

CLARE E. CONNORS 7936-0
Attorney General of Hawai'i

LAWRENCE L. TONG 3040-0

BRYAN C. YEE 4050-0

THOMAS F. M. MORIARTY 9227-0

DAVID D. DAY 9427-0

Deputy Attorneys General
Department of the Attorney General,
State of Hawai'i

425 Queen Street

Honolulu, Hawai'i 96813

Telephone: (808) 586-0618

Email: clare.e.connors@hawaii.gov

lawrence.l.tong@hawaii.gov

bryan.c.yee@hawaii.gov

mana.moriarty@hawaii.gov

david.d.day@hawaii.gov

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STARN • O'TOOLE • MARCUS & FISHER
A Law Corporation

JUDITH A. PAVEY 2173-0

DOUGLAS S. CHIN 6465-0

Pacific Guardian Center, Makai Tower

733 Bishop Street, Suite 1900

Honolulu Hawai'i 96813

Telephone: (808) 537-6100

Email: jpavey@starnlaw.com

dchin@starnlaw.com

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

ELIZABETH J. CABRASER (*pro hac vice pending*)

ROBERT J. NELSON (*pro hac vice pending*)

LEXI J. HAZAM (*pro hac vice pending*)

SARAH R. LONDON (*pro hac vice pending*)

RACHEL E. GREEN (*pro hac vice pending*)

275 Battery Street, 29th Floor

San Francisco, California 94111-3339

Telephone: (415) 956-1000

E-mail: ecabraser@lchb.com

rnelson@lchb.com

lhazam@lchb.com

slondon@lchb.com

rgreen@lchb.com

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

WENDY R. FLEISHMAN (*pro hac vice pending*)

250 Hudson Street, 8th Floor

New York, NY 10013-1413

Telephone: (212) 355-9500

Facsimile: (212) 355-9592

Email: wfleishman@lchb.com

Attorneys for Plaintiff

STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff,

v.

JUUL LABS, INC., previously d/b/a PAX
LABS, INC. and PLOOM INC.; ALTRIA
GROUP, INC.; ADAM BOWEN; JAMES
MONSEES; NICHOLAS PRITZKER;
HOYOUNG HUH; RIAZ VALANI; and
DOES 1-60,

Defendants.

CIVIL NO. _____
(Other Civil Action)

COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES,
DAMAGES, AND OTHER EQUITABLE
RELIEF; DEMAND FOR JURY TRIAL;
SUMMONS

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**COMPLAINT FOR PERMANENT INJUNCTION,
CIVIL PENALTIES, DAMAGES, AND OTHER EQUITABLE RELIEF**

Plaintiff, THE STATE OF HAWAI‘I, (hereinafter “Hawai‘i”), by and through its attorney, Clare E. Connors, Attorney General of the State of Hawai‘i, brings this action against DEFENDANTS for violating the Hawaii Unfair or Deceptive Acts or Practices Act, Hawaii Revised Statutes (“HRS”) § 480-1 *et seq.*, and for unjust enrichment, negligence, negligence *per se*, and public nuisance, and states as follows:

INTRODUCTION

1. Hawai‘i brings this action against Defendants JUUL Labs, Inc., previously d/b/a as PAX Labs, Inc. and PLOOM Inc. (“JLI”); ALTRIA GROUP Inc. (“ALTRIA”); ADAM BOWEN; JAMES MONSEES; NICHOLAS PRITZKER; HOYOUNG HUH; RIAZ VALANI; and Does 1-60, to address their deceptive practices and conduct in the marketing and sale of electronic cigarettes (“e-cigarettes”). DEFENDANTS targeted their advertising toward Hawaii’s school-age population, leading to a public health crisis that has left thousands of Hawaii’s youth addicted to their products and beset with significant health consequences.

2. DEFENDANTS’ marketing strategy, advertising, and product design directly target minors, especially teenagers, and thereby increase the likelihood that minors in Hawai‘i will begin using e-cigarettes and become addicted to DEFENDANTS’ e-cigarette products, all of which will cause further harm to Plaintiff.

3. The battle to end nicotine addiction and its associated diseases and death has consumed our nation’s public health resources for more than half a century. By 2014, after five decades of efforts by public health advocates, litigators, and regulators, the war on tobacco appeared on a path toward victory. Rates of smoking and nicotine addiction in this country were at an all-time low, particularly among teenagers. Until recently.

4. Hawai‘i, and the United States, now face a youth nicotine epidemic of historic proportions. The swift rise of e-cigarette use since 2015 has caused a new generation of nicotine addicts that has overwhelmed parents, schools, and the medical community, drawing governmental intervention at nearly every level.

5. ADAM BOWEN and JAMES MONSEES, co-founders of JLI (“JLI FOUNDERS”), viewed progress in curbing combustible cigarette use as an opportunity to create new markets for nicotine addiction. Seizing on the decline in cigarette consumption and the lax regulatory environment for e-cigarettes, BOWEN, MONSEES, and investors in their company sought to introduce nicotine to a whole new generation, with JLI as the dominant supplier. To achieve that common purpose, the JLI FOUNDERS knew they would need to create and market a product that would make nicotine cool again, without any of the stigma associated with cigarettes. With help from their early investors and board members, who included NICOLAS PRITZKER, HUYOUNG HUH, and RIAZ VALANI (JLI, ADAM BOWEN, JAMES MONSEES, NICHOLAS PRITZKER, HOYOUNG HUH, RIAZ VALANI are referred to as the “JLI DEFENDANTS”), they succeeded in hooking millions of youth, intercepting millions of adults trying to overcome their nicotine addictions, and, of course, earning billions of dollars in profits.

6. Every step of the way, JLI DEFENDANTS, with calculated intention, adopted the cigarette industry’s playbook, through guidance from and coordination with one of that industry’s most central players, cigarette giant ALTRIA, the parent of Philip Morris. JLI was created in the image of the iconic American cigarette companies, which JLI FOUNDERS praised for creating “the most successful consumer product of all time. . . . an amazing product.” The secret to that “amazing product”? Nicotine, a chemical that has deleterious effects on the

developing brains of youths, and which is the critical reason that people persist in using tobacco products. Through careful study of decades of cigarette industry documents, JLI DEFENDANTS knew that the key to developing and sustaining addiction was the amount and the efficiency of the nicotine delivery.

7. JLI DEFENDANTS designed JUUL e-cigarettes, pods, and accessories (collectively “JUUL” or “JUUL products”) to create and sustain addiction, not break it. JLI and BOWEN were the first to design an e-cigarette that could compete with combustible cigarettes on the speed and strength of nicotine delivery. Indeed, JUUL products use nicotine formulas and delivery methods much stronger than combustible cigarettes, confirming that what JLI and BOWEN designed was a starter product, not a cessation or cigarette replacement product. JLI and BOWEN also innovated by making an e-cigarette that was smooth and easy to inhale, practically eliminating the harsh “throat hit,” which otherwise deters nicotine consumption, especially among nicotine “learners,” as R.J. Reynolds’ long-time chemist Claude Teague called new smokers, most of whom were young people.

8. JLI DEFENDANTS’ misconduct, expressly patterned after decades of cigarette company practices, could not have been carried out without the involvement and expertise of an actual cigarette company. Well before ALTRIA announced its investment in JLI, the connections between the two companies ran deep. JLI DEFENDANTS and ALTRIA collaborated to grow the e-cigarette market and the number of users addicted to nicotine, including by sharing data and information and coordinating marketing activities, such as the acquisition of key shelf space next to top-selling Marlboro cigarettes.

9. ALTRIA’s decades of experience thwarting government regulation benefited JLI DEFENDANTS. In an investor presentation in 2019, ALTRIA described JLI as having a “unique and compelling product” and included the following graphic:¹



10. But only *seven weeks* before ALTRIA’s investment in JLI, ALTRIA had sent a letter to the FDA acknowledging that “pod-based [vaping] products significantly contribute to the rise in youth use of e-vapor products,” and expressly criticizing the marketing practices employed by JLI.² The hypocrisy is striking: ALTRIA would not have made an investment in JLI if it did not intend to grow JLI’s already enormous market even more, and yet it had only a matter of weeks before recognized JLI’s role in contributing to the rise in youth use of e-vapor products.

11. In partnership with ALTRIA, JLI DEFENDANTS adopted a “Make the Switch” campaign to mislead consumers into thinking that JUUL products were benign smoking

¹ Altria Group, Inc. 2019 CAGNY Investor Presentation, Available at <http://investor.altria.com/Cache/1500117496.PDF?O=PDF&T=&Y=&D=&FID=1500117496&iid=4087349>.

² Letter from Howard A. Willard III, Altria Group, Inc., to Scott Gottlieb, M.D., FDA Commissioner (Oct. 25, 2018), <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

cessation devices, even though JUUL was never designed to break addictions. JLI DEFENDANTS and ALTRIA together engaged in a campaign of deceit through sophisticated mass media and social media communications, advertisements and otherwise, about the purpose and dangers of JUUL products. JLI DEFENDANTS and ALTRIA also concealed the results of studies that revealed that JUUL products were far more powerfully addictive than was disclosed.

