurisdiction by this Court permissible.

12 19. Venue is proper in this Court because Defendant JUUL's principal place of
13 business is in the City and County of San Francisco, and much of the wrongful conduct alleged
14 herein took place in this City and County.

15 **III. THE PLAINTIFF**

16 20. Plaintiff, K.B., is 16 years old and a resident of Escambia County, Florida.

17 21. Beginning in the summer of 2018, when she was approximately 14 years old, K.B.
18 was exposed to JUUL's advertising and promotional efforts via many sources, including viewing
19 the product and its packaging when seeing her friends use JUUL, and at various store fronts and
20 gas stations where she would see advertisements for JUUL advertising different flavors, and
21 discounts for 'Starter Kits' to begin using JUUL. K.B. was also exposed to JUUL's advertising
22 via a television commercial. Many of the convenience stores that K.B. would frequent with her
23 friends would contain large advertisements in bold colors, advertising JUUL products.

24 22. Incentivized by these advertisements, and as a result of peer pressure from her
25 friends at school, K.B. began regularly using and consuming JUUL products including JUUL
26 devices and JUULpods, between the summer of 2018 and late June 2019, primarily in Escambia
27 County, Florida, as well as in Meridian, Lauderdale County, Mississippi. K.B. was provided
28

1 access to JUUL devices and JUULpods by her friends, and over the course of a year, would
2 ‘vape’ on average six times a day.

3 23. K.B. was initially attracted to JUUL’s flavors and sleek, discreet design, and the
4 allure of appearing trendy and popular among her social circle. She started with the mint flavor,
5 and tried a number of others, including mango.

6 24. K.B. was unaware when she first started using JUUL that it was unsafe for anyone
7 under age 26, was manipulated to addict her to nicotine, and could cause seizures or other brain
8 injuries. Had she known these things, she would not have started using JUUL.

9 25. In June of 2019, after approximately one year of JUUL use, K.B. suffered two
10 seizures. Her first seizure occurred on June 1, 2019, in Florida, and her second seizure occurred
11 on June 23, 2019, in Mississippi. K.B. has never had a history of seizures, strokes, heart attacks,
12 or comparable medical events. Prior to her JUUL usage, K.B. never suffered from a seizure,
13 stroke, heart attack, or comparable medical event. After each of her seizures, K.B. awoke in a
14 hospital with a severe migraine headache, and short term memory loss. K.B.’s seizures resulted in
15 her not remembering how she came to the hospital.

16 26. K.B.’s physicians conducted several tests, including CT scans of her head, EKG,
17 and a full scan for drugs or other foreign substances. K.B.’s physicians stated that, upon her
18 recovery in the hospital in Mississippi, that they were nearly certain her seizures were caused by
19 her use of JUUL.

20 27. JUUL was a substantial factor in K.B.’s injuries.

21 **IV. THE DEFENDANTS**

22 **A. JUUL Labs, Inc.**

23 28. Defendant JUUL is a Delaware corporation, having its principal place of business
24 in San Francisco, California.

25 29. JUUL originally operated under the name PLOOM, then changed its name to PAX
26 Labs, Inc. In 2017, it was renamed JUUL Labs, Inc.

27 30. JUUL manufactures, designs, sells, markets, promotes and distributes JUUL e-
28 cigarettes.

1 31. JUUL ratified each and every act or omission alleged herein in proximately
2 causing the injuries and damages alleged herein.

3 **B. Does 1-25**

4 32. Upon information and belief, Defendants Does 1 through 25 are individuals and
5 corporations with their primary place of business or residence in California, or who directed their
6 activities toward the state of California and/or have minimum contacts in this State.

7 33. Upon information and belief, Defendants Does 1 through 25 provided scientific
8 research and development services to Defendant JUUL, enabling and in furtherance of JUUL's
9 manufacturing, design, sale, marketing, promotion, and distribution of JUUL e-cigarettes.

10 **C. Does 26-50**

11 34. Upon information and belief, Defendants Does 26 through 50 are individuals and
12 corporations with their primary place of business or residence in California, or who directed their
13 activities toward the state of California and/or have minimum contacts in this State.

14 35. Upon information and belief, Defendants Does 26 through 50 provided marketing
15 services, including, but not limited to, market analyses, advertising consultations, advertisement
16 design, marketing tools and techniques, marketing strategies, data on potential target consumer
17 populations, and other services enabling and in furtherance of JUUL's manufacturing, design,
18 sale, marketing, promotion, and distribution of JUUL e-cigarettes.

19 **D. Does 51-100**

20 36. Upon information and belief, Defendants Does 51 through 100 are individuals and
21 corporations with their primary place of business or residence in California, or who directed their
22 activities toward the state of California and/or have minimum contacts in this State.

23 37. Upon information and belief, Defendants Does 51 through 100 are members of the
24 e-cigarette industry that conspired with JUUL to negligently misrepresent or omit and downplay
25 the risks of e-cigarettes, engage in a campaign of doubt and confusion, and overstate the benefits
26 of e-cigarettes and nicotine..
27
28

1 **V. FACTUAL ALLEGATIONS**

2 **A. JUUL Seeks to Re-create the “Magic” of the Cigarette, the “Most Successful**
3 **Consumer Product of All Time”, using Big Tobacco’s Playbook.**

4 38. JUUL’s founder James Monsees has described the cigarette as “the most
5 successful consumer product of all time an amazing product.”¹¹ Because of “some problems”
6 inherent in the cigarette, JUUL’s founders set out to “deliver[] solutions that refresh the magic
7 and luxury of the tobacco category.”¹²

8 39. Monsees saw “a huge opportunity for products that speak directly to those
9 consumers who aren’t perfectly aligned with traditional tobacco products.”¹³ With a focus on
10 recreating the “ritual and elegance that smoking once exemplified,”¹⁴ Monsees and JUUL co-
11 founder Adam Bowen set out to “meet the needs of people who want to enjoy tobacco but don’t
12 self-identify with — or don’t necessarily want to be associated with — cigarettes.”¹⁵

13 40. JUUL used the cigarette industry’s prior practices as a playbook. Monsees has
14 publicly admitted that JUUL built its e-cigarette business by first consulting cigarette industry
15 documents, including board meeting minutes, made public under the Master Settlement
16 Agreement that had been reached between the cigarette industry, governmental officials, and
17 injured smokers. “[Industry documents] became a very intriguing space for us to investigate
18 because we had so much information that you wouldn’t normally be able to get in most industries.
19 And we were able to catch up, right, to a huge, huge industry in no time. And then we started
20 building prototypes.”¹⁶

21 ¹¹ Chaykowski, *Billionaires-to-be: Cigarette breakers - James Monsees and Adam Bowen have*
22 *cornered the US e-cigarette market with Juul. Up next: The world*, FORBES Magazine (Sep 27,
23 2018), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1 (as
of July 5, 2019).

24 ¹² Mings, *Ploom model Two Slays Smoking with Slick Design and Heated Tobacco Pods*, Solid
Smack (Apr 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/
(as of July 5, 2019).

25 ¹³ *Id.*

26 ¹⁴ *James Monsees – Co-founder and CEO of Ploom*, IDEAMENSCH (Apr 11, 2014),
<https://ideamensch.com/james-monsees/> (as of July 5, 2019).

27 ¹⁵ *Id.*

28 ¹⁶ Montoya, *PAX Labs: Origins With James Monsees*, Social Underground,
<https://socialunderground.com/2015/01/PAX-ploom-origins-future-james-monsees/> (as of July 5,

Footnote continued on next page

1 41. JUUL researched how cigarette companies had chemically manipulated nicotine
2 content to maximize delivery: “We started looking at patent literature. We are pretty fluent in
3 ‘Patentese.’ And we were able to deduce what had happened historically in the tobacco
4 industry.”¹⁷ Among the documents it is believed that JUUL found were those documenting how
5 to manipulate nicotine pH to maximize the delivery of nicotine in a youth-friendly vapor that
6 delivers minimal “throat hit”—a combination that creates unprecedented risks of nicotine abuse
7 and addiction, as detailed further below.

8 42. JUUL also engaged former cigarette industry researchers to consult on the design
9 of their product. JUUL’s founder James Monsees noted in WIRED magazine that “people who
10 understood the science and were listed on previous patents from tobacco companies aren’t at
11 those companies anymore. If you go to Altria’s R&D facility, it’s empty.” The WIRED article
12 stated that “some of those people are now on PAX’s team of advisers, helping develop JUUL.”¹⁸

13 43. JUUL also used cigarette industry advertisements—which were created to lure
14 nonsmoking youth—as a blueprint for JUUL’s advertising campaigns. In a 2018 interview,
15 “Monsees indicated that the design of JUUL’s advertising had been informed by traditional
16 tobacco advertisements and that [the Stanford Research into Impact of Tobacco Advertising] had
17 been quite useful to them.”¹⁹

18 44. JUUL just replaced its CEO Kevin Burns with a veteran of the cigarette industry,
19 K.C. Crosthwaite. Crosthwaite was a top official at Altria, the company that bought at 35% share
20 in JUUL for \$12.8 billion last December.²⁰

21
22 *Footnote continued from previous page*
23 2019).

24 ¹⁷ *Id.*

25 ¹⁸ Pierce, *This Might Just Be The First Great E-Cig*, WIRED, (Apr 21, 2015),
26 www.wired.com/2015/04/PAX-juul-ecig/ (as of July 5, 2019).

27 ¹⁹ Jackler *et al.*, *JUUL Advertising Over its First Three Years on the Market*, Stanford Research
28 *into the Impact of Tobacco Advertising*, Stanford University School of Medicine (Jan 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (as of
July 5, 2019).

²⁰ Kaplan, *JUUL replaces its C.E.O. with a tobacco executive*, N.Y. Times (Sept. 25, 2019),
<https://www.nytimes.com/2019/09/25/health/juul-vaping.html> (as of Sept. 25, 2019).

45. JUUL achieved its vision. Since its launch in 2015, JUUL has become the dominant e-cigarette manufacturer in the United States. Its revenues grew by 700% in 2017. According to a recent Wells-Fargo report, JUUL owns three-quarters of the e-cigarette market.²¹

B. JUUL is a Sleek, Easy to Conceal Nicotine Delivery Device with Kid-Friendly Flavors.

46. The JUUL e-cigarette looks sleek and high-tech. JUUL looks like a USB flash drive, and it actually charges in a computer's USB drive. It is about the size and shape of a pack of chewing gum; it is small enough to fit in a closed hand. JUUL is easy to conceal from parents and teachers. The odor emitted from JUUL is a reduced aerosol without much scent – unlike the distinct smell of conventional cigarettes.

47. The thin, rectangular JUUL e-cigarette device consists of an aluminum shell, a battery, a magnet (for the USB-charger), a circuit board, an LED light, and a pressure sensor. Each JUULpod is a plastic enclosure containing 0.7 milliliters of JUUL's patented nicotine liquid and a coil heater. When a sensor in the JUUL e-cigarette detects the movement of air caused by suction on the JUULpod, the battery in the JUUL device activates the heating element, which in turn converts the nicotine solution in the JUULpod into a vapor consisting principally of nicotine, benzoic acid, glycerin, and propylene glycol. A light embedded in the JUUL device serves as a battery level indicator and lights up in a "party mode" display of rainbow of colors when the device is waved around.



²¹ Durbin et al., *Letter from United States Senators to Kevin Burns CEO JUUL Labs Inc.* (Apr 8, 2019), www.durbin.senate.gov/imo/media/doc/FINAL%20JUUL%20Letter%204.8.19.pdf (as of July 5, 2019).

48. JUUL manufactures and distributes its nicotine formulation as JUULpods, which contain JUUL's nicotine liquid. JUUL exclusively sells its pods in four-packs, in a variety of flavors, many of which have no combustible cigarette analog, including mango, "cool" cucumber, fruit medley, "cool" mint, and crème brûlée. According to a recent survey of more than 1,000 12 to 17 year-olds, 6.5% admitted to using a JUUL e-cigarette. Of those, 86% of users most recently used fruit medley, mango, cool mint, or crème brûlée.²²



49. The physical design of the JUUL device (including its circuit board) and JUULpod determines the amount of aerosolized nicotine the JUUL emits. By altering the temperature, maximum puff duration, or airflow, among other things, Defendant can finely tune the amount of nicotine vapor the JUUL delivers.²³

C. **E-Cigarettes Containing Nicotine are Addictive, Increase the Risk for Seizures and Strokes, and are Unsafe for Anyone under Age 26.**

50. All leading health authorities support the three major conclusions of a 1988 report by the Surgeon General of the United States regarding nicotine and tobacco:

- a. Cigarettes and other forms of tobacco are addictive;
- b. Nicotine is the drug in tobacco that causes addiction;
- c. The physiological and behavioral processes that determine tobacco addiction are similar to those that determine heroin and cocaine addiction.

²² Willett, *JUUL: Recognition, use and perceptions* (Apr 26, 2018), www.publichealthlawcenter.org/sites/default/files/JUUL-Webinar-Slides-Apr262018.pdf (as of July 5, 2019).

²³ Talih *et al.*, Characteristics and toxicant emissions of JUUL electronic cigarette (Feb 11, 2019) Tob Control. 054616 www.ncbi.nlm.nih.gov/pubmed/30745326/ (as of July 5, 2019).

1 51. Nicotine fosters addiction through the brain’s “reward” pathway. A stimulant and
2 a relaxant, nicotine affects the central nervous system; increases in blood pressure, pulse, and
3 metabolic rate; constricts blood vessels of the heart and skin, and causes muscle relaxation. When
4 nicotine is inhaled it enters the bloodstream through membranes in the mouth and upper
5 respiratory tract and through the lungs. Once nicotine in the bloodstream reaches the brain, it
6 binds to receptors, triggering a series of physiologic effects in the user that are perceived as a
7 “buzz” that includes pleasure, happiness, arousal, and relaxation of stress and anxiety. These
8 effects are caused by the release of dopamine, acetylcholine, epinephrine, norepinephrine,
9 vasopressin, serotonin, and beta endorphin. With regular nicotine use, however, these feelings
10 diminish and the user must consume increasing amounts of nicotine to achieve the same
11 pleasurable effects.²⁴

12 52. The neurological changes caused by nicotine create addiction. Repeated exposure
13 to nicotine causes neurons in the brain to adapt to the action of the drug and return brain function
14 to normal. This process, called neuroadaptation, leads to the development of tolerance in which a
15 given level of nicotine begins to have less of an effect on the user.²⁵

16 53. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive
17 drug-seeking behavior, which, if not satisfied, results in withdrawal symptoms including anxiety,
18 tension, depression, irritability, difficulty in concentrating, disorientation, increased eating,
19 restlessness, headaches, sweating, insomnia, heart palpitations and tremors – and intense cravings
20 for nicotine. Though smokers commonly report pleasure and reduced anger, tension, depression
21 and stress after smoking a cigarette, many of these effects are actually due to the relief of
22 unpleasant withdrawal symptoms that occur when a person stops smoking and deprives the brain
23 and body of nicotine. Studies have found that most smokers do not like smoking most of the time
24 but do so to avoid withdrawal symptoms.²⁶

25 ²⁴ Neal L. Benowitz, Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and
26 Therapeutics (Sep 27, 2009) *Annu Rev Pharmacol Toxicol* 49: 57–71
www.ncbi.nlm.nih.gov/pmc/articles/PMC2946180/ (as of July 5th, 2019).

27 ²⁵ *Id.*

28 ²⁶ Rigotti, Strategies to help a smoker who is struggling to quit (Oct 17, 2012) *JAMA* 308 (15):
1573–1580, www.ncbi.nlm.nih.gov/pmc/articles/PMC4562427/ (as of July 5, 2019); Paolini &

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54. Nicotine causes permanent brain changes and damage. The effects of nicotine exposure on the brain of youth and young adults include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.²⁷

55. Nicotine is also associated with cardiovascular, reproductive, and immunosuppressive problems, and is also a carcinogen.²⁸ Nicotine adversely affects the heart, eyes, reproductive system, lung, and kidneys. It is well-established that nicotine increases blood pressure. Exposure to nicotine from sources such as nicotine gum still produces an increased risk of coronary vascular disease (CVD) by producing acute myocardial ischemia, as well as an increased risk of peripheral arterial disorders. Aside from its use as a stimulant, the only other known use of nicotine is as an insecticide.²⁹

56. Several studies have shown that e-cigarettes increase the risk of strokes and heart attacks.³⁰

57. Research has also demonstrated that e-cigarettes significantly increase blood pressure and arterial stiffness, which increases the risk for strokes and heart attacks.³¹

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De Biasi, Mechanistic insights into nicotine withdrawal (Oct. 15, 2011) *Biochem Pharmacol* 82(8): 996–1007, www.ncbi.nlm.nih.gov/pmc/articles/PMC3312005/ (as of July 5, 2019).

²⁷ Yuan *et al.*, Nicotine and the adolescent brain (May 27, 2015) *The Journal of Physiology* 593(Pt 16): 3397–3412, www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/ (as of July 5, 2019); U.S. Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on Smoking and Health, *Know The Risks: E-cigarettes and Young People* (2019) <https://e-cigarettes.surgeongeneral.gov/> (as of July 5th, 2019).

²⁸ Mishra *et al.*, Harmful Effects of Nicotine (2015) *Indian J. Med. Paediatr. Oncol.*, 36(1): 24–31 (Jan- Mar 2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4363846/ (as of July 5, 2019).

