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16 *Bailey Wolters*

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

20 Bailey Wolters, on behalf of himself and
21 all those similarly situated,

22 Plaintiff,

23 v.

24 Swedish Match North America, LLC and
25 Philip Morris International, Inc.,

26 Defendants.

Case No.: '24CV0417 AGS MMP

**CLASS ACTION COMPLAINT
FOR DAMAGES**

- (1) STRICT LIABILITY –
DESIGN DEFECT;**
- (2) STRICT LIABILITY –
FAILURE TO WARN;**
- (3) NEGLIGENCE;**
- (4) FRAUD**

JURY TRIAL DEMANDED

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INTRODUCTION

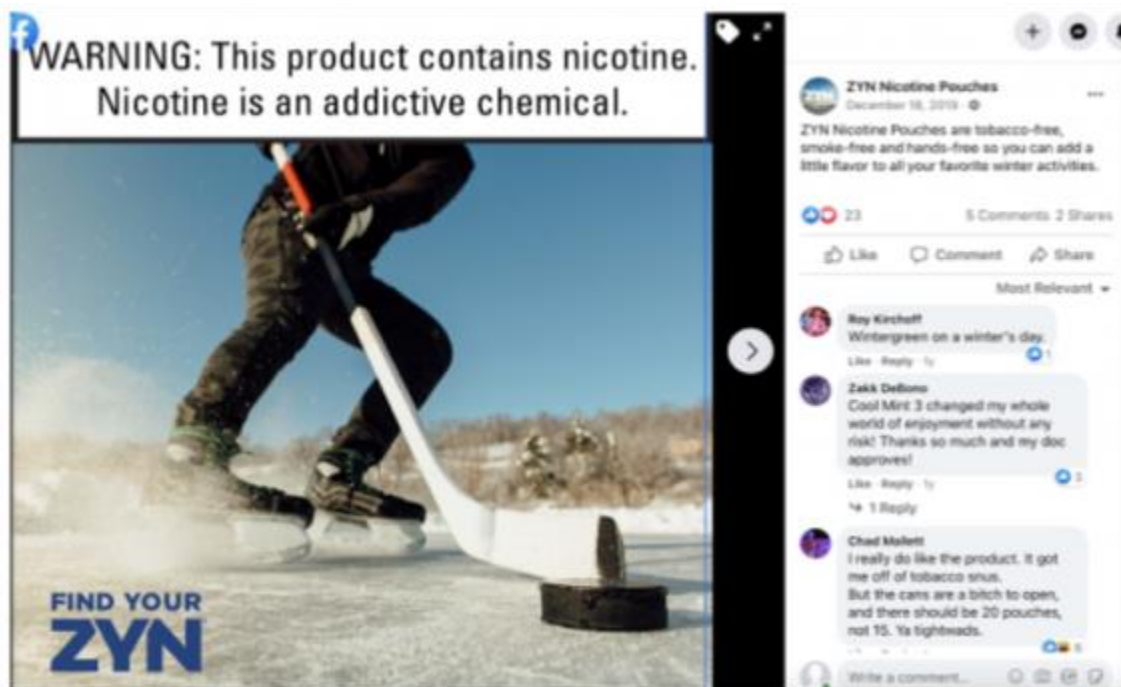
1. Zyn is a small, flavored nicotine pouch that users place in their mouths. Like cigarettes and e-cigarettes, Zyns are designed to create and sustain an addiction to nicotine. Nicotine is the fundamental reason why people use these products. Nicotine is a highly addictive drug, just as addictive as cocaine and heroin. Kids, especially, are vulnerable to nicotine addiction. Nine out of ten nicotine users start by the age of 18, and more than 80% who begin as teens will continue into adulthood. Defendants know this. And who better than Philip Morris International? PMI has, for decades, profited by addicting kids to Marlboro cigarettes, the world’s most popular brand. It is no surprise then that PMI bought the company, Swedish Match, that makes the most popular oral nicotine pouch. Zyn sales are soaring. Zyn makes up about 70% of the nicotine pouch market. PMI shipped 350 million cans of it in 2023 – a 62% growth compared to the year before. PMI expects to earn \$2 Billion in revenue from Zyn in 2024.

2. Zyn is just a recent iteration of the tobacco industry’s historical practice of designing a nicotine delivery device that hooks kids to nicotine while making them think it is not dangerous or harmful. And so Zyn looks like chewing gum, and it comes in gum-like flavors: “wintergreen,” “peppermint,” “cool mint,” “spearmint,” “citrus,” “cinnamon” and others. Flavored nicotine exists to addict kids to it.

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3. Advertisements for Zyn emphasize the themes the industry has long-known resonates with kids, like “Freedom,” “Finding Your Curiosity,” “Never Miss a Moment” and “Find Your Zyn” – a clear play on the word “Zen,” which generally connotes peace and inner calm.



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4. Defendants also benefit tremendously from “Zynfluencers,” – social media influencers who promote Zyn. There are around 30,000 TikToks under the hashtag #Zyn, which has amassed more than 700 million views. Another hashtag, #Zynbabwe, has amassed about 95 million views. Young people are exposed, and according to the CDC, rates of oral nicotine pouch users among middle schoolers and high schoolers are rising. Here are examples of such promotion:

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Find related content

Zynbabwe sells 1.1 billion cans in 2023

Report

freezertarps4333
FREEZERTARPS · 2023-11-30

Hey boys im over here corporate zyn #ched #upperdeckys

original sound - FREEZERTARPS

461 1 35

<https://www.tiktok.com/@freezertarps4333/video>

Comments (1)

rhys
@Conkeyyy my man learnt a trick
2-11 Reply

Log in to comment

Find related content

Report

theratch
Ratch · 2-9

#fyp #viral #you #zynthok #zynfluencer #z

Drops of Jupiter (Tell Me) - Train

14.4K 94 826

<https://www.tiktok.com/@theratch/video/733352>

Comments (94)

Dakota
You still get a nic buzz I haven't been mic since 11th grade 🤔
1w ago Reply
View 4 replies

Matt woods
How u buzzed off zyn
2-9 Reply
View 14 replies

Turner
Y'all still get nic buzzes
2-17 Reply
View 11 replies

Bartman88
Wait till he tries rogue
2-9 Reply
View 6 replies

Cooper Meyer

Log in to comment

Me buzzed 24/7

1 5. In addition to targeting kids through flavors, Defendants use deceptive
2 advertising in describing Zyn as “tobacco-free,” which falsely implies that Zyns are
3 not harmful or there is a reduced risk of addiction. Technically, “tobacco-free”
4 means that no part of the product is derived from the tobacco plant. But Zyn’s
5 nicotine is indeed derived from tobacco.
6
7



