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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BRADLEY COLGATE, KAYTLIN MCKNIGHT,
M.H., a minor, by her Mother and Natural Guardian
JENNIFER HELLMAN, L.B., a minor, by her
Mother and Natural Guardian, JILL NELSON,
ANTHONY SMITH, COREY SMITH, KACIE
ANN LAGUN, A.U., a minor, by her mother and
natural guardian, LISA COMMITANTE, TOMMY
BENHAM, and DAVID LANGAN on behalf of
themselves, the general public and those similarly
situated,

PLAINTIFFS,

v.

JUUL LABS, INC. and PAX LABS, INC.

DEFENDANTS.

CASE NO. 3:18-cv-2499

Honorable William H. Orrick

FIRST AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

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28
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1 4. As one of the San Francisco engineers who invented the JUUL e-cigarette stated:
2 “We don’t think a lot about addiction here because we’re not trying to design a cessation product
3 at all . . . anything about health is not on our mind.”¹ Instead, Defendants advertise JUUL e-
4 cigarettes as “the satisfying alternative to cigarettes.” Defendants’ web site at juulvapor.com touts
5 the JUUL e-cigarette as “the i-Phone of E-cigs,” thereby framing them as a cool, fashionable item
6 to own and use. Defendants advertise and market the JUUL and JUUL pods in a variety of bright,
7 primary colors, with the nicotine pods advertised and marketed in child friendly flavors such as
8 mango, “cool mint,” “fruit medley,” “crème brulee,” and “limited edition classic menthol,” and
9 “limited edition cool cucumber.” JUUL’s pre-filled cartridges of nicotine solution, called
10 “JUULpods,” contain three times more nicotine than the legal limit in the European Union. And
11 the JUUL e-cigarette is more efficient at delivering that nicotine into the bloodstream than a
12 cigarette. As a result, the JUUL puts more nicotine into the bloodstream than cigarettes, and does
13 so faster than cigarettes.

14 5. Like tobacco companies, JUUL has aggressively engaged in youth marketing
15 efforts, using a combination of “big tobacco” techniques for manipulating youth into tobacco
16 addiction, techniques which have been recognized as manipulative and unlawful by countless
17 experts, regulators, and courts. The potency of JUUL e-cigarettes, coupled with the sweetened
18 flavors in which JUULpods are sold, including mango, fruit medley, and crème brulee, are suited
19 for somebody who likes the taste of candy. Defendants paired these traits with a “Vaporized”
20 advertising campaign that focused on bright, attractive images of people in their 20’s and 30’s
21 going out for a night on the town, thereby framing the JUUL e-cigarette as a hip, young activity
22 and product. JUUL’s campaign has produced rapid growth—more than 700% in 2017 alone.
23 That, in turn, has created an uproar among parents, the medical community, and school
24 administrators.

25 6. In response to backlash, JUUL has removed from its website youthful colors and
26

27 ¹ <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>

28 ² <http://www.publichealthlawcenter.org/sites/default/files/JUUL-Webinar-Slides-Apr262018.pdf>

³ See Mishra, A., et al., HARMFUL EFFECTS OF NICOTINE, *Indian J. Med. Paediatr. Oncol.*, 36(1): 24–31 (Jan.-Mar. 2015), available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4363846/>.

1 images of glamorous young models seductively exhaling clouds of vapors. JUUL’s website now
2 pictures middle-aged adults in non-glamorous settings and suggests that JUUL exists solely for
3 the benefit of adult smokers looking for an alternative. Defendants’ attempt to distance
4 themselves from their wrongful conduct is superficial and does not undo the damage they have
5 caused or change their fundamentally unscrupulous business model. JUUL’s e-cigarettes are still
6 as addictive as they ever were, are still sold in candy-like flavors, and can now be ordered with a
7 subscription service on JUUL’s website. JUUL was and is in the business of addicting consumers
8 to its product.

9 7. Defendants’ misconduct is not limited to the youth market. Defendants have
10 continuously downplayed, misrepresented, or failed to disclose the nicotine content and
11 pharmacokinetics of JUUL e-cigarettes, the risks of addiction, or worsening addiction, that JUUL
12 e-cigarettes pose, and the health risks of nicotine. For example, Juul’s web site at juullabs.com
13 states “[u]nlike other alternatives on the market, JUUL accommodates nicotine levels akin to a
14 cigarette’s in order to satisfy smokers switching.” But JUUL e-cigarette and JUULpods deliver
15 25% more nicotine into the blood than the strongest cigarettes available. The disparity is likely far
16 greater when a JUUL is compared to the “light” cigarettes preferred by the teenagers and young
17 adults that constitute JUUL’s core demographic. For smokers seeking an alternative to cigarettes,
18 JUUL’s omissions and misrepresentations about the nicotine content of its products muddy the
19 waters when it comes to making an informed decision about smoking cessation options. In fact,
20 the JUUL e-cigarette system delivers a potent dose of a nicotine salt, which is a particularly
21 addictive form of nicotine that is absorbed by the body at a much higher rate than smoking a
22 cigarette or e-cigarettes that use nicotine liquid. Many smokers duped into using JUUL e-
23 cigarettes report that JUULing has aggravated their addiction to nicotine.

24 8. Defendants are likely aware that the pool of cigarette smokers in California, and
25 throughout the United States, has been substantially declining over the last several decades, due
26 to sustained investment in public health education about the dangers of smoking. If Defendants
27 only focused on the market of existing smokers who want to quit, they would not only face the
28 demography of a shrinking market, but would also have to compete against entrenched habits,

1 loyalty to existing tobacco brands, and other smoking cessation products that do not risk
2 worsening an existing nicotine addiction, such as nicotine gum, patches, and prescription
3 medications. Although JUUL essentially now markets its product as a smoking cessation device,
4 it has not received FDA approval as an aid in smoking cessation, and has not participated in any
5 FDA approval process.

6 9. Defendants have thus employed a two-prong marketing approach. Youth and non-
7 smokers are targeted through multimillion dollar ad campaigns and social media blitzes using
8 alluring imagery presented continuously on social media platforms. Adult smokers are lured with
9 claims that JUUL provides less nicotine, or just about the same amount of nicotine, as a cigarette,
10 when JUUL knows that it designed its product to be more potent and, hence, more addictive than
11 cigarettes. Both prongs of Defendants' marketing efforts have been deceptive, unlawful,
12 intentionally misleading, and fraudulent.

13 10. JUUL has built a commercial empire on fraud, misrepresentations and omissions.
14 Its sleek ad campaigns have turned children and non-smokers into addicts. Defendants have also
15 worsened the plight of smokers who turned to JUUL as a means of ending their addiction to
16 nicotine. This case seeks to put an end to JUUL's unscrupulous practices and provide relief to
17 consumers for the economic losses caused by JUUL's deceptively addictive products.

18 **PARTIES**

19 **I. Plaintiffs**

20 11. The individual Plaintiffs' circumstances are described below. Because Plaintiffs
21 did not know the formula for Defendants' products and cannot test how addictive the products are
22 before purchasing, Plaintiffs will be unable to rely on Defendants' labels when shopping for
23 nicotine products in the future absent an injunction that requires Defendants to disclose the
24 addictive effects and true health consequences of the product. Plaintiffs, and others similarly
25 situated, are likely to be repeatedly presented with false or misleading information, making it
26 difficult to make informed purchasing decisions.
27
28

1 **A. Bradley Colgate - California**

2 12. Bradley Colgate (“Colgate”) is, and at all times relevant was, an individual and a
3 resident of La Jolla, San Diego County, California.

4 13. In 2017, Bradley Colgate (“Colgate”) purchased a JUUL e-cigarette and
5 JUULpods in an effort to curtail his nicotine addiction and quit smoking. Colgate understood one
6 JUULpod to be the equivalent of one pack of cigarettes.

7 14. Rather than weaning Colgate off of nicotine, the intense dosage of nicotine
8 delivered by the JUUL products resulted in an increased nicotine addiction, and an increased
9 consumption of nicotine and JUUL products by Colgate.

10 15. Had Colgate known the truth of the matter about JUUL, he would not have
11 purchased JUUL products.

12 **B. Kaytlin McKnight - California**

13 16. Kaytlin McKnight (“McKnight”) is, and at all times relevant was, an individual
14 and a resident of Arroyo Grande, San Luis Obispo County, California.

15 17. In 2017, Class representative Kaytlin McKnight purchased a JUUL e-cigarette and
16 JUULpods. McKnight subsequently became addicted to nicotine salts. McKnight now consumes
17 several JUULpods each week.

18 18. Had McKnight known the truth of the matter about JUUL, she would not have
19 purchased JUUL products.

20 **C. M.H., and her mother and natural guardian, Jennifer Hellman – New Jersey**

21 19. M.H., and her mother and natural guardian, Jennifer Hellman (“Hellman”) are, and
22 at all times relevant were, individuals and residents of Robbinsville, Mercer County, New Jersey.

23 20. Presently 17 years-old, M.H. began “JUULing” at the age of 15 when she was
24 introduced to it by a friend at school.

25 21. When she first tried a JUUL, M.H. was not aware that a JUUL contained nicotine,
26 how much nicotine a JUUL contained, or that the JUUL had specifically been developed to
27 maximize the narcotic and, hence, addictive effects of nicotine.

28 22. At the age of 17, M.H. has spent at least \$2,000 on JUULpods, some of which she

1 earned and some of which Hellman inadvertently paid for through gifts of money.

2 23. All of M.H.'s friends are JUUL addicts. And there are several stores in her area
3 that readily sell JUULpods to minors. JUULpods are also sold at school by older students.

4 24. Hellman has spent at least \$7,000 in her efforts to help M.H. with behavioral
5 issues that began when M.H. began JUULing.

6 25. At the age of 17, M.H. now consumes at least one JUULpod a day.

7 **D. Jill Nelson – California**

8 26. Jill Nelson ("Nelson") and L.B. are, and at all times alleged in this Class Action
9 Complaint were, residents of San Diego, San Diego County, California.

10 27. L.B. was introduced to JUUL products by classmates at school when she was in
11 the eighth grade. Because the JUUL device and JUUL packaging bears no warnings about
12 nicotine content, and her classmates did not inform her that the JUUL device contained nicotine,
13 L.B. was unaware that the JUUL contained nicotine, or that the JUUL was specifically designed
14 to put extremely high doses of nicotine into the bloodstream. when she first tried a JUUL. She
15 liked the fruit flavors.

16 28. The flavors and effects of JUUL use appealed to L.B., who later purchased a
17 JUUL device of her own from an unknown source.

18 29. When L.B.'s device broke in November 2017, L.B. sought and obtained a
19 warranty replacement through JUUL's website in November 2017. L.B. was 14 at the time.

20 30. L.B. has informed Nelson that the local gas stations readily sell JUUL pods to
21 minors and that one young gas station employee even trades JUUL pods for fast food that
22 children bring him.

23 31. Nelson is not aware of the full extent of L.B.'s JUUL use but does know that she
24 has at least once purchased JUUL pods from eBay.

25 32. In October 2017, Nelson found what she thought was a pencil lead container in
26 L.B.'s backpack. Nelson's older son later informed her that the device was a JUUL e-cigarette.

27 33. A neighbor of Nelson's recently posted an urgent neighborhood alert that her son
28 had lost a USB key containing important school files in or around a local McDonald's.

1 Accompanying the post was a picture of her son’s JUUL device. Neighbors quickly informed her
2 that her son had duped her into searching for his lost e-cigarette.

3 34. L.B. has informed Nelson that JUUL use is very common at school, that
4 JUULpods are readily available for purchase at school from older students who buy packs of
5 JUULpods and sell individual pods to younger students at a markup.

6 **E. Anthony Smith – Washington**

7 35. Anthony Smith (“A. Smith”) is, and at all times relevant was, an individual and
8 resident of Cashmere, Washington.

9 36. Anthony Smith obtained his first JUUL e-cigarette and JUULpods in an effort to
10 curtail his nicotine addiction and quit smoking. He originally saw JUUL advertised via Twitter,
11 using ads with images of young people—young enough to be in high school—who looked like
12 they were enjoying a hip, cool activity. The ads touted JUUL products as a safer, healthier
13 alternative to smoking, which Anthony Smith believed meant it was delivering lower doses of
14 nicotine. Anthony Smith was also attracted to JUULpods because of the variety of fruit and mint
15 flavors; he found the Cool Mint flavor particularly appealing.

16 37. Rather than weaning Anthony Smith off of nicotine, the intense dosage of nicotine
17 delivered by the JUUL products resulted in an increased nicotine addiction, and an increased
18 consumption of nicotine and JUUL products, upping his consumption of one JUULpod per day.
19 The fact that the mint flavor of the JUULpods is pleasant has also played a role in his continued
20 use of JUUL products.

21 38. At the age of 18, Anthony Smith switched to use exclusively of JUULpods as a
22 source of nicotine. Anthony Smith has consumed JUULpods on a daily basis for over three years,
23 and found it far more addictive than traditional cigarettes, to the point where he cannot make it
24 through a day without JUULing.

25 39. If Anthony Smith had known that the JUULpods contained a nicotine salt that
26 delivered a more potent dose of nicotine than a traditional cigarette, he would not have purchased
27 the JUUL product.

28

1 **F. Corey Smith - Washington**

2 40. Corey Smith (“C. Smith”) is an individual and resident of Snohomish,
3 Washington. Corey Smith is a former resident of California.