²⁹ *Id.*

³⁰ E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries (Jan 30, 2019) American Stroke Association *News Release*, Abstract 9, Session A2, <https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attack-diseased-arteries> (as of July 5, 2019); Vindhyal *et al.*, Impact on cardiovascular outcomes among e-cigarette users: a review from National Health Interview Surveys (Mar 2019) *Journal of the American College of Cardiology*, Vol. 73, Iss. 9, Suppl. 2, www.onlinejacc.org/content/73/9_Supplement_2/11 (as of July 5, 2019); Ndunda & Muutu, Electronic cigarette use is associated with a higher risk of stroke (Jan 30, 2019) *International Stroke Conference 2019 Oral Abstracts. Community/risk factors*, Vol. 50, Suppl. 1, Abst. 9, www.ahajournals.org/doi/10.1161/str.50.suppl_1.9 (as of July 5, 2019); Bhatta & Glantz, Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population Assessment of Tobacco and Health (Jun 18, 2019) *Journal of the American Heart Association*, Vol. 8, Iss. 12, www.ahajournals.org/doi/10.1161/JAHA.119.012317 (as of July 5 2019).

58. Further, scientists have found that e-cigarettes also cause oxidative stress, which leads to vascular disease and damage, known risk factors for strokes.³²

59. With respect to JUUL products in particular, one recent study found that “the concentrations of nicotine and some flavor chemicals (e.g. ethyl maltol) are high enough to be cytotoxic in acute in vitro assays”.³³

60. Nicotine affects neurological development in adolescents, and exposure to nicotine during adolescence produces an increased vulnerability to nicotine addiction.³⁴ Adolescent nicotine addiction causes “substantial neural remodeling” including those parts of the brain governed by dopamine or acetylcholine, which play central roles in reward functioning and cognitive function, including executive function mediated by the prefrontal cortex. A “clear-cut relationship” between adolescent smokers and diminished neural responses has been observed such that addicts exhibit diminished sensitivity to non-drug rewards (e.g., financial rewards). This relationship becomes even more severe in adolescents who smoke more than 5 cigarettes a day. In sum, “the use of extremely rewarding drugs, such as nicotine, may decrease the pleasure obtained from non-drug rewards.” *Id.* These changes occur in “early phases of smoking.” *Id.* Other brain changes from nicotine include increased sensitivity to other drugs and heightened impulsivity.³⁵ “Brain imaging on adolescents suggest that those who begin smoking regularly at a young age

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³¹ Vlachopoulos *et al.*, Electronic cigarette smoking increases aortic stiffness and blood pressure in young smokers (Sep 10, 2017) J. Am. Coll. Cardiol. 67:2802–2803, www.sciencedaily.com/releases/2017/09/170910232512.htm (as of July 5, 2019)

³² Thompson, Vaping May Hurt the Lining of Your Blood Vessels (May 28, 2019) WebMD HealthDay Reporter www.webmd.com/mental-health/addiction/news/20190528/vaping-may-hurt-the-lining-of-your-blood-vessels#1 (as of July 5th, 2019). JUUL e-cigarettes and JUULpods deliver dangerous toxins and carcinogens to users. The ingredients in JUULpods include glycerol, propylene glycol, nicotine, benzoic acid, and flavoring chemicals. www.juul.com/learn/pods (as of July 5, 2019).

³³ Omaiye *et al.*, High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations (Apr 17, 2019) Chem Res Toxicol 17;32(6):1058-1069 www.ncbi.nlm.nih.gov/pubmed/30896936 (as of July 5, 2019).

³⁴ Arain *et al.*, Maturation Of The Adolescent Brain (Apr 25, 2013), Neuropsychiatric Disease and Treatment, 9:449–461 <http://doi.org/10.2147/NDT.S39776> (as of July 5, 2019).

³⁵ University of Warwick, “Different brain areas linked to smoking and drinking” (Jan 8, 2019) ScienceDaily, www.sciencedaily.com/releases/2019/01/190108095119.htm (as of July 5, 2019).

1 have markedly reduced activity in the prefrontal cortex and perform less well on tasks related to
2 memory and attention compared to people who don't smoke."³⁶

3 61. Public health authorities have concluded that e-cigarettes are unsafe for anyone
4 under age 26.³⁷

5 **D. JUUL Designed its E-Cigarettes to Make them Easy for Young People to**
6 **Inhale and to Deliver Substantially Higher Doses of Nicotine than Cigarettes.**

7 62. According to the National Institutes of Health, the "amount and speed of nicotine
8 delivery . . . plays a critical role in the potential for abuse of tobacco products."³⁸ The cigarette
9 industry has long known that "nicotine is the addicting agent in cigarettes"³⁹ and that "nicotine
10 satisfaction is the dominant desire" of nicotine addicts.⁴⁰

11 63. For this reason, cigarette companies spent decades manipulating nicotine in order
12 to foster and maintain addiction in their customers. For example, R.J. Reynolds Tobacco
13 Company ("RJR") developed and patented nicotine salt additives such as nicotine benzoate to
14 increase nicotine delivery in cigarette smoke. As detailed in an RJR memorandum titled
15 "Cigarette concept to assure RJR a larger segment of the youth market," manipulating the pH of
16 nicotine was expected to give cigarettes an "additional nicotine 'kick'."⁴¹ This kick was attributed
17 to increased nicotine absorption associated with lower pH.⁴²

18 ³⁶ Brodwin, *An e-cigarette with twice the nicotine of comparable devices is taking over high*
19 *schools - and scientists are sounding the alarm* (Apr 30, 2018) Business Insider,
www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3 (as of July 5, 2019).

20 ³⁷ U.S. Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on
21 Smoking and Health, *Know The Risks: E-cigarettes and Young People* (2019) [https://e-](https://e-cigarettes.surgeongeneral.gov/)
[cigarettes.surgeongeneral.gov/](https://e-cigarettes.surgeongeneral.gov/) (as of July 5th, 2019).

22 ³⁸ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-
23 Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and
Present (2010), www.ncbi.nlm.nih.gov/books/NBK53017/ (as of July 5th, 2019).

24 ³⁹ Brown & Williamson official A.J. Mellman, (1983) Tobacco Industry Quotes on Nicotine
25 Addiction, [www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes](http://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf)
[%20on%20Nicotine%20Addiction.pdf](http://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf) (as of July 5, 2019).

26 ⁴⁰ *Id.*, R.J. Reynolds Tobacco Co. marketing memo, 1972.

27 ⁴¹ *Id.*, 1973 R.J. Reynolds Tobacco Co. memo titled, "Cigarette concept to assure RJR a larger
segment of the youth market."

28 ⁴² Benowitz *et al.*, Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, Nicotine
Psychopharmacology (Oct. 13, 2010), *Handb Exp Pharmacol* 192:29–60,

64. JUUL knowingly used the RJR research and conclusions to produce a similar nicotine kick, and thereby promoting increased use and sales of JUUL e-cigarettes. In U.S. patent No. 9,215,895 (“the ’895 patent”), assigned to “PAX Labs, Inc.” and listing JUUL executive Adam Bowen as an inventor, JUUL describes a process for combining benzoic acids with nicotine to produce nicotine salts, a formulation that mimics the nicotine salt additive developed by RJR decades earlier.

65. In a 2015 interview, Ari Atkins, a JUUL research & development engineer and one of the inventors of the JUUL device said this about the role of acids: “In the tobacco plant, there are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes it ...” He pauses. “I’ve got to choose the words carefully here: Appropriate for inhalation.”⁴³

66. JUUL’s manipulation of nicotine pH directly affects the palatability of nicotine inhalation by reducing the “throat hit” users experience when vaping. Benzoic acid reduces the pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form. This reduction in pH converts naturally-occurring unprotonated nicotine, which causes irritation in the throat and respiratory tract, to protonated nicotine, which is not be absorbed in the throat or upper respiratory tract and, therefore, does not irritate the throat. A recent study found that JUUL’s e-liquid had a pH of under 6.0, suggesting that the JUUL contains almost no freebase (i.e., non-salt form) nicotine.⁴⁴

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www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/ (as of July 5, 2019).

⁴³ Pierce, *This Might Just Be The First Great E-Cig* (Apr 21, 2015) WIRED, www.wired.com/2015/04/PAX-juul-ecig/ (as of July 5, 2019).

⁴⁴ Lauterbach, One More Time Unprotonated Nicotine in E-Cigarette Aerosols: Is It Really There? (2018) www.coresta.org/sites/default/files/abstracts/2018_TSRC83_Lauterbach.pdf (as of July 5, 2019); Other studies have confirmed the low ratio of freebase nicotine in JUUL products. See Duell *et al.*, Free-Base Nicotine Determination in Electronic Cigarette Liquids by 1H NMR Spectroscopy (Jun 18, 2018) 31 Chem. Res. Toxicol. 431-434, www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/ (as of July 5th, 2019).

1 67. The vapor from JUUL’s e-liquid contains about the same ratio of free-base
2 nicotine—and hence causes the same amount of irritation—as a nearly nicotine-free 3 mg/mL e-
3 liquid.⁴⁵

4 68. The same chart further shows that the Duell Study authors found that the low
5 freebase fraction in its aerosols suggested a “decrease in the perceived harshness of the aerosol to
6 the user and thus a greater abuse liability.” *Id.* At 431-434.

7 69. The authors noted that “tobacco company documents suggest that products [like
8 JUUL] with high nicotine levels but a low [percentage of freebase nicotine] will yield vape
9 aerosols of much reduced harshness as compared to products with even only moderate nicotine
10 levels” but high percentages of freebase nicotine. *Id.*

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

19 71. The Duell study concluded that JUUL’s use of nicotine salts “may well contribute
20 to the current use prevalence of JUUL products among youth.”⁴⁶

21 72. JUUL’s lack of throat hit increases the risk of using the product, because it masks
22 the amount of nicotine being delivered, by eliminating the throat sensory feedback normally
23 associated with a large dose of nicotine. The “throat hit” is part of the body’s alert system, letting
24 a person know she is inhaling something harmful. Eventually, the irritation to the throat will
25 cause even the most compulsive addict to wait before the next inhalation. Reducing or removing

26
27 ⁴⁵ *Id.*, Duell Study, Fig. 3.

28 ⁴⁶ *Id.*, Duell Study (citing Willett, *et al.*, Recognition, use and perceptions of JUUL among youth and young adults, Tobacco, Tob Control. 2019 Jan;28(1):115-116.)

1 this feedback impairs the user's ability to ascertain that she is consuming a toxin. As a result, the
2 cravings for nicotine can be satisfied nonstop, fostering addiction or aggravating an existing
3 addiction, and repeatedly exposing the user to the health risks associated with the product, such as
4 significantly increased blood pressure.

5 73. JUUL sells products that contain relatively low amounts of throat-irritating
6 freebase nicotine, yet contain and deliver far higher concentrations of nicotine than cigarettes or
7 other electronic nicotine delivery systems ("ENDS") containing freebase nicotine.

8 74. Blood plasma studies in the '895 patent⁴⁷ show that vaping nicotine benzoate
9 increases nicotine delivery compared to cigarettes or vaporized solutions of freebase nicotine. In
10 fact, nicotine uptake was up to four times higher for nicotine salt formulations than traditional
11 cigarettes (approximately 4 ng/mL/min compared to approximately 1 ng/mL/min). JUUL's data
12 also indicates that nicotine salt solutions produce a higher heart rate in a shorter amount of time (a
13 50 beats/minute increase within 2 minutes for nicotine salt, versus a 40 beats/minute increase in
14 2.5 minutes for a Pall Mall cigarette). Nicotine salts also cause a faster and more significant rise
15 in heart rate than placebo or vaporized freebase nicotine.

16 75. JUUL's '895 patent shows that a 4% solution of benzoic acid nicotine salt causes a
17 peak nicotine-blood concentration ("C_{max}") of approximately 15 ng/mL, compared to a C_{max} of
18 11 ng/mL for a Pall Mall cigarette.⁴⁸

19 76. As high as the reported nicotine dose reported for JUULpods is, the actual dose is
20 likely higher. Though the strongest benzoic acid concentration mentioned in the '895 patent is 4%
21 (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUULpods and found a 4.5%
22 benzoic acid (44.8 ± 0.6) solution.⁴⁹ That study found that JUULpods contained a concentration
23 of 6.2% nicotine salt (about 60 mg/mL), rather than the 5% nicotine (about 50 mg/mL)
24 advertised. JUULpods containing an absolute nicotine concentration 1.2% higher than the stated
25

26 ⁴⁷ See U.S. Patent No. 9, 215, 895.

27 ⁴⁸ '895 Patent, at col. 26, ll. 33-50.

28 ⁴⁹ Pankow *et al.*, Benzene formation in electronic cigarettes (Mar 8, 2017) PLoS One. 2017;
12(3): e0173055 www.ncbi.nlm.nih.gov/pmc/articles/PMC5342216/ (as of July 5, 2019).

1 5% on the label (a relative increase of over 20%) coupled with more benzoic acid than listed in
2 the '895 patent produce higher nicotine absorption than expected for the advertised formulation.

3 77. Other studies have reported even higher actual concentrations of nicotine in
4 JUULpods. Some experts estimate that JUULpods deliver the same nicotine as two packs of
5 cigarettes.⁵⁰

6 78. In any event, JUUL is delivering doses of nicotine that are materially higher than
7 delivered by combustible cigarettes. As a paper published by the European Union citing the
8 United Kingdom Medicines and Healthcare Products Regulatory Agency notes, “an e-cigarette
9 with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the
10 time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg
11 of nicotine).”⁵¹ With at least 59 mg/mL of nicotine delivered in a salt form that increases the rate
12 and efficiency of uptake (and even with a lower mg/mL amount), a JUULpod will easily exceed
13 the nicotine dose of a traditional cigarette. Not surprisingly, the European Union has banned all e-
14 cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and Israel is
15 seeking to do the same.⁵² As Israel’s Deputy Health Minister has noted, “a product that contains a
16 concentration of nicotine that is almost three times the level permitted in the European Union
17 constitutes a danger to public health and justifies immediate and authoritative steps to prevent it
18 from entering the Israeli market.”⁵³

19 79. Comparison of available data regarding per puff nicotine intake corroborates the
20 other JUUL studies (mentioned above), indicating that JUUL delivers about 30% more nicotine
21 per puff. Specifically, a recent study of JUULpods found that “[t]he nicotine levels delivered by

22 ⁵⁰ 6 important facts about JUUL, Truth Initiative, [https://truthinitiative.org/research-
resources/emerging-tobacco-products/6-important-facts-about-juul](https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul) (as of July 5, 2019)

23 ⁵¹ “E-Cigarettes” https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf
24 (as of July 5, 2019) (citing United Kingdom Medicines and Healthcare Products Regulatory
Agency and industry reports).

25 ⁵² Belluz, *Juul, the Vape Device Teens are Getting Hooked On, Explained* (Dec 20, 2018) Vox
26 <https://www.vox.com/science-and-health/2018/5/1/17286638/juul-vaping-e-cigarette> (as of July
5, 2019).

27 ⁵³ Linder-Ganz, *JUUL Warns It Will Fight Israel Over Its Potential Ban on E-Cigarettes* (Jan 30,
2018), HAARETZ, [www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-
potential-ban-on-its-e-cigarettes-1.6140058](http://www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058) (as of July 5, 2019).

1 the JUUL are similar to or even higher than those delivered by cigarettes.”⁵⁴ The Reilly study
2 tested JUUL’s Tobacco, Crème Brûlée, Fruit Punch, and Mint flavors and found that a puff of
3 JUUL delivered 164 ± 41 micrograms of nicotine per puff. By comparison, a 2014 study using
4 larger 100 mL puffs found that a Marlboro cigarette delivered 152—193 $\mu\text{g/puff}$.⁵⁵ Correcting to
5 account for the different puff sizes between the Reilly and Schroeder studies, this suggests that, at
6 75ml/puff, a Marlboro would deliver between 114 and 144 $\mu\text{g/puff}$. In other words, empirical data
7 suggests that JUUL delivers up to 36% more nicotine per puff than a Marlboro.

8 80. Because “nicotine yield is strongly correlated with tobacco consumption,”⁵⁶ a
9 JUULpod with more nicotine will strongly correlate with higher rates of consumption of
10 JUULpods, generating more revenue for JUUL. For example, a historic cigarette industry study
11 looking at smoker employees found that “the number of cigarettes the employees smoked per day
12 was directly correlated to the nicotine levels.”⁵⁷ In other words, the more nicotine in the
13 cigarettes, the more cigarettes a person smoked.

14 81. Despite the above data, Defendant has failed to disclose to consumers that the
15 JUULpods’ nicotine salt formulation delivers an exceptionally potent dose of nicotine.

16 82. By delivering such potent doses of nicotine, JUUL products magnify the health
17 risks posed by nicotine, significantly increase blood pressure, and place users at heightened risk
18 for seizures, as well as strokes, lung damage, heart attacks and other cardiovascular or brain
19 events.

20 83. Further, because JUUL’s nicotine salts actually increase the rate and magnitude of
21 blood plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse
22 is higher for JUUL e-cigarettes than traditional cigarettes. Thus, JUULpods are foreseeably

23 ⁵⁴ Reilly *et al.*, Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic
24 Cigarettes (Oct 20, 2018) Nicotine Tob Res. 3 (the “Reilly study”) <https://www.ncbi.nlm.nih.gov/pubmed/30346584> (as of July 5, 2019).

25 ⁵⁵ Schroeder & Hoffman, Electronic Cigarettes and Nicotine Clinical Pharmacology (May 2014)
26 Tobacco Control 2014: 23:ii30-ii35, www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/ (as of
27 July 5, 2019).

28 ⁵⁶ Jarvis *et al.*, Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in
Smokers: Evidence From a Representative Population Survey (Jan 2001), JNCI Vol. 93, Issue 2,
134–138 <https://academic.oup.com/jnci/article/93/2/134/2906355> (as of July 6, 2019)

⁵⁷ UCSF Library, 1003285443-5443 (US 85421).

1 exceptionally addictive when used by persons without prior exposure to nicotine—a fact not
2 disclosed by Defendant.

3 84. At the same time, as discussed above, the throat “hit” from nicotine salts is much
4 lower than that for combustible tobacco products, making it easier to inhale. According to
5 researchers, the “high total nicotine level (addictive delivery)” of a JUUL coupled with its easily
6 inhalable nicotine vapor is “likely to be particularly problematic for public health.”⁵⁸

7 85. This powerful combination—highly addictive and easy to inhale—also repeatedly
8 exposes users to the toxic chemicals in the vapor, compounding the health risks to users, as
9 described above.