23 6. Like too many others, Plaintiff, Bailey Wolters, began using Zyn as a
24 teenager. He was enticed by the flavors and by Defendants’ deceptive advertising.
25 He brings this suit to redress his injuries caused by Zyn.
26
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28

PARTIES, JURISDICTION, AND VENUE

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2
3 7. Plaintiff, Bailey Wolters, is a citizen of the state of California. He began
4 using Zyn when he was a teenager in or about 2019. He is addicted to the nicotine
5 contained in Zyn and has suffered personal injuries as a result of his Zyn use,
6 including addiction and dental issues. Plaintiff was influenced by Zyn’s marketing
7 and advertising, which drove purchases. Plaintiff did not know of Zyn’s
8 unreasonably dangerous characteristics when he began using Zyn. Defendants’
9 wrongful conduct in marketing, promoting, manufacturing, designing, and selling
10 Zyn caused or contributed substantially to causing her injuries.
11
12

13 8. Defendant, Swedish Match North America LLC, is headquartered in
14 Richmond, Virginia, and is a citizen of the state of Virginia.
15

16 9. Defendant, Philip Morris International Inc. is a citizen of the states of
17 Connecticut and Virginia. It is headquartered in Stamford, Connecticut and is
18 incorporated in the state of Virginia.
19

20 10. The Defendants design, manufacture, market, advertise, promote,
21 distribute and sell Zyn in the United States.
22

23 11. This Court has subject matter jurisdiction over this action pursuant to
24 28 U.S.C. § 1332(d) because: (i) there are 100 or more class members; (ii) the
25 aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs;
26 and (iii) at least one Plaintiff and Defendant are citizens of different states.
27

28 12. This Court has personal jurisdiction over the Defendants because they

1 have committed the acts complained of herein in this State and in this District.
2 Defendants have significant contacts with the District such that they are subject to
3 personal jurisdiction of the Court.
4

5 13. This Court has personal jurisdiction over Defendants for the additional
6 reason that they have engaged in substantial, systematic and continuous contacts
7 with this State by, *inter alia*, regularly conducting and soliciting business in this
8 State and this District, deriving substantial revenue from products and/or services
9 provided to persons in this State and this District, and in some circumstance, from
10 products and services provided from persons in this State.
11
12

13 14. A substantial part of the events and omissions giving rise to Plaintiffs'
14 causes of action occurred in the Southern District of California. Pursuant to 28
15 U.S.C. § 1391(a), venue is proper in said District.
16

17 **FACTUAL ALLEGATIONS**

18 15. Zyn is an oral nicotine product (ONP) that comes in a pouch, a small,
19 pillow-like container.
20

21 16. The nicotine in Zyn is derived from tobacco leaf but the pouches do not
22 contain the tobacco leaf itself. Instead, they contain pharmaceutical grade nicotine
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1 salt and other ingredients like flavors.^{1,2}

2
3 17. Zyn works by delivering nicotine orally. The nicotine leaks out of a
4 permeable wrapper and is absorbed into the bloodstream through the oral mucosa,
5 the lining of the mouth.

6
7 18. Once the user places Zyn in her mouth, the nicotine immediately takes
8 effect, increasing heart rate and blood pressure, followed by the release of dopamine
9 and other neurotransmitters. The release of dopamine signals pleasure and keeps
10 users addicted.

11
12 19. Zyn is available in nicotine concentrations of 3mg, 6mg, and 8mg.

13
14 20. Zyn is designed to create and sustain addiction to nicotine. A typical
15 cigarette smoker absorbs 1mg of nicotine into the body per cigarette. Zyn's own
16 research shows that at its 3 mg nicotine concentration, 1.59 mg of nicotine per single
17 pouch is absorbed into the body; at its 6 mg concentration, 3.51 mg of nicotine per
18 pouch is absorbed; and at its 8 mg concentration, 3.79 mg of nicotine per pouch is
19 absorbed.³ Zyn, therefore, delivers a potent dose of nicotine into the bloodstream.

20
21 21. Defendants falsely maintain that Zyn is a smokeless nicotine
22

23 ¹ Ramamurthi, Divya; Chau, Cindy; Zhuojing, Lu; Rughoobur, Ilina; Sanaie, Keon;
24 Krishna, Partha; Jackler, Robert MD. *Marketing of "Tobacco-Free" and "Synthetic*
25 *Nicotine" Products*, White Paper, Stanford Research into the Impact of Tobacco
26 Advertising. March 8, 2022, (available at) [https://tobacco-img.stanford.edu/wp-](https://tobacco-img.stanford.edu/wp-content/uploads/2022/03/13161808/Synthetic-Nicotine-White-Paper-3-8-2022F.pdf)
27 [content/uploads/2022/03/13161808/Synthetic-Nicotine-White-Paper-3-8-](https://tobacco-img.stanford.edu/wp-content/uploads/2022/03/13161808/Synthetic-Nicotine-White-Paper-3-8-2022F.pdf)
28 [2022F.pdf](https://tobacco-img.stanford.edu/wp-content/uploads/2022/03/13161808/Synthetic-Nicotine-White-Paper-3-8-2022F.pdf)

² *Can Nicotine Pouches Like Zyn Harm Your Health?* (available at) [https://www.nytimes.com/2024/01/25/well/live/zyn-nicotine-pouches-health-](https://www.nytimes.com/2024/01/25/well/live/zyn-nicotine-pouches-health-risks.html)
risks.html

³ Lunell, Erik, et al. *Pharmacokinetic Comparison of a Novel Non-tobacco-Based Nicotine Pouch (ZYN) With Conventional, Tobacco-Based Swedish Snus and American Moist Snuff*. Nicotine & Tobacco Research, 2020, 1757-1763.