4 41. Corey Smith is 18 years old, and started consuming JUULpods when he was 17.
5 Corey Smith saw JUUL advertisements prior to his purchase, especially on social media such
6 Instagram, where he saw ads posted by JUUL. Corey found the JUUL products appealing based
7 on those advertisements, which did not convey the fact that nicotine salts deliver an effective dose
8 of nicotine higher than a traditional cigarette. Corey Smith also found the USB-drive shape of the
9 JUUL appealing based on its sleek design. Corey Smith was also attracted by the fruit-like flavors
10 and the Cool Mint flavor in particular. Corey Smith is now addicted to JUULpods, and consumes
11 a pack of JUULpods per week.

12 42. If Corey Smith had known that JUUL’s use of nicotine salts deliver an effective
13 dose of nicotine higher than a traditional cigarette, he would not have purchase JUUL products.

14 **G. Kacie Ann Lagun (née Durham) - Pennsylvania**

15 43. Kacie Ann Lagun (“Lagun”) is, and at all times relevant was, an individual and
16 resident of Philadelphia, Pennsylvania.

17 44. Lagun is a U.S. Army veteran and health sciences student who purchased a JUUL
18 to help her quit smoking and as a healthier alternative to smoking. Lagun saw JUUL
19 advertisements when she went to purchase cigarettes, which led he to go to the JUUL web site for
20 more information. There, she was the JUUL as a sleek, portable device with a variety of
21 appealing flavors, particularly menthol. Lagun did not know at the time she purchased the JUUL
22 that JUULpods deliver more nicotine than a regular cigarette.

23 45. Lagun is now addicted to JUULpods.

24 **H. A.U., and her mother and natural guardian, Lisa Commitante – New York**

25 46. A.U. and her mother and natural guardian, Lisa Commitante (“Commitante”) are,
26 and at all times relevant were, individuals and residents of Brooklyn, New York, New York.

27 47. A.U. began JUULing at the age of 14, after purchasing a JUUL and JUULpods at a
28 smoke shop. A.U. was attracted to the fruit flavors produced by the JUULpods, and did not

1 realize that it contained nicotine. She subsequently began consuming JUULpods, enticed by the
2 fact that it looked cool and her friends were vaping JUUL products. She used the JUUL
3 frequently until her mother found and confiscated it. A.U. would not have purchased the JUUL
4 starter kit if she had known it contained nicotine.

5 **I. Tommy Benham – Michigan**

6 48. Tommy Benham (“Benham”) is, and at all times relevant was, an individual and
7 resident of Midland, Michigan.

8 49. Benham, who is 20 years old, purchased a Juul starter kit at the age of 18. He was
9 a smoker prior to his purchase. Benham decided to try JUUL products based on advertising that
10 he saw in posters, magazines and Facebook depicting JUUL e-cigarettes as a safer, less addictive
11 alternative to smoking cigarettes. He was smoking a pack of cigarettes a day at the time and
12 thought that the JUUL would help him quit smoking by weaning him from cigarettes. He also
13 found the variety of flavors appealing, and was attracted to the eye-catching colors and bold fonts
14 used in the JUUL ads, as well as the JUUL e-cigarette’s sleek, practical design and quick
15 recharging ability.

16 50. Although Benham thought JUUL would help him quit smoking, he has found it
17 even more addictive than cigarettes, to the point where even tobacco is an inadequate substitute.
18 Benham now finds that he has to interrupt his routine throughout the day to vape with his Juul,
19 and that he is consuming at least eight JUULpod packs per week. Benham favors Cool-Mint-
20 flavored JUULpods. Had Benham known that the nicotine salts in JUULpods were more potent
21 and addictive than traditional cigarettes, he would not have purchased JUUL products.

22 **J. David Langan – Massachusetts**

23 51. David Langan (“Langan”) is, and at all times relevant was, an individual and
24 resident of Haverhill, Massachusetts.

25 52. Langan, who is 23 years old, bought his first Juul from a friend. Langan had been
26 smoking 4-5 years before he purchased his first JUUL and had unsuccessfully tried to quit a few
27 times. He felt like he had almost quit cigarettes when a friend introduced him to JUULpods in or
28 about March 2017. Shortly afterwards, he purchased his JUUL. Subsequently, he found that his

1 nicotine addition increased significantly. When Langan lost his first JUUL, he could not go
2 without one, so he bought a replacement. Langan also found that if he did not have a working
3 JUUL on him, he felt compelled to ask for cigarettes from smokers around him. Langan saw
4 advertising materials describing the fruity and menthol flavors of JUULpods, which influenced
5 his purchase. Langan favors Menthol JUULpods, and has also purchased Mango-flavored
6 JUULpods that were advertised. Had Langan known that the nicotine salts in JUULpods were
7 more potent and addictive than traditional cigarettes, he would not have purchased JUUL
8 products.

9 **II. Defendants**

10 53. Defendant Juul Labs, Inc. (“JUUL”) is, and at all times alleged in this Class Action
11 Complaint was, a Delaware corporation, having its principal place of business in San Francisco,
12 California. JUUL originally operated under the name PAX Labs, Inc. In 2017, it was renamed
13 JUUL Labs, Inc., and a new company was spun out as the Pax Labs, Inc., referenced in the
14 paragraph below. A substantial portion of the conduct cited here occurred while JUUL was
15 operating as PAX Labs, Inc.

16 54. Defendant PAX Labs, Inc. (“PAX”) is a Delaware corporation, having its principal
17 place of business in San Francisco, California. PAX is the company spun out of JUUL (formerly
18 operating as Pax Labs, Inc.) in the paragraph referenced above.

19 55. At all times alleged in this Class Action Complaint, each of the Defendants was an
20 agent, servant, representative, officer, director, partner or employee of the other Defendant and, in
21 doing the things herein alleged, was acting within the scope and course of his/her/its authority as
22 such an agent, servant, representative, officer, director, partner or employee, and with the
23 permission and consent of each Defendant.

24 56. At all times alleged in this Class Action Complaint, Defendants, and each of them,
25 were members of, and engaged in, a joint venture, partnership and common enterprise, and acted
26 within the course and scope of, and in pursuance of, said joint venture, partnership and common
27 enterprise.
28

1 57. At all times alleged in this Class Action Complaint, Defendants, and each of them,
2 ratified each and every act or omission complained of herein.

3 58. At all times alleged in this Class Action Complaint, the acts and omissions of
4 Defendants, and each of them, concurred and contributed to the various acts and omissions of
5 each and all of the other Defendants in proximately causing the injuries and damages as herein
6 alleged.

7 **JURISDICTION AND VENUE**

8 59. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
9 § 1332(d) because: (i) there are 100 or more class members; (ii) the aggregate amount in
10 controversy exceeds \$5,000,000, exclusive of interest and costs; and (iii) at least one Plaintiff and
11 Defendants are citizens of different states. This Court has supplemental jurisdiction over the state
12 law claims pursuant to 28 U.S.C. § 1367.

13 60. Venue is proper in this Court under 28 U.S.C. § 1391 because (1) Defendants are
14 headquartered in this District; and (2) Defendants regularly transact and solicit business in this
15 District.

16 **ALLEGATIONS OF FACT**

17 **I. Founding of JUUL Labs, Inc., and Development of the JUUL e-Cigarette.**

18 61. Defendants JUUL Labs, Inc. and PAX Labs, Inc. began as Ploom, Inc. in 2007.
19 The company's founders, Adam Bowen ("Bowen") and James Monsees ("Monsees"), both
20 product designers by education and experience, invented the Ploom, a cigarette-shaped device
21 into which pre-filled of ground tobacco were inserted and vaporized at lower-than-combustion
22 temperatures using an electrical heating element.

23 62. In 2014, Bowen, Monsees and others submitted a patent application for the JUUL
24 device, a self-regulating vaporization device and cartridge.

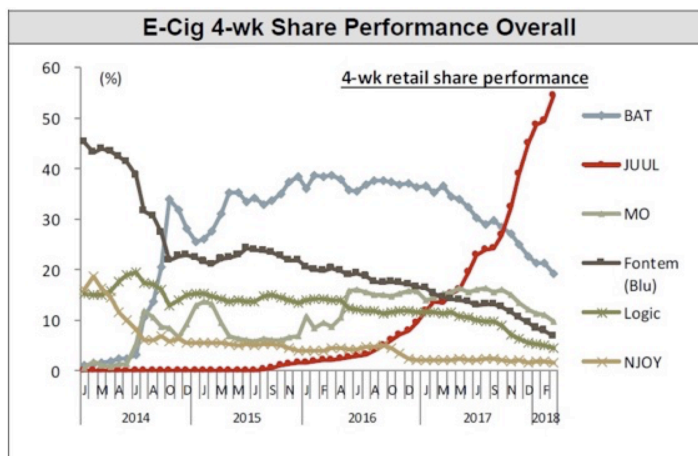
25 63. In February 2015, JTI took ownership of the Ploom vaporizer, as well as the
26 Ploom name, and gave up its stake in Ploom, which changed its name to PAX Labs, Inc.

27 64. A few months later, PAX announced the JUUL e-cigarette and raised nearly \$50
28 million in funding from Fidelity Investments and other investors, presumably to aid in the

1 manufacturing and marketing of JUUL e-cigarettes.

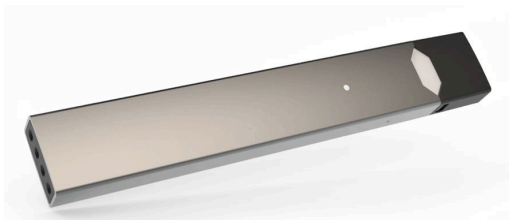
2 65. In 2017, the named defendant “PAX Labs, Inc.” entity spun off of JUUL
3 (previously operating as PAX Labs, Inc.).

4 66. Bowen and Monsees remained at JUUL (i.e., the former PAX), where Bowen is
5 now JUUL’s Chief Technology Officer and Monsees is JUUL’s Chief Product Officer. That same
6 year, JUUL became the dominant e-cigarette company in the United States, growing revenues by
7 700%. As of March 2018, market reports from Nielsen indicate that JUUL represents 54.6% of
8 the e-cigarette traditional retail market.



16 II. The JUUL E-Cigarette

17 67. The JUUL e-cigarette is about the size and shape of a pack of chewing gum. It
18 consists of a rectangular enclosure containing a rechargeable battery and heating element (the
19 “JUUL device”), and a pre-filled pod of JUUL’s patented nicotine solution (the “JUULpod”),
20 which slides into the end of the JUUL device. The JUUL e-cigarette is a proprietary system that is
21 incompatible with other e-cigarette components or liquids.

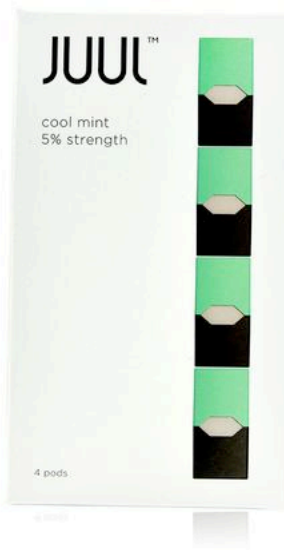


26 68. When a sensor in the JUUL e-cigarette detects the movement of air caused by
27 suction on the JUUL pod, the battery in the JUUL device activates the heating element, which in
28 turn converts the nicotine solution in the JUUL pod into a vapor consisting principally of

1 nicotine, glycerine, and propylene glycol that is inhaled into the lungs. A light embedded in the
2 JUUL device serves as a battery level indicator and lights up in a display of rainbow of colors
3 when the device is waved around.

4 69. The JUUL device does not have a manual or automatic “off” switch. In contrast to
5 a traditional cigarette, which self-extinguishes as each cigarette is consumed, the battery in the
6 JUUL device stores enough power to consume an entire JUULpod.

7 70. JUUL manufactures and distributes JUULpods, which contain JUUL’s nicotine
8 liquid. Sold in packs of four, JUUL sells pods in a variety of flavors that have no tobacco
9 cigarette analog, including mango, “cool” cucumber, fruit medley, cool mint, and crème brulee.
10 According to a recent survey of more than 1,000 12 to 17 year-olds, 6.5% admitted to using a
11 JUUL e-cigarette. Of those, 86% of users most recently used fruit medley, mango, cool mint, or
12 crème brulee.²



23 **III. JUUL Fails to Include a Nicotine Warning.**

24 71. Nicotine is a highly addictive substance. A stimulant that affects the central
25 nervous system, nicotine, when ingested, can accelerate blood pressure, pulse, affect mood,
26 increase circulating levels of hormones increase metabolic rate, constrict blood vessels of the
27

28 ² <http://www.publichealthlawcenter.org/sites/default/files/JUUL-Webinar-Slides-Apr262018.pdf>

1 heart and skin, and cause muscle relaxation.

2 72. When a person smokes a cigarette or a JUUL e-cigarette, tiny nicotine-bearing
3 droplets in the smoke or vapor are inhaled into the lungs where they are rapidly absorbed into the
4 blood stream and, eventually, the brain. In the brain, nicotine binds to receptors, triggering a
5 series of physiologic effects in the user, including pleasure, arousal and relaxation of stress and
6 anxiety. These effects are caused by the release of dopamine, acetylcholine, norepinephrine,
7 vasopressin, serotonin, and beta endorphin. Though smokers commonly report pleasure and
8 reduced anger, tension, depression and stress after smoking a cigarette, many of these effects are
9 actually due to the relief of unpleasant withdrawal symptoms that occur when a person stops
10 smoking and deprives the brain and body of nicotine. The almost immediate pleasure a smoker
11 feels from a cigarette or JUUL creates a strong connection in the user's mind between the source
12 of nicotine and its effects.

13 73. The physiological changes caused by smoking or JUUL use cause addiction.
14 Prolonged or repetitive nicotine exposure causes brain cells to adapt to compensate for the action
15 of the drug and return brain function to normal. This process, called neuroadaptation, leads to the
16 development of tolerance in which a given level of nicotine begins to have less of an effect on the
17 body.