12. JUUL products' packaging and advertising grossly understated the nicotine content in its products. Advertising campaigns featured JUUL paired with food and coffee, positioning JUUL as part of a healthy meal, a normal part of a daily routine, and as safe as caffeine.

13. Like the large cigarette companies before them, JLI DEFENDANTS targeted teens as their customer base. JUUL products were designed to appear slick and high-tech like a cool gadget, including video-game-like features like "party mode." JLI DEFENDANTS offered kid-friendly flavors like mango and cool mint, and partnered with ALTRIA to create and preserve the market for mint-flavored products—all because DEFENDANTS knew that flavors get young people hooked.

14. For the duration of most Hawai'i residents' JUUL use, none of JUUL's advertising, marketing, promotion, packaging or website disclosed any of the dangerous health effects and risks that DEFENDANTS knew or should have known would result from use of its products. These dangerous and potentially lethal risks include nicotine addiction, significant increases in blood pressure, increased risk of stroke, heart attacks and other cardiovascular injuries, seizures, permanent brain changes, mood disorders, heightened risk of cancer, lung collapse and other pulmonary injuries, and other harms. Instead, the imaging, advertising, promotion, packaging and overall marketing represented the products, especially to youth, as

safe and fun. As one of the JLI founders admitted: “We don’t think a lot about addiction here because we’re not trying to design a cessation product at all...anything about health is not on our mind”.³

15. DEFENDANTS’ conduct has led to a surge in teen e-cigarette use, creating the “largest ever recorded [increase in substance abuse] in the past 43 years for any adolescent substance use outcome in the U.S.”⁴ In just a few years, DEFENDANTS completely undid more than a decade of real progress reducing teen smoking, and thereby increased nicotine use among teenagers to levels not seen since the early 2000s.

16. Between 2011 and 2015, e-cigarette use among high school and middle school students nationwide increased 900 percent.⁵ Between 2017 and 2018, e-cigarette use increased 78 percent among high school students, from 11.7 percent of high school students in 2017 to 20.8 percent of high schoolers in 2018.⁶ Among middle school students, e-cigarette use increased 48 percent between 2017 and 2018.⁷ In 2018, 4.9 million middle and high school students used

³ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent E-Cigarette: Surprise, It's a Rectangle*, THE VERGE (Apr. 21, 2015) <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

⁴ Salynn Boyles, *Surgeon General Calls for New E-Cig Restrictions: ‘I am Officially Declaring E-Cigarette Use Among Youth an Epidemic’*, MEDPAGE TODAY (Dec. 18, 2018) www.medpagetoday.com/primarycare/smoking/77000.

⁵ Jerome Adams, *Surgeon General’s Advisory on E-Cigarette Use Among Youth*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-ecigarette-use-among-youth-2018.pdf>.

⁶ *Id.*

⁷ 2018 NYTS Data: A Startling Rise in Youth E-Cigarette Use, U.S. FOOD & DRUG ADMIN. (Feb. 2, 2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

tobacco products, with 3.6 million of those students using e-cigarettes.⁸ Between 2017 and 2018, the number of youth e-cigarette users increased by 1.5 million.⁹

17. Hawai'i residents, and particularly Hawaii's teenagers, are victims of this epidemic. The use of e-cigarettes among high school teens in Hawai'i is two to three times higher than the national average.¹⁰ The 2017 Hawaii Youth Risk Behavior Survey reported that 42 percent of high school students and 27 percent of middle school students have tried e-cigarettes.¹¹

18. DEFENDANTS' actions were, and are, unfair, deceptive, and illegal under Hawai'i law. Hawai'i brings this action for the purpose of abating, enjoining, and preventing the acts and omissions of DEFENDANTS, which constitute violations of the laws prohibiting unfair and unlawful business practices, false advertising, and public nuisance.

19. Hawai'i respectfully requests this Court to use its equitable and legal authority to: (1) enjoin DEFENDANTS' unlawful and unfair practices permanently; (2) provide Plaintiff with money damages according to proof equal to the expenses Plaintiff has undertaken to (a) respond to the use of DEFENDANTS' products and resulting health impact, (b) prevent the use of DEFENDANTS' products by underage youth, and (c) dispose of DEFENDANTS' products;

⁸ *Id.*

⁹ *Id.*

¹⁰ Jason C. Seto et al., *E-Cigarette Use Related to Demographic Factors in Hawai'i*, 75 HAWAII J. OF MED. & PUB. HEALTH 295 (2016); Pallav Pokhrel et al., *Smokers Who Try E-Cigarettes to Quit Smoking: Findings From a Multiethnic Study in Hawai'i*, 103 AM. J. PUB. HEALTH 57 (2013); Sherry Bracken, *Hawai'i Youth Vape More Than National Average*, HAWAII PUBLIC RADIO (Sept. 17, 2018), <https://www.hawaiipublicradio.org/post/hawaii-youth-vape-more-national-average#stream/0>.

¹¹ *Hawai'i Youth Vaping at Epidemic Levels*, HEALTHYHAWAII.COM, https://www.healthyhawaii.com/wp-content/uploads/2018/11/18405-DOH_Vaping_resource-guide_ONLINE_Parents-pages_1101_HiRes.pdf.

and (3) impose stiff civil penalties to punish DEFENDANTS for their unlawful and disastrous conduct.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to article VI, section 1 of the Hawai‘i Constitution and section 603-21.5 of the Hawaii Revised Statutes.

21. This Court has jurisdiction over DEFENDANTS because DEFENDANTS have intentionally availed themselves of the Hawai‘i market so as to render the exercise of jurisdiction by the Hawai‘i courts consistent with traditional notions of fair play and substantial justice.

22. The violations of law alleged in this Complaint occurred throughout Hawai‘i, including within the City and County of Honolulu.

23. Venue is proper in this county pursuant to HRS § 603-36 subsection (5), and section 480-21, in that DEFENDANTS’ marketing and sales activities occurred in the City and County of Honolulu and therefore DEFENDANTS’ liability arises in the City and County of Honolulu.

24. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332, as Hawai‘i is not a citizen of any state and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by the Complaint, as it sets forth herein exclusively viable state law claims against DEFENDANTS. Nowhere herein does Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in the allegations of this Complaint do not implicate any substantial federal issues and do not turn on the necessary interpretation of federal law. Specifically, Plaintiff expressly avers that the only causes of action claimed, and the only remedies sought herein, are founded upon the positive statutory, common, and decisional laws of

Hawai'i. Further, the assertion of federal jurisdiction over the claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities. Accordingly, any exercise of federal jurisdiction is without basis in law or fact.

PARTIES

A. PLAINTIFF

25. Plaintiff, the State of Hawai'i, by and through the Attorney General of the State of Hawai'i Clare E. Connors ("Attorney General"), brings this action. The Attorney General is the chief law officer of Hawai'i and has the authority to file civil actions to protect public rights and interests. HRS § 661-10. The Attorney General has a duty to enforce the civil provisions of the Unfair or Deceptive Acts or Practices Act, HRS § 480-20, and has standing to bring an action based upon unfair or deceptive acts or practices prohibited by this Act. HRS § 480-2(d). The Attorney General is further authorized by the Unfair or Deceptive Acts or Practices Act, HRS § 480-3.1, to collect civil penalties of not less than \$500 nor more than \$10,000 for each violation of the Act, and under HRS § 480-14 may recover threefold actual damages sustained by Hawai'i by reason of anything forbidden by that chapter. The Attorney General is authorized by HRS § 480-15 to obtain injunctive relief to halt violations of, and enforce compliance with, the Unfair or Deceptive Acts or Practices Act. This lawsuit is brought pursuant to the Attorney General's independent statutory, and common law authority to represent the public interest.

26. Hawai'i has an interest in promoting the health of its residents, especially its children. It is well established that smoking is the leading preventable cause of death in the United States. To that end, and pursuant to its authority to enforce HRS § 712-1258, which prohibits the sale of electronic smoking devices to persons under 21 years of age, Hawai'i seeks to reduce the illegal sales of electronic smoking devices to individuals under 21 years of age.

B. DEFENDANTS

27. JUUL Labs, Inc. is a Delaware corporation, having its principal place of business in San Francisco, California. PLOOM, Inc., a predecessor company to JUUL Labs, Inc., was incorporated in Delaware on March 12, 2007. In 2015, PLOOM, Inc. changed its name to PAX Labs, Inc. In April 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc., and formed a new subsidiary corporation with its old name, PAX Labs, Inc. That new subsidiary, PAX Labs, Inc. (“PAX”), was incorporated in Delaware on April 21, 2017 and has its principal place of business in San Francisco, California. As stated previously, “JLI” as used herein refers to JUUL Labs, Inc. and the companies it was formerly known as.

28. JLI manufactures, designs, sells, markets, promotes and distributes JUUL e-cigarettes devices, JUUL Pods and accessories. JUUL products are available for sale in Hawai‘i. JLI markets, promotes, distributes, and advertises its products in Hawai‘i, including but not limited to the City and County of Honolulu.