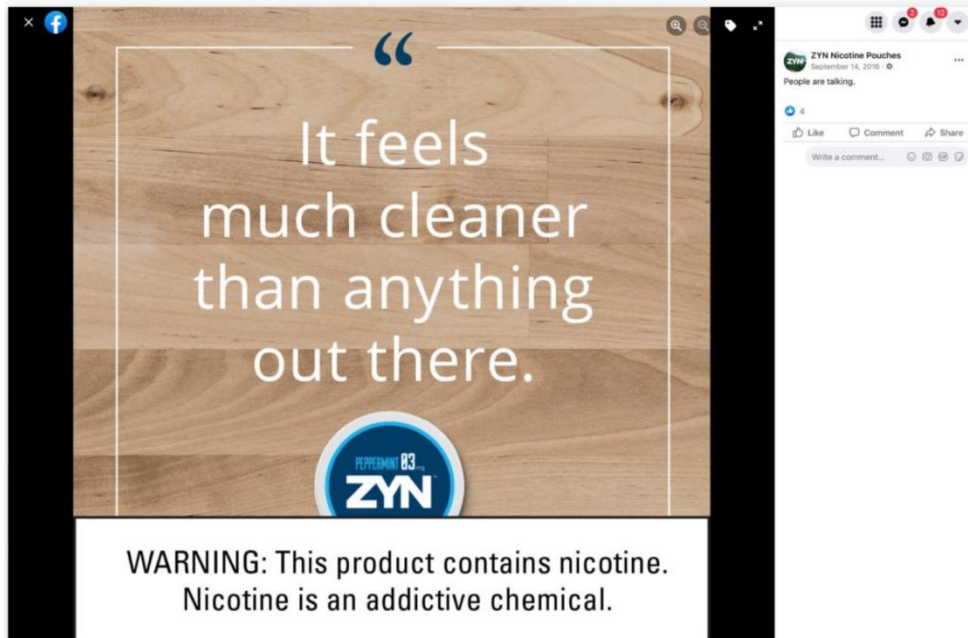
1 replacement therapy from cigarettes or e-cigarettes, yet the nicotine concentration
2 levels in Zyn exceed the levels found in nicotine replacement therapies.⁴ Defendants
3 have not received authorization from the FDA to market its product as a modified
4 risk tobacco product or tobacco cessation device. What’s more, Nicotine pouches
5 are available in a wider variety of flavors compared to FDA approved nicotine
6 replacement gum or lozenges.⁵
7
8

9 22. Defendants also falsely maintain that Zyn is “tobacco-free.” It is not.
10 The nicotine in Zyn is derived from tobacco. Promoting Zyn as “tobacco-free” and
11 like descriptors such as “cleaner than anything out there,” or placing Zyn among
12 produce – as in the Zyn advertisements below – explicitly or implicitly represents
13 that Zyn is less harmful than other nicotine-based products, or that Zyn contains less
14 of a substance, like nicotine, than others, or that Zyn is free of a substance compared
15 to others. All of which is false, misleading, and purposefully targets youth and naïve
16 tobacco users.
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26 ⁴ Majmundar, Anuja, et al. *Nicotine Pouch Sales Trends in the US by Volume and
27 Nicotine Concentration Levels From 2019 to 2022*. JAMA Network Open,
28 Substance Use and Addiction. 2022; 5(11):e2242235.

⁵ Ling, Pamela M. et al, *Tobacco-Derived Nicotine Pouch Brands and Marketing
Messages on Internet and Traditional Media: Content Analysis*. JMIR Formative
Research. 2023; 7:e39146. (available at)
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9978966/>

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23. Defendants have long known that nicotine is the fundamental reason

1 that people persist in using nicotine-based products.

2 24. According to the U.S. Surgeon General, about 90% of nicotine users
3 start by the age of 18, of which, more than 80% will continue using into adulthood.
4 Moreover, and more than 80% of whom choose brands that are most heavily
5 advertised.⁶ Defendants have long known this as well.
6

7
8 25. Defendants’ business model today is exactly how Philip Morris
9 described it long ago:

10 Today’s teenager is tomorrow’s potential regular customer and the
11 overwhelming majority of smokers first begin to smoke while in their
12 teens. . . . The smoking patterns of teen-agers are particularly important
13 to Philip Morris. . . the share index is highest in the youngest group for
14 all Marlboro and Virginia Slims packings. At least a part of the success
15 of Marlboro Red during its most rapid growth period was because it
16 became the brand of choice among teenagers who then stuck with it as
17 they grew older.

18 “Marlboro’s phenomenal growth rate in the past has been attributable in
19 large part to our high market penetration among young smokers ... 15 to
20 19 years old . . . my own data, which includes younger teenagers, shows
21 even higher Marlboro market penetration among 15-17-year-olds.”

22 “The ability to attract new smokers and develop them into a young adult
23 franchise is key to brand development.”⁷

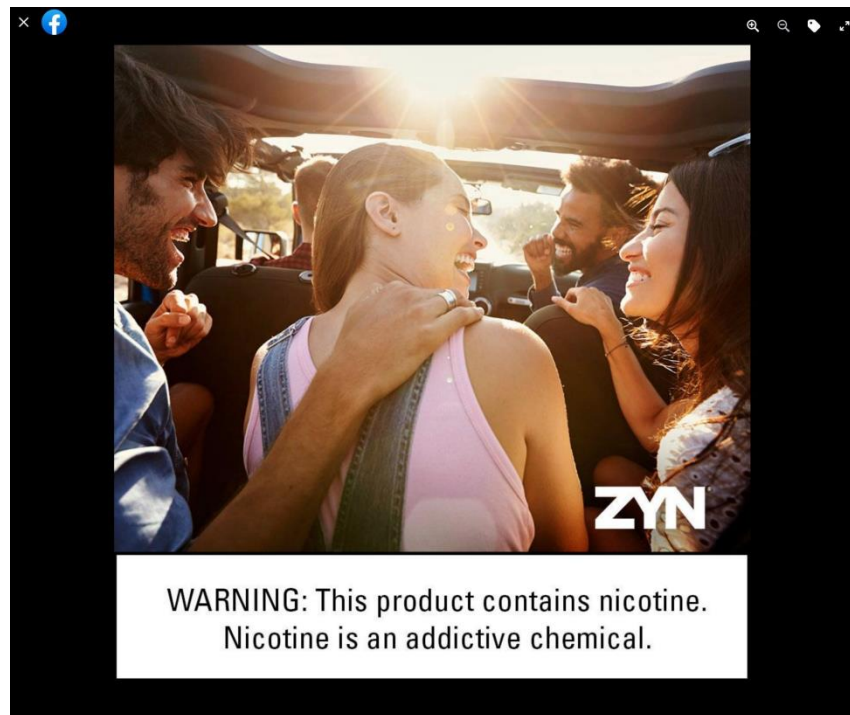
24 26. To “get our share of the youth market,” as Claude Teague of R.J
25 Reynolds, PMI’s one-time conspirator, had said, Defendants employ the same kind

26 ⁶ *Preventing Tobacco Use Among Youths, Surgeon General Fact Sheet*, Surgeon
27 General., [https://www.hhs.gov/surgeongeneral/reports-and-
publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html](https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html) (last
28 visited, Feb. 29, 2024).