18 74. Once a brain is addicted to nicotine, the absence of nicotine causes withdrawal
19 symptoms including anxiety, tension, depression, irritability, difficulty in concentrating,
20 disorientation, increased eating, restlessness, headaches, sweating, insomnia, heart palpitations
21 and tremors – and intense cravings for the product responsible for the addiction. The difficulty of
22 quitting nicotine is comparable to that for heroin or cocaine.

23 75. Although framed as a safer alternative to smoking, Defendants' JUUL e-cigarettes
24 and JUULpods still deliver dangerous toxins and carcinogens to teenage users. Nicotine itself is a
25 carcinogen, as well as a toxic chemical associated with cardiovascular, reproductive, and
26
27
28

1 immunosuppressive problems.³ Nicotine adversely affects the heart, eyes, reproductive system,
2 lung, and kidneys. Exposure to nicotine from sources such as nicotine gum still produces an
3 increased risk of Coronary Vascular Disease by producing acute myocardial ischemia, as well as
4 an increased risk of peripheral arterial disorders. Aside from its use as a stimulant, the only other
5 known use of nicotine is as an insecticide. See Mishra, supra. Moreover, because vaping still
6 introduces foreign substances into the lungs, prolonged use of vaping products is likely to
7 produce chronic obstructive pulmonary disease, just like traditional cigarette smoke. Vaping also
8 triggers immune responses associated with inflammatory lung diseases.

9 76. There is also evidence that nicotine can affect neurological development in
10 adolescents, and that exposure to nicotine during adolescence can produce an increased
11 vulnerability to nicotine addiction. Arain, M., et al., MATURATION OF THE ADOLESCENT
12 BRAIN, *Neuropsychiatric Disease and Treatment*, 9, 449–461 (Apr. 25, 2013),
13 <http://doi.org/10.2147/NDT.S39776>. Adolescent nicotine addiction causes “substantial neural
14 remodeling” including those parts of the brain governed by dopamine or acetylcholine, which
15 play central roles in reward functioning and cognitive function, including executive function
16 mediated by the prefrontal cortex. A “clear-cut relationship” between adolescent smokers and
17 diminished neural responses has been observed such that addicts exhibit diminished sensitivity to
18 non-drug rewards (e.g., financial rewards). This relationship becomes even more severe in
19 adolescents who smoke more than 5 cigarettes a day. In sum, “the use of extremely rewarding
20 drugs, such as nicotine, may decrease the pleasure obtained from non-drug rewards.” These
21 changes occur in “early phases of smoking.”

22 77. Despite making numerous revisions to its packaging since 2015, JUUL has not
23 added nicotine warnings to the JUUL device, the JUULpods, or their product labels (the “JUUL
24 product labels”). The JUUL product labels have a California Proposition 65 warning indicating
25 that the product contains a substance known to cause cancer, and a warning to keep JUULpods
26

27 ³ See Mishra, A., et al., HARMFUL EFFECTS OF NICOTINE, *Indian J. Med. Paediatr. Oncol.*,
28 36(1): 24–31 (Jan.-Mar. 2015), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4363846/>.

1 away from children and pets, but contains no warnings specifically about the known effects, or
2 unknown long-term effects, of vaping/inhaling nicotine salts.

3
4 **IV. JUUL Fails to Warn Consumers that Its Nicotine Formulation Delivers an**
5 **Exceptionally Potent Dose of Nicotine Compared to Traditional Cigarettes.**

6 78. According to the National Institutes of Health, the “amount and speed of nicotine
7 delivery . . . plays a critical role in the potential for abuse of tobacco products.”⁴ The cigarette
8 industry has long known that “nicotine is the addicting agent in cigarettes”⁵ and that “nicotine
9 satisfaction is the dominant desire” of nicotine addicts.⁶

10 79. Knowing this, tobacco companies spent decades manipulating nicotine in order to
11 foster and maintain addiction in their customers. For example, R.J. Reynolds Tobacco Company
12 (“RJR”) developed and patented nicotine salt additives such as nicotine benzoate to increase
13 nicotine delivery in cigarette smoke. As detailed in an RJR memorandum titled “*Cigarette*
14 *concept to assure RJR a larger segment of the youth market,*” reducing the pH was expected to
15 give cigarettes an “additional nicotine ‘kick’.”⁷ This kick was attributed to increased nicotine
16 absorption associated with lower pH.⁸

17 80. JUULpods use the same phenomenon to produce a similar nicotine kick. In U.S.
18 patent No. 9,215,895 (“the ’895 patent”), assigned to “Pax Labs, Inc.” and listing JUUL executive
19 Adam Bowen as an inventor, JUUL teaches combining benzoic acids with nicotine to produce
20 nicotine salts, a formulation that mimics the nicotine salt additive developed by RJR decades
21 earlier.

22 81. Blood plasma studies in the ’895 patent show that vaping nicotine benzoate

23 ⁴ See <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>

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

27 ⁶ R.J. Reynolds Tobacco Co. marketing memo, 1972.

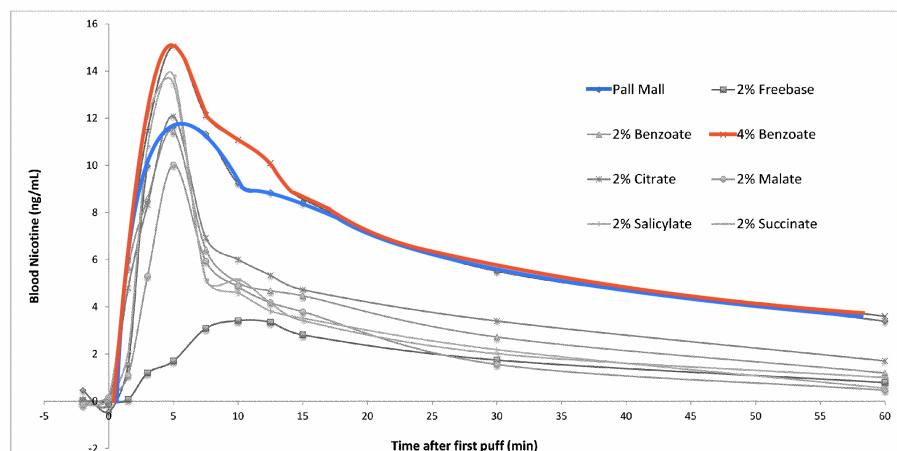
28 ⁷ 1973 R.J. Reynolds Tobacco Co. memo titled, “Cigarette concept to assure RJR a larger
segment of the youth market.”

⁸ Neal Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, *Nicotine*
Psychopharmacology, 22-29, *Handbook of Experimental Pharmacology*, vol 192.

1 increases nicotine delivery compared to a “Pall Mall (New Zealand)” cigarette and vaporized
 2 solutions of freebase nicotine. In fact, nicotine uptake was up to four times higher for nicotine salt
 3 formulations than traditional cigarettes (approximately 4 ng/mL/min compared to approximately
 4 1 ng/mL/min). JUUL’s data also indicates that acid/nicotine salt solutions produced a higher heart
 5 rate in a shorter amount of time (a 50 beats/minute increase within 2 minutes for nicotine salt,
 6 versus a 40 beats/minute increase in 2.5 minutes for a Pall Mall cigarette). Nicotine salts also
 7 caused a faster and more significant rise in heart rate than placebo or vaporized freebase nicotine.

8 82. The following image from the ’895 patent shows that a 4% solution of benzoic
 9 acid nicotine salt causes a peak nicotine-blood concentration (“Cmax”) of approximately of
 10 approximately 15 ng/mL, compared to a Cmax of 11 ng/mL for a Pall Mall cigarette. (To make it
 11 more readable, JUUL’s 4% nicotine benzoate data is highlighted in red, and the Pall Mall data is
 12 highlighted in blue.)

FIG. 4



22 83. As high as the reported nicotine dose reported for JUULpods is, the actual dose is
 23 likely higher. Though the strongest benzoic acid concentration mentioned in the ’895 patent is 4%
 24 (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUULpods and found a 4.5%
 25 benzoic acid (44.8 ± 0.6) solution.⁹ That study found that JUULpods contained a concentration of
 26

27 ⁹ Pankow JF, et al., Benzene formation in electronic cigarettes, PLoS ONE 12(3): e0173055
 28 (2017). See <https://doi.org/10.1371/journal.pone.0173055> (last visited June 4, 2018).

1 6.2% nicotine salt (about 60 mg/mL), rather than the 5% nicotine (about 50 mg/mL) advertised.
2 Even “a small percentage [pH change] can double, triple, or quadruple the amount of free nicotine
3 available for inhalation in cigarette smoke,” *U.S.A. v. Philip Morris*, Case No. 99-cv-02496, 628 ¶
4 1598 (D.D.C. Aug. 17, 2008). JUULpods containing an absolute nicotine concentration 1.2%
5 higher than the stated 5% on the label (a relative increase of over 20%) coupled with more
6 benzoic acid than listed in the ‘895 patent produce higher nicotine absorption than expected for
7 the advertised formulation.

8 84. Either way, JUUL is delivering doses of nicotine that are several time higher than
9 those allowed in normal cigarettes. As a paper published by the European Union citing the United
10 Kingdom Medicines and Healthcare Products Regulatory Agency notes, “an e-cigarette with a
11 concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the time
12 needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1mg of
13 nicotine).”¹⁰ With 50-60 mg/mL of nicotine delivered in a salt form that increases the rate and
14 efficiency of uptake, a JUULpod will easily exceed the nicotine dose of a traditional cigarette. As
15 Israel’s Deputy Health Minister has noted, “a product that contains a concentration of nicotine
16 that is almost three times the level permitted in the European Union constitutes a danger to public
17 health and justifies immediate and authoritative steps to prevent it from entering the Israeli
18 market.”¹¹ As a result, the European Union has banned all e-cigarette products with a nicotine
19 concentration of more than 20 mg/ml nicotine, and Israel is seeking to do the same.¹²

20 85. Yet Defendants have failed to disclose to consumers that the JUULpods’ nicotine
21 salt formulation delivers an exceptionally potent dose of nicotine.

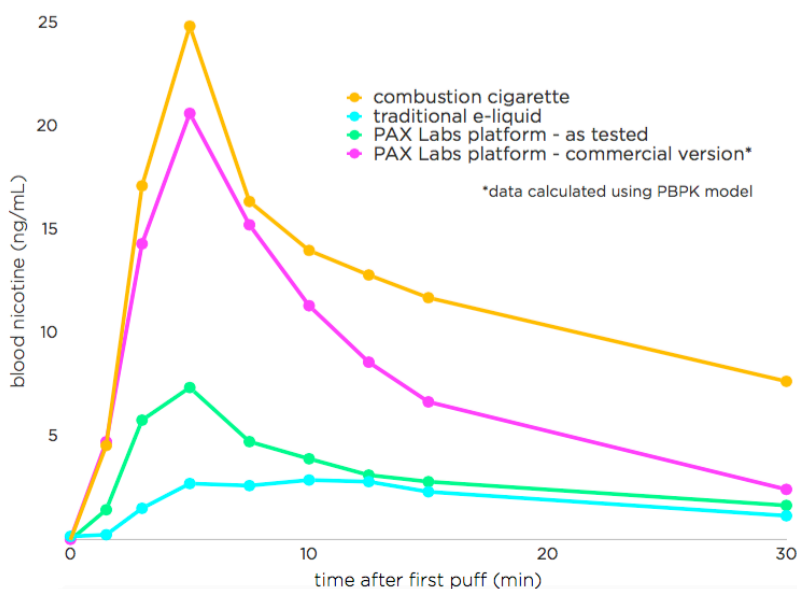
22 86. For example, prior to the JUUL’s release in June 2015, several press outlets were

23 ¹⁰ E-Cigarettes, https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf
24 (last visited June 4, 2018) (citing United Kingdom Medicines and Healthcare Products Regulatory
Agency and industry reports).

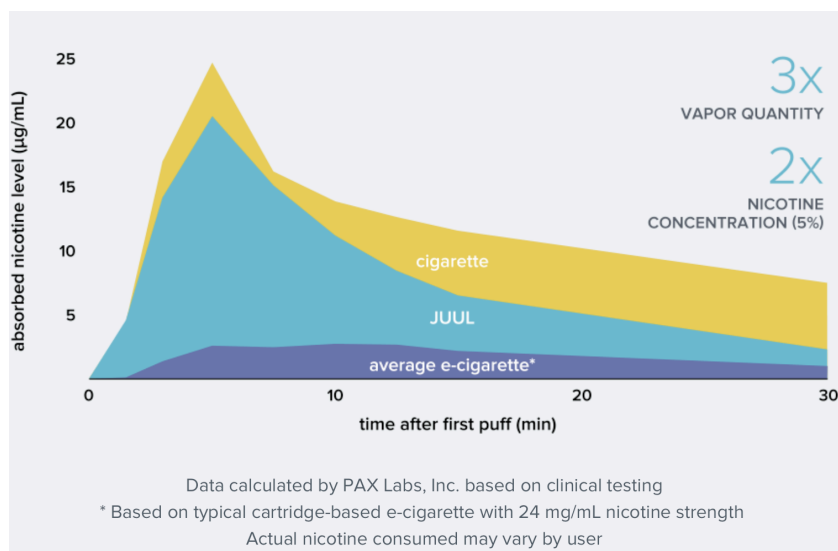
25 ¹¹ Ronny Linder Ganz, HAARETZ, *JUUL Warns it Will Fight Israel Over Its Potential Ban on E-
26 Cigarettes* (June 3, 2018, 9:52 p.m.), [https://www.haaretz.com/israel-news/business/juul-warns-it-
will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058](https://www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058) (last visited June 7, 2018).