29. ALTRIA is a Virginia corporation, having its principal place of business in Richmond, Virginia. ALTRIA is one of the world’s largest producers and marketers of tobacco products. On December 20, 2018, ALTRIA purchased a 35 percent stake in JLI, worth \$12.8 billion.¹² ALTRIA is the parent company of Philip Morris, USA, the manufacturer of Marlboro cigarettes.

¹² Ben Tobin, *Altria Purchases 35% Stake in Juul in Deal Worth \$12.8 Billion*, USA TODAY (Dec. 20, 2018, 9:47 AM ET), <https://www.usatoday.com/story/money/2018/12/20/altria-buys-stake-juul-deal-worth-12-8-billion/2373663002/>.

30. Defendant ADAM BOWEN is a resident of the San Francisco Bay Area. In 2007, he co-founded PLOOM with JAMES MONSEES. At all relevant times, BOWEN has been Chief Technology Officer and a member of the Board of Directors of JLI or its predecessors.

31. Defendant JAMES MONSEES is a resident of the San Francisco Bay Area. In 2007, he co-founded PLOOM with BOWEN. MONSEES was Chief Executive Officer of JLI until October 2015, and thereafter served as Chief Product Officer of JLI. At all relevant times, he has been a member of the Board of Directors of JLI or its predecessors.

32. Defendant NICHOLAS PRITZKER is a resident of San Francisco, California, and a member of the PRITZKER family, which owned the chewing-tobacco giant Conwood before selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. More recently, PRITZKER co-founded Tao Capital, an early investor in, among other companies, Tesla Motors and Uber. In 2007, he invested in JLI.¹³

33. Defendant HOYOUNG HUH lives and works in the Silicon Valley area. Dr. HUH holds an M.D. from Cornell and a Ph.D. in Genetics/Cell Biology from Cornell/Sloan-Kettering. Dr. HUH has been on the Board of Directors of JLI or its predecessors since at least June 2015.

34. Defendant RIAZ VALANI lives near San Jose and is a general partner at Global Asset Capital, a San Francisco-based private equity investment firm. He has been on the Board of Directors of JLI or its predecessors since at least May 2011.

¹³ Ainsley Harris, How JUUL went from a Stanford thesis to \$16 billion startup, Fast Company (March 8, 2020 4:11 PM PST), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>.

35. Defendants Does 1-10 are individuals, firms, partnerships, corporations or other entities, that manufactured JUUL products, component parts, or products compatible with JUUL products, and whose acts caused or contributed to Plaintiffs' damages, whose names are unknown to Plaintiff at this time, despite Plaintiff's best efforts to ascertain same, but which will be substituted by amendment when ascertained.

36. Defendants Does 11-20 are individuals, firms, partnerships, corporations or other entities, that distributed JUUL products, component parts, or products compatible with JUUL products, and whose acts caused or contributed to Plaintiffs' damages, whose names are unknown to Plaintiff at this time, despite Plaintiff's best efforts to ascertain same, but which will be substituted by amendment when ascertained.

37. Defendants Does 21-40 are individuals, firms, partnerships, corporations or other entities, that are retailers or sellers of JUUL products, component parts, or products compatible with JUUL products, and whose acts caused or contributed to Plaintiffs' damages, whose names are unknown to Plaintiff at this time, despite Plaintiff's best efforts to ascertain same, but which will be substituted by amendment when ascertained.

38. Defendants Does 41-50 are individuals, firms, partnerships, corporations or other entities, that advertised or marketed JUUL products, component parts, or products compatible with JUUL products, and whose acts caused or contributed to Plaintiffs' damages, whose names are unknown to Plaintiff at this time, despite Plaintiff's best efforts to ascertain same, but which will be substituted by amendment when ascertained.

39. Defendants Does 51-60 are individuals, companies, organizations, agents, or representatives, whose acts caused or contributed to Plaintiffs' damages, and whose names are

unknown to the Plaintiff at this time, despite Plaintiff's best efforts to ascertain their identity, but which will be substituted by amendment when ascertained.

FACTS

A. A Brief History of the Defendants

40. JLI was founded by ADAM BOWEN and JAMES MONSEES. The two men met at Stanford University as graduate students in the product design program in 2002. The goal of their 2005 thesis was to re-invent the cigarette. As MONSEES put it, “[t]he cigarette is probably the most successful consumer product of all time.”¹⁴ He and BOWEN hoped their project would “take tobacco back to being a luxury good and not so much a drug delivery device.”¹⁵

41. In order to accomplish this goal, BOWEN and MONSEES studied the Truth Tobacco Industry Documents at the University of California San Francisco Library. This public collection contains internal corporate documents produced by the tobacco industry during the litigation between the state attorneys general and the tobacco industry that resulted in the tobacco Master Settlement Agreement in 1998 between the State Attorneys General of 46 states, five U.S. territories, the District of Columbia and the four largest cigarette manufacturers in America, including Philip Morris, concerning the advertising, marketing, and promotion of cigarettes.¹⁶

¹⁴ Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—James Monsees and Adam Bowen Have Cornered the US E-Cigarette Market with Juul. Up Next: The World*, FORBES (Sept. 27, 2018, 3:10:35 PM EST), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1.

¹⁵ Holden Foreman, *Juul Founders Call E-Cigarette Prototype ‘A Luxury Good’ in 2005 Thesis Footage*, STANFORD DAILY (Mar. 1, 2019), <https://www.stanforddaily.com/2019/03/01/juul-founders-call-e-cigarette-prototype-a-luxury-good-in-2005-thesis-footage/>.

¹⁶ <https://www.industrydocuments.ucsf.edu/tobacco/>.

42. BOWEN and MONSEES also familiarized themselves with the advertising techniques used by Big Tobacco to sell cigarettes from these documents. Stanford University houses a collection of tobacco advertising imagery as part of the Stanford Research into the Impact of Tobacco Advertising (“SRITA”).¹⁷ When MONSEES met Dr. Robert Jackler, principal investigator of SRITA, in the summer of 2018, he thanked Dr. Jackler for the database and said the images were very helpful in the design of JLI’s advertising.¹⁸ In a 2018 interview, “Monsees indicated that the design of JUUL’s advertising had been informed by traditional tobacco advertisements and that [the Stanford University Research into Impact of Tobacco Advertising] had been quite useful to them.”

43. After graduating, and with the help of early investors like NICHOLAS PRITZKER,¹⁹ BOWEN and MONSEES launched Ploom, a pod-based tobacco vaporizer and then PAX, a vaporizer for loose-leaf tobacco and marijuana.

44. BOWEN and MONSEES then turned their focus to a form of nicotine called nicotine salts. This approach originated from their research into Big Tobacco patents. “We started looking at patent literature. We are pretty fluent in ‘Patentese.’ And we were able to deduce what had happened historically in the tobacco industry.” With access to the trove of documents made public to curb youth smoking and aid research to support tobacco control efforts, JLI FOUNDERS were able to review literature on manipulating nicotine pH to maximize

¹⁷ http://tobacco.stanford.edu/tobacco_main/index.php.

¹⁸ July 24, 2019 Dr. Jackler congressional testimony before the House Committee on Oversight and Reform, 1:32:25 - 1:33:18.

¹⁹ In 2007, he invested in JLI. Ainsley Harris, *How JUUL went from a Stanford thesis to \$16 billion startup*, FAST COMPANY (March 8, 2020 4:11 PM PST), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>.

its delivery in a youth-friendly vapor with minimal “throat hit.” Working through their company, PAX, MONSEES and BOWEN introduced the JUUL electronic cigarette to the market in June 2015.

45. Defendant HOYOUNG HUH has been on the Board of Directors of JLI or its predecessors since at least June 2015. Defendant RIAZ VALANI has been on the Board of Directors of JLI or its predecessors since at least May 2011. Defendant NICHOLAS PRITZKER has been on the Board of Directors of JLI or its predecessors since at least December 2017.

46. In October 2015, MONSEES stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, PRITZKER, HUH, and VALANI formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth.

47. Before installation of Tyler Goldman as JLI’s new CEO in August 2016, Defendants PRITZKER, HUH, and VALANI used their newly formed Executive Committee to expand the number of addicted e-cigarette users through fraudulent advertising and representations to the public. They cleaned house at JLI by “dismiss[ing] other senior leaders and effectively tak[ing] over the company.”²⁰

48. In April 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc.

49. At all relevant times, BOWEN, JAMES MONSEES, NICHOLAS PRITZKER, HOYOUNG HUH, RIAZ VALANI authorized, directed, participated in, and/or were involved in all key decisions, actions, and omissions of JLI involving the design, manufacture, inspection, testing (or not), packaging, labeling, marketing, advertising, promoting, distribution, and/or sale

²⁰ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

of JUUL products, and all decisions, actions, and omissions stated herein, except as otherwise expressly provided.