10 86. In addition to its nicotine content, the “Cool” Mint pods pose additional risks. The
11 FDA’s Tobacco Products Scientific Advisory Committee in March 2011 issued a report on
12 menthol cigarettes, concluding that the minty additive was not just a flavoring agent but had drug-
13 like effects, including “cooling and anesthetic effects that reduce the harshness of cigarette
14 smoke.”⁵⁹ Mint could also “facilitate deeper and more prolonged inhalation,” resulting in “greater
15 smoke intake per cigarette.” *Id.* at 500-501.

16 87. JUUL has negligently misrepresented or omitted material information about the
17 addictive and dangerous nature of its e-cigarettes. Defendant necessarily is in possession of all of
18 this information.

19 **E. JUUL’s Design Offers No Benefit for Young People, Only Risk.**

20 88. JUUL’s design offers no benefit to young people like K.B., who was not addicted
21 to cigarettes before she started using JUUL.

22 **F. JUUL Conspired with Others in the Cigarette Industry to Engage Third-**
23 **Party Spokespersons to Downplay the Risks of E-cigarettes, Create Doubt,**
24 **and Misrepresent the Benefits of Nicotine.**

25 89. Because JUUL understood that it could not specifically make health-related claims
26 without drawing the ire of the FDA, JUUL conspired with others, including unnamed Defendants

27 ⁵⁸ Duell Study, 431

28 ⁵⁹ Proctor, *Golden Holocaust: Origins of the Cigarette Catastrophe and the Case for Abolition*,
500 (1st ed. 2011).

1 Does 51-100, in the cigarette industry to engage consultants, academics, reporters, and other
2 friendly sources such as the American Enterprise Institute, to serve as spokespersons and
3 cheerleaders for e-cigarette products. Taking yet another page from the cigarette-industry
4 playbook, these influencers masked their connection to the e-cigarette industry, while serving as
5 its mouthpiece to cast doubt about risks and overstate benefits.

6 90. For example, just as JUUL launched, cigarette company expert witness Sally Satel
7 published an article in Forbes Magazine touting the benefits of nicotine—claiming it aids in
8 concentration—and stating that it is harmless.⁶⁰ In another article, she lauded efforts by JUUL
9 and others to develop nicotine-related products, and cast any doubters as hysterical and creating a
10 “panic”.⁶¹

11 91. Numerous other articles, videos, and podcasts—also spread through social
12 media—echoed this same message that the public health community was overreacting to e-
13 cigarettes and in a panic about nothing.

14 92. During each of its multiple fundraising rounds, JUUL assured potential investors
15 that addiction to something that is not harmful is not harmful, suggesting that JUUL was no more
16 harmful than coffee.

17 93. On information and belief, JUUL and its co-conspirators spread this message
18 through hired third-party spokespersons and influencers.

19 94. Furthering their campaign of doubt and confusion, when asked directly about
20 health risks, JUUL’s employees and founders would point reporters to other sources to indicate
21 that its products had been shown to be safe, or not harmful, rather than admit what it knew were
22 the dangers.

25 ⁶⁰ Satel, *Nicotine Itself Isn't The Real Villain* (Jun 19, 2015), Forbes,
26 www.forbes.com/sites/sallysatel/2015/06/19/nicotine-can-save-lives/#60379f766f43 (as of July 5,
2019).

27 ⁶¹ Satel, *Why The Panic Over JUUL And Teen Vaping May Have Deadly Results* (Apr 11, 2018),
28 Forbes, www.forbes.com/sites/sallysatel/2018/04/11/why-the-panic-over-juul-and-teen-vaping-may-have-deadly-results/#6b1ec693ea48 (as of July 5, 2019).

1 95. JUUL well-understood from the cigarette industry playbook that sowing doubt and
2 confusion over the benefits and risks of e-cigarettes is key to long-term success. First, by creating
3 a “two-sides-to-every-story” narrative, JUUL reduced the barriers for young people and new
4 users to try the product, and gave addicted users permission to keep using the product and avoid
5 the pain of withdrawal. Second, by engaging people who looked like independent experts, JUUL
6 staved off regulation and suppressed political opposition, allowing it a long runway to capture
7 market share. Third, by belittling the public health community, JUUL neutered its most vocal
8 threat.

9 96. On information and belief, JUUL negligently misrepresented or omitted the risks
10 of e-cigarettes, benefitting from a campaign of doubt, misinformation and confusion that would
11 be the key to the industry’s survival.

12 **G. JUUL Intentionally Misrepresents and Grossly Understates the Amount of**
13 **Nicotine in each JUULpod.**

14 97. From JUUL’s pre-release announcements to this day, JUUL, along with unnamed
15 Defendants Does 25 through 50 that provided marketing services to JUUL, has continuously
16 falsely represented that each pod contains only as much nicotine as a pack of cigarettes. JUUL
17 repeats these claims widely in advertisements, press releases, on its packaging, and on its web
18 site. For example, some JUUL advertisements and JUUL’s website currently provides that each
19 “JUULpod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of
20 manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs.”

21 98. This statement is false and seriously misleading because, as JUUL knows, it is not
22 just the amount of nicotine, but the efficiency with which the product delivers nicotine into the
23 bloodstream, that determines the product’s narcotic effect, risk of addiction, and other health
24 risks.

25 99. Defendant knows that benzoic acid affects pH and “absorption of nicotine across
26 biological membranes.”⁶²

27 ⁶² Benowitz *et al.*, Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, Nicotine
28 Psychopharmacology (Oct 12, 2010), Handb Exp Pharmacol 192: 29–60
www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/ (as of July 5, 2019).

100. Assuming a concentration of 59 mg/mL, JUUL’s reported nicotine content corresponds to about 40 mg of nicotine per 0.7 mL JUULpod. If, as JUUL claims, this is equivalent to one pack of cigarette (or 20 cigarettes), that implies 2 mg of nicotine per cigarette.

101. JUUL’s equivalency claim further assumes 10 puffs per cigarette (i.e., 200 puff per pack), or 0.2 mg (200 µg) of nicotine per puff.

102. Typically, a cigarette that delivers around one milligram of nicotine in smoke retains “about 14-20 milligrams of nicotine in the unsmoked rod,” *USA v. Philip Morris, Inc.* (D.D.C. 2006) 449 F.Supp.2d 1, 567, for an overall delivery of 5-7% of the cigarette’s actual nicotine content. A study by the Center for Disease Control found that in “commercial cigarette brands, nicotine concentrations ranged from 16.2 to 26.3 mg nicotine/g tobacco (mean 19.2 mg/g; median 19.4 mg/g).”⁶³ Assuming an average of 19 milligrams of nicotine per cigarette, an average pack of cigarettes contains 380 milligrams of nicotine, or six times as much nicotine as the 62 milligrams reported for each JUULpod. Yet the average pack would be expected to deliver only 5-7% (19-27 mg) of its nicotine content to the user. In line with this expectation, a study of thousands of smokers found smokers intaking between 1.07 to 1.39 milligrams per cigarette (21.4-27.8 mg per pack).⁶⁴ This is less than half of the amount of nicotine contained in a JUULpod (i.e., 2 mg per “cigarette” based on JUUL’s stated concentration, or 200 µg per puff assuming 100% delivery). Even with the slightly lower efficiency of delivery demonstrated in studies like Reilly (about 82%, for averages of 164 µg per puff), this amounts to a substantially higher amount of nicotine that a human will absorb from a JUULpod than from smoking a pack of cigarettes.

103. JUUL’s statement in its advertisements that each JUULpod contains about as much nicotine as a pack of cigarettes is therefore literally false and likely to mislead, because the amount of nicotine contained in the JUULpod is perhaps six times less than in a pack of

⁶³ Lawler *et al.*, Surveillance of Nicotine and pH in Cigarette and Cigar Filler (Apr 1, 2018), Tob Regul Sci. 3(Suppl 1): 101–116, www.ncbi.nlm.nih.gov/pmc/articles/PMC5628511/ (as of July 5 2019).

⁶⁴ Jarvis *et al.*, Nicotine Yield From Machine-Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey (Jan 17, 2001), JNCI, Vol. 93, 2:134–138, www.ncbi.nlm.nih.gov/pubmed/11208883 (as of July 5 2019).

1 cigarettes, but the actual amount of nicotine consumed via JUULpod is as much as twice as high
2 as that via cigarettes. This fact is never mentioned by JUUL or Does 1-100.

3 104. Further, while a pack of cigarettes contains 20 cigarettes which each have to be
4 separately lit, the JUUL can be inhaled continuously, and often can be used indoors without
5 detection by others, a feature that JUUL promoted heavily in its advertisements, eliminating the
6 need for smoking breaks. Thus, the device design leads users to intake far more nicotine than
7 would occur with cigarettes.

8 105. Finally, the JUUL device does not have a manual or automatic “off” switch. On
9 information and belief, neither the JUULpod nor the programming of the JUUL device’s
10 temperature or puff duration settings limit the amount of nicotine JUUL delivers each puff to the
11 upper bound of a cigarette. Thus, in contrast to a traditional cigarette, which self-extinguishes as
12 each cigarette is consumed, the JUUL allows non-stop nicotine consumption, which is limited
13 only by the device’s battery. As a result, the JUUL is able to facilitate consumption of
14 extraordinarily high levels of nicotine that a cigarette cannot match. This makes it easier for the
15 user to become addicted to nicotine and poses additional health risks.

16 106. Contrary to Defendant’s representations, the above data indicate that each
17 JUULpod delivers significantly more nicotine than a pack of cigarettes, both per pack and per
18 puff. JUUL’s products thus have the foreseeable effect of luring youth, who react positively to a
19 strong nicotine “kick,” and exacerbating nicotine addiction and adverse health effects associated
20 with nicotine consumption.

21 107. Thus, JUUL is more harmful when compared to cigarettes, in that the
22 extraordinarily high levels of nicotine can cause heightened blood pressure and stroke, and the
23 repetitive exposure to the toxins and chemical in JUUL can also cause vascular damage and
24 stroke.

1 **H. Defendants Never Warned K.B. that JUUL’s Products Were Unsafe,**
2 **Addictive, and Dangerous.**

3 108. At no time before K.B. suffered her two seizures did JUUL, nor any of the other
4 unnamed Defendants involved in the research, development, marketing and distribution of JUUL
5 products provide any warnings about the risks of stroke, seizure, or other brain damage.

6 109. At no time before K.B. suffered her two seizures did JUUL or any other
7 Defendants warn K.B. that JUUL products were unsafe for her and anyone under age 26, nor
8 instruct her on how much JUUL would be safe to consume.

9 110. Despite making numerous revisions to its packaging since 2015, JUUL did not add
10 nicotine warnings until forced to do so in August of 2018, far too late for Plaintiff. Neither did
11 any of the unnamed Defendants Does 1 through 100 involved in the research, development,
12 marketing of JUUL products and e-cigarettes provide any warnings. The original JUUL product
13 labels had a California Proposition 65 warning indicating that the product contains a substance
14 known to cause cancer, and a warning to keep JUULpods away from children and pets, but
15 contained no warnings specifically about the known effects, or possible long-term effects, of
16 nicotine or vaping/inhaling nicotine salts. Many of JUUL’s advertisements, particularly before
17 November 2017, also lacked a nicotine warning.

18 111. Furthermore, JUUL misrepresents the nicotine content of JUULpods by
19 representing it as 5% strength. As discussed above, JUULpods contain more than 5% nicotine by
20 volume, and deliver it in a form that is particularly potent.

21 112. Instead, JUUL marketed its JUUL products as an “alternative to cigarettes,”
22 thereby giving the false impression that they are not harmful like traditional cigarettes and safe to
23 use.

24 113. Plaintiff did not and could have known the risks associated with JUUL, because
25 Defendant had exclusive knowledge about its product, including its design, and concealed that
26 information from her.

1 114. Instead, as a result of JUUL’s wildly successful marketing campaign, based on
2 tactics developed by the cigarette industry and amplified in social media, K.B. reasonably
3 believed that JUUL was safe, harmless, fun, and cool—a thing to do with friends.

4 115. A 2017 study by the Truth Initiative Schroeder Institute® found that 6 percent of
5 youth and 10 percent of young adults have used a JUUL e-cigarette in the last 30 days. The study
6 also found that while many young people are aware of JUUL, many are unaware that the product
7 always contains the addictive chemical nicotine.

8 a. Twenty-five percent of survey respondents aged 15 to 24 recognized a
9 JUUL e-cigarette device when shown a photo of the product.

10 b. Among those who recognized JUUL, 25 percent reported that use of this
11 product is called “JUULing,” indicating that this product is so distinctive, it is perceived as its
12 own category.

13 c. Fully sixty-three percent of JUUL users did not know that this product
14 always contains nicotine.

15 **I. Despite knowledge that its products were unsafe for anyone under age 26,**
16 **JUUL Deployed a Deceptive and Unfair Viral Marketing Campaign to Entice**
17 **Young People to Start JUULing.**

18 116. As described further below, Defendant has used the same strategies perfected by
19 the cigarette industry to sell JUUL products to young people. In particular, JUUL has both
20 exploited regulatory loopholes and relied heavily on social media and other viral advertising tools
21 to hook people, and in particular young persons, on its addictive e-cigarettes.

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

25 118. Defendants Does 25 through 50 provided the strategies, analyses, and services to
26 JUUL enabling and in furtherance of JUUL’s deceptive and unfair marketing tactics.

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

28 119. “Viral marketing” is defined as “marketing techniques that seek to exploit
preexisting social networks to produce exponential increases in brand awareness, through

1 processes similar to the spread of an epidemic.”⁶⁵ Viral marketing is a form of word-of-mouth
2 recommendation that harnesses the network effect of the internet to rapidly reach a large number
3 of people. Because the goal in a viral marketing campaign is to turn customers into salespeople
4 who repeat a company’s representations on its behalf, a successful viral marketing campaign may
5 look like millions of disconnected, grassroots communications, when in fact they are the result of
6 carefully orchestrated corporate advertising campaign.

7 120. Companies may use different media to transmit their viral messaging, but
8 generally, all viral marketing campaigns tend to share similar features, including (1) a simple
9 message—typically implied by an image—that elicits an emotional response; (2) the strategic use
10 of marketing platforms, especially social media, to reach and engage the target audience; (3) use
11 of content that invites participation and engagement; and (4) use of third parties to magnify the
12 impact of a message.

13 121. Typically, a viral marketing campaign will begin with a “push” by the company
14 seeking to advertise the product, and since the advent of social media, that push is typically done
15 through the creation of new content on a social media platform, such as Instagram, YouTube,
16 Twitter, Facebook or other similar platform (“Social Media Platforms”).⁶⁶ A company that wants
17 to push an ad on Social Media Platforms has a few options. First, the company can solicit
18 followers to its social media pages, so that when the company posts to its feed, the content would
19 be delivered to those followers and to those who visited the company page. Second, the company
20 can purchase paid advertisements that were delivered to specified target audiences. Then, to
21 amplify a message, companies can utilize other tools, such as paid influencers and strategic use of
22 promotions and hashtags, to blanket the targeted demographic with advertisements across social
23 media.

24
25 ⁶⁵ Larson, The Rise of Viral Marketing through the New Media of Social Media (2009), Liberty
26 University Pub., [https://digitalcommons.liberty.edu/
cgi/viewcontent.cgi?article=1009&context=busi_fac_pubs](https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1009&context=busi_fac_pubs) (as of July 5, 2019).

27 ⁶⁶ Skrob, The viral marketing concept as a model for open source software to reach the critical
28 mass for global brand awareness based on the example of TYPO3 (Aug 2005), University of
Applied Science Kufstein, Austria, [http://citeseerx.ist.psu.edu/viewdoc/
download?doi=10.1.1.494.8779&rep=rep1&type=pdf](http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.494.8779&rep=rep1&type=pdf) (as of July 5, 2019).

122. Companies seeking to advertise new products or reach a new demographic have discovered the power of the “like” and “share” features on social media, which allow users to promote content to their own audiences. As Mark Zuckerberg, founder and Chief Executive Officer of Facebook explained: “[n]othing influences people more than a recommendation from a trusted friend...A trusted referral is the Holy Grail of advertising.”⁶⁷

123. With the advent of social media, viral marketing campaigns have become a particularly effective way to reach young people, particularly teenagers. Teenagers tend to use social media far more than adults, and tend to be more susceptible to peer pressure. 95% of teens report having use of a smart phone.⁶⁸ 45% report being online “constantly.” *Id.* 85% use YouTube. *Id.* 72% use Instagram, and 69% use Snapchat. *Id.* Adolescents also have a far stronger herding instinct than adults. The desire to fit in and look cool means that adolescents drive new trends online. As many businesses know, young people are often skeptical of traditional advertising and the tactics of large corporations. Thus, by pushing a viral marketing campaign, these businesses can reach consumers who might ignore typical advertising and are more likely to respond to an advertisement that does not look or feel like an advertisement, but instead is a message shared by a friend, a peer, or some other person influential to the viewer.

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

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

125. To remain profitable, the tobacco industry must continue to woo new customers: some existing customers wean themselves from addiction and the others eventually die, so

⁶⁷ <https://www.ft.com/content/01341240-8cbd-11dc-b887-0000779fd2ac> (last accessed Dec. 13, 2018). See also *Perkins v. LinkedIn Corp.* (N.D. Cal. 2014) 53 F.Supp.3d 1190, 1210 (“One of the principal reasons such viral marketing is superior to other forms of marketing is the source: viral marketing comes from a friend or contact with whom the recipient is familiar and trusts as opposed to an unfamiliar or untrusted source.”).

⁶⁸ Anderson & Jiang, *Teens, Social Media & Technology 2018* (May 31 2018), Pew Research Center, www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/ (as of July 5, 2019).