⁷ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids
(May 14, 2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

1 of fraudulent and deceptive youth marketing business practices that PMI has been
2 using for decades – the very practices adjudged to violate federal racketeering laws.
3
4 They exploit themes that resonate with teenagers while falsely deny doing so.⁸

5 27. For decades, Philip Morris intentionally exploited adolescents’
6 vulnerability to imagery by creating advertising that utilizes themes of
7 independence, adventurousness, sophistication, glamour, athleticism, social
8 inclusion...and being “cool.”⁹



23 28. Defendants just replaced Marlboro with Zyn.

24 29. One recent study showed that Zyn is gaining popularity among teens
25
26
27

28 ⁸ *USA v. Philip Morris*, 449 F. Supp. 2d 1 (D.D.C. 2006) (J. Kessler).

⁹ *Id.*, 449 F. Supp. 2d at 571.

1 because of Defendants’ increased marketing.¹⁰ The study found that the marketing
2 of oral nicotine products was “remarkably similar to the marketing for popular
3 tobacco products.”¹¹ Participants under 21 felt targeted by Zyn’s marketing. Among
4 the 2,738 study participants who saw the Zyn marketing, 28.1% felt that it targeted
5 “people younger than me.” Those in the 13-20 year age group were more likely to
6 buy Zyn based on its marketing if they perceived the marketing was about good
7 tasting flavors or helping to feel comfortable in social situations.¹²

10 30. Defendants use and promote flavors that are known to entice underage
11 users.¹³ “Taken as a category, mint/menthol/ice flavors were the most popular.
12 These findings mirror studies demonstrating the popularity of flavored tobacco
13 products such as e-cigarettes.”¹⁴

16 31. The reason why Defendants use chewing gum flavors – the effect of
17 why there are present in nicotine products like Zyn – is to capture non-tobacco users
18 through the use manipulative techniques to make a product attractive to the
19 uninitiated. The problem, however, is what lies beneath. Drug addiction. This
20 strategy is in keeping with and expanding on the internal knowledge of the nicotine
21 industry. As Claude Teague stated perfectly in a secret memo “...the non-[cigarette]
22
23
24

25 ¹⁰ Gaiha, Shivani M; Lin, Crystal; Lempert, Lauren K; Halpern-Felsher, Bonnie.
26 *Use, marketing, and appeal of oral nicotine products among adolescents, young
adults, and adults.* Addictive Behaviors 140 (2023) 107632.

27 ¹¹ *Id.*

28 ¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

1 smoker has little or no knowledge of what satisfactions it may offer him and no
2 desire to try it. Instead, we must somehow convince him with wholly irrational
3 reasons that he should try smoking, in the hope that he will for himself then discover
4 the real “satisfactions” obtainable.”¹⁵
5

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11 CONFIDENTIAL

12 RESEARCH PLANNING MEMORANDUM

13 ON

14 THE NATURE OF THE TOBACCO BUSINESS AND THE CRUCIAL

15 ROLE OF NICOTINE THEREIN
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18 desire. We have deliberately played down the role of nicotine, hence the
19 non-smoker has little or no knowledge of what satisfactions it may offer him,
20 and no desire to try it. Instead, we somehow must convince him with wholly
21 irrational reasons that he should try smoking, in the hope that he will for
22 himself then discover the real “satisfactions” obtainable. And, of course, in
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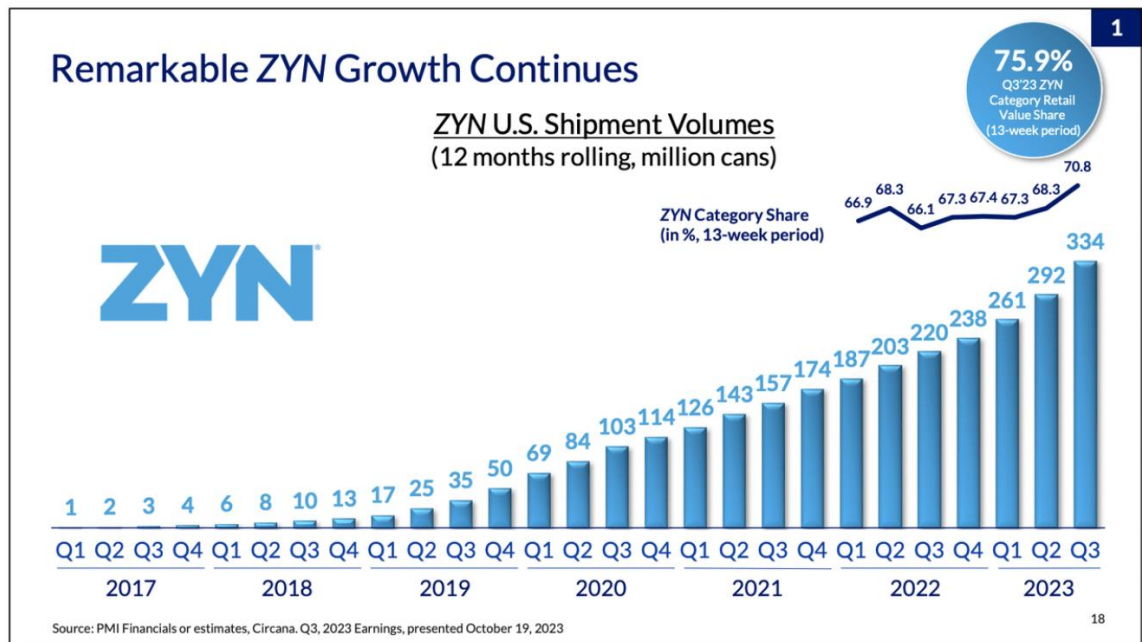
25 32. “Satisfaction” in industry speak means nicotine addiction. The flavors
26
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28 ¹⁵ *Research and Planning Memorandum on The Nature of the Tobacco Business and the
Crucial Role of Nicotine Therein*. 1972. Claude Teague, RJR Confidential.
<https://www.industrydocuments.ucsf.edu/docs/kpkj0191>

1 Defendants use are the “wholly irrational reasons” to use flavored nicotine, which
 2 makes Zyn unreasonably dangerous and defective.
 3

4 33. Defendants’ marketing efforts are paying off. Zyn made its debut in
 5 2014. Since 2016, it has become the overwhelming market leader of oral nicotine
 6 pouches.¹⁶ Nationwide sales of nicotine pouches continued to rise dramatically, as
 7 808 million pouches were sold in the first three months of 2022 alone. Zyn has
 8 accounted for about 60% of those sales.
 9