27 ¹² Julia Belluz, Vox, *Juul, the Vape Device Teens are Getting Hooked On, Explained* (June 6,
28 2018), <https://www.vox.com/science-and-health/2018/5/1/17286638/juul-vaping-e-cigarette> (last
visited June 8, 2018).

1 given JUUL products and provided information about the JUUL device and its nicotine content.
 2 TechCrunch, a popular technology website, and a handful of other sites providing pre-release
 3 articles about the JUUL, posted the following chart (the “PAX Chart”) of a PAX “commissioned
 4 study” comparing JUUL’s blood-nicotine levels to traditional combustion cigarette and other e-
 5 cigarettes. The chart compares the results for two versions of the JUUL device, one of which used
 6 computer-modeled results, a generic “combustion cigarette” and a generic “traditional e-liquid.”
 7 <https://beta.techcrunch.com/wp-content/uploads/2015/04/pax-evaluation.png>.



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 18
 19 87. When JUUL’s website debuted in 2015, it included the following chart (the
 20 “JUUL chart”):



1 88. Both charts contradict the results reported in JUUL’s ‘895 Patent. That
2 publication indicates that a 4% benzoic acid concentration coupled with a 5% concentration of
3 nicotine salts causes nicotine-blood levels approximately 30% higher than a Pall Mall cigarette.
4 In contrast, both the PAX chart and the JUUL chart show that, at its peak, the JUUL delivers
5 approximately 25% less nicotine to the blood than a cigarette, creating the impression that the
6 JUUL is less addictive than a combustible cigarette.

7 89. JUUL also repeatedly represented that a single JUULpod contains an amount of
8 nicotine “about” equal to a pack of cigarettes. For example, JUUL’s website currently provides
9 that each “JUULpod is designed to contain approximately 0.7mL with 5% nicotine by weight at
10 time of manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs.”

11 90. This statement, even if true, is seriously misleading because, as JUUL knows, the
12 it is not just the amount of nicotine, but the efficiency with which the product delivers nicotine
13 into the bloodstream, that determines the product’s narcotic effect, risk of addiction, and
14 therapeutic use. Defendants know that benzoic acid affects pH and “absorption of nicotine across
15 biological membranes.” Defendants have affirmatively concealed the role that benzoic acid plays
16 in JUUL’s products. In a 2015 interview, Ari Atkins, a JUUL research & development engineer
17 and one of the inventors of the JUUL device said this about the role of acids: “In the tobacco
18 plant, there are these organic acids that naturally occur. And they help stabilize the nicotine in
19 such a way that makes it ...” He pauses. “I’ve got to choose the words carefully here: Appropriate
20 for inhalation.”¹³

21 91. In sum, Defendants have either misrepresented the pharmacokinetic effect of its
22 products or altered the composition and, hence, pharmacokinetic effects of its products without
23 disclosing that material fact to consumers.

24 92. Because JUUL’s nicotine salts actually increase the rate and magnitude of blood
25 plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse is
26 higher for JUUL e-cigarettes than traditional cigarettes. Thus, far from helping smokers quit, the

27 _____
28 ¹³ D. Pierce, “This Might Just Be the First Great E-Cig,” *Wired* (Apr. 2015),
<https://www.wired.com/2015/04/pax-juul-ecig/>

1 JUULs simply increase their level of addiction to nicotine. Further, JUULpods are foreseeably
2 exceptionally addictive when used by persons without prior exposure to nicotine—a fact not
3 disclosed by Defendants.

4 **V. JUUL’s Marketing Continues Decades of Youth Targeting by the Tobacco Industry**

5 93. Exposure to nicotine as a youth has a profound effect on nicotine addiction.
6 According to the U.S. Centers for Disease Control and Prevention, nearly 80% of smokers begin
7 before the age of 18. R.J. Reynolds found that only 5% of smokers start after age 18.

8 94. Adolescents and young adults are more vulnerable to addiction than adults because
9 the brains of young people possess a higher degree of neuroplasticity. Adolescents experience
10 symptoms of dependence at lower levels of nicotine exposure than adults, and adolescents who
11 become addicted to nicotine as teens are more likely to become life-long addicts than those who
12 start smoking in their 20s or later. Unsurprisingly, teens who use e-cigarettes are four times more
13 likely to smoke.

14 95. Historically, tobacco companies fought to increase share penetration among the
15 14-24 age group because “young smokers have been the critical factor in the growth” of tobacco
16 companies, and “the 14-18 year old group is an increasing segment of the smoking population.”¹⁴
17 The importance of the youth market was illustrated in a 1974 presentation by RJR's Vice-
18 President of Marketing who explained that the “young adult market . . . represent[s] tomorrow's
19 cigarette business. As this 14-24 age group matures, they will account for a key share of the total
20 cigarette volume - for at least the next 25 years.”¹⁵

21 96. 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 ¶ 2682 (D.D.C. 2008). In terms of images and themes that cater to adolescents, the court found

26
27 ¹⁴ <http://legacy.library.ucsf.edu/tid/lve76b00> (last visited June 5, 2018)

28 ¹⁵ <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091> (last visited Apr. 25, 2018).

1 “overwhelming” evidence that tobacco companies intentionally exploited adolescents’
2 vulnerability to imagery by creating advertising emphasizing themes of “independence,
3 adventurousness, sophistication, glamour, athleticism, social inclusion, sexual attractiveness,
4 thinness, popularity, rebelliousness, and being ‘cool.’” *Id.*, ¶ 2674.

5 97. As described further below, Defendants have used the same strategies perfected by
6 big tobacco to pimp the JUUL products to minors and young adults, to great success. A 2017
7 survey reported that 8% of American youth and young adults (aged 15–24 years) used JUUL in
8 the 30 days prior to the survey.¹⁶

9 **A. JUUL’s “Vaporized” Campaign used images and themes that appeal to**
10 **teenagers.**

11 98. To announce the JUUL’s release in June 2015, JUUL launched a multimillion-
12 dollar “Vaporized” advertising campaign that was aimed at a youth audience.¹⁷ As part of the
13 Vaporized campaign, JUUL advertised on a 12-panel display over Times Square. Billboard
14 advertising of cigarettes has for years been unlawful under the Master Settlement Agreement
15 reached between 46 states’ attorneys generals and tobacco companies. JUUL’s 2015 Vaporized
16 campaign featured “young men and women using JUUL, typically dressed for the night.” JUUL
17 also advertised in the front spread of Vice magazine’s cover issue. Vice bills itself as the “#1
18 youth media in the world.”¹⁸ JUUL also implemented a series of pop-up “JUUL bars” in Los
19 Angeles, New York, and the Hamptons, imitating pop-up restaurants and bars typically aimed at
20 attracting young, hip urban consumers.

21 99. JUUL’s Vaporized campaign used images that conveyed the same themes that
22 tobacco companies used to prey on youth, including “independence, adventurousness,
23 sophistication, glamour, — social inclusion, sexual attractiveness, thinness, popularity,

24 ¹⁶ JG Willett et al., *Recognition, use and perceptions of JUUL among youth and young adults*,
25 *Tobacco Control* (2018), doi:10.1136/tobaccocontrol-2018-054273.

26 ¹⁷ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, ADAGE
27 (June 23, 2015), [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/)
28 [campaign/299142/](http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/) (last visited June 5, 2018).

¹⁸ <https://upload-assets.vice.com/files/2016/01/15/1452894236compressed.pdf>.

1 rebelliousness, and being ‘cool.’”



19 100. JUUL’s chief marketing officer, Richard Mumby said “while other campaigns
20 tend to be ‘overtly reliant on just the product,’ its effort features diverse 20-to-30-year-olds using
21 the product.” This reliance on images of young, diverse users was specifically aimed at
22 convincing young people who were not previously cigarette smokers to purchase JUUL products,
23 to make the use of JUUL appear fun and without long-term negative consequences, to position
24 the JUUL e-cigarette as the e-cigarette of choice for young adults, and to introduce youth to the
25 “illicit pleasure” of using the JUUL products.

26 101. Images from JUUL’s Vaporized campaign are attached hereto as Appendix A, and
27 additional images and videos are available at the following link:

28 <http://www.stevenbaillie.com/work/#/new-gallery/>.

102. John Schachter, director of state communications for Campaign for Tobacco-Free

1 Kids, has been cited as expressing “concern about the Juul campaign because of the youth of the
 2 men and women depicted in the campaign, especially when adjoined with the design.” Mr.
 3 Schachter said “the organization has noticed obvious trends that appeal to adolescents in e-
 4 cigarette campaigns such as celebrity endorsements, sponsorships and various flavors.”

5 103. To the extent that the Vaporized advertisements disclosed that JUUL products
 6 contained nicotine, the warnings were in small print against low-contrast backgrounds.

7 104. JUUL further diminished what few warnings it does provide about its products by
 8 suggesting that JUUL pods should be paired with foods and selling its products in limited edition
 9 colors and flavors.



14 **B. JUUL’s Flavored JUULpods**

15 105. The tobacco industry has long known that sweetened cigarettes attracted young
 16 smokers. The FDA banned flavored cigarettes for that reason.

17 106. JUUL sells its JUULpods in a variety of sweetened flavors. The use of flavors that
 18 appeal to youth has a marked effect on e-cigarette adoption by underage “vapers.” A national
 19 survey found that that 81 percent of youth aged 12-17 who had ever used e-cigarettes had used a
 20 flavored e-cigarette the first time they tried the product, and that 85.3 percent of current youth e-
 21 cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5 percent of
 22 current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”
 23 See Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years,
 24 2013-2014,” Journal of the American Medical Association, published online October 26, 2015.
 25 The use of attractive flavors foreseeably increases the risk of nicotine addiction, as traditional
 26 cigarette product designs aimed at reducing the unpleasant characteristics of cigarette smoke (e.g.,
 27 addition of menthol to mask unpleasant flavors) have previously been shown to contribute to the
 28 risk of addiction. See <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>. Another peer-

1 reviewed study concluded that “Young adults who use electronic cigarettes are more than four
2 times as likely to begin using regular cigarettes as their nonvaping peers, a new study has found.”
3 Primack, B.A., et al., “Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use
4 Among Tobacco-Naïve US Young Adults,” Volume 131, Issue 4, Pages 443.e1–443.e9, available
5 at [https://www.amjmed.com/article/S0002-9343\(17\)31185-3/fulltext](https://www.amjmed.com/article/S0002-9343(17)31185-3/fulltext) (last visited April 26, 2017).

6
7 **C. JUUL’s youth-friendly pricing model**

8 107. Tobacco companies for years sold youth-brand cigarettes at lower prices that
9 underage smokers could afford and used discounts and other promotions to ensnare underage
10 smokers.

11 108. A pack of four JUULpods, which, according to JUUL is the equivalent of four
12 packs of cigarettes, cost approximately \$13. By contrast, a single pack of cigarettes in California
13 costs approximately \$8.

14 109. JUUL offers discounts of 15% to purchasers who refer others to purchase
15 JUULpods or JUUL devices from JUUL.

16 110. JUUL also offers a 15% discount on JUULpods to individuals who sign up for
17 JUUL’s subscription service.¹⁹

18 **D. JUUL retail locations**

19 111. On information and belief, many of JUUL’s retail locations are non-age restricted
20 gas stations, which are frequently in close proximity to high schools and colleges. As one
21 example, the following image of JUUL retailers in Berkeley, California shows that the majority
22 of JUUL retailers in the region surround the University of California, Berkeley, and Berkeley
23 High School. The blue circles in the image below mark the location JUUL sellers, and the orange
24 dot represents Berkeley University, which is adjacent to the largest high school in the region,
25 Berkeley High School.

26 112. On information and belief, JUUL’s retail locations provide no signs warning or
27 other indicators concerning the existence, danger, or amount of nicotine in JUUL products.

28 ¹⁹ <https://www.juul.com/auto-ship>.

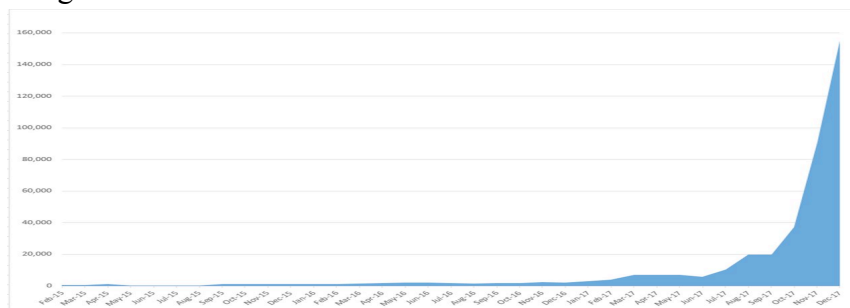
1 113. On information and belief, JUUL products are not sold in pharmacies, which have
2 the lowest rates of underage tobacco sales.

3 **E. JUUL’s social media promotion strategies knowingly reach teenagers**

4 114. On information and belief, JUUL maintains active accounts on most social media
5 platforms, including Instagram, Facebook, and Twitter, where JUUL tweeted nearly 5,000 times
6 in 2017 alone. As of 2016, 76 percent of American teens age 13-17 used Instagram, 66 percent of
7 teens use Facebook, and 44 percent of teens use Twitter.²⁰

8 115. A recent study of JUUL’s growth and marketing explored the growth of JUUL’s
9 sales and presence on social media platforms.²¹

10 116. The study found that JUUL grew nearly 700% yet spent “no recorded money” in
11 the first half of 2017 on major advertising channels, and spent only \$20,000 on business-to-
12 business advertising. By comparison, VUSE, one of JUUL’s competitors, spent \$16 million on
13 television advertisements alone. Despite JUUL’s apparently minimal advertising spend in 2017,
14 the study found a significant increase in JUUL-related tweets in 2017:



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19 117. On Instagram, the study found seven JUUL-related accounts, including
20 DoIt4JUUL and JUUL.girls, which accounted for 4,230 total JUUL-related posts and had more
21 than 270,000 followers.