1 replacement customers are needed. In recent years, tobacco usage in the United States has fallen
2 dramatically, with particularly large decreases in the youth smoking rates, which cigarette
3 companies have been vigorously trying to counteract. The cigarette industry knows that the
4 younger a person starts smoking, the longer they will have a customer. Historically, cigarette
5 companies fought to increase share penetration among the 14-24 age group because “young
6 smokers have been the critical factor in the growth” of tobacco companies, and “the 14-18 year
7 old group is an increasing segment of the smoking population.”⁶⁹ The importance of the youth
8 market was illustrated in a 1974 presentation by RJR’s Vice-President of Marketing who
9 explained that the “young adult market . . . represent[s] tomorrow’s cigarette business. As this 14
10 24 age group matures, they will account for a key share of the total cigarette volume - for at least
11 the next 25 years.”⁷⁰

12 126. It is well-established that “marketing is a substantial contributing factor to youth
13 smoking initiation.” *USA v. Philip Morris* (D.D.C. 2006) 449 F. Supp.2d 1, 570.

14 127. Because teenagers are at a stage in their psychosocial development when they are
15 struggling to define their own identities, they are particularly vulnerable to image-heavy
16 advertisements providing cues for the “right” way to look and behave amongst peers. *Id.* at 578.
17 Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco
18 product initiation. *Id.* at 570, 590. By making smoking a signifier of a passage into adulthood,
19 tobacco companies turned smoking into a way for teenagers to enhance their image in the eyes of
20 their peers. *Id.* at 1072

21 128. The landmark *USA v. Philip Morris* case revealed that tobacco companies targeted
22 adolescents for decades by: “(1) employ[ing] the concept of peers in order to market to teenagers;
23 (2) us[ing] images and themes in their marketing that appeal to teenagers; and (3) employ[ing]
24 advertising and promotion strategies to knowingly reach teenagers.” No. 99-cv-2396, ECF 5732,
25

26 ⁶⁹ Memo to: C.A. Tucker from: J.F. Hind Re: "Meet the Turk" (January 23, 1978)
27 <http://legacy.library.ucsf.edu/tid/lve76b00> (last visited June 5, 2018).

28 ⁷⁰ Mr. C.A. Tucker Presentation to RJRI BOFD - 9/30/74 (740930), “Marketing Plan” (1974),
www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091 (as of July 5, 2019)

¶ 2682 (D.D.C. 2008). In terms of images and themes that cater to adolescents, the court found “overwhelming” evidence that tobacco companies intentionally exploited adolescents’ vulnerability to imagery by creating advertising emphasizing themes of “independence, adventurousness, sophistication, glamour, athleticism, social inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being ‘cool.’” *Id.* at ¶ 2674.

129. Thus, the industry has long used viral marketing campaigns to push its products on children, teens, and young adults. Prior to the advent of the Internet, cigarette companies engaged in “viral advertising” or “influential seeding” by paying “cool people” to smoke in select bars and clubs, with the “idea being that people will copy this fashion, which would then spread as if by infection.”⁷¹ By simply paying some attractive, stylish third parties to use the product in trendy public places, tobacco companies were able to create buzz and intrigue. As word spread, the public would develop a strong association that smoking was what young, cool adults were doing.

130. Today, cigarette manufacturers like Altria are limited in their ability to advertise in the United States, but actively use viral marketing techniques outside of the United States. For example, Japan Tobacco International, one of JUUL’s early investors, launched social media campaigns including a “Freedom Music Festival” promoting Winston cigarettes in Kazakhstan Kyrgyzstan, and Jordan. Similarly, Phillip Morris International, a spin-off of Altria, JUUL’s largest stakeholder, has used influencer campaigns in multiple countries. A campaign in Indonesia called “I Decide To” has been viewed more than 47 million times online. A hashtag marketing campaign called #NightHunters in Uruguay used paid influencers to pose with menthol cigarettes and was seen by nearly ten percent of Uruguay’s population.⁷²

131. An influencer paid to promote Philip Morris brands stated that Philip Morris targets a “super young profile” for its influencers . . . the people they selected are always the youngest. They look for young people that have large groups of friends so [the social media

⁷¹ Golden Holocaust, 119 (citing Ted Bates and Co., Copy of a Study of Cigarette Advertising Made by J.W. Burgard; 1953, (Lorillard), n.d., Bates 04238374-8433.

⁷² *New Investigation Exposes How Tobacco Companies Market Cigarettes on Social Media in the U.S. and Around the World* (Aug 27, 2019) Campaign For Tobacco-Free Kids www.tobaccofreekids.org/press-releases/2018_08_27_ftc (as of July 5, 2019).

1 promotional message] gets expanded more and more.” *Id.* Another influencer allegedly stated that
2 “we had a training session with the person in charge of marketing in Marlboro, she talked to us
3 about how difficult it was for them to advertise due to all the laws in place. She also talked to us
4 about . . . [linking] the brand to certain colors or situations.” *Id.* (brackets in original).

5 132. A study carried out by the campaign for tobacco-free kids, reported that “tobacco
6 companies are secretly paying social media stars to flood your newsfeed with images of their
7 cigarette brands.” *Id.* In a nutshell, “young social media stars are paid to make smoking look
8 cool.” *Id.* A gallery of influencer posts is available at:
9 <https://www.takeapart.org/wheretheressmoke/gallery/>.

10 133. Similarly, in 1988 the R.J. Reynolds Tobacco Company introduced the infamous
11 Joe Camel cartoon campaign, which faced instant criticism due to how appealing the cartoon
12 animal was to children and teens. Joe Camel was drawn as sleek, metropolitan figure, typically
13 wearing sunglasses or a tuxedo, or was depicted driving convertibles, gambling, or playing pool.
14 The ads often used the phrase “Smooth Character,” which to teenagers, meant he had a slick, cool
15 personality. That in turn led to an association between smoking and coolness in the minds of
16 young people. To ensure that message stuck, R.J. Reynolds put up billboards featuring Joe Camel
17 near schools, and printed Joe Camel shirts, hats, and other paraphernalia, ensuring the campaign
18 would be carried far and wide, and that kids would constantly be exposed to it. Only three years
19 after the campaign began, in 1991, the Journal of the American Medical Association published a
20 study showing that by age six nearly as many children could correctly respond that “Joe Camel”
21 was associated with cigarettes as could respond that the Disney Channel logo was associated with
22 Mickey Mouse, and it alleged that the “Joe Camel” campaign was targeting children, despite R. J.
23 Reynolds’ claim (similar to the claim of Defendants here) that the campaign was directed only to
24 adults who were already smokers of other brands.⁷³ At that time researchers estimated that 32.8%
25 of all cigarettes sold illegally to underage buyers were Camels.⁷⁴ The Joe Camel campaign ended

26 ⁷³ Fischer *et al.*, Brand Logo Recognition by Children Aged 3 to 6 Years (Dec 11, 1991), JAMA
27 266(22):3145-8, www.ncbi.nlm.nih.gov/pubmed/1956101 (as of July 5, 2019).

28 ⁷⁴ DiFranza *et al.*, RJR Nabisco’s cartoon camel promotes camel cigarettes to children (Dec 11,
1991) JAMA 266(22):3149-53, www.ncbi.nlm.nih.gov/pubmed/1956102 (as of July 5, 2019).

Footnote continued on next page

1 under the pressure of an impending civil trial brought by the City Attorney in San Francisco,
2 Congressional investigation, and public pressure.⁷⁵

3 134. Cigarette companies have also known for decades that flavored products are key to
4 nicotine adoption by youth. A 1972 Brown & Williamson internal memorandum titled “Youth
5 Cigarette – New Concepts,” observed that “it’s a well known fact that teenagers like sweet
6 products.”⁷⁶ A 1979 Lorillard memorandum found “younger” customers would be “attracted to
7 products with ‘less tobacco taste,’” and suggested investigating the “possibility of borrowing
8 switching study data from the company which produces ‘Life Savers’ as a basis for determining
9 which flavors enjoy the widest appeal” among youth.⁷⁷ A 2008 study found that 17-year-old
10 smokers were more than three times as likely as those over the age of 25 to smoke flavored
11 cigarettes, and they viewed flavored cigarettes as safer.⁷⁸ Cigarette companies also used
12 advertisements that paired cigarettes with foods, to make it seem like cigarettes were part of a
13 healthy meal.

14 **J. Because Advertising Fuels Youth Smoking, Tobacco Companies are**
15 **Prohibited from Viral Marketing Practices and Use of Flavors**

16 135. Most of the activities described in the section above are now recognized as against
17 public policy, and thus forbidden for cigarette companies.

18 136. Under the Tobacco Master Settlement Agreement (“MSA”), reached in 1998,
19 participating manufacturers agreed not to “take any action, directly or indirectly, to target Youth
20 within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take
21

22 *Footnote continued from previous page*

(The JUULs represent an even higher percentage of all cigarettes and e-cigarettes sold to minors.)
23 ⁷⁵ Joe Camel, Wikipedia https://en.wikipedia.org/wiki/Joe_Camel#cite_note-8 (as of July 5, 2019).

24 ⁷⁶ Brown & Williamson official A.J. Mellman, (1983) Tobacco Industry Quotes on Nicotine
Addiction, www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf (as of July 5, 2019).

25 ⁷⁷ Flavored Tobacco FAQs, Students Working Against Tobacco, (citing, Sedgefield Idea Sessions
790606-790607. June 8, 1979. Bates No. 81513681/3691)
26 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (as of July 5, 2019)

27 ⁷⁸ Klein *et al.*, Use of flavored cigarettes among older adolescent and adult smokers: United
States, 2004-2005. (Jul 2008) Nicotine Tob Res. 10(7):1209-14,
28 <https://www.ncbi.nlm.nih.gov/pubmed/18629731> (as of July 5, 2019).

1 any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth
2 smoking within any Settling State.” MSA, § III(a). They are also prohibited from

3 a. using outdoor advertising such as billboards,
4 b. sponsoring events,
5 c. giving free samples,
6 d. paying any person “to use, display, make reference to or use as a prop any
7 Tobacco Product, Tobacco Product package . . . in any “Media,” which includes “any motion
8 picture, television show, theatrical production or other live performance,” and any “commercial
9 film or video,”; and

10 e. paying any third party to conduct any activity which the tobacco
11 manufacturer is prohibited from doing.

12 137. In 2009, the FDA banned flavored cigarettes pursuant to its authority under the
13 Family Smoking Prevention and Tobacco Control Act of 2009. Then-FDA commissioner
14 Dr. Margaret A. Hamburg announced the ban because “flavored cigarettes are a gateway for
15 many children and young adults to become regular smokers.”⁷⁹

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

19 139. A study of the cigarette flavor ban in 2017 found that the flavor ban was effective
20 in lowering the number of smokers and the amount smoked by smokers, but also was associated
21 with an increased use of menthol cigarettes.⁸⁰ The same study reported that 85% of adolescents
22 who use e-cigarettes use flavored varieties.

23
24
25
26 ⁷⁹ Harris, *Flavors Banned From Cigarettes to Deter Youth* (Sep 22, 2009), The New York Times,
www.nytimes.com/2009/09/23/health/policy/23fda.html (as of July 5, 2019).

27 ⁸⁰ Courtemanche *et al.*, Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use
28 (May 2017), Am J Prev Med 52(5):e139-e146, www.ncbi.nlm.nih.gov/pubmed/28081999 (as of
July 5, 2019)

1 1. **JUUL’s Marketing Leveraged Banned Strategies Perfected by**
2 **Cigarette Companies to Induce Minors and Young Non-Smokers to**
3 **Purchase JUUL Products**

4 140. Following the successful model of its predecessors, since 2015, JUUL, in
5 conjunction and in concert with unnamed Defendants Does 25 through 50 involved in providing
6 marketing services to JUUL, has been operating a long term viral marketing campaign aimed at
7 teenagers and young adults. This campaign extends and expands upon deceptive advertising
8 tropes used by tobacco companies to exploit the psychological needs of consumers—especially
9 youth—to convert them into smokers.



13 141. JUUL’s admitted reliance on tobacco industry documents is apparent in a
14 collection of JUUL advertisements compared to historical cigarette advertisements on Stanford’s
15 Research into Impact of Tobacco Advertising (“SRITA”) website. The side-by-side comparison
16 of numerous JUUL advertisements shows that its imagery directly parallels that adopted by
17 cigarette manufacturers, including imagery relating to attractiveness, stylishness, sex appeal, fun,
18 “belonging,” relaxation, and sensory pleasure, including taste.

19 142. Because of social media, JUUL has been able to operate an even more pervasive,
20 insidious, and successful viral marketing campaign than its predecessors in this industry. As set
21 forth below, JUUL developed and oversaw a long-term viral marketing campaign with the intent
22 to convince young people to purchase its products. JUUL’s advertisements presented images
23 depicting an idealized future self that adolescents could achieve by taking up JUUL products.

24 143. JUUL carried this campaign out by: (i) intentionally designing a campaign that
25 was simple and would trigger an emotional response, particularly with young people; (ii)
26 intentionally designing flavored products that would appeal to teenagers and young adults; (iii)
27 directing its advertising to teenagers and young adults on social media; (iv) utilizing third party
28 influencers to amplify its message around the internet; (v) utilizing other social media tools, such

1 as hashtags, to encourage participation and word-of-mouth messaging by its customers; (vi)
2 amplifying the message through off-line advertising; and (vii) using a pricing and distribution
3 model designed to put the product within reach of youth.

4 144. JUUL's advertisements consistently withheld material information about the
5 dangers of the product. Through this long term advertising campaign, JUUL was able to persuade
6 consumers, and in particular teenagers and young adults that its product was cool, while hiding
7 from them the dangers associated with using the product. And because of the viral nature of
8 JUUL's marketing, JUUL promotions continue to reach youth, despite JUUL's deactivation of its
9 social media accounts.

10 **2. JUUL Advertising Used Imagery that Exploited Young People's**
11 **Psychological Vulnerabilities.**

12 145. Throughout the relevant period, JUUL ran a consistent, simple message on social
13 media that communicated to people, and in particular, teenagers and young adults that JUUL's
14 products were used by popular, attractive, and stylish young adults (i.e., an idealized version of an
15 adolescent's future self) while failing to adequately and conspicuously disclose the nature or risks
16 of the products.

17 146. In designing the campaign, JUUL knew that to increase the chances that content
18 goes viral amongst the teen demographic, it needed to design a campaign that was simple, would
19 generate an emotional response that would resonate with teenagers, and obscure the fact that the
20 product was unsafe and addictive.

21 147. To help it design these ads, JUUL relied on various social media marketing
22 companies. In 2015, JUUL worked with Cult Collective, instructing Cult Collective to design an
23 ad campaign that would catch fire and reach customers who had "heard it all before." At the time,
24 JUUL was a young company, competing with bigger, more established companies with large
25 advertising budgets and high brand loyalty. The solution JUUL and Cult Collective reached was
26 to position JUUL as a modern product that represented a better way of life for young people. That
27 campaign was highly effective.
28

3. **JUUL's Launch Campaign Was Targeted to Create Buzz Among Young Consumers.**

148. To announce the JUUL's release in June 2015, JUUL launched the "Vaporized" advertising campaign that was aimed at a youth audience.⁸¹ The campaign used young, stylish models, bold colors, and memorable imagery. The models were often using hand gestures or poses that mimicked teenagers.



149. JUUL's advertisements presented images depicting an idealized future self that adolescents could achieve by taking up JUUL products.

150. The Vaporized campaign advertisements featured young, stylish models and images of attendees at JUUL's launch parties and highlighted themes of sexual attractiveness, thinness, independence, rebelliousness and being "cool." This Vaporized campaign targeted youth using the exact template established by the cigarette companies decades earlier.

151. Often the Vaporized ads contained the phrase "Smoking Evolved," so that consumers, and in particular youth, would associate JUUL with high tech and the latest generation of cool products, like iPhones and MacBooks.

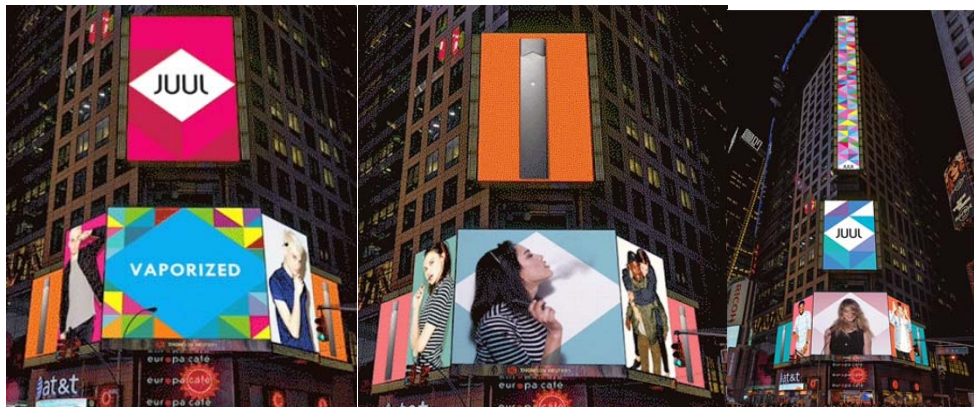
152. The color scheme chosen was similar to colors used by Natural Americans Spirit Cigarettes, a leading brand of cigarettes among teenagers.

⁸¹ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with 'Vaporized' Campaign* (Jun 23, 2015) ADAGE, <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/> (as of July 5, 2019).

153. Nowhere in the Vaporized ads did JUUL include any visible or prominent disclaimers about the dangers of nicotine or e-cigarettes as described above or state that JUUL was unsafe for anyone under age 26.

154. As the Cult Collective creative director explained, “We created ridiculous enthusiasm for the hashtag ‘Vaporized,’ and deployed rich experiential activations and a brand sponsorship strategy that aligned perfectly with those we knew would be our best customers.”⁸²

155. As part of the Vaporized campaign, JUUL advertised on a 12-panel display over Times Square.



156. Billboard advertising of cigarettes has for years been unlawful under the Master Settlement Agreement reached between 46 states’ attorneys general and cigarette companies, but JUUL took advantage of that agreement’s failure to foresee the rise of vaping products to advertise its nicotine products in a manner that had already been deemed against public policy for other nicotine products.