10 34. PMI bought Zyn for \$16 Billion in 2022. PMI’s marketing efforts and
 11 tobacco sale know-how has fueled growth and secured market dominance as
 12 exhibited in this chart:
 13



16 Ling, Pamela M. et al, *Tobacco-Derived Nicotine Pouch Brands and Marketing*
 17 *Messages on Internet and Traditional Media: Content Analysis*. JMIR Formative
 18 Research. 2023; 7:e39146. (available at)
 19 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9978966/>

1 35. Zyn is unreasonably dangerous, and therefore defective, particularly for
2 youth. Chief among the reasons is that Zyn creates and sustains an addiction to
3 nicotine. Nicotine is a drug that is as addictive as heroin and cocaine.¹⁷
4

5 36. Nicotine fosters addiction through the brain’s “reward” pathway. Both
6 a stimulant and a relaxant, nicotine affects the central nervous system; increases
7 blood pressure, pulse, and metabolic rate; constricts blood vessels of the heart and
8 skin; and causes muscle relaxation. Long-term exposure to nicotine causes
9 upregulation—an increase in the number of these high-affinity nicotinic receptors in
10 the brain. When nicotine binds to these receptors it triggers a series of physiological
11 effects in the user that are perceived as a “buzz” that includes pleasure, happiness,
12 arousal, and relaxation of stress and anxiety. With regular nicotine use, however,
13 these feelings diminish, and the user must consume increasing amounts of nicotine
14 to achieve the same effects.
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18 37. The Surgeon General has explained how nicotine affects the developing
19 brain and can addict kids more easily than adults: “Until about age 25, the brain is
20 still growing. Each time a new memory is created, or a new skill is learned, stronger
21 connections—or synapses—are built between brain cells. Young people’s brains
22 build synapses faster than adult brains. Because addiction is a form of learning,
23 adolescents can get addicted more easily than adults.”¹⁸
24
25
26

27 ¹⁷ See e.g., US Department of Health and Human Services. *Nicotine Addiction: A*
28 *Report of the Surgeon General*. DHHS Publication Number (CDC) 88 -8406, (1988).

¹⁸ *Know The Risks: E-Cigarettes & Young People*, <https://e->
(cont’d)

1 38. Nicotine use during adolescence disrupts the formation of brain circuits
2 that control attention, learning, and susceptibility to addiction. Research has shown
3 early age of nicotine use is correlated with daily use and lifetime
4 nicotine dependence.¹⁹

6 39. Nicotine exposure during adolescence likely has lasting adverse
7 consequences for brain development.²⁰

9 40. Nicotine use can also intensify symptoms of depression and anxiety. It
10 also increases stress levels.²¹

12 41. Overall, with chronic drug use, the brain becomes chemically altered,
13 transforming a user into an addict.²²

14 42. Nicotine poses other health hazards. For example, nicotine use is
15 associated with increased risk of cardiovascular, respiratory, and gastrointestinal
16 disorders. There is decreased immune response and it also poses ill impacts on the
17 reproductive health. It affects cell proliferation, oxidative stress, apoptosis, DNA
18 mutation by various mechanisms which leads to cancer. It also affects the tumor
19

21
22
23 cigarettes.surgeongeneral.gov/
knowtherisks.html.

24 ¹⁹ *Nicotine and the young brain*. Truth Initiative, Jun. 8, 2022. (available at
<https://truthinitiative.org/research-resources/harmful-effects-tobacco/nicotine-and-young-brain>.)

25 ²⁰ U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth*
26 *and Young Adults. A Report of the Surgeon General*. CDC, Office of Smoking and
Health; 2016.

27 ²¹ *Id.*

28 ²² *Neurochemical Effects of Nicotine, Tobacco Dependence and Treatment for*
Smokers with Co-occurring mental illnesses (available at
[https://iprc.indiana.edu/training/courses/Tobacco%20Dependence%20and%20Trea](https://iprc.indiana.edu/training/courses/Tobacco%20Dependence%20and%20Treatment/a_04_05_01.html)
tment/a_04_05_01.html

1 proliferation and metastasis and causes resistance to chemo and radio therapeutic
2 agents.²³
3

4 43. Health experts are also concerned that Zyn causes gum damage and
5 periodontal disease.²⁴ That’s because oral nicotine pouches like Zyn contain toxic
6 chemicals, which can lead to injury of the gums. “Persistent, recurrent injury can
7 end up leading to inflammation, infection, but most importantly cancer.”²⁵
8

9 44. Defendants fail to disclose these health risks. The “warning” saying
10 “This product contains nicotine. Nicotine is an addictive chemical” is entirely
11 insufficient to communicate the true extent of the dangers posed by Zyn.
12

13 **CLASS REPRESENTATION ALLEGATIONS**

14 45. Plaintiff brings this class action against Defendants on behalf of
15 Plaintiff and all others similarly situated, as a class action pursuant to Rule 23 of the
16 Federal Rules of Civil Procedure. The proposed classes are defined as follows:
17

18 All persons who purchased, in the United States, Zyn products;

19 All residents of California who purchased Zyn products;

20 All residents of California who, at the time of their use of Zyn products,
21 were under the age of 18, and who procured and used Zyn products.
22

23
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25
26 ²³ Mishra, Aseem, et al. *Harmful effects of nicotine*. Indian J Med Paediatr Oncol. 2015 Jan-Mar; 36(1): 24-31.

27 ²⁴ *What is Zyn? Doctors share health concerns of the popular and controversial*
28 *nicotine pouch*. February 8, 2024 (available at) <https://www.cbsnews.com/news/zyn-health-impacts-controversial-nicotine-pouch/>

²⁵ *Id.*

1 46. Plaintiffs reserve the right to propose subclasses or modify the above
2 class definitions, based on the evidence adduced in discovery, or as necessary and
3 appropriate.
4

5 47. This action has been brought and may properly be maintained as a class
6 action against the Defendants pursuant to the provisions of Rule 23 of the Federal
7 Rules of Civil Procedure because there is a well-defined community of interest in
8 the litigation and the proposed classes are ascertainable.
9

10 48. Numerosity: Plaintiffs do not know the exact size of the Classes but
11 they are each composed of more than 500 persons. The persons in the Classes are
12 so numerous that joinder of all such persons is impracticable and the disposition of
13 their claims in a class action rather than in individual actions will benefit the parties
14 and the courts.
15
16

17 49. Commonality: There are questions of law or fact common to the Class
18 or Classes that predominate over any questions affecting only individual members,
19 including:
20

- 21 a. Whether Defendants engaged in unlawful, unfair or deceptive
22 business practices, as alleged herein;
- 23 b. Whether Defendants made unlawful and misleading
24 representations or material omissions with respect to Zyn
25 products;
- 26 c. Whether Defendants unlawfully marketed Zyn to minors;
- 27 d. Whether Zyn was defective in design;
- 28 e. Whether Zyn lacked adequate warnings;

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- f. Whether Defendants were negligent;
- g. Whether Plaintiff and class members are entitled to equitable and injunctive relief;
- h. Whether punitive damages should be awarded.