22
23 118. In addition to JUUL’s explosive growth on individual social media platforms, the
24 study found JUUL products being marketed across social media platforms in an apparently

25
26 ²⁰ <http://apnorc.org/projects/Pages/HTML%20Reports/instagram-and-snapchat-are-most-popular-social-networks-for-teens.aspx>

27 ²¹ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, TOBACCO CONTROL (May 31, 2018),
28 <http://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382>.

1 coordinated fashion, including smaller targeted campaigns and affiliate marketing, all of which
2 caused the authors to question whether JUUL was paying for positive reviews and JUUL-related
3 social media content.

4 119. Though the article could not demonstrate that JUUL paid social media
5 “influencers” or automated twitter accounts (“bots”) to help promote JUUL or its products
6 through social media channels, the authors did cite to a story about a popular YouTube e-cigarette
7 reviewer claiming that JUUL has paid for favorable reviews or other forms of “native” coverage
8 on unrestricted social media platforms.²²

9 120. Some Twitter users have reported what appear to be JUUL bots.²³ Other Twitter
10 users appear to either be bot accounts or native advertisers, in that they have a small number of
11 followers, follow few other users, and post exclusively about JUUL content. See, e.g.,
12 @HenrytheJUUL²⁴

13 121. The lead author of the study concluded that JUUL was “taking advantage” of the
14 reach and accessibility of multiple social media platforms to “target the youth and young adults . .
15 . because there are no restrictions,” on social media advertising.²⁵

16 122. A separate study of e-cigarette advertising on mobile devices found that 74% of
17 total advertising impressions were for JUUL products, and that several of JUUL’s advertisements
18 highlighted JUUL’s high-tech design, featured young people using JUUL products, or featured
19 financial incentives for purchasing JUUL products. [https://www.slideshare.net/YTHorg/mobile-
20 marketing-of-electronic-cigarettes](https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes)

21 **F. JUUL’s websites and subscription services**

22 123. JUUL owns and operates www.juullabs.com and www.juulvapor.com (the “JUUL
23

24 ²² [https://www.vice.com/en_us/article/8xvjm/this-21-year-old-is-making-thousands-a-month-
vaping-on-youtube](https://www.vice.com/en_us/article/8xvjm/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube)

25 ²³ One example of what appear to be JUUL bots in action on Twitter is available at:
26 <https://twitter.com/search?q=juul%20bot&src=typd>.

27 ²⁴ <https://twitter.com/henrythejuul>

28 ²⁵ Laura Kelley, THE WASHINGTON TIMES, *JUUL Sales Among Young People Fueled by Social
Media, Says Study* (June 4, 2018), [https://www.washingtontimes.com/news/2018/jun/4/juul-sales-
among-young-people-fueled-by-social-med/](https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/) (last visited June 4, 2018).

1 Websites”), where it markets, advertises and sells its e-cigarettes and JUULpods.

2 124. The JUUL Websites are a leading online marketing and distribution channel for e-
3 cigarettes. JUUL partners with other online and brick-and-mortar providers to market, advertise
4 and sell, via the JUUL Websites, e-cigarettes.

5 125. When a consumer purchases a JUUL e-cigarette and/or JUULpods utilizing any of
6 the JUUL Websites, he or she first chooses his or her desired e-cigarette style and color and
7 nicotine pod flavor and color. After the consumer has input that information into the JUUL
8 Websites, the JUUL Websites advertise to the consumer different e-cigarette styles and colors
9 and/or a variety of nicotine pod flavors and colors. From Defendants’ advertised e-cigarette and
10 pod styles, consumers select a desired e-cigarette decorated in a style most appealing to the
11 consumer, and/or one or more desired pod flavors, each of which has its own distinctive color.

12 126. The JUUL Websites allow the purchaser to arrange automatic shipping of refill
13 nicotine pods.

14 127. JUUL represents that it uses state-of-the-art age verification for website purchases.
15 But it has not been effective or properly implemented, as numerous underage purchasers have
16 used JUUL’s website to purchase products or obtain warranty service.

17 **VI. Defendants Falsely Market, Advertise and Sell E-Cigarette “Autoship” Services as**
18 **“Cancel Anytime” Service, Without Disclosing the Products’ Highly Addictive**
19 **Nature.**

20 128. Defendants never disclose to consumers that JUUL e-cigarettes and JUULpods are
21 at least as addictive as if not more addictive than traditional cigarettes. Instead, Defendants
22 market the JUUL products as an “alternative to cigarettes,” thereby giving the false impression
23 that they are less addictive than traditional cigarettes and safe to use.

24 129. JUUL also offers “Autoship” as a service that provide “pods at your door and
25 savings in your pocket. 15% off every order. Cancel anytime.”

26 130. While it is true that consumers are not obligated to purchase additional JUULpods,
27 there is no disclosure of the fact that use of the JUUL e-cigarettes and JUULpods is likely to
28 result in nicotine addiction, thereby interfering with the user’s ability to stop purchasing

1 JUULpods. Defendants, in fact, know (and prey upon the fact) that once a consumer begins using
2 JUUL products, they will become addicted to those products and continue to purchase them, often
3 in increasing amounts in order to achieve the same “high” as their tolerance to nicotine increases.
4 Defendants intentionally misrepresent and omit the above information from the initial purchase
5 process (and advertisements) because they know that consumers will have an impaired ability to
6 cease using JUUL e-cigarettes and JUULpods once they are addicted, making their ability to
7 “cancel anytime” illusory.

8 131. The highly addictive nature of the JUUL products also means that the consumers
9 of the JUUL products, including Plaintiffs and Class Members, will continued to suffer economic
10 injury far into the future, as they will have to keep buying additional JUUL products if they want
11 to avoid the physically and mentally difficult effects of nicotine withdrawal. Defendants intend
12 for Plaintiffs and Class Members to suffer this economic injury, which inures to Defendants’
13 benefit, that is, to “hook” their consumers, including children, into becoming long-term or life-
14 long customers.

15 132. Although Defendants contend that they need not disclose these facts because the
16 products are only designed for existing cigarette smokers, and that their products are purportedly
17 safer than regular cigarettes, the contention is belied by Defendants’ own knowledge, marketing
18 plan and intentions, which is to grow a new group of consumers of nicotine products, not just to
19 market to the shrinking number of existing cigarette smokers.

20 **VII. Defendants Misled Class Members, Including Minors, Into Becoming Addicted to**
21 **Nicotine Salts.**

22 133. As discussed above, the Plaintiffs (or the minors they represent) have become
23 addicted to nicotine as a result of using JUUL products. Plaintiffs’ experiences were not isolated
24 incidents. Rather, all of JUUL’s other customers have been identically misled into purchasing
25 JUUL’s addictive nicotine products. Some of them have publicly complained about the
26 undisclosed addictiveness of JUUL’s nicotine products.

27 134. For example, one teen wrote:
28

1 “At [Lawrence Free State High School], underage use of vapes is
2 quite typical. Out of 95 students surveyed, 50% of them said that the
3 illegal use of vape products is very common. Students are able to get
4 their hands on vape products with ease, as there are many effective
5 methods of buying them unlawfully.”

6 “In the past, users could purchase vaping products on the internet
7 without being asked for any identification. That rule has since been
8 altered and all consumers are now required to provide an I.D., but
9 underage users can easily buy fake I.D.’s to avoid this. If minors are
10 slick enough, they can go into vape stores, act of age and not be
11 questioned when buying a device, an anonymous senior said.”

12 . . .

13 “Another attractive characteristic of vaping is the buzz that the user
14 gets after in-haling the substance. It can be described as a short-term
15 head high.”

16 “It’s almost like being drunk—you feel it in your head and you just
17 kind of wobble,” senior Isaiah Jacobs said. “It’s a dizzy feeling. It
18 feels nice.”

19 “The buzz is caused by nicotine which the vape juice contains. To a
20 new user, vaping is an easy way to get a strong high. After continual
21 use, users build up an immunity and must ingest more nicotine to
22 reach their desired state. This is called a nicotine addiction and all
23 consumers, especially minors, are susceptible to this craving
24 according to the U.S. National Library of Medicine. Some students
25 have become habitual users, causing them to spend time and money
26 feeding their habit. Students who vape recognize that many of their
27 peers have an addiction but still choose to partake in the activity,
28 disregarding the risk.”

“Some [people who vape] will admit it,” senior Isaiah Jacobs said.
“You can tell they are addicted when they spend all their money and
time on it, just like people who smoke cigarettes or drink alcohol.”

“Once hooked, users inhale the many toxins that compose vape
juice. Very little research has been conducted on the long-term
effects that vaping has on a person’s body according to
pulmonologist Aman Kahn.”

. . .

“With so little information available, students are unable to make an
informed decision about whether or not to partake in vaping. Until
further research has been conducted, underage users will continue to
consume vape products without understanding the impacts that these
substances can have on their health.”

<https://www.fsfreepressonline.com/features/2018/02/13/too-juul-for-school/> (last visited April 3,
2018).

1 135. A reporter at Kent State University wrote:

2
3 “‘Of course,’ Freed said. ‘Nothing should be going through your
4 lungs but air. Being 21 years old, it’s hard to watch 15-year-olds
5 carry them around. I mostly use my JUUL for a quick buzz, but
6 because that buzz is so short, I find myself using it too often.’”

7 “Senior fashion merchandising major Avery Niernberger expressed
8 concern for the new fad on Kent’s campus.”

9 “‘JUULs are just another ‘trend’ right now unfortunately,’
10 Niernberger said. ‘The scary thing is that since they’re so new, no
11 one truly knows the side effects they will bring to people. And right
12 now my generation loves them, so I can only hope they won’t affect
13 my peers deeply.’”

14 . . .

15 “While traditional cigarette usage has dropped in recent years,
16 newer electronic cigarettes exploded in popularity. A 2016 Surgeon
17 General’s report concerning electronic cigarette use among youth
18 and adults indicated that e-cigarette use among American youth
19 increased 900 percent between 2011 and 2015.”

20 [http://www.kentwired.com/latest_updates/article_637d8f2e-1f49-11e8-a245-
21 87a74d0e50a2.html](http://www.kentwired.com/latest_updates/article_637d8f2e-1f49-11e8-a245-87a74d0e50a2.html) (last visited April 3, 2018).

22 **VIII. Federal Law Governing Marketing of Tobacco Products**

23 136. The FCLAA, enacted by Congress in 1965, prohibits manufacturing, packaging, or
24 importing for sale or distribution any cigarettes whose package fails to bear specified Surgeon
25 General’s warnings. (15 U.S.C. § 1333.) The phrase “ ‘sale or distribution’ includes sampling or
26 any other distribution not for sale.” (Id., § 1332(6).)

27 137. In the Family Smoking Prevention and Tobacco Control Act (Pub.L. No. 111-31,
28 div. A (June 22, 2009) 123 Stat. 1776), Congress specified that the FDA’s authority did not
include the authority to ban all cigarettes. (21 U.S.C. § 387g(d)(3).) At the same time, Congress
specified that nothing in that subchapter (with an exception not relevant here) “shall be construed
to limit the authority of a Federal agency (including the Armed Forces), a State or political
subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and
enforce any law, rule, regulation, or other measure with respect to tobacco products that is in
addition to, or more stringent than, requirements established under this subchapter, including a

1 law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession,
2 exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of
3 any age” (21 U.S.C. § 387p(a)(1).)

4 138. The Tobacco Control Act puts in place specific restrictions on marketing tobacco
5 products to children and gives the FDA authority to take further action in the future to protect
6 public health. These provisions ban:

- 7 • sales to minors;
- 8 • vending machine sales;
- 9 • the sale of packages of fewer than 20 cigarettes;
- 10 • tobacco-brand sponsorships of sports and entertainment events or other social or
11 cultural events; and
- 12 • free giveaways of sample cigarettes and brand-name non-tobacco promotional
13 items.

14 139. The FDA has also promulgated rules re Rules for Sales of E-Cigarettes and Other
15 Electronic Nicotine Delivery Systems (ENDS). Some examples of ENDS include e-cigarettes,
16 vape pens, e-hookahs, e-cigars, personal vaporizers, and electronic pipes. The FDA has issued a
17 final rule titled “Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and
18 Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act;
19 Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements
20 for Tobacco Products” (the “Final Rule”). 81 Fed. Reg. 28974 (May 10, 2016) (codified at 21
21 C.F.R. pts. 1100, 1140, 1143). The Final Rule concludes that e-cigarettes are deemed “tobacco
22 products” and fall under the FDA’s authority to regulate tobacco products. See Final Rule, 81
23 Fed. Reg. 28974, 28976. As of the effective date of the Final Rule (August 8, 2016) the newly
24 deemed products, including e-cigarettes, are subject to certain Food, Drug, and Cosmetic Act
25 requirements related to cigarettes and other tobacco products, as well as “additional provisions.”
26 *Id.* These “additional provisions” include a minimum age for purchase requirement, a prohibition
27 (subject to certain conditions) on vending machine sales, and a requirement for health warnings
28 for product packages and advertisements. *Id.*

1 140. The Final Rule imposes a warning label requirement that goes into effect on
2 August 10, 2018. According to the Final Rule, “[p]ackaging and advertising for all newly deemed
3 products other than cigars must display an addictiveness warning that states: ‘WARNING: This
4 product contains nicotine. Nicotine is an addictive chemical.’” Final Rule, 81 Fed. Reg. 28974,
5 28988; see also 21 C.F.R. § 1143.3(a)(1). The FDA mandates that the warnings must appear on at
6 least 30 percent of the two principal display panels of the package, and 20 percent of the area of
7 advertisements. Final Rule, 81 Fed. Reg. 28974, 28988; see also 21 C.F.R. § 1143.3(a)(2), (b).
8 The heading of this part of the regulation is “Minimum Required Warning Statements.” 21 C.F.R.
9 pt. 1143. The FDA has stated that the heading was implemented “in order to clarify that part 1143
10 is not intended to prevent tobacco product manufacturers from including truthful, non-misleading
11 warnings on their products’ packaging or advertisements voluntarily or as a result of FDA
12 guidance.” Final Rule, 81 Fed. Reg. 28974, 28990.