50. In December 2018, ALTRIA invested \$12.8 billion for a 35% stake in JLI.²¹

B. Defendants' Strategy Was to Create a Nicotine Product That Would Maximize Consumer Growth Through Addiction.

1. Defendants Understood that the "Magic" Behind Cigarettes' Stratospheric Commercial Success was Nicotine Addiction.

51. The first step in replicating the success of combustible cigarettes was to create a product that, like combustible cigarettes, was based on getting users addicted to the nicotine in the product. Nicotine is an alkaloid, a class of plant-derived nitrogenous compounds that is highly addictive and the key ingredient that drives addiction to cigarettes. Nicotine's addictive properties are similar to heroin and cocaine.²²

52. All leading health authorities support the three major conclusions of a 1988 report by the U. S. Surgeon General regarding nicotine and tobacco:

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

53. Nicotine fosters addiction through the brain's "reward" pathway. As both a stimulant and a relaxant, nicotine affects the central nervous system. It also increases blood pressure, pulse, and metabolic rate, constricts blood vessels of the heart and skin, and causes

²¹ Ben Tobin, *Altria Purchases 35% Stake in Juul in Deal Worth \$12.8 Billion*, USA TODAY (Dec. 20, 2018, 9:47 AM ET), <https://www.usatoday.com/story/money/2018/12/20/altria-buys-stake-juul-deal-worth-12-8-billion/2373663002/>.

²² See e.g., US Department of Health and Human Services. *Nicotine Addiction: A Report of the Surgeon General*. DHHS Publication Number (CDC) 88-8406, (1988).

muscle relaxation. When nicotine is inhaled, it enters the bloodstream through membranes in the mouth and upper respiratory tract and through the lungs. Once nicotine in the bloodstream reaches the brain, it binds to receptors, triggering a series of physiologic effects in the user that include pleasure, happiness, arousal, and relaxation of stress and anxiety. These effects, perceived as a “buzz,” are caused by the release of dopamine, acetylcholine, epinephrine, norepinephrine, vasopressin, serotonin, and beta endorphin. With regular nicotine use, however, these feelings diminish and the user must consume increasing amounts of nicotine to achieve the same pleasurable effects.²³

54. The neurological changes caused by nicotine create addiction. Repeated exposure to nicotine causes neurons in the brain to adapt to the action of the drug and return brain function to normal. This process, called neuroadaptation, leads to the development of tolerance in which a given level of nicotine begins to have less of an effect on the user.²⁴

55. Once a brain is addicted to nicotine, the absence of nicotine causes compulsive drug-seeking behavior, which, if not satisfied, results in withdrawal symptoms including anxiety, tension, depression, irritability, difficulty concentrating, disorientation, increased eating, restlessness, headaches, sweating, insomnia, heart palpitations and tremors – and intense cravings for nicotine. While smokers commonly report pleasure and reduced anger, tension, depression and stress after smoking a cigarette, many of these effects are actually due to the relief of unpleasant withdrawal symptoms that occur when a person stops smoking and deprives

²³ Neal L. Benowitz, *Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and Therapeutics*, 49 ANNUAL REV. OF PHARMACOLOGY & TOXICOLOGY 57 (Sept. 27, 2009), www.ncbi.nlm.nih.gov/pmc/articles/PMC2946180/.

²⁴ *Id.*

the brain and body of nicotine. Studies have found that most smokers do not like smoking but do so to avoid withdrawal symptoms.²⁵

56. Nicotine affects neurological development in adolescents, and exposure to nicotine during adolescence produces an increased vulnerability to nicotine addiction.²⁶ The effects of nicotine exposure on the brains of youth and young adults also include priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.²⁷ Specifically, adolescent nicotine addiction causes “substantial neural remodeling” to those parts of the brain governed by dopamine or acetylcholine, which play central roles in reward functioning and cognitive function, including executive function mediated by the prefrontal cortex. A “clear-cut relationship” between adolescent smokers and diminished neural responses has been observed such that addicts exhibit diminished sensitivity to non-drug rewards (e.g., financial rewards). This relationship becomes even more severe in adolescents who smoke more than 5 cigarettes a day. In sum, “the use of extremely rewarding drugs, such as nicotine, may decrease the pleasure obtained from non-drug rewards.” These changes occur in “early phases of smoking.”²⁸ Other brain changes from nicotine include increased sensitivity to

²⁵ Nancy A. Rigotti, *Strategies to Help a Smoker Who is Struggling to Quit*, 308 JAMA 1573 (Oct. 17, 2012), www.ncbi.nlm.nih.gov/pmc/articles/PMC4562427/; Michael Paolini & Mariella De Biasi, *Mechanistic Insights into Nicotine Withdrawal*, 82 BIOCHEMICAL PHARMACOLOGY 996 (Oct. 15, 2011), www.ncbi.nlm.nih.gov/pmc/articles/PMC3312005/.

²⁶ Mariam Arain et al., *Maturation Of The Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449 (Apr. 3, 2013) <http://doi.org/10.2147/NDT.S39776>.

²⁷ Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. OF PHYSIOLOGY 3397 (May 27, 2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/; U.S. Surgeon General and U.S. Centers for Disease Control & Prevention, Office on Smoking and Health, *Know the Risks: E-Cigarettes and Young People*, SURGEON GENERAL (2019) <https://e-cigarettes.surgeongeneral.gov/>.

²⁸ *Id.*

other drugs and heightened impulsivity.²⁹ “Brain imaging on adolescents suggest that those who begin smoking regularly at a young age have markedly reduced activity in the prefrontal cortex and perform less well on tasks related to memory and attention compared to people who don’t smoke.”³⁰

57. In 2014, the United States Surgeon General reported that nicotine addiction is the “fundamental reason” that individuals persist in using tobacco products, and this persistent tobacco use contributes to millions of needless deaths and many diseases, including diseases that affect the heart and blood vessels (cardiovascular disease), lung diseases (chronic obstructive pulmonary disease (COPD) and lung cancer), cancer almost anywhere in the body, and birth defects.

58. Kids are particularly vulnerable to nicotine addiction, as Defendants knew well. As described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.” Nine out of ten smokers begin by age 18 and 80% who begin as teens will smoke into adulthood.³¹

59. Further, the Surgeon General has explained how the nicotine in e-cigarettes affects the developing brain and can addict kids more easily than adults: “Until about age 25, the brain is still growing. Each time a new memory is created, or a new skill is learned, stronger connections—or synapses—are built between brain cells. Young people’s brains build synapses

²⁹ University of Warwick, *Different Brain Areas Linked to Smoking and Drinking*, SCIENCE DAILY (Jan. 8, 2019), www.sciencedaily.com/releases/2019/01/190108095119.htm.

³⁰ Erin Brodwin, *An E-Cigarette with Twice the Nicotine of Comparable Devices is Taking Over High Schools – and Scientists are Sounding the Alarm*, BUSINESS INSIDER (Apr. 30, 2018, 4:03 PM), www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3.

³¹ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* at 1 (2012), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

faster than adult brains. Because addiction is a form of learning, adolescents can get addicted more easily than adults.”³²

60. DEFENDANTS knew and understood the role of nicotine addiction in maintaining and growing a customer base.

2. **Following the Cigarette Industry Playbook, JLI Defendants Sought to Market a Product that would Create and Sustain Nicotine Addiction, and that would be Appealing to Young People.**

61. Because of “some problems” inherent in the cigarette, JLI FOUNDERS set out to “deliver[] solutions that refresh the magic and luxury of the tobacco category.”³³ MONSEES saw “a huge opportunity for products that speak directly to those consumers who aren’t perfectly aligned with traditional tobacco products.”³⁴

62. JLI FOUNDERS followed the cigarette industry’s playbook. “[Industry documents] became a very intriguing space for us to investigate because we had so much information that you wouldn’t normally be able to get in most industries. And we were able to catch up, right, to a huge, huge industry in no time. And then we started building prototypes.”³⁵

63. JLI FOUNDERS engaged former cigarette industry researchers to consult on the design of its product. MONSEES noted in WIRED magazine that “people who understood the science and were listed on previous patents from cigarette companies aren’t at those companies

³² *Know The Risks: E-Cigarettes & Young People*, <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

³³ Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*, SOLID SMACK (Apr. 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/.

³⁴ *Id.*

³⁵ Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

anymore. If you go to ALTRIA's R&D facility, it's empty." The WIRED article stated that "some of those people are now on Pax's team of advisers, helping develop JUUL."³⁶

64. JLI FOUNDERS attempted to distinguish JUUL products from the death and disease associated with cigarettes by deliberately providing false assurances of safety. For example, on May 8, 2018, a document titled "Letter from the CEO" appeared on JLI's website. The document stated: "[JUUL]'s simple and convenient system incorporates temperature regulation to heat nicotine liquid and deliver smokers the satisfaction that they want without the combustion and the harm associated with it."³⁷

65. JLI's mission was not to improve public health. Rather, JLI sought to introduce a new generation of consumers to nicotine. As one JLI engineer put it: "We don't think a lot about addiction here because we're not trying to design a cessation product at all ... anything about health is not on our mind."³⁸

66. JLI FOUNDERS saw a market opportunity in a generation of non-smoking consumers brought up on anti-smoking norms. In MONSEES' words, with a focus on re-creating the "ritual and elegance that smoking once exemplified,"³⁹ they wanted to redesign the cigarette

³⁶ David Pierce, *This Might Just Be the First Great E-Cig*, WIRED (Apr. 21, 2015, 8:00 AM), www.wired.com/2015/04/pax-juul-ecig/.