157. To ensure that its message would spread, JUUL utilized several other tools to put its product in front of young people. First, it ran the Vaporized campaign in the front spread of Vice magazine’s cover issue. Notably, Vice bills itself as the “#1 youth media brand” in the world and is known for running edgy content that appeal to youth. JUUL also implemented a series of pop-up “JUUL bars” in Los Angeles, New York, and the Hamptons, imitating pop-up restaurants

⁸² Jackler *et al.*, JUUL Advertising Over its First Three Years on the Market (Jan 31, 2019) Stanford Research into the Impact of Tobacco Advertising, Stanford University School of Medicine, http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (as of July 5, 2019). (Citing, Cult Creative JUUL case study. <http://cultideas.com/case-study/juul> (last accessed September 21, 2018)). (emphasis added)

1 and bars typically aimed at attracting young, hip urban consumers. Again, this is an activity
2 which would have been prohibited by law for a cigarette company on the ground that it was
3 against public policy.



10 158. JUUL's chief marketing officer, Richard Mumby said "while other campaigns tend
11 to be 'overtly reliant on just the product,' [JUUL's] effort features diverse 20-to-30-year-olds
12 using the product."⁸³ This reliance on images of young, diverse users was specifically aimed at
13 convincing young people who were not previously addicted cigarette smokers to purchase JUUL
14 products; to make the use of JUUL appear fun and without long-term negative consequences; to
15 position the JUUL e-cigarette as the e-cigarette of choice for young adults; and to introduce youth
16 to the "illicit pleasure" of using the JUUL products.⁸⁴

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

21 160. JUUL also sponsored at least 25 live social events for its products in California,
22 Florida, New York and Nevada. The invitations to JUUL's events did not indicate that the JUUL
23 was intended for cigarette smokers, was unsafe for anyone under 26, contained nicotine, carried
24 significant health risks or was addictive. Instead, the promised attendees "free #JUUL starter

25 ⁸³ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with 'Vaporized' Campaign* (June 23, 2015),
26 AdAge, [http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/)
[campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (as of July 5, 2019)

27 ⁸⁴ Additional images and videos are available at
28 http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php (as of
July 5, 2019).

1 kit[s],” live music, or slumber parties. Photographs from these events indicate that they drew a
2 youthful crowd. Use of sponsored events was a long-standing practice for tobacco companies, but
3 is now forbidden.

4 161. John Schachter, director of state communications for Campaign for Tobacco-Free
5 Kids, expressed “concern about the JUUL campaign because of the youth of the men and women
6 depicted in the campaign, especially when adjoined with the design.” Mr. Schachter said “the
7 organization has noticed obvious trends that appeal to adolescents in e-cigarette campaigns such
8 as celebrity endorsements, sponsorships and various flavors.”⁸⁵

9 162. To the extent that the Vaporized advertisements disclosed that JUUL products
10 contained nicotine, the warnings were in small print against low-contrast backgrounds, making
11 them easy to overlook. By way of comparison, if the same ads had been touting cigarettes, they
12 would have been required to display a health warning in high contrast black and white in a box
13 comprising 30% of the image.

14 **4. JUUL Gave Away Free Products to Get New Consumers Hooked.**

15 163. JUUL distributed free starter packs at the live social events described above in
16 paragraph 125—conduct that was expressly forbidden for a cigarette company under the Tobacco
17 Master Settlement Agreement, because it lured young people into nicotine addiction and related
18 harms. BeCore, one of the firms responsible for designing and implementing JUUL’s live events
19 reported that “on average, BeCore exceeded the sampling goals set by JUUL . . . average number
20 of samples/event distributed equals 5,000+.”⁸⁶ At these events, BeCore distributed the
21 appropriately-named JUUL “Starter Kits,” which contain a JUUL and 4 JUULpods of varying
22 flavors. If BeCore indeed gave away 5,000 Starter Kits per event, JUUL effectively distributed
23

24
25 ⁸⁵ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized’ Campaign* (June 23, 2015),
26 AdAge, [http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/)
[campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (as of July 5, 2019)

27 ⁸⁶ Jackler *et al.*, *JUUL Advertising Over its First Three Years on the Market*, Stanford Research
28 into the Impact of Tobacco Advertising, Stanford University School of Medicine (Jan 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (as of
July 5, 2019).

1 the nicotine equivalent of 20,000 packs of cigarettes at each of the 25 events described above—or
2 the equivalent of 500,000 packs of cigarettes at all 25 events.



164. Though JUUL publicly acknowledged in October 2017 that it is unlawful to free samples of its products at live events, JUUL continued to do so, sometimes through \$1 “demo events.” Notably, promotions of this kind are prohibited for cigarette companies by the MSA.

165. The effect—and purpose—of JUUL’s Vaporized giveaways was to flood major cities with free product which by its addictive nature would hook tens or hundreds of thousands of new users, and to generate buzz for the brand among urban trendsetters who would then spread JUUL’s message to their friends via word of mouth and social media. Similar campaigns have long been used by drug cartels. This campaign unconscionably flooded cities with free samples of

1 an addictive product, with distribution focusing on the youth market. As a foreseeable result,
2 JUUL products ended up in the hands of non-smokers and youth, like Plaintiff, who used the
3 products, became addicted to nicotine and suffered severe health consequences.

4 **5. JUUL Portrayed Its Products as Status Symbols.**

5 166. As tobacco companies have long known, young people—and adolescents in
6 particular—find security and a sense of identity in status symbols. Even after the “Vaporized”
7 campaign, JUUL’s later advertisements mimicked the look and feel of the “Vaporized” ads to
8 foster the image of JUUL e-cigarettes and JUULpods as sleek, stylish, status symbol. For
9 example, JUUL developed and ran a series of advertisements that were simple images of stylish
10 young people using JUUL.

11 167. All of these ads communicated to teenagers that JUUL was a product being used
12 by cool, modern young people, which JUUL, like all cigarette companies, knows is a powerful
13 message. None of these ads prominently disclosed the dangers of using JUUL.

14 168. Other JUUL advertisements relied on graphic images with the look and feel of
15 advertisements by Apple, Google, and similar tech companies with progressive and modern
16 reputations. Again, these ads resonated with teenagers as well, as they made JUUL, and
17 especially the flavored pods, look like cool gadgets or software, something akin to an iPhone or a
18 hot new app to download. Like the other ads, none prominently disclosed the dangers of using
19 JUUL.

20 169. JUUL also consistently compared the JUUL to the iPhone through statements like
21 “the iPhone of e-cigarettes,” which JUUL posted on its website, distributed through social media,
22 and disseminated through its email campaign. The iPhone is the most popular smartphone among
23 adolescents, with 82% of teenagers preferring Apple’s phone over the competition. JUUL’s
24 advertising images frequently include pictures of iPhones and other Apple devices, including
25 iPads, Beats Headphones, MacBook laptops. Through these images, JUUL presented its image a
26 “must have” technology product and status symbol, instead of a nicotine delivery system.

27 170. Beyond triggering an emotional response in teenagers, all of JUUL’s social media
28 advertising had three additional things in common. First, through the use of clean lines, artistic

1 arrangements, minimal text, and eye-catching graphics, JUUL ensured that the advertisements
2 would jump out to distracted teenagers who scrolled crowded social media pages on their phones
3 and browsers.

4 171. Second, all of JUUL's advertisements reflect an understanding that social media
5 users in general, and teenagers in particular, do not typically read long blocks of text on social
6 media, and rely more heavily on imagery instead of text to convey a message. Many of the ads
7 did not include any warning about the dangers of JUUL or suggest to teenagers that the product
8 contained nicotine.

9 172. Moreover, where JUUL's advertisements appeared to contain such a disclaimer,
10 this disclaimer was not typically seen when viewing social media due to the way the posts appear
11 in phones and browsers. In particular, Facebook and Instagram typically only present to users the
12 image and a couple lines of text, and viewers who want to see the entire post must click on it to
13 open it up and read the rest.

14 173. JUUL's Instagram advertisements obscure those nicotine warnings by placing
15 them in a location that requires the user to open up the post and read it. As can be seen in JUUL's
16 Instagram ads, the company consistently used brief text at the beginning of a post so that it would
17 to be a complete sentence with no further content. Thus, the disclaimer was never visible to
18 anyone viewing the posts in their main feed, and it was only seen by a limited number of people
19 who elected to open the post and then read what was there. Notably, on Twitter, a Social Media
20 Platform that is geared towards reading text, and on Facebook, where some users do read text,
21 JUUL typically did not include the disclaimer in its advertisements.

22 174. Third, JUUL's advertisements were typically creative, giving them the look and
23 feel of "art." Thus, teenagers were drawn to the advertisements, holding their gaze on the ads for
24 longer periods of time, and being more inclined to share the advertisement with others in their
25 networks, thus accomplishing JUUL's goal: turning consumers into salespeople.

26 175. Even JUUL's newer "alternative for adult smokers" tagline suggests to adolescents
27 that JUUL-use is a symbol of status as an adult, which happens to be an advertising theme
28 cigarette companies peddled to youth for decades.

6. JUUL Used Flavors and Food Imagery to Attract Teenagers and Downplay Risks.

176. JUUL sells its JUULpods in a variety of sweetened flavors. It even advertised some of its flavors as though they were desserts in themselves. For example, it advertised its crème brûlée flavor using tag lines like “save room for JUUL” and “indulge in dessert without the spoon.” JUUL used imagery that looked like ads for a trendy coffee shop or restaurant.



177. Again, none of these advertisements prominently disclosed that JUUL was addictive and unsafe.

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

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

180. Moreover, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”⁸⁷ Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their nonvaping peers, a new study has found.”⁸⁸

⁸⁷ Ambrose *et al.*, Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014 (Oct 26, 2015), JAMA 314(17):1871-1873

<https://jamanetwork.com/journals/jama/fullarticle/2464690>

⁸⁸ Primack *et al.*, Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults (Apr 2018), Vol. 131, Issue 4, 443.e1–443.e9, [www.amjmed.com/article/S0002-9343\(17\)31185-3/fulltext](http://www.amjmed.com/article/S0002-9343(17)31185-3/fulltext)

181. Research also shows that when youth see flavored ENDS liquids advertisements, they believe the advertisements and products are intended for them.⁸⁹

182. The use of attractive flavors foreseeably increases the risk of nicotine addiction, and e-cigarette related injuries, as traditional cigarette product designs aimed at reducing the unpleasant characteristics of cigarette smoke (e.g., addition of menthol to mask unpleasant flavors) have previously been shown to contribute to the risk of addiction.⁹⁰ Worse still, adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was tobacco-flavored.

183. JUUL's kid-friendly flavors included Mango, "Cool" Mint, and Menthol. 74% of youth surveyed in a recent study indicated that their first use of a JUUL was of a flavored pod.⁹¹ More than half of teens in a nationwide survey by the Wall Street Journal stated that they use ENDS because they like the flavors.

184. When JUUL released what are now the two most popular flavors among youth: Mango and "Cool" Mint ("Cool Mint"), JUUL promoted those flavors on Instagram, Twitter, YouTube and Facebook—all of which are skewed toward young audiences.

185. JUUL's Mango pods quickly became the runaway favorite among youth. The Mango pods are so popular that, incredibly, they noticeably increased the use of the word "mango" on the internet as a whole. Starting in early 2017, Google Trends reports a nearly five percent increase in year-over-year use of the word "mango" online.⁹²

186. "Cool" Mint became youths' second youth favorite flavor. The 2018 Duell Study found 94 mg/mL nicotine in a JUUL "Cool" Mint pod – nearly double the amount on JUUL's "5% strength" label would suggest.

⁸⁹ McKelvey *et al.*, Youth say ads for flavored e-liquids are for them (Aug 29, 2018), *Addict Behav.* 91:164-170, www.ncbi.nlm.nih.gov/pubmed/30314868 (as of July 5, 2019)

⁹⁰ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and Present (2010) www.ncbi.nlm.nih.gov/books/NBK53017/ (as of July 5th, 2019).

⁹¹ McKelvey *et al.*, Adolescents and young adults use in perceptions of pod-based electronics cigarettes (Oct 19, 2018), *JAMA Netw Open.* 1(6): e183535 www.ncbi.nlm.nih.gov/pmc/articles/PMC6324423/ (as of July 5, 2019).

⁹² <https://trends.google.com/trends/explore?date=2014-06-01%202018-12-05&geo=US&q=mango>

187. JUUL’s advertising emphasized the flavors of its sweetened nicotine pods. Leveraging the flavors, JUUL advertised JUULpods as part of a meal, to be paired with other foods. In late 2015, JUUL began a food-based advertising campaign called “Save Room for JUUL.” A play on the expression “save room for dessert,” JUUL’s campaign focused on the JUULpods’ sweet flavors, and pairing them with foods. JUUL described its crème brûlée nicotine pods as “the perfect evening treat,” using tag lines like “save room for JUUL” and “indulge in dessert without the spoon.” In one 2016 email, JUUL bluntly suggested that users satisfy their sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brûlée.”

188. JUUL similarly promoted the Fruit Medley pods using images of ripe berries. JUUL described its “Cool” Mint pods as having a “crisp peppermint taste with a pleasant aftertaste” and encouraged consumers to “Beat The August Heat With Cool Mint,” and in a Facebook advertisement dated July 10, 2017, JUUL urged customers to “start your week with cool mint juulpods.”⁹³ Along with the bright green caps of the “Cool” Mint JUULpods, the Facebook ad included an image of a latte and an iPad. *Id.*

189. JUUL even hired celebrity chefs to provide pairing suggestions for JUUL flavors. On Instagram and Twitter, JUUL boasted about “featured chef” Bobby Hellen creating a “seasonal recipe to pair with our brûlée pod.” On Facebook, JUUL posted a link to an article on porhomme.com about “what our featured chefs created to pair with our pod flavors.”⁹⁴ JUUL tweeted repeatedly about its flavors and encouraged its social media followers to share their preferred pairings.

⁹³ <https://airtable.com/tblkPVYIp5AFNLrTy/viwFFlmOJSzXHskhz/recEYkrXbuSCdZB0h>

⁹⁴ Facebook 10, <https://airtable.com/tblkPVYIp5AFNLrTy/viwFFlmOJSzXHskhz/rec0vT9owbjQeVUuY>.



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

191. By positioning JUULpods as a delicious treat rather than a system for delivering a highly addictive drug with dangerous side effects, JUUL unfairly led consumers to the conclusion that JUULpods were not only healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt or adverse effect.

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

193. By 2017, JUUL knew that the foreseeable risks posed by fruit and candy-flavored e-liquids had materialized. A significant percentage of JUUL's customers included adolescents who overwhelmingly preferred Fruit Medley and Crème Brûlée over Tobacco or Menthol.⁹⁵

⁹⁵ Truth Initiative, *JUUL fails to remove all of youth's favorite flavors from stores* (Nov 15, Footnote continued on next page

1 Instead of taking corrective action or withdrawing the sweet flavors, JUUL capitalized on youth
2 enthusiasm for its products.

3 194. JUUL disingenuously asserts that it did not intend its flavors to appeal to young
4 people, including Plaintiff. After 11 senators sent a letter to JUUL questioning its marketing
5 approach and kid-friendly e-cigarette flavors like Fruit Medley, Crème Brûlée and Mango, JUUL
6 visited Capitol Hill and told senators that it never intended its products to appeal to kids and did
7 not realize they were using the products, according to a staffer for Sen. Dick Durbin (D-Ill.).
8 JUUL’s statements to Congress—which parallel similar protests of innocence by cigarette
9 company executives—were false.

10 195. In November 2018, in response to litigation and other mounting public pressures,
11 JUUL announced that it had “stopped accepting retail orders” for many of its flavored JUULpods,
12 such as mango, crème brûlée, and cucumber.⁹⁶ But JUUL’s promise is misleading. JUUL has
13 only refused to sell them directly to retailers, but it still manufactures and sells the JUULpods.
14 The pods can still be purchased on its website by persons under age 26. JUUL also continues to
15 sell “Cool” Mint in gas stations knowing that the flavor is incredibly popular with youth and will
16 become the de facto favorite if access to other flavors is removed.

17 196. The only responsible solution to prevent flavored JUULpods from getting into the
18 hands of young people is to stop manufacturing them.

19 **7. JUUL Developed Point-of-Sale Advertising That Emphasized the**
20 **Products’ Positive Image Without Adequately Disclosing Its Dangers**
21 **and Risks.**

22 197. The cigarette industry spends \$8.6 billion a year in point-of-sale (“POS”) promotions—or almost \$990,000 every hour.⁹⁷ In a 2009 study of adult daily smokers,

23
24 *Footnote continued from previous page*

25 2018), <https://truthinitiative.org/news/juulfails-remove-all-youths-favorite-flavors-stores> (as of
26 July 5, 2019).

27 ⁹⁶ Kaplan & Hoffman, *Juul Suspends Selling Most E-Cigarette Flavors in Stores* (Nov 13, 2018),
28 The New York Times, www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html (as of July 5, 2019).

⁹⁷ *The Truth About Tobacco Industry Retail Practices*, Truth Initiative, https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-2017_0.pdf (as of
July 5, 2019)

1 unintended cigarette purchases were made by 22 percent of study participants, and POS displays
2 caused nearly four times as many unplanned purchases as planned purchases. *Id.* at 4. Younger
3 smokers, in particular, are more likely to make unplanned tobacco purchases in the presence of
4 POS advertising. *Id.*

5 198. Studies show that tobacco use is associated with exposure to retail advertising and
6 relative ease of in-store access to tobacco products. Some studies have shown that youth who
7 were frequently exposed to POS tobacco marketing were twice as likely to try or initiate smoking
8 than those who were not as frequently exposed. Frequent exposure to tobacco product advertising
9 and marketing at retail normalizes tobacco and smoking for youth over time and makes them
10 more likely to smoke. POS marketing is also associated with youth brand preference. Research
11 shows that young adult smokers prefer the tobacco brands marketed most heavily in the
12 convenience store closest to their schools. Before its launch in 2015, JUUL and Cult Collective
13 developed innovative packaging and creative in-store displays that would carry their message
14 through into stores.