13 141. The Final Rule also addresses preemption. During the comment period, competing
14 comments wanted an explicit statement by the FDA that the Final Rule’s warning requirements
15 did, or did not, preempt state and local warning requirements. See Final Rule, 81 Fed. Reg.
16 28974, 28989. The FDA referred the commenters to 21 U.S.C. § 387. It also stated: “No State or
17 local laws in effect at the close of the public comment period were identified that FDA
18 determined would be preempted by this final rule.” *Id.*

19 142. The following Rules for Sales of E-Cigarettes and Other Electronic Nicotine
20 Delivery Systems (ENDS) apply to e-cigarette sales:

- 21 • Only sell e-cigarettes and other ENDS to customers age 18 and older.
- 22 • Do NOT sell e-cigarettes or other ENDS in a vending machine unless in an adult-
23 only facility.
- 24 • Do NOT give away free samples of e-cigarettes or other ENDS to consumers,
25 including any of their components or parts

26 143. Beginning August 10, 2018, the following rules apply to all “covered tobacco
27 products”:

- 28 • Do NOT sell or distribute e-cigarettes or other ENDS without a health warning

1 statement on the package.

- 2 • Do NOT display advertisements for e-cigarettes or other ENDS without a health
3 warning statement.

4 144. The following are the Rules for Sales of Nicotine Gels:

- 5 • Check photo ID of everyone under age 27 who attempts to purchase nicotine gel.
6 • Only sell nicotine gels to customers age 18 and older.
7 • Do NOT sell nicotine gels in a vending machine unless in an adult-only facility.
8 • Do NOT give away free samples of nicotine gels to consumers, including any of
9 their components or parts

10 145. Beginning August 10, 2018, the following rules apply to sales of nicotine gels:

- 11 • Do NOT sell or distribute nicotine gel without a health warning statement on the
12 package.
13 • Do NOT display advertisements for nicotine gel without a health warning
14 statement.

15 146. The following are the Rules for Sales of Dissolvables:

- 16 • Check photo ID of everyone under age 27 who attempts to purchase dissolvable
17 tobacco products.
18 • Only sell dissolvable tobacco products to customers age 18 and older.
19 • Do NOT sell dissolvable tobacco products in a vending machine unless in an
20 adult-only facility.
21 • Do NOT give away free samples of dissolvable tobacco products to consumer

22 147. Beginning August 10, 2018, the following rules apply to sales of dissolvable
23 tobacco products:

- 24 • Do NOT sell or distribute dissolvable tobacco products without a health warning
25 statement on the package.
26 • Do NOT display advertisements for dissolvable tobacco products without a health
27 warning statement

28 **IX. California Regulations Governing E-Cigarettes**

1 148. Beginning August 10, 2018, the following rules apply to sales of dissolvable
2 tobacco products:

3 149. Section 118950, subdivision (b), provides: “It is unlawful for any person, agent, or
4 employee of a person in the business of selling or distributing smokeless tobacco or cigarettes
5 from engaging in the nonsale distribution of any smokeless tobacco or cigarettes to any person in
6 any public building, park or playground, or on any public sidewalk, street, or other public grounds
7” (Italics added.) A “[p]ublic building, park, playground, sidewalk, street, or other public
8 grounds’ ” is defined as “any structure or outdoor area that is owned, operated, or maintained by
9 any public entity, including,” among other things, “streets and sidewalks, parade grounds, fair
10 grounds, ... [and] public recreational facilities.” (Id., subd. (c)(3).)

11 150. Section 118950, subdivision (f), the so-called safe harbor provision, operates as an
12 exception to the prohibition of section 118950, subdivision (b). Subdivision (f) states that the
13 prohibition on nonsale distribution of tobacco products does not apply to any public property
14 “leased for private functions where minors are denied access by a peace officer or licensed
15 security guard on the premises.”

16 151. Subdivision (d) of section 118950 provides that anyone violating this section is
17 liable for “a civil penalty of not less than two hundred dollars (\$ 200) for one act, five hundred
18 dollars (\$ 500) for two acts, and one thousand dollars (\$ 1,000) for each subsequent act
19 constituting a violation.

20 152. Notwithstanding any other allegation of this Complaint, Plaintiffs do not plead,
21 and hereby disclaim, causes of action under the Food Drug and Cosmetic Act and regulations
22 promulgated there under, nor any other law or regulation that does not provide a private right of
23 action. Plaintiffs provide the legal and regulatory framework only to the extent such laws and
24 regulations have been separately enacted as state law or regulation or provide a predicate basis of
25 liability under the state and common laws cited in the following causes of action.

26 **FRAUDULENT CONCEALMENT ALLEGATIONS**

27 153. Absent discovery, Plaintiffs are unaware of, and unable through reasonable
28 investigation to obtain, the true names and identities of those individuals at JUUL or PAX

1 responsible for disseminating false and misleading marketing materials regarding JUUL e-
2 cigarettes and JUULpods. Defendants necessarily are in possession of all of this information.
3 Plaintiffs' claims arise out of Defendants' fraudulent concealment of material facts concerning
4 the JUUL e-cigarette and Defendants' representations about the JUUL e-cigarettes' nicotine
5 content, potency, benzoic acid content, and physiological effects of JUUL e-cigarettes. To the
6 extent that Plaintiffs' claims arise from Defendants' fraudulent concealment, there is no one
7 document or communication, and no one interaction, upon which Plaintiffs bases their claims.

8 154. Plaintiffs allege that at all relevant times, including specifically at the time they
9 purchased or used JUUL e-cigarettes, Defendants knew that JUUL e-cigarettes' were not safe
10 under any circumstances for non-smokers, and posed a risk of aggravating nicotine addiction in
11 those already addicted to cigarettes. Defendants also knew that JUUL's nicotine solution could
12 deliver more nicotine into the bloodstream than a cigarette, and did so more quickly than a
13 cigarette. Defendants were under a duty to disclose this material information based upon its
14 exclusive knowledge of it, and its concealment of it; and Defendants never disclosed the Defect to
15 Plaintiff or the public at any time or place or in any manner.

16 155. Plaintiffs make the following specific fraud allegations with as much specificity as
17 possible absent access to the information necessarily available only to Defendants:

18 156. *Who:* Defendants actively concealed the nicotine content and nicotine potency of
19 JUUL e-cigarettes from Plaintiffs and Class Members while simultaneously disclosing false or
20 misleading evidence concerning nicotine content. Defendants also actively concealed the benzoic
21 acid content of the JUUL e-cigarettes, while knowing that benzoic acid played a central role in
22 determining the physiological effects of JUUL e-cigarettes. Defendants also manipulated the
23 formulations of JUUL devices and JUULpods in ways that could and would impact their potency
24 and addictiveness, and Defendants did so without notifying Plaintiffs. Plaintiffs are unaware of,
25 and therefore unable to identify, the true names and identities of those specific individuals at
26 JUUL or PAX responsible for such decisions.

27 157. *What:* Defendants knew, or was negligent or reckless in not knowing, that the
28 JUUL e-cigarettes were likely to aggravate nicotine addiction in smokers and posed extreme risks

1 of addiction to children and made misrepresentations about the risks, effects, operation, content,
2 and other attributes of JUUL e-cigarettes.

3 158. *When:* Defendants concealed material information regarding the effect of JUUL e-
4 cigarettes at all times and made representations from the time when the JUUL e-cigarette was
5 announced to this day. Defendants still have not disclosed the truth about JUUL e-cigarettes.
6 Defendants have never taken any action to put any warning labels on JUUL device boxes, JUUL
7 e-cigarette boxes, or JUUL devices, though Defendants are well aware that JUUL use is running
8 rampant among children and teenagers. Defendant has amplified and cemented these
9 misrepresentations in the minds of the public through its unprecedented social media efforts, the
10 full scope of which is not yet fully known.

11 159. *Where:* Defendants concealed material information and made misrepresentations
12 regarding the true nature of JUUL e-cigarettes' nicotine formula on JUUL's websites, interviews
13 with the media, promotional materials, and through social media. Plaintiff is aware of no
14 document, communication, or other place or thing in which Defendants disclose consistent or
15 truthful statements about JUUL e-cigarettes' potency or its actual nicotine content. Such
16 information is not disclosed on JUUL's website or in any marketing materials or advertising
17 materials.

18 160. *How:* Defendants concealed critical information from Plaintiff and Class Members
19 concerning the potency and effects of JUUL use, or made representations about the nicotine
20 content and potency of the JUUL e-cigarettes that were false or misleading. Defendants actively
21 concealed the truth about the real impact of JUUL e-cigarette use from Plaintiffs and Class
22 Members at all times, even though it knew such information would be important to a reasonable
23 consumer, and Defendants promised in JUUL's marketing materials that the JUUL e-cigarettes
24 have qualities that they do not have.

25 161. *Why:* Defendants actively concealed material information about the potency of
26 JUUL e-cigarettes for the purpose of inducing Plaintiffs and Class Members to purchase and/or
27 use JUUL e-cigarettes, rather than purchasing or leasing competing e-cigarettes or nicotine
28 cessation products, such as nicotine gum. Had Defendants disclosed the truth—that the JUUL e-

1 cigarette was, by design, more physically addictive than cigarettes, for example in its
2 advertisements or other materials or communications, Plaintiffs and Class Members (all
3 reasonable consumers) would have been aware of this fact, and would not have bought JUUL e-
4 cigarettes or would have used them in a way that posed fewer risks of creating or aggravating
5 nicotine addiction.

6 **CLASS ALLEGATIONS**

7 162. Plaintiffs bring this action against Defendants on behalf of themselves and all
8 others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil
9 Procedure. The proposed class is defined as follows:

10 All persons who purchased, in the United States, a JUUL e-cigarette and/or JUULpods.

11 163. Plaintiffs further propose the following subclass:

12 All class member who at the time of their purchase were under the age of 18.

13 164. Plaintiffs reserve the right to propose further subclasses of the above class and
14 subclass, or to narrow the above class and subclass definitions, to be limited to persons who, prior
15 to their purchases of Juul products, were nonsmokers.

16 165. Plaintiffs further reserve the right to propose further subclasses of the above
17 classes and subclasses, or to narrow the above class and subclass definitions, to be limited to
18 persons who reside in or made their purchases in one or more identified states, including without
19 limitation the states of residence of the plaintiffs named herein and states whose laws are
20 materially the same.

21 166. Plaintiffs also reserve the right to propose additional or further subclasses or
22 narrowing of the above class and subclass definitions, based on the evidence adduced in
23 discovery, or as necessary and appropriate.

24 167. This action has been brought and may properly be maintained as a class action
25 against the Defendants pursuant to the provisions of Rule 23 of the Federal Rules of Civil
26 Procedure because there is a well-defined community of interest in the litigation and the proposed
27 classes are easily ascertainable.

28 168. Numerosity: Plaintiffs do not know the exact size of the Classes and the

1 Subclasses, but they are each composed of more than 500 persons. The persons in the Classes are
2 so numerous that the joinder of all such persons is impracticable and the disposition of their
3 claims in a class action rather than in individual actions will benefit the parties and the courts.

4 169. Common Questions Predominate: This action involves common questions of law
5 and fact to the potential classes because each Class Member's claim derives from the false,
6 deceptive, unlawful and/or unfair statements and omissions that led Class Members to believe
7 that: (a) JUUL E-cigarettes and JUULpods were less addictive than traditional cigarettes; (b)
8 JUUL products could be used without negative health consequences, and (c) they would be able
9 to stop using and purchasing JUUL products "anytime." Class Member claims also derive from
10 common questions of law and fact related to JUUL products falsely advertised as non-addictive.
11 The common questions of law and fact predominate over individual questions, as proof of a
12 common or single set of facts will establish the right of each Class Member to recover. Among
13 the questions of law and fact common to the class are:

- 14 a. Whether Defendants' advertising and marketing regarding the JUUL E-cigarette
15 and JUULpods were likely to deceive Class Members or were unfair;
 - 16 b. Whether Defendants intentionally omitted material information from their
17 advertising and marketing materials;
 - 18 c. Whether Defendants unfairly, unlawfully and/or deceptively induced Class
19 Members to purchase JUUL E-cigarettes and/or JUULpods using the promise that
20 they would be able to stop purchasing JUULpods "anytime";
 - 21 d. Whether Defendants engaged in the alleged conduct knowingly, recklessly, or
22 negligently;
 - 23 e. The amount of revenues and profits Defendants received and/or the amount of
24 monies or other obligations lost by Class Members as a result of such wrongdoing;
 - 25 f. Whether Class Members are entitled to injunctive and other equitable relief and, if
26 so, what is the nature of such relief; and
- 27
28

1 g. Whether Class Members are entitled to payment of actual, incidental,
2 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
3 what is the nature of such relief

4 170. Typicality: Plaintiffs' claims are typical of the class because each Plaintiff was
5 misled into: (a) purchasing a highly addictive nicotine product due to Defendants' false
6 advertising and unfair business practices; and/or (b) substituting addiction to vaporized nicotine
7 salts in place of addiction to nicotine from cigarette smoking. Thus, Plaintiffs and Class Members
8 sustained the same injuries and damages arising out of Defendants' conduct in violation of the
9 law. The injuries and damages of each Class Member were caused directly by Defendants'
10 wrongful conduct in violation of law as alleged.