³⁷ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warningletters/juul-labs-inc-590950-09092019>.

³⁸ Kevin Roose, Juul's Convenient Smoke Screen, N.Y. Times (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

³⁹ James Monsees—Co-founder and CEO of Ploom, IDEAMENSCH (Apr. 11, 2014), <https://ideamensch.com/james-monsees/>.

“to meet the needs of people who want to enjoy tobacco but don’t self-identify with—or don’t necessarily want to be associated with—cigarettes.”⁴⁰

67. JLI DEFENDANTS achieved their vision. Pioneering a nicotine delivery technology that eliminated the harshness of traditional free-base, as described further below, JLI’s products provided consumers with palatable access to high-concentrations of nicotine like never before.

68. Since its launch in 2015, JLI has become the dominant e-cigarette manufacturer in the United States. Its revenues grew by 700 percent in 2017.

69. By 2019, JLI owned three-quarters of the e-cigarette market.⁴¹

3. **JLI Defendants Sought to Position JLI for Acquisition by a Major Cigarette Company.**

70. JLI DEFENDANTS worked together to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base.

71. That growing customer base was crucial JLI DEFENDANTS’ long term objective—lucrative acquisition by another company. They recognized that JLI’s product, with its potential to dominate the nicotine products market by hooking new users, would appeal to one segment of the economy in particular: the cigarette industry. JLI DEFENDANTS needed to shape social norms such that the public attitude towards e-cigarettes would allow consumers to use their product without the stigma and self-consciousness smokers experienced.

⁴⁰ Gabriel Montoya, Pax Labs: Origins with James Monsees, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

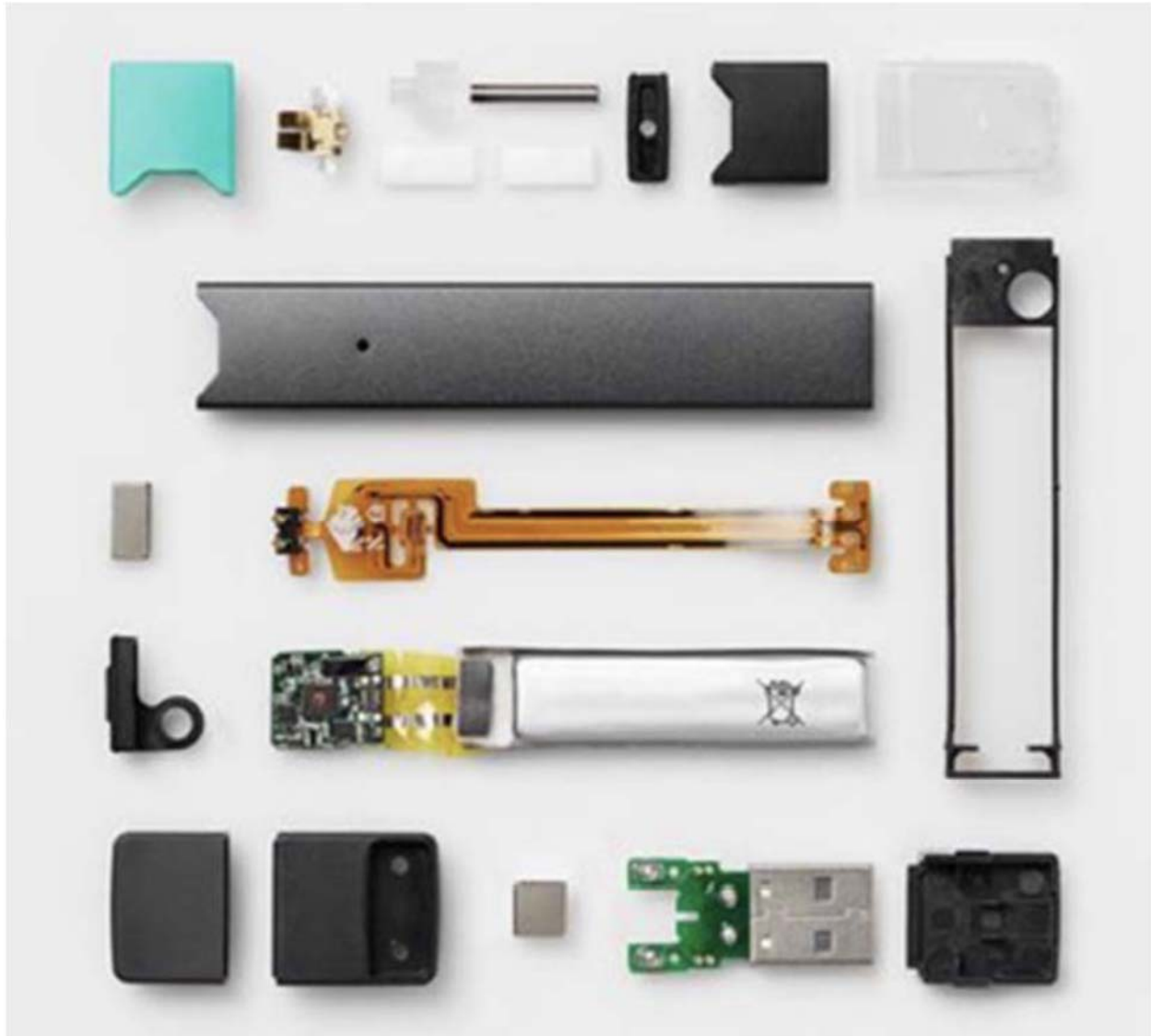
⁴¹ Dick Durbin et al., *Durbin & Senators to JUUL: You Are More Interested in Profits Than Public Health*, DURBIN NEWSROOM (Apr. 8, 2019), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health>.

C. JLI FOUNDERS Designed the JUUL Product to be Attractive to Young People and to be Addictive to Consumers.

1. JLI DEFENDANTS Designed the JUUL Product to be Sleek and Attractive.

72. The JUUL e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device, (2) the JUUL pod (with e-liquid), and (3) the USB charger. The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device consisting of an aluminum shell, a battery, a magnet (for the USB charger), a circuit board, an LED light, and a pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid that includes nicotine, flavoring, and other additives. Each JUUL pod is a plastic enclosure containing 0.7 milliliters of JUUL's patented nicotine liquid and a coil heater. When a sensor in the JUUL e-cigarette detects the movement of air caused by suction on the JUUL pod, the battery in the JUUL device activates the heating element, which in turn converts the nicotine solution in the JUUL pod into a vapor consisting principally of nicotine, benzoic acid, glycerin, and propylene glycol along with

myriad chemical flavorings and other chemicals, many of which are recognized as toxic.⁴²



73. JLI sells the JUUL pods in packs of two or four pods, and until recently in a variety of enticing kid-friendly flavors. Many of these flavors have no combustible cigarette analog, including mango, “cool” cucumber, fruit medley, “cool” mint, and crème brûlée. The

⁴² *E-cigarettes and vapor products*, King County, <https://www.kingcounty.gov/depts/health/tobacco/data/e-cigarettes.aspx> (last visited Apr. 2, 2020).

image below shows the JUUL device and a JUUL “Starter Kit” with four flavored JUUL pods, which were offered until November 2019:



2. **JLI FOUNDERS Made Highly-Addictive E-Cigarettes Easy for Young People and Non-Smokers to Inhale.**

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

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

76. Before JUUL, most e-cigarettes used an alkaline form of nicotine called free-base nicotine.⁴³ When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates the

⁴³ Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine Product Market*, 28 Tobacco Control 623 (2019).

throat, and is perceived as harsh by the user. This experience is often referred to as a “throat hit.” The higher the concentration of free-base nicotine, the more intense the “throat hit.”

77. Before 2015, most e-liquids on the market were between 1% and 2% concentration; 3% concentrations were marketed as appropriate for consumers who were accustomed to smoking approximately forty cigarettes a day.⁴⁴ None of these e-liquids delivered as much nicotine as quickly as a combustible cigarette.

78. JLI FOUNDERS intentionally designed their product to minimize “throat hit” and maximize “buzz.”

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

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

81. JLI FOUNDERS’ manipulation of nicotine pH directly affects the palatability of nicotine inhalation by reducing the “throat hit” users experience when vaping. Benzoic acid

⁴⁴ *Id.*

reduces the pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form.