15 199. In particular, they designed bright, white packages. The packaging looked similar
16 to iPhone packaging, which JUUL knew would resonate with young people, and because it was
17 solid white, the packaging stood out and caught people's eyes when displayed in store shelves.
18 This packaging buttresses Defendant's online marketing of JUUL e-cigarette as "the i-Phone of
19 Ecigs," thereby framing them as a cool, fashionable item to own and use. JUUL posters and signs
20 at the point of sale also promoted JUUL's flavors. From 2015 through late 2018, JUUL promoted
21 JUUL products and JUUL flavors at the point of sale without disclosing that the products
22 contained nicotine or warning that the products could lead to addiction. Instead, JUUL's
23 promotions displayed the colorful JUULpod caps and their food-based names while omitting that
24 JUUL delivers nicotine, is addictive, carries risks of stroke and other cardiovascular events,
25 seizures and other brain injury events, and is unsafe for anyone under age 26.



200. For many, JUUL's POS materials provided an introduction to the brand. Because JUUL's POS materials omitted the most material features of JUUL's product—that it is a powerfully addictive nicotine delivery system, unsafe for anyone under age 26—adolescents who saw JUUL's POS and were later offered a JUUL would have no reason to think that what they were being offered JUUL contained nicotine, or posed risks of addiction, or was unsafe.

8. **JUUL Used Social Media to Inundate Target Consumers, Particularly Youth, With Messaging Promoting Its Nicotine Products.**

201. JUUL not only designed its advertising with an eye to what might be appealing to young people, but set about disseminating those ads to ensure that young people see them. JUUL set out to advertise on at least three major social media platforms: Instagram, Facebook, and Twitter, and disseminated the information in various ways across the platforms.

202. On information and belief, JUUL maintains active accounts on most social media platforms, including Instagram, Facebook, and Twitter, where JUUL tweeted nearly 5,000 times in 2017 alone. As of 2016, 76 percent of American teens age 13-17 used Instagram, 66 percent of teens use Facebook, and 44 percent of teens use Twitter.⁹⁸ While JUUL continues to maintain its

⁹⁸ Snapchat And Instagram Are The Most Popular Social Media Platforms Among American Teens, The Associated Press-NORC Center for Public Affairs Research, <http://apnorc.org/projects/Pages/HTML%20Reports/instagram-and-snapchat-are-most-popular-social-networks-for-teens.aspx> (as of July 5, 2019)

1 Twitter page, it deleted nearly all content from its Instagram and Facebook pages around
2 November of 2018, in response to lawsuits.

3 203. JUUL was able to deliver content directly on social media using two approaches.
4 First, it could post its advertisements directly to its own page, where it would be viewed by those
5 who followed JUUL, and those who shared its posts (“Unpaid Advertising”). And it could engage
6 in paid advertising, whereby it could target specific demographics of people to ensure they
7 received its advertisements (“Paid Advertising”).

8 204. With respect to Unpaid Advertising, Instagram was the centerpiece of JUUL’s
9 teen-focused advertising blitz. Instagram is used overwhelmingly by teenagers. At least 72% of
10 teenagers in the United States have an Instagram account, and at least 63% of teenagers between
11 the ages of 13 and 17 use Instagram every day.⁹⁹ While increasingly more adults are using
12 Instagram, this has been a recent development, and thus, advertisers typically only use Instagram
13 if they are interested in marketing to young people, especially teenagers.

14 205. Because of the way Instagram delivers content, Instagram allowed for fast,
15 effective delivery and sharing of its graphic, simple messages. Users would see these images
16 simply by scrolling through their feeds.

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

25
26 ⁹⁹ Smith & Anderson, Social Media Use in 2018: A majority of Americans use Facebook and
27 YouTube, but young adults are especially heavy users of Snapchat and Instagram (Mar 1, 2018),
28 Pew Research Center, www.pewinternet.org/2018/03/01/social-media-use-in-2018/ (as of July 5,
2019).

207. JUUL’s hashtag marketing played a central role in the viral spread of JUUL between teenagers. The use of hashtags in social media advertisements “can be used to get your content in front of a bigger audience, raise awareness about your brand, target a very specific group of people, boost your SEO, and use hot trends and topics to your advantage.”¹⁰⁰ Hashtags are “the best weapon in your arsenal, aside from influencer marketing” for getting content “in front of its intended audience.” *Id.* Through hashtag marketing, brands can Join in on trending topics, engaging “an insane amount of readers” by using “hashtags which aren’t closely related to your industry” by, e.g., using holiday-related hashtags. *Id.* By using “branded hashtags” that include the company’s name or a specific product, advertisers can monitor the performance of specific campaigns. Another advantage of branded hashtags is user-generated content: “Every time a user puts one of your branded hashtags inside one of their posts, they are increasing your presence on social media” by promoting the branded hashtag, and the related content, to the user’s followers. *Id.* Through successful hashtag marketing campaign, brands can create communities through which “followers will not only be able to communicate via chat or messages, but also connect with each other by using your hashtag.” *Id.*

208. From 2015 through 2018, JUUL used hashtag marketing consistently on Twitter, Instagram, and Facebook to promote its products. In various posts, JUUL would slip in hashtags so that their posts would be found by young people. This post is not a paid advertisement, but a post to JUUL’s Instagram feed. JUUL used #TBT, which is an acronym for “Throwback Thursday.” Throwback Thursday is a popular meme on social media, and teenagers are especially likely to understand it and use it. Thus, any teenager who had elected to follow the hashtag TBT would see this post when they logged into Instagram that day. Moreover, no one would see any warning regarding nicotine unless they actually opened the post. JUUL frequently used other hashtags that would be used by teenagers to push their product to them across social media, such as #icymi (“in case you missed it”).

¹⁰⁰ Ryan, *Hashtag Marketing: How to Use Hashtags for Better Marketing Campaigns*, Mention, <https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-marketing-campaigns/> (as of July 5, 2019).

1 209. JUUL also used hashtags to convert young users into salespersons through unpaid
2 viral marketing.

3 210. In disseminating Paid Advertising, the Social Media Platforms allow companies
4 like JUUL to engage in micro-targeting, i.e., to select precisely what demographics of people
5 should be exposed to its advertising. Social Media Platforms create internal profiles for the
6 consumers that use them, tracking their online activity to determine their likes, habits, and
7 purchasing power. When advertisers pay to disseminate ads, they can choose to target those ads
8 so that they are received only by people whose digital footprint suggests an interest or
9 predisposition to the product. JUUL would have had the option to exclude teenagers. It also could
10 have elected to narrow its target audience to people with an interest in tobacco products, if it
11 wanted to reach and convert non-smokers. Or it could target a broader audience of people whose
12 digital footprints did not reveal that they were smokers.

13 211. While JUUL's precise targeting methods are unknown, on information and belief,
14 young people like Plaintiff are known to have been exposed to JUUL's Paid Advertising while on
15 social media, suggesting that JUUL did not narrow its target audience to adult smokers

16 212. Moreover, regardless of to whom JUUL targeted paid advertisements, JUUL's use
17 of Paid Advertising was aggressive, and had the inevitable result of reaching teenagers, including
18 Plaintiff. Paid advertising can be shared and liked just as Unpaid Advertising. JUUL relentlessly
19 advertised to its targeted audience of young people, across all Social Media Platforms.

20 **9. JUUL Exploited Social Media to Target Young People.**

21 213. JUUL was able to line up celebrity and other popular and pretty young people to
22 work as "influencers" to promote its products to teenagers, by spreading pictures of cool, young
23 people using JUUL.

24 214. To broaden the reach of its campaign, JUUL used "influencers" to push the
25 product to young people. Influencers are "high-social net worth" individuals who have developed
26 large social media followings – i.e., the "cool kids" of the social media world. People follow
27 influencers because they tend to deliver lots of high quality, interesting photos and content, and
28 because they are known to be trend-setters.

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

216. JUUL relied on influencers to carry out its viral marketing campaign. JUUL’s reliance on influencers appears to have begun around June 2015, when JUUL listed a position on its website for a three-month Influencer Marketing Intern.¹⁰¹ JUUL described the position as follows: “The Influencer Marketing Intern will create and manage blogger, social media and celebrity influencer engagements. . . to build and nurture appropriate relationships with key influencers in order to drive positive commentary and recommendations through word of mouth and social media channels, etc.” (*Id.*). JUUL’s efforts to solicit influencers appears to have been underway for years; until December 2018, JUUL’s website still called for individuals to “Join the JUUL influencers.” Applicants were required to disclose their profile information for Instagram, Twitter, and Facebook, as well as various other blog and vlog platforms, suggesting that JUUL was interested in understanding whether the influencers could help JUUL reach its targeted youth demographic.

¹⁰¹ <https://www.internships.com/marketing/influencer-marketing-intern-i7391759> (last accessed Nov 14, 2018).

1 217. JUUL used or ratified multiple accounts across many social media sites to reach
2 young people, even encouraging users to JUUL at school.

3 218. JUUL also enjoyed the benefit of third-party promoters who reached hundreds of
4 thousands of young people.

5 219. JUUL allowed third parties, like @JUULnation to use its trademark.
6 @JUULnation's Instagram post included tips on how to conceal JUUL in school supplies and
7 ridiculed efforts to combat JUUL use among young people. JUUL promoted @JUULnation on
8 its own Instagram account.

9 220. Cigarette companies are prohibited from conducting any of the practices described
10 above under the Tobacco Master Settlement Agreement. Activities such as product placement in
11 performances and professional videos have been identified as against public policy for nicotine
12 products.

13 221. One recent study concluded that JUUL was "taking advantage" of the reach and
14 accessibility of multiple social media platforms to "target the youth and young adults . . . because
15 there are no restrictions," on social media advertising.¹⁰²

16 **10. JUUL Utilized a Pricing and Distribution Model Designed to Put the**
17 **Product Within Reach of Youth Without Disclosing Harms.**

18 222. Cigarette companies for years sold youth-brand cigarettes at lower prices that
19 young smokers could afford and used discounts and other promotions to ensnare them. JUUL is
20 no different. It not only designed a marketing campaign to reach young people and entice new
21 smokers, but it priced its products in such a way to ensure they would buy them.

22 223. A pack of four JUULpods, which, according to JUUL, is the equivalent of four
23 packs of cigarettes, costs approximately \$13-\$20. JUUL's website charges \$15.99 for a pack of
24 JUULpods, or about \$4 per JUULpod. By contrast, a single pack of cigarettes in Connecticut
25 costs approximately \$9, and \$13 in New York.

26
27 ¹⁰² Kelley, *JUUL Sales Among Young People Fueled by Social Media, Says Study* (Jun 4, 2018),
28 The Washington Times, www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/ (as of July 5, 2019).

1 224. For years, JUUL directed its products to gas stations and convenience stores for
2 ready access to young people. JUUL knew and had reason to know that teenagers and those new
3 to smoking are likely to frequent gas stations and convenience stores rather than smoke shops.
4 JUUL knew and had reason to know that gas stations, small delicatessens, convenience stores and
5 small bodegas are less likely to scrutinize young buyers to determine if they are over the age of
6 21 before they would sell the JUUL nicotine products. By distributing heavily to those types of
7 businesses, JUUL knew or had reason to know it would dramatically increase the chances that
8 these young people would purchase the product.

9 225. To further drive curiosity and interest, and make it so its target audience, and
10 especially teenagers, would purchase JUUL, JUUL instructed retailers to display the product in an
11 unusual fashion. Whereas cigarettes and other tobacco products have long been kept behind the
12 counter, JUUL designed display cases that would sit on store shelves. JUUL intentionally
13 designed the clear display cases so that the bright white, sleek packaging and the flavors would
14 catch consumers' eyes and make them interested in purchasing the product.

15 226. JUUL knew that by asking retailers to display JUUL products separate from other
16 tobacco products, and within arms' reach, it would also suggest to consumers that JUUL was
17 safer than traditional cigarettes and that it was not an addictive drug.

18 **K. JUUL Used Non-Age-Restricted Emails to Promote and Track Its Products.**

19 227. Between 2015 and 2018, JUUL sent around 200 email promotions to customers
20 and potential customers. JUUL's email subscription list was not age-restricted and, until recently,
21 users who failed the age verification requirements on JUUL's purchase page were nevertheless
22 added to JUUL's mailing list and emailed a coupon for a discount on a Starter Kit. The JUUL
23 emails promoted retail locations, flavors, discounts, and "refer a smoker" programs. The emails
24 also promoted JUUL's find-a-store locator.

25 228. JUUL also used emails to distribute surveys. Because JUUL's emails were not
26 age-restricted, neither were their surveys. On information and belief, JUUL thus collected data
27 from minors. JUUL paid customers, including youth, up to \$30 to complete some surveys.
28

1 **L. JUUL Knew that its Scheme to Attract Young Smokers Like Plaintiff had**
2 **Worked.**

3 229. Within a few months of the JUUL’s commercial release in June 2015, a former
4 JUUL executive reportedly told the New York Times that JUUL “quickly realized that teenagers
5 were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social
6 media.”¹⁰³

7 230. JUUL tracked and closely monitored usage among youth through social media,
8 online surveys, YouTube videos, hashtags, likes, email lists, and myriad other sources.

9 231. By the end of 2015, young people had posted tens of thousands of videos on
10 YouTube demonstrating ways to “JUUL in school” and in other locations without teachers,
11 coaches or parents finding out.

12 232. From the outset, JUUL was well-aware that a huge portion of its sales was going
13 to persons like Plaintiff under age 26, but did nothing to curb, prevent, or mitigate the harms that
14 its products could cause.

15 **M. JUUL Created a Youth Vaping Epidemic and Exposed a New Generation to**
16 **the Dangers of Nicotine Products.**

17 233. JUUL’s marketing and product design efforts have been wildly successful. Since
18 its launch, JUUL is now the fastest growing e-cigarette in the country. Because the JUUL delivers
19 more nicotine in a shorter amount of time than any other product, delivers that nicotine in a
20 sweetened vapor that causes no irritation, and does so through a concealable device that can be
21 consumed discretely in class, at home, and in the car, nicotine naïve users like Plaintiff frequently
22 spiral into patterns of addiction with no historical precedent. It is not uncommon for teenagers,
23 like Plaintiff, to consume two JUULpods a day, the nicotine equivalent of at least as many—and
24 likely more—packs of cigarettes.

25
26

¹⁰³ Richtel & Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette*
27 *company says it never sought teenage users, but the F.D.A. is investigating whether Juul*
28 *intentionally marketed its devices to youth* (Aug 27, 2018), The New York Times,
 www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html (as of July 5, 2019).

1 234. Because JUUL’s marketing turned the JUUL into a status symbol for teens, the
2 acute nicotine addiction a JUUL fosters is frequently reinforced by the idea—which JUUL
3 spread—that JUUL use is what “cool” popular kids do in high school. As a result, the medical
4 community has found itself ill-equipped to develop a treatment for JUUL-addicted youth, as
5 evidenced by a January 2019 FDA-sponsored meeting concerning the role of drug therapies in
6 treating e-cigarette use.

7 235. The vaping epidemic caused by JUUL has swept the entire nation in a short period
8 of time. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends
9 for 2018 reported that increases in adolescent Electronic Nicotine Delivery System (“ENDS”)
10 vaping from 2017 to 2018 were the “*largest ever recorded in the past 43 years for any adolescent*
11 *substance use outcome in the U.S.*”¹⁰⁴

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

20 237. Former FDA Commissioner Dr. Scott Gottlieb has described the increase in e-
21 cigarette consumption as an “almost ubiquitous – and dangerous – trend” that is responsible for
22 an “epidemic” of nicotine use among teenagers.¹⁰⁵ The rapid –indeed infectious- adoption of e-
23 cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to
24

25 ¹⁰⁴ Prieur, National Adolescent Drug Trends in 2018 (Dec 17, 2018), Institute For Social
26 Research, The University of Michigan, <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/> (as of July 5, 2019).

27 ¹⁰⁵ FDA launches new, comprehensive campaign to warn kids about the dangers of e-cigarette use
28 as part of agency’s Youth Tobacco Prevention Plan, amid evidence of sharply rising use among
kids, U.S. Food & Drug Administration, (Sep 18, 2018),
www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm (as of July 5, 2019)

1 tobacco products.” *Id.* The Commissioner identified the two primary forces driving the epidemic
2 as “youth appeal and youth access to flavored tobacco products.” *Id.*

3 238. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome
4 Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a
5 lifetime of nicotine addiction and associated health risks.”¹⁰⁶

6 239. Even more troubling are the challenges associated with getting kids to quit JUUL
7 once they start. JUUL’s aggressive social media campaign puts JUUL advertisements before them
8 every day, all day. Those that want to stop thinking about it are faced with advertising when
9 engaging in their regular activities. And even while JUUL has purportedly stopped advertising on
10 social media in recent months, its hashtags, imagery, and impact live on, as there remain nearly
11 524,000 posts and counting on Instagram featuring the #juul hashtag as of July 8, 2019.

12 240. Moreover, many medications for breaking nicotine addictions are approved only
13 for adults.

14 241. The inadequacy of quality control and other standards in the manufacture of JUUL
15 raises additional, serious public health concerns regarding youth access and use. For instance,
16 actual nicotine concentrations in JUUL can vary from advertised amounts, sometimes
17 significantly exceeding the advertised concentration of nicotine. Because the concentration of
18 nicotine in JUUL pods is already staggeringly high and potent, concentrations over the advertised
19 amounts can increase the risk that users could become addicted or experience nicotine poisoning,
20 or experience a spike in blood pressure which can result in serious illness or death. A related
21 concern is the lack of full disclosure of all ingredients in e-liquids, some of which can also cause
22 harm when inhaled.