11 171. Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class
12 Members because it is in their best interest to prosecute the claims alleged herein to obtain full
13 compensation due to them for the unfair and illegal conduct of which they complain. Plaintiffs
14 also has no interests that are in conflict with or antagonistic to the interests of Class Members.
15 Plaintiffs have retained highly competent and experienced class action attorneys to represent their
16 interests and that of the Classes. No conflict of interest exists between Plaintiffs and Class
17 Members hereby, because all questions of law and fact regarding liability of Defendants are
18 common to Class Members and predominate over any individual issues that may exist, such that
19 by prevailing on his/her own claim, Plaintiffs necessarily will establish Defendants' liability to all
20 Class Members. Plaintiffs and their counsel have the necessary financial resources to adequately
21 and vigorously litigate this class action, and Plaintiffs and their counsel are aware of their
22 fiduciary responsibilities to the Class Members and are determined to diligently discharge those
23 duties by vigorously seeking the maximum possible recovery for Class Members.

24 172. Superiority: There is no plain, speedy, or adequate remedy other than by
25 maintenance of this class action. The prosecution of individual remedies by members of the
26 Classes will tend to establish inconsistent standards of conduct for the Defendants and result in
27 the impairment of Class Members' rights and the disposition of their interests through actions to
28 which they were not parties. Class action treatment will permit a large number of similarly

1 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
2 and without the unnecessary duplication of effort and expense that numerous individual actions
3 would engender. Furthermore, as the damages suffered by each individual Class Member may be
4 relatively small, the expenses and burden of individual litigation would make it difficult or
5 impossible for individual members of the class to redress the wrongs done to them, while an
6 important public interest will be served by addressing the matter as a class action.

7 173. Nexus to California: The State of California has a special interest in regulating the
8 affairs of corporations that do business here and persons who live here. Defendants JUUL and
9 PAX are both based in San Francisco, California. Defendants designed and implemented the
10 unlawful and deceptive conduct described in this Complaint from their headquarters in the San
11 Francisco Bay Area. Additionally, Defendants have more JUUL e-cigarette consumers in
12 California than in any other state. Accordingly, there is a substantial nexus between Defendants'
13 unlawful behavior and California such that the California courts should take cognizance of this
14 action on behalf of a class of individuals who reside in California and the United States.

15 174. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
16 management of this action that would preclude its maintenance as a class action.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **(False Advertising)**

20 175. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
21 Action Complaint as if set forth herein.

22 176. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
23 preceding the filing of the Class Action Complaint, Defendants have made untrue, false,
24 deceptive and/or misleading statements in connection with the advertising and marketing of
25 JUUL e-cigarettes and JUULpods in California and throughout the United States.

26 177. Defendants have made false representations and statements that led reasonable
27 consumers to believe that JUUL e-cigarettes and JUULpods are a less addictive alternative to
28 cigarettes, deliver less nicotine than cigarettes, and are a no more addictive alternative to

1 cigarettes. Defendants additionally withheld material information from consumers regarding the
2 addictiveness and other negative health consequences of JUUL e-cigarettes and JUULpods.

3 178. Defendants knowingly engaged in these false, misleading and deceptive
4 advertising and marketing practices to increase their profits. Accordingly, Defendants have
5 engaged in false advertising, as defined and prohibited by the California False Advertising Law,
6 California Civil Code §§ 17500, *et seq.*, Massachusetts Consumer Protection Act, Mass. Gen.
7 Laws Ann. Ch. 93A, §§ 1, *et seq.*; Michigan Consumer Protection Act, Mich. Comp. Laws Ann.
8 §§ 445.903, *et seq.*; New Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1, *et seq.*;
9 Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. §§ 201-2
10 & 201-3, *et seq.*, New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*,
11 Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.020, *et seq.*, and the laws
12 of all other states and the District of Columbia.

13 179. Plaintiffs, and those similarly situated, relied to their detriment on Defendants'
14 false, misleading and deceptive advertising and marketing practices. Had Plaintiffs, and those
15 similarly situated, been adequately informed and not intentionally deceived by Defendants, they
16 would have acted differently by not purchasing a JUUL E-cigarette and JUULpods.

17 180. The aforementioned practices, which Defendants have used, and continue to use,
18 to their significant financial gain, also constitute unlawful competition and provide an unlawful
19 advantage over Defendants' competitors as well as injury to the general public.

20 181. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
21 of monies, as necessary and according to proof, to restore any and all monies acquired by
22 Defendants from Plaintiffs, the general public, and/or those similarly situated by means of the
23 false, misleading and deceptive advertising and marketing practices complained of herein, plus
24 interest thereon.

25 182. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction
26 to prohibit Defendants from continuing to engage in the false, misleading and deceptive
27 advertising and marketing practices complained of herein. The acts complained of herein
28 occurred, at least in part, within three (3) years preceding the filing of this Class Action

1 Complaint.

2 183. Further Plaintiffs seek, on behalf of themselves and those similarly situated, and
3 are entitled to receive, both a declaration that the above-described practices constitute false,
4 misleading and deceptive advertising, and injunctive relief restraining Defendants from engaging
5 in any such advertising and marketing practices in the future. Such misconduct by Defendants,
6 unless and until enjoined and restrained by order of this Court, will continue to cause injury in
7 fact to the general public and the loss of money and property in that the Defendants will continue
8 to violate the laws of California, unless specifically ordered to comply with the same. This
9 expectation of future violations will require current and future consumers to repeatedly and
10 continuously seek legal redress in order to recover monies paid to Defendants to which
11 Defendants are not entitled. Plaintiffs, those similarly situated, and/or other consumers
12 nationwide have no other adequate remedy at law to ensure future compliance with the California
13 Business and Professions Code alleged to have been violated herein.

14 184. As a direct and proximate result of such actions, Plaintiffs, and those similarly
15 situated, have suffered, and continue to suffer, injury in fact and have lost money and/or property
16 as a result of such false, deceptive and misleading advertising in an amount which will be proven
17 at trial, but which is in excess of the jurisdictional minimum of this Court..

18 **SECOND CAUSE OF ACTION**

19 **(Violation of the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, and**
20 **similar laws of other states)**

21 185. Plaintiffs reallege and incorporate the above paragraphs of this Class Action
22 Complaint as if set forth herein.

23 186. This cause of action is brought on behalf of the Class and each state Subclass.

24 187. Defendants' actions, representations and conduct have violated, and continue to
25 violate the CLRA and similar laws of other states, because they extend to transactions that are
26 intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

27 188. Plaintiffs, and those similarly situated, are "consumers" as defined in Cal. Civ.
28 Code § 1761(d), "persons" as defined in Mass. Gen. Laws Ann. Ch. 93A, §§ 1(a), and similarly

1 defined persons as defined under the Michigan Consumer Protection Act, Mich. Comp. Laws
2 Ann. §§ 445.903, *et seq.*; New Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1, *et seq.*;
3 Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. §§ 201-2
4 & 201-3, *et seq.*, New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*,
5 Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.020, *et seq.*, and the laws
6 of all other states and the District of Columbia.

7 189. The JUUL e-cigarettes and JUULpods that Plaintiffs, and those similarly situated,
8 purchased from Defendants were “goods” within the meaning of California Civil Code § 1761
9 and similar laws of other states. Additionally, the provision of “Autoship” subscriptions for
10 delivery of JUULpod nicotine salt cartridges that Plaintiffs, and those similarly situated,
11 purchased from Defendants were “services” within the meaning of California Civil Code § 1761
12 and similar laws of other states.

13 190. Defendants’ acts and practices constitute improper representations that the goods
14 or services that they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
15 quantities, which they do not have, in violation of CLRA §1770(a)(5) and other similar state laws.
16 As detailed above, Defendants misrepresented the nicotine content of JUUL e-cigarettes and the
17 nicotine delivery of JUUL e-cigarettes. Defendants’ advertisements indicated that JUUL
18 cigarettes were beneficial as a means of smoking cessation, when in fact JUUL e-cigarettes can
19 worsen nicotine addiction of smokers, making it more likely that purchasers smoke in the future.

20 191. In violation of California Civil Code §1770(a)(7) and similar laws of other states,
21 Defendants’ acts and practices constitute improper representations that the goods or services that
22 they sell are of a particular standard, quality, or grade, or that goods are of a particular style or
23 model, when they were not.

24 192. In violation of California Civil Code §1770(a)(9), Defendants’ advertised goods or
25 services with intent not to sell them as advertised.

26 193. In violation of California Civil Code §1770(a)(14) and similar laws of other states,
27 Defendants’ acts and practices constitute improper representations that a transaction confers or
28 involves rights, remedies, or obligations which it does not have or involve, or which are

1 prohibited by law. With respect to underage Plaintiffs, Defendants' advertising materials on its
2 website and through social media networks also violated the CLRA and provisions of other
3 states' laws because Defendants knew or should have known that its advertising and marketing
4 materials would persuade youth that JUUL e-cigarette use conferred benefits that it did not
5 confer.

6 194. In violation of California Civil Code §1770(a)(16) and similar laws of other states,
7 Defendants' acts and practices constitute improper representations that the subject of a transaction
8 has been supplied in accordance with a previous representation when it has not. Specifically,
9 Defendants' acts and practices led consumers to falsely believe that: (a) JUUL E-cigarettes and
10 JUULpods delivered less nicotine, or the same amount of nicotine, as traditional cigarettes; (b)
11 JUUL were less addictive than combustible cigarettes; and (c) Plaintiffs and Class Members
12 would be able to stop using and purchasing JUUL products "anytime" when Defendants knew
13 that to be false.

14 195. In violation of California Civil Code §§ 1770(a)(5), (7), and (9), and similar
15 provisions of other state laws, Defendants omitted, suppressed, and concealed the material fact
16 that JUULpods nicotine formulation was designed to be more potent in terms of the rate and
17 amount of nicotine delivered into the blood than all or most cigarettes.

18 196. Plaintiffs request, on behalf of themselves and those similarly situated, that this
19 Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices
20 alleged herein pursuant to California Civil Code § 1780(a)(2) and similar laws of other states. If
21 Defendants are not restrained from engaging in these types of practices in the future, Plaintiffs,
22 and those similarly situated, will continue to suffer harm.

23 197. Pursuant to California Civil Code § 1780(a)(3) and similar laws of other states,
24 Plaintiffs, Plaintiffs seek compensatory damages, punitive damages and restitution of any ill-
25 gotten gains due to Defendants' acts and practices.

26 198. Plaintiffs also seek an award of costs and reasonable attorneys' fees pursuant to
27 California Civil Code § 1780(d) and similar laws of other states.

28 199. Plaintiffs request, on behalf of themselves and those similarly situated, that this

1 Court enjoin Defendants from continuing to employ the unlawful methods, acts and practices
2 alleged herein pursuant to California Civil Code § 1780(a)(2) and similar laws of other states. If
3 Defendants are not restrained from engaging in these types of practices in the future, Plaintiffs,
4 and those similarly situated, will continue to suffer harm.

5 200. Plaintiffs further request an order requiring Defendants to affirmatively correct the
6 misrepresentations about Defendants' JUUL e-cigarettes and JUULpods that Defendants have
7 distributed through their own advertisements, marketing materials, and extensive social media
8 campaigns.

9 **THIRD CAUSE OF ACTION**

10 **(Fraud)**

11 201. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
12 Action Complaint as if set forth herein.

13 202. On the dates set forth in this Complaint, and within the three years prior to the
14 filing of this lawsuit, Defendants fraudulently and deceptively sold JUUL products to Plaintiffs as
15 non-addictive nicotine delivery systems, or less addictive nicotine products than cigarettes, when
16 Defendants knew it to be untrue. On those same dates, Defendants fraudulently and deceptively
17 failed to disclose to Plaintiffs that the JUUL nicotine salts they were purchasing were highly
18 addictive in nature, making it extremely difficult for Plaintiffs to cease purchasing JUULpod
19 refills. On the same dates, Defendants fraudulently and deceptively informed Plaintiffs that they
20 would be able to cease purchasing JUULpods "anytime," when they knew it to be untrue. On
21 those same dates, Defendants fraudulently and deceptively failed to disclose to Plaintiff that the
22 nicotine benzoate salts in JUULpods delivered nicotine to blood plasma at a rate four times higher
23 than a smoked Pall Mall cigarette, which was likely to make the nicotine addiction associated
24 with JUUL products stronger and more severe than that associated with cigarettes or other E-
25 cigarette products. Defendants made each of these misrepresentations and omissions to those
26 similarly situated as Plaintiffs.

27 203. Each of these misrepresentations and omissions were material at the time they
28 were made. In particular, each of the misrepresentations and omissions concerned material facts

1 that were essential to the analysis undertaken by Plaintiffs, and those similarly situated, as to
2 whether to purchase a JUUL E-cigarette and JUULpod. Defendants had a fiduciary duty to
3 accurately provide this information to Plaintiffs, and those similarly situated. In not so informing
4 Plaintiffs, and those similarly situated, Defendants breached their duty to each of them.
5 Defendants also gained financially from, and as a result of, their breach.

6 204. Plaintiffs, and those similarly situated, relied to their detriment on Defendants'
7 fraudulent omissions. Had Plaintiffs, and those similarly situated, been adequately informed and
8 not intentionally deceived by Defendants, they would have acted differently by, without
9 limitation: (1) not purchasing a JUUL E-cigarette or JUULpod; (2) not subscribing to Defendants'
10 "autoship" service; or (3) purchasing and using different, less addictive E-cigarettes and nicotine
11 pods.