50. Typicality: Plaintiff’s claims are typical of the claims of the class. Plaintiff and class members were injured through Defendants’ substantially uniform misconduct. Plaintiff is advancing the same claims and legal theories on behalf of Plaintiff and class members, and there are no defenses that are unique to Plaintiff’s claims. Plaintiff and class members’ claims are from the same set of operative facts and are based on the same legal theories.

51. Adequacy: Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained competent and capable attorneys experienced in complex and class action litigation, including consumer class actions. Plaintiff and Plaintiff’s counsel are committed to prosecuting this action vigorously on behalf of the class and have the financial resourced to do so. Neither Plaintiff nor counsel have interests that are contrary to or that conflict with the class.

52. Predominance: The common issues that comprise the basis for this lawsuit predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

53. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, absent a class action, class members as a practical matter will be unable to obtain redress; Defendants’

1 violations of their legal obligations will continue without remedy, additional
2 consumers will be harmed, and Defendants will continue to retain ill-gotten gains; it
3 would be a substantial hardship for most individual class members if they were
4 forced to prosecute individual actions; once liability has been adjudicated, the Court
5 will be able to determine the claims of all class members; a class action will permit
6 an orderly and expeditious administration of the claims, foster economies of time,
7 effort and expense, and ensure uniformity of decisions; the lawsuit presents no
8 difficulties that would impede its management by the Court as a class action; and
9 Defendants acted on grounds generally applicable to class members, making class-
10 wide relief appropriate.
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12
13

14 **CAUSES OF ACTION**

15 **CAUSE OF ACTION I**

16 **Strict Liability – Design Defect**

17 54. Plaintiff incorporates paragraphs 1–44 by reference as though set forth
18 fully at length herein.
19

20 55. Defendants designed manufactured, assembled, inspected, tested (or
21 not), packaged, labeled, marketed, advertised, promoted, supplied, distributed,
22 and/or sold Zyn that Plaintiff consumed.
23

24 56. Zyn was designed and intended to be used as a method of ingesting
25 nicotine and the other constituents in the Zyn pouch.
26

27 57. Zyn was sold in a defective condition that is unreasonably dangerous
28 and unsafe, and posed a substantial likelihood of harm to Plaintiff because of reasons

1 including the high delivery of nicotine, the likelihood of nicotine addiction and the
2 risks of behavioral, cognitive, and mental health injuries, cardiovascular injuries,
3 gastrointestinal injuries, and periodontal injuries, among other harmful effects.
4

5 58. Zyn was sold in a defective condition that is unreasonably dangerous
6 and unsafe to Plaintiff because Defendants failed to adequately warn about the risk
7 of nicotine addiction and failed to warn of the risks of behavioral, cognitive, and
8 mental health injuries, cardiovascular injuries, gastrointestinal injuries, and
9 periodontal injuries, among other harmful effects.
10
11

12 59. Defendants designed and promoted Zyn to specifically appeal to minors
13 and young adults, who were particularly unable to appreciate the risks posed by Zyn.
14

15 60. Defendants designed Zyn with a pharmacokinetic profile engineered to
16 create risks of abuse and addiction.

17 61. Defendants defectively designed Zyn that is inherently dangerous
18 because it included features making the product attractive and more palatable to
19 youth and non-smokers. These features include its concealability and its so called
20 “tobacco-free” condition, which is false and misleading.
21

22 62. Zyn does not perform as safely as a reasonable and ordinary consumer
23 would reasonably assume and reasonably expect, as Zyn is designed to cause and
24 sustain nicotine addiction, delivers a potent amount of nicotine, and is likely to cause
25 behavioral, cognitive, and mental health injuries, cardiovascular injuries,
26 gastrointestinal injuries, and periodontal injuries, among other harmful effects.
27
28

1 63. The risks inherent in the design of Zyn significantly outweigh any
2 benefits of such design.
3

4 64. Defendants could have utilized cost effective, reasonably feasible
5 alternative designs to minimize these harms, such as by designing products that
6 delivered less nicotine, and/or did not have flavors that attract youth like Plaintiff.
7

8 65. Plaintiff used Zyn as intended or in reasonably foreseeable ways.

9 66. Plaintiff's injuries, physical, emotional, and economic, were reasonably
10 foreseeable at the time of Zyn's design, manufacture, distribution, and sale.
11

12 67. Zyn was defective and unreasonably dangerous when they left
13 Defendants' possession. The defects continued to exist through the products' sale to
14 and use by consumers, including Plaintiff, who used the products without any
15 substantial change in the products' condition.
16

17 68. Plaintiff was injured as a direct and proximate result of Zyn's defective
18 design as described herein. The defective design of Zyn was a substantial factor in
19 causing Plaintiff's harms.
20

21 69. Plaintiff demands judgment against Defendants for compensatory and
22 punitive damages, medical monitoring to diagnose Zyn induced injuries at an earlier
23 date to allow for timely treatment and prevention of exacerbation of injuries,
24 together with interest, costs of suit, attorneys' fees, and all such other relief as the
25 Court deems proper.
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CAUSE OF ACTION II
Strict Liability – Failure to Warn

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2
3 70. Plaintiff incorporates paragraphs 1–44 by reference as though set forth
4 fully at length herein.

5 71. Defendants designed manufactured, assembled, inspected, tested (or
6 not), packaged, labeled, marketed, advertised, promoted, supplied, distributed,
7 and/or sold Zyn that Plaintiff consumed.

8
9 72. Zyn was sold in a defective condition that is unreasonably dangerous
10 and unsafe to Plaintiff because Defendants failed to adequately warn about the risk
11 of nicotine addiction and failed to warn of the risks of behavioral, cognitive, and
12 mental health injuries, cardiovascular injuries, gastrointestinal injuries, and
13 periodontal injuries, among other harmful effects.