82. A study by Anna K. Duell et al. examined 4% benzoate solutions—the basis for JUUL’s subsequent commercial formulations—and explains why there was so little throat hit. The Duell study determined that the fraction of free-base nicotine in JLI’s “Fruit Medley” flavor was 0.05 and in “Crème Brulee” was 0.07.⁴⁵ Given total nicotine content of 58 mg/ml and 56 mg/ml in each flavor, respectively, these flavors have roughly 3-4 mg/ml free-base nicotine. For comparison, “Zen” brand e-liquid contains 17 mg/ml of nicotine—less than one-third of the total nicotine content of JLI’s flavors—but has a free-base fraction of 0.84,⁴⁶ resulting in over 14 mg/ml of free-base nicotine. The Duell Study’s authors found that the low free-base fraction in JLI aerosols suggested a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”⁴⁷

83. Reducing the harshness of nicotine also allows more frequent use of e-cigarettes, for longer periods of time, and masks the amount of nicotine being delivered. By removing the physiological drawbacks of inhaling traditional free-base nicotine, JLI’s technology removes the principal barrier to nicotine consumption and addiction. The Duell study further concluded that JLI’s creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is “particularly problematic for public health.”⁴⁸

⁴⁵ U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431, 432 (Fig. 3).

⁴⁶ Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431 (hereinafter “Duell Study”).

⁴⁷ *Id.* at 431–34.

⁴⁸ Duell Study at 433 (citing Willett, J. G., et al., *Recognition, use and perceptions of JUUL*
Footnote continued on next page

84. JLI FOUNDERS' purposeful creation of products with low levels of harshness and minimal throat "hit" is consistent with the goal of producing products for young non-smokers. The non-irritating vapor product is easier for non-smokers to consume without negative side effects like coughing or irritation. The design also shows that JLI FOUNDERS' intention was to target nonsmokers, not existing smokers, because existing smokers are already tolerant of the throat hit and have even been habituated to associate the "throat hit" with getting their nicotine fix. Minimizing the throat "hit" of JUUL e-cigarettes is unnecessary to provide an alternative for adult smokers but crucial to luring a new generation of nicotine-addicted users.

3. The JUUL Product Rapidly Deliver Substantially Higher Doses of Nicotine than Cigarettes.

85. The JLI Product's minimized throat hit also dangerously masks the amount of nicotine being delivered, as it eliminates the throat sensory feedback normally associated with a large dose of nicotine. The "throat hit" is part of the body's alert system, letting users know they are inhaling something harmful. Irritation to the throat causes even the most compulsive addict to wait before the next inhalation. Reducing or removing this feedback impairs the user's body from ascertaining its consumption of a toxin and ensures that the nicotine can be consumed without pause. This fosters addiction, and in the cases where users are already addicted, aggravates the existing addiction.

86. JLI Products contain relatively low amounts of throat-irritating freebase nicotine, yet contain and deliver far higher concentrations of nicotine than traditional cigarettes or other electronic nicotine delivery systems ("ENDS") containing freebase nicotine.

Footnote continued from previous page

among youth and young adults, Tobacco Control, 054273 (2018)).

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

88. JLI's '895 patent also shows that a 4 percent solution of benzoic acid nicotine salt causes a peak nicotine-blood concentration ("C_{max}") of approximately 15 ng/mL, compared to a C_{max} of 11 ng/mL for a Pall Mall cigarette.

89. As strikingly high as the reported nicotine dose reported for JUUL pods is, the actual dose is likely higher. JLI FOUNDERS have continuously and falsely represented that each pod contains only as much nicotine as a pack of cigarettes. This statement is false and seriously misleading because, as JLI FOUNDERS know, it is not just the amount of nicotine, but the efficiency with which the product delivers nicotine into the bloodstream, that determines the product's narcotic effect, risk of addiction, and other health risks.

90. Though the strongest benzoic acid concentration mentioned in the '895 patent is 4 percent (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUUL pods and found a 4.5 percent benzoic acid (44.8 ± 0.6) solution. That study found that JUUL pods contained a concentration of 6.2 percent nicotine salt (about 60 mg/mL), rather than the 5 percent nicotine (about 50 mg/mL) advertised. JUUL pods containing an absolute nicotine concentration 1.2 times higher than the stated 5 percent on the label (a relative increase of over 20 percent) coupled

with more benzoic acid than listed in the '895 patent produce higher nicotine absorption than expected for the advertised formulation.

91. Other studies have reported even higher actual concentrations of nicotine in JUUL pods; some experts estimate JUUL pods deliver the same nicotine as two packs of cigarettes.

92. JLI's equivalency claim assumes 10 puffs per cigarette (i.e., 200 puff per pack), or 0.2 mg (200 µg) of nicotine per puff.

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

94. Comparison of available data regarding per puff nicotine intake corroborates the JLI studies mentioned above and indicates that JUUL delivers about 30 percent more nicotine per puff. Specifically, a recent study of JUUL pods found that “[t]he nicotine levels delivered by the JUUL are similar to or even higher than those delivered by cigarettes.” The Reilly study tested JLI’s Tobacco, Fruit Punch, and Mint flavors and found that one puff delivered 164 ± 41 micrograms of nicotine. By comparison, a 2014 study using larger 100 mL puffs found that a Marlboro cigarette delivered 152—193 $\mu\text{g/puff}$. Correcting to account for the different puff sizes between the Reilly and Schroeder studies, this suggests that, at 75ml/puff, a Marlboro would deliver between 114 and 144 $\mu\text{g/puff}$. In other words, empirical data suggests that a JUUL device delivers up to 36 percent more nicotine per puff than a Marlboro cigarette.

95. Because “nicotine yield is strongly correlated with tobacco consumption,” a JUUL pod with more nicotine leads to the purchase of greater amounts of JUUL pods, generating more revenue for JLI. For example, an historic cigarette industry study looking at smoker employees found that “the number of cigarettes the employees smoked per day was directly correlated to the nicotine levels.” In other words, the more nicotine in the cigarettes, the more cigarettes a person smoked.

96. Despite this data, JLI DEFENDANTS failed to disclose to consumers that the JUUL pods’ nicotine salt formulation delivers an exceptionally potent dose of nicotine.

97. By delivering such potent doses of nicotine, JLI Products magnify the health risks posed by nicotine.

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

exceptionally addictive when used by persons without prior exposure to nicotine—a fact not disclosed by JLI DEFENDANTS. Finally, the JUUL device does not have a manual or automatic “off” switch. On information and belief, neither the JUUL pod nor the programming of the JUUL device’s temperature or puff duration settings limit the amount of nicotine JUUL delivers in each puff to the upper bound of a cigarette. Thus, in contrast to a traditional cigarette, which self-extinguishes as each cigarette is consumed, the JUUL device allows non-stop nicotine consumption, which is limited only by the device’s battery. As a result, the JUUL device is able to facilitate consumption of extraordinarily high levels of nicotine unmatched by any cigarette. This makes it easier for the user to become addicted to nicotine and poses additional health risks.

99. JLI DEFENDANTS knew or should have known these dangerous attributes of its products. Despite this knowledge, JLI DEFENDANTS unfairly and deceptively concealed material information about the addictive and dangerous nature of its e-cigarettes.

4. **JUUL is a Sleek, Easy to Conceal Nicotine Delivery Device, Making it Attractive to Non-Smokers and Easy for Young People to Use Without Detection.**

100. As demonstrated by the image below, the JUUL e-cigarette was purposefully designed to look sleek and high-tech.



101. It not only looks like a USB flash drive, but the JUUL device can also be plugged into a computer’s USB drive and charged. The device is approximately the size and shape of a pack of chewing gum, and small enough to fit in a closed hand. In addition, the odor

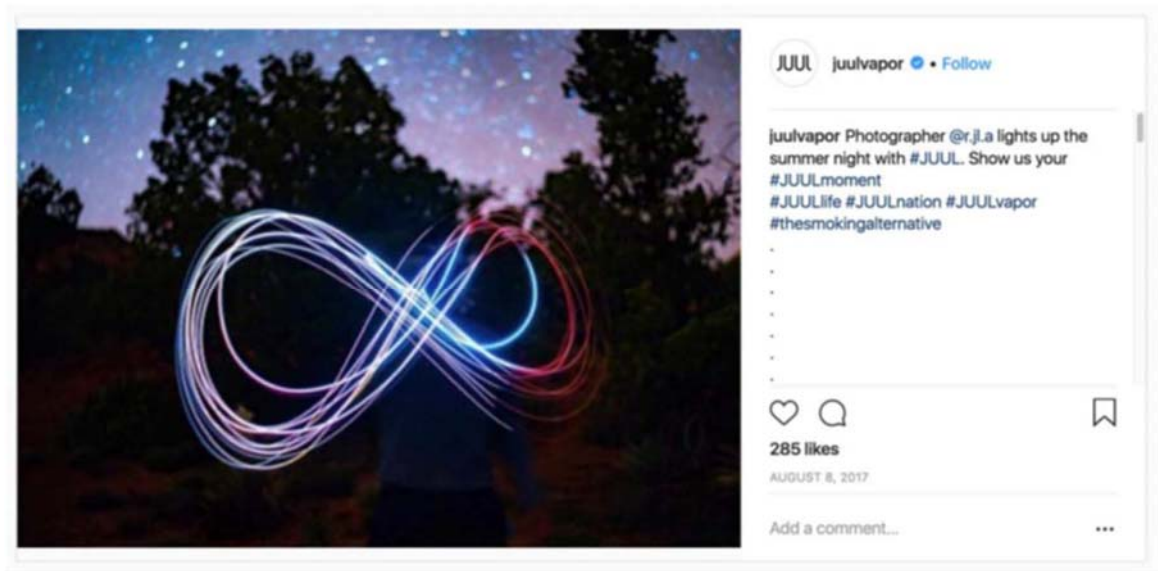
emitted from smoking a JUUL device is a reduced aerosol without much scent, unlike the distinct smell of conventional cigarettes. Because of its design, JUUL is easy to conceal from parents and teachers.