12 205. By and through such fraud, deceit, misrepresentations and/or omissions,
13 Defendants intended to induce Plaintiffs, and those similarly situated, to alter their positions to
14 their detriment.

15 206. Plaintiffs, and those similarly situated, justifiably and reasonably relied on
16 Defendants' misrepresentations and/or omissions, and, accordingly, were damaged by the
17 Defendants.

18 207. As a direct and proximate result of Defendants' misrepresentations and/or
19 omissions, Plaintiffs, and those similarly situated, have suffered damages in an amount equal to:
20 (a) the amount that Defendants charged them; and (b) the amount they paid in excess of what they
21 would have paid for a less addictive e-cigarette and refill cartridges containing nicotine in a non-
22 salt formulation.

23 208. Defendants' conduct as described herein was willful and malicious and was
24 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
25 and harm to Plaintiff, and those similarly situated.

26 **FOURTH CAUSE OF ACTION**

27 **(Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200.**

28 **Massachusetts Consumer Protection Act, Mass. Gen. Laws Ann. Ch. 93A, §§ 1, et seq.;**

1 **Michigan Consumer Protection Act, Mich. Comp. Laws Ann. §§ 445.903, *et seq.*; New**
2 **Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1, *et seq.*; Pennsylvania Unfair**
3 **Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. §§ 201-2 & 201-3, *et seq.*,**
4 **New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*, Washington**
5 **Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.020, *et seq.*, and the laws of all**
6 **other states and the District of Columbia)**

7 209. Plaintiffs reallege and incorporate by reference the above paragraphs of this Class
8 Action Complaint as if set forth herein.

9 210. Within four (4) years preceding the filing of this Class Action Complaint, and at
10 all times alleged herein, Defendants have engaged, and continue to engage, in unfair, unlawful
11 and deceptive trade practices in California by engaging in the unfair, unlawful, and deceptive
12 business practices outlined in this Class Action Complaint. In particular, Defendants have
13 knowingly and willfully engaged, and continue to engage in, unfair, unlawful and deceptive trade
14 practices by, without limitation:

- 15 a. developing and marketing a product that contained nicotine levels far in excess of
16 what smokers need to comfortably switch from cigarettes, with the intention of
17 creating and fostering long-term addiction to JUUL products;
- 18 b. falsely and deceptively marketing, advertising and selling JUUL e-cigarettes and
19 JUULpods by misrepresenting their nicotine content, nicotine pharmacokinetics,
20 and suitability as an “alternative” to cigarettes, when in fact, JUUL is likely to
21 aggravate nicotine addiction;
- 22 c. falsely and deceptively marketing, advertising and selling JUUL’s “autoship”
23 service for use in California as something consumers could cancel “anytime”
24 without disclosing to consumers how addiction associated with use of JUUL e-
25 cigarettes would interfere with their ability to cancel the JUULpod subscription;
- 26 d. creating advertising that lured underage non-smokers into using JUUL e-
27 cigarettes, and disseminating that advertising through unregulated social media
28 platforms commonly used by most youth in the United States;

- 1 e. setting the price of JUULpods at an artificially low price that is intended to and
2 does attract underage users to purchase JUUL products;
- 3 f. violating California False Advertising Law, California Business & Professions
4 Code, § 17500, et seq., violating the California Consumer Legal Remedies Act,
5 California Civil Code, § 1750, et seq., breaching implied and express warranties,
6 violating prohibitions on unjust enrichment; and
- 7 g. violating other legal standards set forth above.

8 211. Plaintiffs, and those similarly situated, relied to their detriment on Defendants'
9 unfair, unlawful, and deceptive business practices. Had Plaintiff, and those similarly situated,
10 been adequately informed rather than intentionally deceived by Defendants, they would have
11 acted differently by, without limitation: (1) not purchasing a JUUL E-cigarette or JUULpod;
12 (2) not subscribing to Defendants' "autoship" service; or (3) purchasing and using different, less
13 addictive e-cigarettes or e-cigarette liquids.

14 212. Defendants engaged, and continue to engage, in these unfair practices to increase
15 their profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and
16 prohibited the California Business and Professions Code, §§ 17200, et seq.; Massachusetts
17 Consumer Protection Act, Mass. Gen. Laws Ann. Ch. 93A, §§ 1, et seq.; Michigan Consumer
18 Protection Act, Mich. Comp. Laws Ann. §§ 445.903, et seq.; New Jersey Consumer Protection
19 Act, N.J. Stat. Ann. § 56:8-1, et seq.; Pennsylvania Unfair Trade Practices and Consumer
20 Protection Law, 73 Pa. Cons. Stat. §§ 201-2 & 201-3, et seq., New York General Business Law,
21 N.Y. Gen. Bus. Law §§ 349, et seq., Washington Consumer Protection Act, Wash. Rev. Code
22 Ann. §§ 19.86.020, et seq., and the laws of all other states and the District of Columbia.

23 213. The aforementioned practices, which Defendants have used, and continue to use,
24 to their significant financial gain, also constitute unlawful competition and provide an unlawful
25 advantage over Defendants' competitors as well as injury to the general public.

26 214. Plaintiffs seek, on behalf of themselves and of those similarly situated, full
27 restitution of monies, as necessary and according to proof, to restore any and all monies acquired
28 by Defendants from Plaintiffs, the general public, and/or those similarly situated by means of the

1 230. Defendants were aware that the JUUL devices, when used in conjunction with the
2 JUUL pods, had potential risks that were known and knowable in light of scientific and medical
3 knowledge that was generally accepted in the scientific community at the time of design,
4 manufacture, distribution and sale of JUUL devices and JUUL pods.

5 231. The use of JUUL devices and JUUL pods presented a substantial danger of
6 causing nicotine addiction when a JUUL device was used or misused with a JUUL pod in an
7 intended or reasonably foreseeable way.

8 232. Plaintiffs and their children would not have recognized the potential risks of using
9 a JUUL device with a JUUL pod because Defendants intentionally downplayed, misrepresented,
10 or failed to warn of the risks of nicotine addiction that the JUUL device and JUUL pods posed.

11 233. Defendants failed to adequately warn or instruct foreseeable users of JUUL
12 devices and JUUL pods of the risks of nicotine addiction that their products posed.

13 234. Plaintiffs, and the children of Plaintiffs identified above, were harmed by
14 Defendants' failure to warn.

15 235. Defendants' lack of sufficient instructions or warnings were a substantial factor in
16 causing harm to Plaintiffs and the children of Plaintiffs identified above.

17 **SEVENTH CAUSE OF ACTION**

18 **(Strict Liability – Design Defect)**

19 236. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

20 237. This claim is brought by Plaintiffs on behalf of the Class and Subclasses.

21 238. Defendants designed, engineered, developed, manufactured, fabricated, assembled,
22 equipped, tested or failed to test, inspected or failed to inspect, labeled, advertised, promoted,
23 marketed, supplied, distributed, wholesaled, and sold the JUUL devices and JUUL pods, which
24 were intended by Defendants to be used as a method of ingesting nicotine and the other
25 aerosolized constituents of JUUL's nicotine solution.

26 239. Defendants knew that JUUL devices and JUUL pods were to be purchased and
27 used without inspection for defects by Plaintiffs and the general public.

28 240. Defendants designed the JUUL e-cigarettes defectively, causing it to fail to

1 perform as safely as an ordinary consumer would expect when used in an intended or reasonably
2 foreseeable manner.

3 241. The JUUL device in conjunction with the JUUL pods did not perform as safely as
4 an ordinary consumer would have expected it to perform when used or misused in an intended or
5 reasonably foreseeable way.

6 242. The risks inherent in the design of the JUUL device and JUUL pods outweigh
7 significantly any benefits of such design.

8 243. Plaintiffs were not aware of the aforementioned defects at any time prior to recent
9 revelations regarding problems with JUUL products and devices.

10 244. Plaintiffs and Class Members suffered harm as a result, in the form of addiction to
11 nicotine or aggravated addiction to nicotine.

12 245. The failure of the JUUL device to perform safely was a substantial factor in
13 causing Plaintiffs' harm.

14 246. As a legal and proximate result of the aforementioned defects of the subject
15 vehicle, Plaintiffs sustained the injuries and damages set forth herein while using the subject
16 JUUL devices and JUUL pods in a reasonably foreseeable manner.

17 247. Plaintiffs are, therefore, entitled to damages in an amount to be proven at the time
18 of trial.

19 **EIGHTH CAUSE OF ACTION**

20 **(Strict Liability – Manufacturing Defect)**

21 248. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

22 249. This claim is brought by Plaintiffs on behalf of the Class and Subclasses.

23 250. In manufacturing the JUULpods, Defendants routinely added more nicotine salt to
24 the JUULpods than represented on the JUULpods labels or Defendants' advertising materials.

25 251. In manufacturing the JUULpods, Defendants routinely added more benzoic acid
26 than the 4% solution specified in the '895 patent, which was the basis of the JUULpods
27 formulation.

28 252. The variations in the nicotine salt content and/or benzoic acid in Defendants'
products caused harm to Plaintiffs and the Class by exacerbating the narcotic effects of

1 Defendants' JUUL e-cigarettes, increasing the risks of nicotine addiction or worsening existing
2 nicotine addictions, causing harm to Plaintiffs and the Class.

3 253. The manufacturing defects in Defendants' products were a substantial cause of
4 Plaintiffs' nicotine addiction or aggravation of their nicotine addiction.

5 **NINTH CAUSE OF ACTION**

6 **(Breach of Implied Warranty of Merchantability)**

7 254. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

8 255. This claim is brought by Plaintiffs on behalf of the Adult Class and Adult
9 Subclasses.

10 256. The Uniform Commercial Code § 2-314 provides that, unless excluded or
11 modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if
12 the seller is a merchant with respect to goods of that kind. To be "merchantable," goods must
13 "run, within the variations permitted by the agreement, of even kind, quality and quantity within
14 each unit and among all units involved," "are adequately contained, packaged, and labeled as the
15 agreement may require," and "conform to the promise or affirmations of fact made on the
16 container or label if any."

17 257. Defendants, through the acts and omissions alleged herein, in the sale, marketing,
18 and promotion of JUUL products impliedly warranted that JUUL e-cigarettes and cigarettes were
19 equivalent in terms of nicotine content, pharmacokinetics, and puff-count.

20 258. Defendants are merchants with respect to the good which were sold to Plaintiff and
21 the Class, and there was an implied warranty that those goods were merchantable.

22 259. Defendants breached the warranty implied

23 260. JUUL e-cigarettes are not fit for their intended purposes of offering an alternative
24 to cigarettes because JUUL e-cigarettes, when used as intended or reasonably foreseeable, worsen
25 or aggravate users' underlying nicotine addiction.

26 **TENTH CAUSE OF ACTION**

27 **(Breach of Express Warranty)**

1 Subclasses.

2 271. As alleged above, Defendants have made misrepresented the pharmacokinetics of
3 JUUL e-cigarettes, the nicotine content of JUULpods, and the role of benzoic acid in JUULpods.

4 272. When making these statements, Defendants were aware that these representations
5 were false or made them without knowledge of their truth or veracity.

6 273. The negligent misrepresentations and omissions made by Defendants, upon which
7 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce, and
8 actually induced, Plaintiffs and all Class members to purchase the products at issue.

9 274. At minimum, Defendants' misrepresentations include misrepresenting the
10 pharmacokinetics of JUUL use, the role of benzoic acid in JUUL's products, and the comparative
11 nicotine content of JUULpods and competing products.

12 275. The negligent misrepresentations and omissions made by Defendants, upon which
13 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce, and
14 actually induced, Plaintiffs and all Class members to purchase the products at issue.

15 276. Plaintiffs would not have purchased JULL e-cigarettes, or would not have
16 purchased the products on the same terms, if the facts Defendants misrepresented had been
17 known to Plaintiffs.

18 277. Plaintiffs and Class members are entitled to damages and other legal and equitable
19 relief as a result.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs prays for judgment as follows:

22 **A. On Causes of Action Numbers 1, 4, and 5 against Defendants and in favor of Plaintiff**
23 **and the other members of the California Subclasses:**

- 24 1. For the greater of actual or compensatory damages according to proof;
25 2. For restitution pursuant to, without limitation, the California Business & Professions Code
26 §§ 17200, et seq. and 17500, et seq.; and
27 3. For injunctive relief pursuant to, without limitation, the California Business & Professions
28 Code §§ 17200, et seq. and 17500, et seq.

B. On Cause of Action Number 2 against Defendants and in favor of Plaintiffs and the other members of the California Subclasses:

1. For restitution and injunctive relief pursuant to, without limitation, California Civil Code §1780;
2. [RESERVED]; and
3. [RESERVED].

C. On Cause of Action Number 3 against Defendants and in favor of Plaintiffs and the other members of the Classes:

1. An award of compensatory damages, the amount of which is to be determined at trial; and
2. An award of punitive damages, the amount of which is to be determined at trial.

D. On all causes of action against Defendants and in favor of Plaintiffs, Classes, California Subclasses, and the general public:

1. For reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and California Code of Civil Procedure § 1021.5;
2. For costs of suit incurred; and
3. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury

Dated: June 12, 2018

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APPENDIX A



JUUL

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STARTER KITS

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The image shows a woman from the chest up, wearing a vibrant, patterned top with teal, pink, and white polka dots and abstract brushstrokes. She is holding a white JUUL e-cigarette in her right hand, which has dark purple nail polish. She is also wearing a gold necklace with a triangular pendant. The background is a solid teal color.

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APPENDIX B



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AVAILABLE WHILE SUPPLIES LAST

LIMITED EDITION
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WARNING: This product contains nicotine. Nicotine is an addictive chemical.