23 N. **JUUL Implemented its Advertising Strategy with the Advice and Services of**
24 **Defendants Does 1-100.**

25 242. In order to implement such a diverse, wide-ranging advertising scheme, designed
26 for the sole purpose of delivering its JUUL e-cigarette products to young consumers, JUUL

27 ¹⁰⁶ Surgeon General’s Advisory on E-cigarette Use Among Youth (last updated Apr 9, 2019),
28 CDC, www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html
(as of July 5, 2019).

1 worked in concert with an array of marketing, research and development, and distribution
2 professionals.

3 243. JUUL's advertising and marketing relied on the ideas, strategies, and advice of
4 marketing and public relations entities.

5 244. These entities, unnamed Defendants Does 25 through 50, willingly and knowingly
6 provided advertising expertise to JUUL, fully aware that JUUL would use these advertisements to
7 target, sell to, and ultimately increase the number of young people consuming nicotine via its
8 products.

9 245. Defendants Does 25 through 50 used their knowledge of how young adults use
10 social media, interact with social media posts, and are influenced by such posts, to create an
11 advertising strategy designed to consistently, relentlessly, and exploitatively induce young adults
12 and teenagers to use JUUL's JUUL e-cigarette products.

13 246. Defendants Does 25 through 50 provided their marketing services knowing that
14 the marketing slogans, advertisements, and advertising methods they created were deceptive,
15 provided no meaningful warning to users, and would necessarily mislead or otherwise falsely
16 suggest that JUUL's JUUL e-cigarette products were not harmful, not addictive, or otherwise safe
17 for use.

18 247. Defendants Does 25 through 50 expended time, money, and effort in order to
19 design, create, and implement and pervasive advertising scheme whose sole purpose was to
20 exploit and influence the minds of young adults into associating social status, popularity,
21 desirability, and success with the purchase and consumption of JUUL's JUUL e-cigarette
22 products.

23 248. Defendants Does 25 through 50 essentially used the playbook of cigarette and
24 tobacco product advertising implemented by companies such as Philip Morris, in order to market
25 JUUL e-cigarette products to young adults.

26 **O. JUUL Unraveled Decades of Progress in Reducing Teen Smoking by**
27 **Exploiting Regulatory Loopholes.**

28 249. The teen vaping epidemic was by design, not by accident.

1 250. When JUUL was first developed, the FDA’s regulations on tobacco products were
2 vague as to whether they applied to vaping devices. Because the regulations did not explicitly
3 identify electronic vaping devices that dispensed tobacco and nicotine as a regulated product,
4 JUUL interpreted those regulations to mean that it could sell its dangerous products to anyone,
5 regardless of their age, and that it did not have to comply with the advertising and labeling
6 restrictions that restricted other tobacco companies.

7 251. As other vaping companies began to enter the market, JUUL no doubt knew that
8 this gray area was unlikely to stay gray for long. Knowing that the clock was ticking, JUUL went
9 on a wild spree to get as many young people addicted as possible while it still viewed itself as
10 “unregulated.” The aggressive advertising described above was designed not just to sell the
11 products to teenagers, but to sell the product to as many teenagers as possible while it still had a
12 plausible defense to any assertion that it was violating FDA regulations. By hooking teens, JUUL
13 not only ensured it would have loyal customers for decades, but those teens would influence their
14 friends.

15 252. Moreover, by pumping social media platforms full of images of cool, young
16 people having fun while JUULing, JUUL ensured that everyone from adults to young children,
17 would think JUULing was a cool, fun, and safe activity. Just as RJR Reynolds learned with Joe
18 Camel, even very young children would in turn be more likely to form strong, positive
19 associations with the tobacco product and be more susceptible to trying it in the future.

20 253. In 2018, after the FDA opened an investigation and lawsuits were filed, JUUL set
21 out to rewrite its history. It has removed from its website and much of the internet images of
22 glamorous young models seductively exhaling clouds of vapors. JUUL’s website now pictures
23 middle-age adults in non-glamorous settings and suggests that JUUL solely exists for the benefit
24 of adult smokers looking for an alternative. Although JUUL now markets its product as a
25 smoking cessation device (“Switch to JUUL”), it has not received FDA approval as a modified
26 risk tobacco product or as a nicotine replacement therapy, and JUUL’s e-cigarette has not
27 participated in any FDA approval process analyzing its risks and benefits. While JUUL has also
28 announced some half-hearted voluntary measures to reduce access to young people, the cat

1 cannot go back in the bag. The viral marketing campaign and images live on, the candy flavors
2 are still available, and the product remains designed to maximize the nicotine delivery for young
3 people, leading to devastating health consequences.

4 254. To this day, JUUL has not disclosed the health risks associated with its products,
5 has not recalled or modified its products despite the known risks, and continues to foster a public
6 health crisis, placing millions of young people in harm's way.

7 **P. JUUL's Conduct Harmed K.B..**

8 255. Starting in the summer of 2018, when she was approximately 14 years old,
9 Plaintiff was exposed to advertising and promotions for JUUL via many sources, including
10 viewing the product and its packaging when seeing her friends use JUUL, and at various store
11 fronts and gas stations where she would see advertisements for JUUL advertising different
12 flavors, and discounts for 'Starter Kits' to begin using JUUL. K.B. was also exposed to JUUL's
13 advertising via a television commercial. Many of the convenience stores that K.B. would frequent
14 with her friends would contain large advertisements in bold colors, advertising JUUL products.
15 These ads and promotions made JUULing seem fun, healthy and cool. In addition, K.B. saw her
16 friends using JUUL and was attracted to the trendy and popular nature of the product.

17 256. Minor Plaintiff K.B. first tried JUUL in or around summer of 2018, when her
18 social circle and other students in her school began using JUUL devices and JUULpods.

19 257. Minor Plaintiff K.B. started using JUUL with her friends, largely because she saw
20 her friends using JUUL, and associated it with being trendy and popular. K.B. was incentivized to
21 use JUUL because she thought it had a cool design, appealing flavors, and was fun to use. Part of
22 the attraction for K.B. was the fact that her close friends were using JUUL, and she wanted to be
23 popular and included in the socializing experience associated with JUULing after school and/or in
24 the evenings.

25 258. Before K.B. tried JUUL, she had never smoked a cigarette, and was not addicted
26 to nicotine.

27 259. Prior to her JUUL usage, K.B. never suffered from a seizure, stroke, heart attack,
28 or comparable medical event.

1 260. K.B. was attracted to JUUL’s flavors, especially that of mango and mint.

2 261. K.B. was regularly provided JUUL devices and JUULpods by her friends, and
3 often saw different “cool” advertising for JUUL products at the convenience stores that she
4 frequented with her friends.

5 262. Like the majority of young people surveyed, Plaintiff was not aware when she first
6 began “JUULing” that the device contained nicotine. She did not even know how much nicotine
7 the device contained, that it was addictive, or that it carried any health risks.

8 263. K.B. relied to her detriment on JUUL’s representations in its advertisements and
9 labeling that the product was safe, not harmful, fun, and that each JUULpod contained no more
10 nicotine than approximately a pack of cigarettes.

11 264. JUUL never warned K.B. that JUUL was addictive, dangerous, could cause her to
12 suffer a seizure, or would cause permanent brain injury.

13 265. Had K.B. known that JUUL was addictive or increased her risk for having a
14 seizure, she never would have tried it.

15 266. JUUL never disclosed that it had manipulated the nicotine in JUUL to deliver
16 massive doses of nicotine that could addict her quickly, spike her blood pressure, and put her at
17 greater risk of seizure.

18 267. JUUL never instructed K.B. that the product was unsafe for her, nor how much
19 JUUL was safe to consume.

20 268. Had K.B. known that JUUL was not safe, was addictive, dangerous, could cause
21 seizures, could permanently alter her brain and impair her mood and mind, that JUUL had
22 manipulated nicotine to maximize addiction, or that each JUULpod delivered substantially more
23 nicotine than a pack of cigarettes, she would not have used or continued to use JUUL.

24 269. On June 1, 2019, K.B. was using JUUL in the parking lot of a Target store in
25 Florida. K.B. was in a car with her friends, who provided the device to her for use. K.B. began to
26 see flashing lights in her vision, and according to medical reports from her hospital admission,
27 began speaking incoherently and nonsensically. For example, K.B. began asking where one of her
28 friends was, when that particular friend was in fact in the car with her. Her friends then witnessed

1 K.B. begin to turn to the left, and shake uncontrollably for almost 90 seconds. K.B.'s friends
2 pulled over on the side of the road, where K.B.'s seizure gradually ended, but with her still
3 convulsing and not in control of her limbs. K.B. was rushed to the hospital in an ambulance
4 where her parents joined her. K.B.'s doctor confirmed she had suffered a seizure, noting her
5 recent use of JUUL.

6 270. One June 23, 2019, K.B. suffered a similar episode in Mississippi after using
7 JUUL, suffering a seizure within two minutes of usage. Her mother was notified when K.B. was
8 again rushed to a local hospital. Doctors at the hospital in Meridian, Lauderdale County,
9 Mississippi ruled out sleep deprivation as a possible cause.

10 271. Before she started to use JUUL, K.B. was a healthy, active, ambitious and student.
11 She performed well in her studies. She exhibited no signs or indications that she was at risk for a
12 seizure. While she has recovered, and will continue to fight to lead as normal a life as possible,
13 K.B.'s injuries have caused her to become more withdrawn, and anxious about the possibility of
14 further harm from her prior JUUL use.

15 272. As a direct and proximate result of JUUL's conduct, K.B. suffered severe injuries,
16 including: two seizures, shortness of breath, headaches, migraines, and fainting and potential long
17 term impact on her health and well-being.

18 273. As a result of her injuries caused by JUUL, Plaintiffs have incurred and will
19 continue to incur substantial medical expenses. Plaintiff has suffered physical and emotional pain
20 and suffering, loss of school, embarrassment, physical injuries and damages, medical expenses
21 and lost time from school and scholastic activities which may have a devastating effect on her
22 future ability to succeed in college, and may impair her earning capacity.

23 **VI. CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **Strict Products Liability - Design Defect - Consumer Expectations Test** 26 **(against Defendants JUUL and Does 1 through 25)**

27 274. Plaintiff incorporates the above and below allegations by reference.
28

1 275. At all relevant times, JUUL Labs, in concert and aided by Does 1 through 25,
2 manufactured, distributed, and/or sold the JUUL Devices and Pods (“JUUL Products”) that
3 Plaintiff consumed.

4 276. JUUL Products were defective in design in that they did not perform as safely as
5 an ordinary consumer would have expected them to perform when used in an intended or
6 reasonably foreseeable way.

7 277. JUUL and Does 1 through 25 had constructive notice or knowledge and knew, or
8 in the exercise of reasonable care should have known, that its JUUL Products were dangerous,
9 had risks, and were defective in design, including because delivering high doses of nicotine to a
10 young person could cause addiction to nicotine, permanently alter the structure of the developing
11 brain, significantly increase blood pressure, repeatedly expose users to toxic chemicals, and
12 cause strokes and seizures, resulting in catastrophic, life-altering injuries.

13 278. As a result of JUUL’s conduct, Plaintiff was harmed as described herein, including
14 two seizures, headaches, migraines, shortness of breath, cognitive impairment, and fainting, as
15 well as emotional distress, embarrassment, lost time at school, limited social activities and
16 potential impairment of her future earning capacity.

17 279. The defect(s) in JUUL Products was a substantial factor in causing Plaintiff’s
18 harms.

19 **SECOND CAUSE OF ACTION**
20 **Strict Products Liability - Design Defect - Risk-Utility Test**
 (against Defendants JUUL and Does 1 through 25)

21 280. Plaintiff incorporates the above and below allegations by reference.

22 281. At all relevant times, JUUL Labs, in concert and aided by Does 1 through 25
23 manufactured, distributed, and/or sold the JUUL Products that Plaintiff consumed.

24 282. The benefits of JUUL Products’ design are not outweighed by their risks,
25 considering the gravity of the potential harm resulting from the use of the products, the
26 likelihood that the harm would occur, the feasibility and cost of an alternative safer design at the
27 time of manufacture, and the disadvantages of an alternative design. Instead, as described
28 herein, Defendants JUUL and Does 1 through 25 made their products available in youth-friendly

1 colors and flavors. Defendants also designed their products to be more palatable to youth and
2 nonsmokers by increasing JUUL's inhale-ability, and increased the level of nicotine that is
3 absorbed by users, making them even more addictive and dangerous. There were and are
4 alternative designs available to JUUL. For example, Defendants could have designed the
5 product to appeal to adult smokers over age 26 who smoked conventional cigarettes without
6 using the flavors or reduced "harshness" to attract young people and create their addiction to
7 nicotine. Further, Defendants could have significantly lowered the nicotine content, while still
8 delivering sufficient levels to cigarette smokers, to reduce the risks from high exposure to
9 nicotine and repeated exposures to the toxic chemicals in JUUL.

10 283. JUUL and Does 1 through 25 had constructive notice or knowledge and knew, or
11 in the exercise of reasonable care should have known, that its Products were dangerous, had
12 risks, and were defective in design, including because delivering high doses of nicotine to a
13 young person could cause addiction to nicotine, permanently alter the structure of the developing
14 brain, significantly increase blood pressure, repeatedly expose users to toxic chemicals, and
15 cause strokes and seizures resulting in catastrophic, life-altering injuries.

16 284. As a result of the defect in JUUL's Products, Plaintiff was harmed as described
17 herein, including that she suffered two seizures, headaches, migraines, shortness of breath,
18 fainting, cognitive impairments, and possible permanent brain changes.

19 285. The defect(s) in JUUL's Products was a substantial factor in causing Plaintiff's
20 harms.

21 **THIRD CAUSE OF ACTION**
22 **Strict Products Liability - Failure to Warn**
(against Defendants JUUL and Does 1 through 25)

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

24 287. At all relevant times, JUUL Labs, in concert and aided by Does 1 through 25
25 manufactured, distributed, and/or sold the JUUL Products that Plaintiff consumed.

26 288. The JUUL Products that Plaintiff consumed had potential risks that were known
27 or knowable in light of the scientific and medical knowledge that was generally accepted in the
28 scientific community at the time of manufacture, distribution, or sale.

1 289. The potential risks presented a substantial danger when the JUUL Products were
2 used or misused in an intended or reasonably foreseeable way.

3 290. The ordinary consumer of JUUL Products would not have recognized the
4 potential for risks.

5 291. JUUL Products were defective and unreasonably dangerous when they left
6 JUUL's possession because they did not contain adequate warnings, including warnings that the
7 products are not safe for anyone under 26 years old, may cause strokes, heart attacks and other
8 cardiovascular injuries, seizures and other brain injuries, are powerfully addictive, may cause
9 permanent brain changes and mood disorders, may impair learning and cognition. Instead, as
10 described herein, Defendants JUUL and Does 1 through 25 made their products available in
11 youth-friendly colors and flavors. Defendant also designed their products to be more palatable to
12 youth and nonsmokers by increasing JUUL's inhale-ability, and increased the level of nicotine
13 that is absorbed by users, making them even more addictive and dangerous.

14 292. JUUL Products were defective and unreasonably dangerous when they left
15 JUUL's possession because they lacked sufficient instructions, including instructions that the
16 products should not be used by anyone under age 26, should not be used concurrently with
17 cigarettes, and instructions regarding how many pods are safe to consume in a day.

18 293. JUUL and Does 1 through 25 had constructive notice or knowledge and knew, or
19 in the exercise of reasonable care should have known, that its Products were dangerous, had
20 risks, and were defective without adequate warnings or instructions, including because delivering
21 high doses of nicotine to a young person could cause addiction to nicotine, permanently alter the
22 structure of the developing brain, and cause strokes and seizures resulting in catastrophic, life-
23 altering injuries.

24 294. JUUL and Defendants 1 through 25 failed to adequately warn or instruct
25 concerning the potential risks of the JUUL Products.

26 295. As a result of JUUL's failures to adequately warn and/or instruct, Plaintiff was
27 harmed as described herein, including that she suffered two seizures, headaches, migraines,
28 shortness of breath, fainting, cognitive impairments, and possible permanent brain changes.

1 296. The defect(s) in JUUL Products was a substantial contributing factor in causing
2 the harms and losses that K.B. has suffered.

3 297. The lack of sufficient instructions and warnings was a substantial contributing
4 factor in causing Plaintiff's harm.

5 **FOURTH CAUSE OF ACTION**
6 **Negligence and/or Gross Negligence**
7 **(against JUUL and Defendants Does 1 through 50)**

8 298. Plaintiff incorporates the above and below allegations by reference.

9 299. Defendant JUUL and/or their predecessors-in-interest, in concert with and aided
10 by Does 1 through 50 designed, produced, manufactured, assembled, packaged, labeled,
11 advertised, promoted, marketed, sold, supplied and/or otherwise placed JUUL Products into the
12 stream of commerce, and therefore owed a duty of reasonable care to avoid causing harm to
13 those consumed it, such as Plaintiff.

14 300. JUUL's Products were the types of products that could endanger others if
15 negligently made or promoted. Defendants knew the risks that young people would be attracted
16 to their electronic cigarette devices and JUULpods and knew or should have known the
17 importance of ensuring that the products were not sold and/or distributed to anyone under age 26.

18 301. Defendants were negligent in designing, manufacturing, supplying, inspecting,
19 testing (or not testing), marketing, promoting, advertising, packaging, and/or labeling JUUL's
20 Products.

21 302. As a powerfully addictive and dangerous nicotine-delivery device, Defendants
22 knew or should have known that JUUL Products needed to be researched, tested, designed,
23 advertised, marketed, promoted, produced, packaged, labeled, manufactured, inspected, sold and
24 supplied properly, without defects and with due care to avoid needlessly causing harm.
25 Defendants knew or should have known that its JUUL Products could cause serious risk of harm,
26 particularly to young persons like Plaintiff.