102. The JUUL e-cigarette is small and discrete. Fully assembled, the device is just over 9.5 cm in length and 1.5 cm wide. The JUUL device resembles a memory stick and can be charged in a computer's USB drive. This design allows the device to be concealed in plain sight, camouflaged as a thumb-drive, for use in public spaces, like schools.



103. JUUL's design also included an LED light, which would flash a rainbow of colors when in "party mode." The user activates "party mode" by waving the JUUL e-cigarette back and forth until the white LED light starts flashing multiple colors, so that the rainbow colors are visible while the person inhales from the JUUL device. "Party mode" can also be permanently activated on the JUUL by the user quickly and firmly slapping the JUUL Device

against the palm of the hand, until the LED light starts flashing multiple colors permanently. Party mode on the JUUL e-cigarette is described by users to be “like an Easter egg in a video game” and allows for “some cool tricks that are going to drive [] friends crazy.”⁴⁹ This feature was another characteristic that set JUUL e-cigarette apart from other e-cigarettes on the market, and made it even more appealing and “cool” to young users.



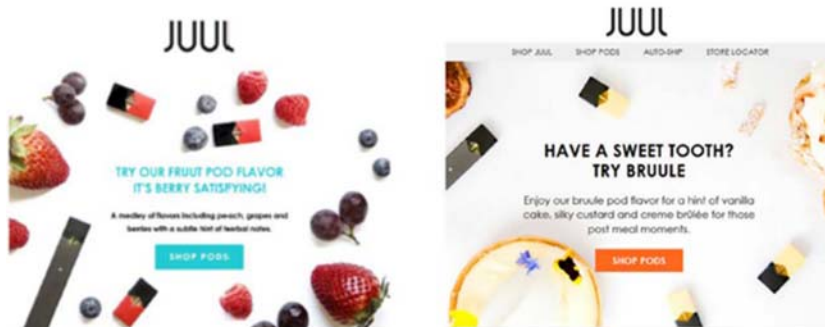
5. **JLI DEFENDANTS Enticed Newcomers to Nicotine with Kid-Friendly Flavors Without Ensuring the Flavoring Additives Were Safe for Inhalation.**

104. Cigarette companies have known for decades that flavored products are key to getting young people to acclimate to nicotine.⁵⁰

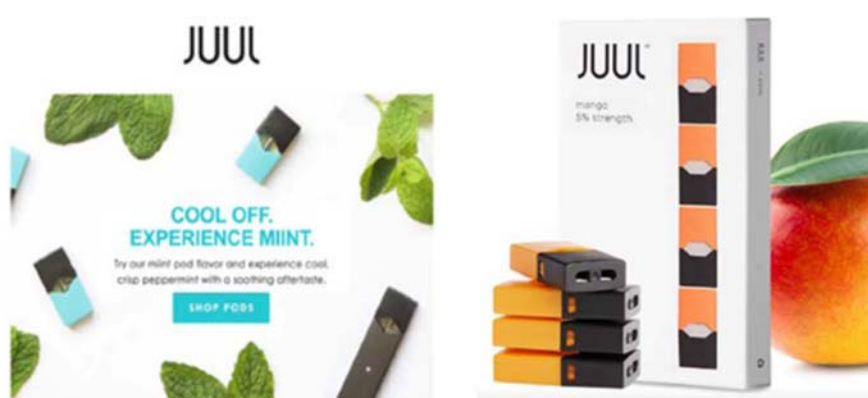
⁴⁹ Jon Hos, *Getting Your Juul Into Party Mode*, (Jul. 12, 2018), <https://vapedrive.com/gettingyour-juul-into-party-mode>.

⁵⁰ A Sept. 1972 Brown & Williamson internal memorandum titled “Youth Cigarette New Concepts,” observed that “it’s a well known fact that teenagers like sweet products.” A 1979 Lorillard memorandum found “younger” customers would be “attracted to products with ‘less tobacco taste,’” and suggested investigating the “possibility of borrowing switching study data from the company which produces ‘Life Savers’ as a basis for determining which flavors enjoy the widest appeal” among youth.

105. In June 2015, the flavors the JLI Defendants marketed included tabaac (later renamed Tobacco), fruit (later renamed Fruit Medley), bruul   (later renamed Cr  me Brulee), and miint (later renamed mint).



106. JLI Defendants later offered other kid-friendly flavors, including cool mint, Cucumber, and mango.



107. In 2009, the FDA banned flavored cigarettes (other than menthol) as its first major anti-tobacco action pursuant to its authority under the Family Smoking Prevention and Tobacco Control Act of 2009. "Flavored cigarettes attract and allure kids into addiction," Health and Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference

held to announce the ban.⁵¹ In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco” and “Menthol” flavors.

108. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction by making it easier and more pleasant to ingest nicotine.⁵²

109. In a recent study, 74% of youth surveyed indicated that their first-use of a JUUL was of a flavored JUUL pod.⁵³

110. JLI DEFENDANTS asserts that they did not intend their flavors to appeal to underage consumers. After eleven Senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette flavors, JLI visited Capitol Hill and told Senators that it never intended its products to appeal to kids and did not realize they were using the products, according to a staffer for Senator Dick Durbin. JLI’s statements to Congress—which parallel similar protests of innocence by cigarette company executives—were false.⁵⁴

111. JLI DEFENDANTS’ use of flavors unfairly targeted not only youth, but unsuspecting adults as well. By positioning JUUL pods as a flavor-oriented product rather than a system for delivering a highly addictive drug, JLI DEFENDANTS deceptively led consumers to

⁵¹ Daniel J. DeNoon, FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors, WebMD (Sept. 22, 2009), <https://www.webmd.com/smokingcessation/news/20090922/fda-bans-flavored-cigarettes#2>.

⁵² See How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Chapter 4 (Centers for Disease Control and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

⁵³ Karma McKelvey et al., Adolescents and Young Adults Use in Perceptions of Pod-based Electronic Cigarettes. 1 JAMA Network Open e183535 (2018), <https://doi:10.1001/jamanetworkopen.2018.3535>.

⁵⁴ Lorraine Woellert & Sarah Oweremohle, *JUUL Tries to Make Friends in Washington as Regulators Circle*, WASH. POST (Dec. 8, 2018, 6:41 AM EST), <https://www.politico.com/story/2018/12/08/juul-lobbying-washington-1052219>.

believe that JUUL pods were not only healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt or adverse effect.

D. DEFENDANTS Developed and Implemented a Marketing Scheme to Downplay the Risks of E-cigarettes, Create Doubt, and Misrepresent the Benefits of Nicotine.

112. Having created a product designed to hook users to its nicotine, JLI DEFENDANTS had to mislead consumers into believing JUUL was something other than what it actually was. So the company engaged in a years' long campaign to downplay JUUL's nicotine content, nicotine delivery, and the unprecedented risks of abuse and addiction JUUL poses. Defendants devised and knowingly carried out a material scheme to defraud consumers by (a) misrepresenting the nicotine content and nicotine delivery profile of JUUL products, (b) misrepresenting the risks and purposes of JUUL products, including representing to the public that JUUL was a smoking cessation tool, and (c) misleading the public and government about JLI's marketing to children.

1. DEFENDANTS Knowingly Made False and Misleading Statements and Omissions Concerning JUUL's Nicotine Content.

113. Every 5% strength JUUL pod package represents that one pod is equivalent to one pack of cigarettes. This statement is deceptive, false and misleading. As JLI's regulatory head explained internally to former CEO Kevin Burns in 2018, each JUUL pod contains "roughly twice the nicotine content of a pack of cigarettes."

114. In addition, and as JLI DEFENDANTS know, it is not just the amount of nicotine, but the efficiency with which the product delivers nicotine into the bloodstream, that determines the product's narcotic effect, risk of addiction, and therapeutic use. Most domestic cigarettes contain 10–15 mg of nicotine per cigarette and each cigarette yields between 1.0 to 1.4 mg of nicotine, meaning that around 10% of the nicotine in a cigarette is typically delivered to

the user. JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine contained in a JUUL pod to the user. JLI's own internal studies suggest a nicotine transfer efficiency rate of closer to 100%.

115. JUUL's e-liquid formulation is highly addictive not only because it contains a high concentration of nicotine, but because it contains a particularly potent form of nicotine, i.e., nicotine salts. DEFENDANTS knew this.

a. JLI DEFENDANTS Transmitted, Promoted, and Utilized Statements Concerning JUUL's Nicotine Content that They Knew Were False and Misleading.

116. As set forth above, the statements in JLI advertisements and on JUUL pod packaging that each JUUL pod contains about as much nicotine as a pack of cigarettes are deceptive, false and misleading. JLI DEFENDANTS knew this.