14
15 73. Defendants were aware that Zyn posed risks that were known and
16 knowable in light of scientific and medical knowledge that was generally accepted
17 in the scientific community at the time of design, manufacture, distribution, and sale
18 of Zyn.

19
20 74. Zyn is defective because, among other reasons described herein,
21 Defendants failed to warn consumers, including Plaintiff, in Zyn’s labeling,
22 packaging, and through the marketing promotion, and advertising of Zyn including
23 that:

- 24
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27 a. Zyn causes, maintains, or aggravates nicotine addiction and subject
28 consumers to the risks of concomitant health hazards that addictive, i.e.,
compulsive behavior can result in, and that this danger was even greater

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for minors;

- b. Zyn causes harm by increased exposure to nicotine and other harmful ingredients;
- c. Zyn is a nicotine delivery device not intended for persons under 26 years old;
- d. Zyn delivers nicotine derived from tobacco;
- e. Zyn delivers nicotine at greater levels than nicotine replacement therapies;
- f. Zyn carries risks of behavioral, cognitive, and mental health injuries, cardiovascular injuries, gastrointestinal injuries, and periodontal injuries, among other harmful effects.
- g. Which and when medical symptoms warranted medical care; and
- h. How many Zyn pouches are safe to consume in a day.

75. The failure to adequately warn about its defective products and to misleadingly advertise through conventional and social media avenues created a danger of injuries described herein that were reasonably foreseeable at the time of labeling, design, manufacture, distribution, and sale of Zyn.

76. Ordinary consumers would not have recognized the potential risks of Zyn when used in a manner reasonably foreseeable to Defendants.

77. Defendants are strictly liable for the sale of defective Zyn products that contained inadequate warnings.

78. Plaintiff could not have averted injury through exercise of reasonable care for reasons including Defendants' concealment of the true risks posed by Zyn.

79. Zyn was defective and unreasonably dangerous when they left

1 Defendants' possession because it lacked adequate warnings. The defects continued
2 to exist through the products' sale to and use by consumers, including Plaintiff, who
3 used the products without any substantial change in the products' condition.
4

5 80. Defendants could have provided adequate warnings and instructions to
6 prevent the harms and injuries set forth herein.
7

8 81. Plaintiff was injured as a direct and proximate result of Defendants'
9 failure to warn because Plaintiff would not have used or purchased Zyn had Plaintiff
10 received adequate warnings and instructions.
11

12 82. Defendants' lack of adequate and sufficient warnings and instructions
13 and its inadequate and misleading advertising was a substantial contributing factor
14 in causing the harm to Plaintiff.
15

16 83. Plaintiff demands judgment against Defendants for compensatory and
17 punitive damages, medical monitoring to diagnose Zyn induced injuries at an earlier
18 date to allow for timely treatment and prevention of exacerbation of injuries,
19 together with interest, costs of suit, attorneys' fees, and all such other relief as the
20 Court deems proper.
21

22
23 **CAUSE OF ACTION III**
24 **Negligence**

25 84. Plaintiff incorporates paragraphs 1–44 by reference as though set forth
26 fully at length herein.

27 85. Defendants designed manufactured, assembled, inspected, tested (or
28 not), packaged, labeled, marketed, advertised, promoted, supplied, distributed,

1 and/or sold Zyn that Plaintiff consumed.

2 86. Zyn was the type of product that could endanger others if negligently
3 made, promoted, and sold.

4 87. Defendants had a duty of reasonable care in designing, manufacturing,
5 assembling, inspecting, testing, packaging, labeling, marketing, advertising,
6 promoting, supplying, distributing and/or selling Zyn to avoid causing harm to those
7 that consumed Zyn.
8

9 88. Defendants knew or should have known through the exercise of
10 reasonable care that the risks of consumers of Zyn, a powerfully addictive and
11 dangerous nicotine delivery device.
12

13 89. Defendants knew or should have known through the exercise of
14 reasonable care, that minors and young people would be attracted to Zyn.
15

16 90. Defendants knew or should have known through the exercise of
17 reasonable care, that Zyn was dangerous, harmful and injurious when used by
18 Plaintiff in a reasonably foreseeable manner, particularly with minors and young
19 adults.
20

21 91. Defendants knew or should have known through the exercise of
22 reasonable care, that Zyn was designed to cause or sustain nicotine addiction, and
23 that Zyn posed a risk of harm including risks of addiction, behavioral, cognitive, and
24 mental health injuries, cardiovascular injuries, gastrointestinal injuries, and
25 periodontal injuries, among other harmful effects, as described herein, that were
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1 known and knowable in light of scientific and medical knowledge that was generally
2 accepted in the scientific community at the time of design, manufacture, distribution,
3 promotion, and sale of Zyn.
4

5 92. Defendants knew or should have known through the exercise of
6 reasonable care that Zyn needed to be researched, designed, manufactured,
7 assembled, inspected, tested packaged, labeled, marketed, advertised, promoted,
8 supplied, distributed, and/or sold properly, without defects and with due care to avoid
9 needlessly causing harm.
10
11

12 93. Defendants knew or should have known through the exercise of
13 reasonable care that Zyn could cause serious risk of harm, particularly to young
14 persons and minors.
15

16 94. Defendants were negligent, reckless, and careless and failed to take the
17 care and duty owed to Plaintiff, thereby causing Plaintiff to suffer harm.
18

19 95. Defendants breached their duty of care by, among other things:

- 20 a. Failing to perform adequate testing of Zyn prior to marketing to ensure
21 safety, including long-term testing of the product, and testing for injury
22 to the brain and cardiovascular systems, respiratory, gastrointestinal,
23 and periodontal, and other related medical conditions, as well as its
24 effect on mental health;
- 25 b. Failing to inform or warn consumers, including Plaintiff, that Zyn had
26 not been adequately tested or researched prior to marketing to ensure
27 safety;
- 28 c. Failure to take reasonable care in the design of Zyn;
- d. Failure to take reasonable care in the advertising, promoting, and
marketing of Zyn;

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- e. Failure to warn consumers, including Plaintiff, of the dangers associated with Zyn, including that it was unsafe, is powerfully addictive, can cause permanent changes in the brain, mood disorders, and impairment of thinking and cognition;
- f. Failure to use reasonable care in the sale of Zyn without adequate warnings; use of flavors and design to appeal to minors and young people;
- g. Misleadingly stating that Zyn is “free of tobacco”;
- h. Failure to provide any instructions regarding a safe amount of Zyn to consume in a day;
- i. All other failures, acts and omissions set forth herein.