27 303. JUUL and/or their predecessors-in-interest, along with Defendants Does 1
28 through 100, were negligent, reckless and careless and failed to take the care and duty owed to
Plaintiff, thereby causing Plaintiff to suffer harm.

1 304. The negligence and extreme carelessness of JUUL and/or their predecessors-in-
2 interest, along with Defendants Does 1 through 50 includes, but is not limited to, the following:

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

6 b. Failure to take reasonable care in the design of JUUL's Products;

7 c. Failure to use reasonable care in the production of JUUL's Products;

8 d. Failure to use reasonable care in the manufacture of JUUL's Products;

9 e. Failure to use reasonable care in the assembly of JUUL's Products;

10 f. Failure to use reasonable care in supplying JUUL's Products;

11 g. Failure to use reasonable care in advertising, promoting, and marketing
12 JUUL's Products;

13 h. Promotion of JUUL to young people under age 26;

14 i. Use of flavors and design to appeal to young people under age 26, in that
15 the products smell good, look cool and are easy to conceal from parents and teachers;

16 j. Use of design that maximizes nicotine delivery while minimizing
17 "harshness", thereby easily creating and sustaining addiction;

18 k. Failure to prevent JUUL from being sold to young people under age 26;

19 l. Failure to prevent JUUL use among young people under age 26;

20 m. Failure to curb JUUL use among young people under age 26;

21 n. Failure to develop tools or support to help people addicted to JUUL cease
22 using the product;

23 o. Failure to reasonably and properly test and properly analyze the testing of
24 JUUL's Products under reasonably foreseeable circumstances;

25 p. Failure to warn its customers about the dangers associated with use of
26 JUUL's Products, in that it was unsafe for anyone under age 26, significantly increases blood
27 pressure, causes vascular damage, carries risks of stroke, heart attacks, and cardiovascular
28

1 events, seizures and brain injury events, is powerfully addictive, can cause permanent brain
2 changes, mood disorders, and impairment of thinking and cognition.

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

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

10 s. Failure to utilize proper materials and components in the design of
11 JUUL's Products to ensure they would not deliver unsafe doses of nicotine;

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

13 u. Failure to take necessary steps to modify JUUL's Products to avoid
14 delivering high doses of nicotine to young people and repeatedly exposing them to toxic
15 chemicals;

16 v. Failure to recall JUUL's Products; and

17 w. Failure to inspect JUUL's Products for them to operate properly and avoid
18 delivering unsafe levels of nicotine to young persons.

19 305. Defendants' acts and omissions constitute gross negligence, because they
20 constitute a total lack of care and an extreme departure from what a reasonably careful person
21 would do in the same situation to prevent foreseeable harm to young persons, like Plaintiff.

22 306. Defendants acted and/or failed to act willfully, and with conscious and reckless
23 disregard for the rights and interests of Plaintiff. Defendants' acts and omissions had a great
24 probability of causing significant harm and in fact resulted in such harm.

25 307. As a result of Defendants' negligence and/or gross negligence, Plaintiff was
26 harmed as described herein, including that she suffered two seizures, headaches, migraines,
27 shortness of breath, fainting, cognitive impairments, and possible permanent brain changes.
28

308. Defendants' negligence and/or gross negligence were a substantial contributing factor in causing Plaintiff's harms.

FIFTH CAUSE OF ACTION
Negligent Failure to Recall
(against Defendant JUUL)

309. Plaintiff incorporates the above and below allegations by reference.

310. JUUL acted negligently by failing to recall, prior to Plaintiff's two seizures in June of 2019, the JUUL Products.

311. JUUL, in concert with and aided by Defendants Does 1 through 100, designed, manufactured, assembled, produced, distributed, maintained and/or sold the JUUL Products.

312. JUUL knew or reasonably should have known that, when used as intended, the JUUL Products presented or were likely to present a danger to users, including young persons like Plaintiff. JUUL knew or reasonably should have known that its Products were unsafe for anyone under the age of 26, delivered excessive doses of nicotine, significantly increase blood pressure, cause vascular damage, cause addiction, seizures and permanent brain changes, mood disorders, strokes, heart attacks, and other cardiovascular injuries.

313. After JUUL Products were placed on the market in 2015, and before June 1, 2019, JUUL knew or reasonably should have known its Products were being consumed by young people under age 26, that such use was unsafe, that its Products delivered excessive doses of nicotine, significantly increase blood pressure, cause vascular damage, cause addiction, seizures and permanent brain changes, mood disorders, strokes, heart attacks, and other cardiovascular injuries. Nevertheless, at no point during this time period did JUUL recall, repair, or warn of the danger posed by Products.

314. A reasonable designer, manufacturer, distributor, or seller facing the same or similar circumstances as JUUL in the exercise of reasonable care, would have recalled JUUL Products to ensure young people including Plaintiff were not harmed.

315. JUUL's failure to timely recall its Products was a substantial factor in causing harm to Plaintiff. Had JUUL recalled its Products when it knew or should have known of the

1 risks to young people like Plaintiff, she would not have used it, and she would not have suffered
2 two seizures.

3 **SIXTH CAUSE OF ACTION**
4 **Violations of the Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.***
5 **(against Defendants JUUL, and Does 26 through 100)**

6 316. Plaintiff incorporates the above and below allegations by reference.

7 317. The UCL prohibits acts of “unfair competition,” including any “unlawful, unfair
8 or fraudulent business act or practice.”

9 318. Defendants have engaged in unlawful, unfair and fraudulent business acts and
10 practices in violation of the UCL. Defendants conduct violates the UCL in at least the following
11 ways:

12 a. By violating the California Consumer Legal Remedies Act, as described
13 below;

14 b. By concealing the health risks associated with JUUL products, including,
15 but not limited to, increased blood pressure, strokes, heart attacks and other cardiovascular events,
16 addiction, seizures and permanent brain changes, mood disorders and learning and cognitive
17 impairments;

18 c. By concealing that JUUL is unsafe for anyone under age 26;

19 d. By downplaying and minimizing the risks of JUUL products and
20 promoting them as safe and not harmful;

21 e. By conspiring with others in the tobacco industry to downplay and
22 minimize the risks of e-cigarette products, create confusion and doubt in the public regarding the
23 safety of e-cigarettes, overstate the benefits of nicotine and e-cigarette products, and undermine
24 the public health efforts to prevent and curb use of e-cigarettes by those under age 26;

25 f. By misrepresenting the delivery of nicotine as “approximately equivalent
26 to one pack of cigarettes” when in fact, as consumed, JUUL products deliver much higher
27 quantities of nicotine;

28 g. By concealing that JUUL is designed to create and sustain addiction among
young people rather to transition adult smokers from conventional cigarettes;

- 1 h. By knowingly and intentionally designing the JUUL device and JUUL
2 pods in a way that deliberately appeals to young people:
- 3 i. Making the pods available in flavors that JUUL knew that teens
4 would find irresistible and would not associate with tobacco or smoking;
- 5 ii. Intentionally advertising and marketing its products in ways that
6 make the device appear deceptively harmless, including concealing that product is highly
7 addictive, poses long-term risks to developing brains (mood disorders, permanent impairment of
8 impulse control, concentration and learning), significantly increases blood pressure, causes
9 repeated exposure to toxic chemicals, can cause cardiovascular events, such as strokes and heart
10 attacks, and can cause brain injuries such as seizures;
- 11 iii. Designing the JUUL so that it maximizes nicotine delivery, while
12 minimizing “harshness”, so as to recruit and retain young people as the next generation of
13 customers;
- 14 iv. Designing the JUUL device so that it is small and can easily be
15 concealed;
- 16 v. Designing the JUUL device so that it resembles a USB flash drive,
17 which can be charged in the USB port of laptop, so that parents and teachers will have trouble
18 identifying when a young person is JUULing;
- 19 vi. Making the smell emitted when a young person exhales
20 indistinguishable from other common scents, so that parents and teachers will not be any the
21 wiser; and
- 22 vii. Promoting the JUUL device on social media sites such as Twitter
23 and Instagram in order to appeal to the younger generation.

24 319. Defendants’ unfair and fraudulent business acts and practices caused Plaintiff to
25 purchase the JUUL device and/or JUUL pods.

26 320. Defendants’ conduct is unfair because Defendants deceive and mislead consumers
27 by inducing young persons under age 26 to purchase a product that is unsafe for them, delivers
28 high amounts of nicotine, is incredibly addictive, causes repeated exposure to toxic chemicals,

1 carries risks of seizures and other brain injury events, and has no benefit to them, while making it
2 appear that the product is harmless. Defendants were and are aware that young persons are
3 unable to appreciate the risk of JUULing to their health and welfare, and that many young people
4 do not even know that the product always contains nicotine, is addictive, or unsafe for them in
5 any amount. In this way, Defendants unfairly target young persons in order to get customers for
6 life.

7 321. Defendants' business practices are also fraudulent because Defendants deceptively
8 sell JUUL products to Plaintiff as harmless, and a "safer" alternative to cigarettes, while
9 concealing that JUUL is unsafe for anyone under age 26, delivers a more potent dose of nicotine
10 than conventional cigarettes, is highly addictive, significantly increases blood pressure, and can
11 cause strokes, heart attacks, seizures, and other deleterious effects.

12 322. Defendants' misrepresentations and omissions as alleged herein were consistent
13 with and part of its scheme to lure young persons into becoming customers for life and to
14 maximize profits at the expense of public health.

15 323. Accordingly, Plaintiff has suffered injury in fact including lost money as a result
16 of Defendants' unlawful, unfair and fraudulent business practices.

17 324. Plaintiff seeks to enjoin further unlawful, unfair and fraudulent acts or practices by
18 Defendants under Bus. & Prof. Code § 17200.

19 325. Plaintiff requests that this Court enter such orders or judgments as may be
20 necessary to enjoin Defendants from continuing their unfair and deceptive practices and to restore
21 to Plaintiff any money it acquired by unfair competition, including restitution and/or
22 disgorgement, as provided in Bus. & Prof. Code § 17203 and Bus. & Prof. Code § 3345; and for
23 such other relief set forth below.

24 326. Defendants' conduct, as described herein, is unfair because it is immoral,
25 unethical, unscrupulous, oppressive, and substantially injurious. Under the auspices of creating
26 an alternative for adult cigarette smokers, Defendants developed a highly addictive and
27 dangerous product and marketed it to young people as cool, fun, and harmless. Their scheme
28 worked, attracting millions and millions of teens, including Plaintiff, who have become

1 powerfully addicted to their product and have been exposed to massive amounts of nicotine and
2 other toxic chemicals. As a result of Defendants' conduct, Plaintiff suffered harms as described
3 herein, and others are at risk of the same or similar injuries. Defendants created this epidemic
4 and bear responsibility for its consequences.

5 327. The gravity of the harm resulting from Defendants' conduct far outweighs any
6 conceivable utility of this conduct. There are reasonably available alternatives that would further
7 Defendants' legitimate business interests in offering an alternative to adult cigarette smokers
8 over age 26, including, but not limited to: using only tobacco flavoring, designing the products to
9 deliver far less nicotine—only as much as would be sufficient to attract a nicotine-addicted
10 cigarette smoker—so as to reduce the nicotine-related harms and reduce the exposure to other
11 toxic chemicals, and offering the products “behind the counter” at pharmacies. Instead,
12 Defendants used kid-friendly flavors and design, promoted the products as harmless and cool,
13 conspired with others in the industry to downplay the risks and inflate the benefits, and has done
14 nothing to curb or prevent young people from starting and continuing to use its products, despite
15 the known risks of harm.

16 328. Plaintiff could not have reasonably avoided injury from Defendants' unfair
17 conduct. Plaintiff did not know, and had no reasonable means of learning, that JUUL could
18 harm her as it did. Nor did Plaintiff know that JUUL had been designed to lure and trap her into
19 becoming a customer for life.

20 329. Plaintiff was harmed, and Defendants' misleading statements and omissions were
21 a substantial factor in causing Plaintiff's harm.

22 330. The requested injunction under the UCL will primarily benefit the interests of the
23 general public. It will have the primary purpose and effect of prohibiting acts that threaten injury
24 to members of the public who have or will be exposed to JUUL's conduct.

25 **SEVENTH CAUSE OF ACTION**
26 **Violations of the Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.***
(against Defendants JUUL, and Does 26 through 100)

27 331. Plaintiff incorporates the above and below allegations by reference.
28

1 332. JUUL is a “person” as defined by Civil Code §§ 1761(c) and 1770 and has
2 provided “goods” as defined by Civil Code §§ 1761(a) and 1770.

3 333. Defendants Does 1 through 100 are each a “person” as defined by Civil Code
4 §§ 1761(c) and 1770 and has provided “goods” as defined by Civil Code §§ 1761(a) and 1770.

5 334. Plaintiff is a “consumer” as defined by Civil Code §§ 1761(d) and 1770 and
6 entered into transactions as defined by Civil Code §§ 1761(e) and 1770.

7 335. Defendants’ acts and practices were intended to and did result in the continued
8 sale of goods to Plaintiff, and those acts and practices violated Civil Code § 1770, including by:

9 a. representing that their goods had characteristics, ingredients, uses, benefits,
10 or quantities that they did not have;

11 b. representing that their goods were of a particular standard, quality, or
12 grade, when they were not; and

13 c. advertising goods with intent not to sell them as advertised.

14 336. Defendants’ acts and practices violated the Consumer Legal Remedies Act in the
15 following ways:

16 a. Defendants represented through public statements, marketing, advertising,
17 via social media, and on JUUL’s website (among other places) that its products were safe and/or
18 not harmful, when in fact its products were unsafe for persons under age 26;

19 b. Defendants represented that each JUUL pod contained approximately the
20 same amount of nicotine as one pack of cigarettes, when in fact it delivered much more than that;

21 c. Defendants represented that they had developed JUUL products only as an
22 alternative for adult cigarette smokers, when in fact they designed and marketed JUUL’s
23 products to young people to create and sustain addiction so as to build customers for life; and

24 d. Defendants concealed material facts from Plaintiff, including that JUUL is
25 highly addictive, significantly increases blood pressure, causes repeated exposure to toxic
26 chemicals, causes vascular damage, causes strokes, heart attacks and other cardiovascular risks,
27 and causes seizures, permanent brain changes, mood disorders and learning and cognitive
28 impairments.

1 337. Defendants had ample means and opportunities to tell the truth and to alert
2 Plaintiff regarding the dangers of JUUL's product and to instruct her not to use it, but did not.

3 338. Had Defendants not engaged in their scheme of misrepresentations and omissions,
4 Plaintiff would not have purchased, or continued purchasing JUUL and would not have been
5 harmed.

6 339. Defendants had a duty to disclose material facts regarding the risks of JUUL to
7 Plaintiff, because they had made partial representations that were made misleading by omissions,
8 and also because Defendants had exclusive knowledge of these facts, while Plaintiff could not
9 have known or reasonably discovered them.

10 340. Plaintiff was harmed, and Defendants' misleading statements and omissions were
11 a substantial factor in causing Plaintiff's harm. If Plaintiff had known the information that was
12 concealed, she would not have used JUUL, and would not have been harmed as described herein.
13 In the meantime, Defendants generated more revenue than they otherwise would have, unjustly
14 enriching themselves.

15 341. Plaintiff accordingly is entitled to equitable relief, reasonable attorneys' fees and
16 costs, declaratory relief, and a permanent injunction enjoining Defendants from their unlawful,
17 fraudulent, and deceitful activity.

18 342. Pursuant to Civ. Code § 1782(a), Plaintiff sent a letter to JUUL regarding their
19 CLRA violations and affording them the opportunity to correct their business practices and
20 rectify the harm they caused. Plaintiff sent the CLRA notice via certified mail, return receipt
21 requested, to JUUL's principal places of business. Plaintiff reserves the right to amend this
22 complaint to seek money damages under the CLRA.

23 343. In accordance with Civ. Code § 1780(d), Plaintiff's CLRA venue declaration is
24 attached to this Complaint.

25 344. Defendants' conduct as set forth herein was reprehensible and subjected Plaintiff
26 to cruel and unjust hardship in conscious disregard of her rights, constituting oppression, for
27 which Defendants should be punished by punitive and exemplary damages in an amount
28 according to proof. Defendants' behavior evidences a conscious disregard for Plaintiff's safety,

1 health and well-being. Defendants' conduct was and is despicable conduct and constitutes
2 malice under Section 3294 of the California Civil Code. An officer, director, or managing agent
3 of each of Defendants JUUL and Does 1 through 100 personally committed, authorized, and/or
4 ratified the reprehensible conduct set forth herein. Plaintiff thus seeks an award of punitive
5 damages sufficient to penalize Defendants.

6 **VII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff respectfully requests that the Court:

8 1. Award Plaintiff compensatory, restitution, , general, consequential, punitive and
9 exemplary damages in an amount to be determined at trial, and also including, but not limited to:

10 a. General Damages;

11 b. Special Damages, including all expenses, including incidental past and
12 future expenses, including medical expenses, and loss of earnings and earning capacity; and,

13 c. Statutory Damages;

14 2. Award prejudgment interest as permitted by law;

15 3. Enter an appropriate injunction against Defendants and their officers, agents,
16 successors, employees, representatives, and assigns;

17 4. Appoint a monitor and retain jurisdiction to ensure that Defendants comply with
18 the injunctive provisions of any decree of this Court;

19 5. Enter other appropriate equitable relief;

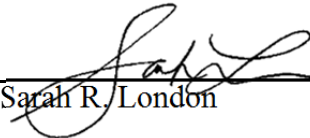
20 6. Award reasonable attorneys' fees and costs, as provided for by law; and

21 7. Grant such other and further relief as the Court deems just and proper.

22 **VIII. JURY TRIAL DEMAND**

23 Plaintiff demands trial by jury.
24
25
26
27
28

1 Dated: September 27, 2019


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