96. Defendants further acted and or failed to act willfully and with conscious and reckless disregard for the rights, interests, and safety of Plaintiff, and Defendants acts and omissions had a great probability of causing significant harm; and in fact resulted in such harm.

97. Defendants reasonably should have foreseen that young people would try Zyn and quickly become addicted, resulting in teenagers and young adults developing lifelong addictions.

98. Plaintiff was injured as a direct and proximate result of negligence and/or gross negligence as described herein.

99. Defendants’ negligence was a substantial factor in causing and or contributing to Plaintiff’s harms.

100. Plaintiff demands judgment against Defendants for compensatory and punitive damages, medical monitoring to diagnose Zyn induced injuries at an earlier

1 date to allow for timely treatment and prevention of exacerbation of injuries,
2 together with interest, costs of suit, attorneys' fees, and all such other relief as the
3 Court deems proper.
4

5 **CAUSE OF ACTION IV**
6 **Fraud**

7 101. Plaintiff incorporates paragraphs 1–44 by reference as though set forth
8 fully at length herein.

9 102. Defendants designed manufactured, assembled, inspected, tested (or
10 not), packaged, labeled, marketed, advertised, promoted, supplied, distributed,
11 and/or sold Zyn that Plaintiff consumed.
12

13 103. Defendants created and implemented a plan to generate a market for
14 Zyn and substantially increase sales of Zyn through a pervasive pattern of false and
15 misleading statements and omissions. Defendants' plan was intended to portray Zyn
16 as cool and safe alternatives to combustible cigarettes and e-cigarettes, with a
17 particular emphasis on appealing to minors, based in part on flavors while
18 misrepresenting or omitting key facts concerns Zyn's nicotine content,
19 addictiveness, flavoring content and safety.
20
21
22

23 104. Defendants' marketing, promoting, and advertising contained deceptive
24 statements like "tobacco free" when in fact Zyn is derived from tobacco.
25

26 105. Defendants further fraudulently and deceptively marketed Zyn as safe,
27 healthful, or not harmful when Defendants knew it to be untrue.

28 106. Defendants further fraudulently and deceptively downplayed,

1 minimized, and concealed the risks associated with Zyn generally.

2
3 107. Defendants’ marketing, promoting, and advertising failed to disclose
4 that it was an extremely potent nicotine delivery device; Zyn was designed to create
5 and sustain nicotine addiction; and posed significant risks of substantial injury
6 resulting from use of Zyn. Promoting Zyn as “tobacco-free” and like descriptors
7 such as “cleaner than anything out there” explicitly or implicitly represents that Zyn
8 is less harmful than other nicotine-based products, or that Zyn contains less of a
9 substance, like nicotine, than others, or that Zyn is free of a substance compared to
10 others.
11
12

13 108. Defendants’ conduct was fraudulent and deceptive because their
14 misrepresentations and omissions had the capacity to, were likely to, and in fact did,
15 deceive reasonable consumers including the Plaintiff.
16

17 109. Defendants owed Plaintiff a duty to disclose these facts because they
18 were known and/or accessible exclusively to Defendants, who have had exclusive
19 and superior knowledge of the facts; because the facts would be materials to
20 reasonable consumers; because Zyns pose an unreasonable risk of substantial bodily
21 injury.
22
23

24 110. Plaintiff reasonably and justifiably relied on the misrepresentations
25 and/or omissions. Reasonable consumers would have been expected to have relied
26 on Defendants’ misrepresentations and omissions.
27

28 111. Defendants knew or should have known that its misrepresentations

1 and/or omissions were false and misleading, and intended for consumers to rely on
2 such misrepresentations and omissions.
3

4 112. Defendants' misrepresentations and/or omissions were a substantial
5 factor in causing Plaintiff's harms. Plaintiffs were injured as a direct and proximate
6 result of Defendants' fraudulent conduct as described herein.
7

8 113. Plaintiff demands judgment against Defendants for compensatory and
9 punitive damages, medical monitoring to diagnose Zyn induced injuries at an earlier
10 date to allow for timely treatment and prevention of exacerbation of injuries,
11 together with interest, costs of suit, attorneys' fees, and all such other relief as the
12 Court deems proper.
13

14 114. Through the exercise of reasonable diligence, Plaintiff did not and
15 could not have discovered that Zyn caused Plaintiff's injuries and/or sequelae thereto
16 because, at the time of these injuries and/or sequelae thereto, the cause was unknown
17 to Plaintiff.
18

19 115. Plaintiff did not suspect and had no reason to suspect Zyn caused
20 Plaintiff's injuries and/or sequelae thereto until less than the applicable limitations
21 period prior to the filing of this action.
22

23 116. In addition, Defendants' fraudulent concealment has tolled the running
24 of any statute of limitations. Through their affirmative misrepresentations and
25 omissions, Defendants actively concealed from Plaintiff the risks associated with the
26 defects of JUUL Products and that these products caused their injuries and/or
27
28

1 sequelae thereto. Through their ongoing affirmative misrepresentations and
2 omissions, Defendants committed continual tortious and fraudulent acts.

3
4 117. As a result of Defendants' fraudulent concealment, Plaintiff was
5 unaware and could not have reasonably known or learned through reasonable
6 diligence that Plaintiff had been exposed to the defects and risks alleged herein and
7 that those defects and risks were the direct and proximate result of Defendants' acts
8 and omissions.

9
10 **PRAYER FOR RELIEF**

11
12 Plaintiff demands judgment against Defendants to the full extent of the law,
13 including but not limited to:

- 14
15 1. Judgment for Plaintiff against Defendants;
- 16 2. Damages to compensate Plaintiff for injuries sustained as a result of the
17 use of Zyn, including but not limited to physical pain and suffering, mental
18 anguish, loss of enjoyment of life, emotional distress, medical expenses,
19 economic harm;
- 20 3. Punitive damages;
- 21 4. Attorneys' fees and costs;
- 22 5. Prejudgment and post-judgment interest at the lawful rate;
- 23 6. Medical monitoring;
- 24 7. An order certifying the proposed classes, designating Plaintiffs as the
25 named representatives of the classes, and designating the undersigned class
26 counsel;
- 27 8. A trial by jury on all issues;
- 28 9. Any other relief the Court deems just and proper.

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DATED: March 1, 2024

SCHMIDT NATIONAL LAW GROUP
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By: /s/ Martin Schmidt
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Attorneys for Plaintiff, Bailey Wolters

DEMAND FOR JURY TRIAL

A trial by jury is hereby demanded by Plaintiff.

DATED: March 1, 2024

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