117. JLI DEFENDANTS caused deceptive, false and misleading statements that a JUUL pod had an equivalent amount of nicotine as one pack of cigarettes to be distributed to consumers including Plaintiff. JLI DEFENDANTS have thus materially misrepresented the nicotine content of JUUL products to the consuming public including Hawai'i residents.

118. By no later than October 30, 2016 (and likely much earlier), the JLI Website – which, as discussed above, the JLI DEFENDANTS reviewed and approved – advertised that “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight, approximately equivalent to 1 pack of cigarettes or 200 puffs.”⁵⁵ The language on the website would later change, but still

⁵⁵ JUULpod, JUUL Labs, Inc. (Oct. 30, 2016), <https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>.

maintained the same fraudulent misrepresentation – i.e., that “[e]ach 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”⁵⁶

119. As noted above, JLI DEFENDANTS directed and approved the content of the JUUL website, and they also directed and approved the distribution channels for JUUL pods and their deceptive, misleading and fraudulent statements regarding JUUL’s nicotine content. And although they knew that these statements were untrue, JLI DEFENDANTS have made no effort to retract such statements or correct their lies.

120. In addition to approving the JLI website, knowing that it contained deceptive, misleading and false statements, JLI DEFENDANTS also knowingly approved and directed the sale and distribution of JUUL pod packaging that contained misrepresentations and omissions.

121. JUUL pod packages that DEFENDANTS sold and distributed stated that JUUL pods are “approximately equivalent to about 1 pack of cigarettes.”⁵⁷ These statements, as well as the statements on the JLI website, are false and misleading.

122. ALTRIA greatly expanded the reach of this fraud by providing its retail and distribution might for JLI products, causing millions of JUUL pods to be sold and distributed with packaging stating that JUUL pods contained only 5% nicotine by weight and were “approximately equivalent to about 1 pack of cigarettes.”⁵⁸ JLI DEFENDANTS and ALTRIA knew that these statements were false and misleading, but nevertheless utilized JUUL product packing, marketing and advertising.

⁵⁶ *What is Vaping?*, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/Whatis-Vaping-How-to-Vape>.

⁵⁷ Juul Labs, Feb. 14, 2018, 10:35 a.m. Tweet, <https://twitter.com/JUULvapor/status/963844069519773698>.

⁵⁸ *Id.*

123. ALTRIA knew in 2017 that a JUUL pod delivered more nicotine than one pack of cigarettes. In 2017, ALTRIA launched its MarkTen Bold ENDS, a relatively high-strength 4% formulation compared to the 2.5% and 3.5% strength MarkTen products initially offered. Even though the JUUL Product was already on store shelves and was rapidly gaining market share with its 5% nicotine formulation, ALTRIA chose to bring a less potent 4% formulation to market.

124. Based on its own internal knowledge, ALTRIA knew that a 5% nicotine formulation would carry more nicotine than one pack of cigarettes. In addition to data it received from JLI DEFENDANTS, ALTRIA's due diligence undoubtedly included a careful examination of JLI's intellectual property, including the '895 patent, which provides a detailed overview of nicotine benzoate's pharmacokinetic profile.

125. Thus, JLI DEFENDANTS and ALTRIA knew that the statement on JUUL pod packaging that each JUUL pod contains 5% nicotine and about as much nicotine as a pack of cigarettes is literally false and they intended such statements to mislead. Neither ALTRIA nor the JLI DEFENDANTS has made any effort to correct or retract the false and misleading statements as to the true nicotine content in JUUL pods. Instead, they have continued to misrepresent the product's nicotine content and design, with the goal of misleading and deceiving consumers.

126. Not only have JLI DEFENDANTS and ALTRIA misrepresented or concealed the actual amount of nicotine consumed via JUUL pods, but they also did not effectively or fully inform users about the risks associated with the potent dose of nicotine delivered by its products. Despite making numerous revisions to JUUL packaging since 2015, the packaging did not

include nicotine addiction warnings until JLI DEFENDANTS were forced to add them in August 2018.

127. The “5% strength” statement in DEFENDANTS’ marketing, advertisements and promotions misrepresents the most material feature of the JUUL product—the nicotine content—and has misled consumers to their detriment. Resellers, apparently assuming that “5% strength” means “50mg/mL” nicotine by volume, compound confusion among consumers by stating that JUUL pods contain “50 mg/mL,” which they do not.⁵⁹

2. DEFENDANTS Downplayed the Risks of JUUL Products.

a. JLI DEFENDANTS Used Food and Coffee Themes to Give a False Impression that JUUL Products Were Safe and Healthy.

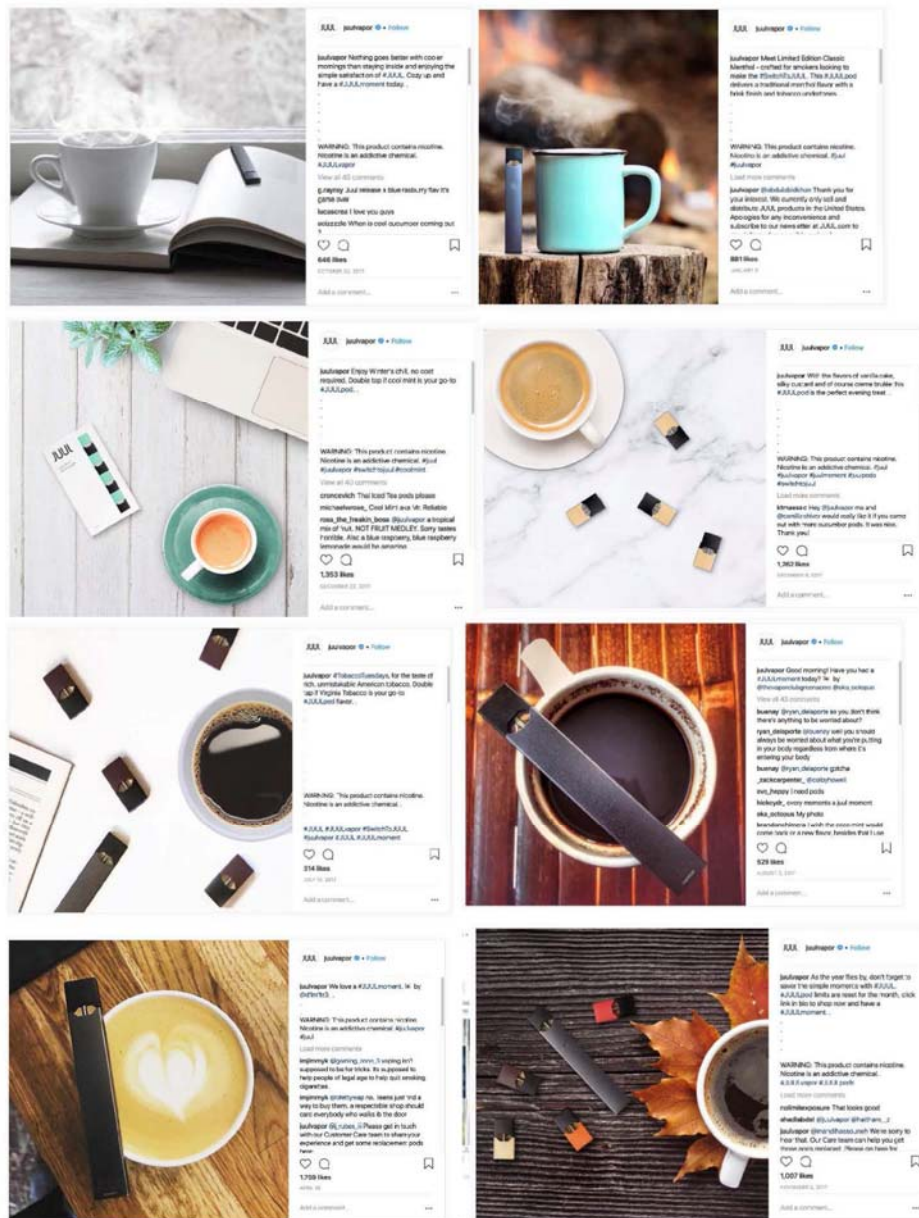
128. In late 2015, JLI DEFENDANTS employed a deceptive marketing scheme to downplay the harms of e-cigarettes with a food-based advertising campaign called “Save Room for JUUL.” The campaign framed JUUL’s addictive pods as “flavors” to be paired with foods.⁶⁰ JLI described its crème brûlée nicotine pods as “the perfect evening treat” that would allow users to “indulge in dessert without the spoon.”

⁵⁹ See, e.g. Tracy Vapors, Starter Kits, <http://web.archive.org/web/20190422143424/https://www.tracyvapors.com/collections/starterkit>; Lindsey Fox, *JUUL Vapor Review*, *Ecigarette Reviewed*, (March 20, 2017) <https://ecigarettereviewed.com/juul-review> (“The nicotine content of the JUUL pods is always the same: 5% or 50 mg/ml”); Jason Artman, *JUUL E-Cigarette Review*, eCig One (Oct. 26, 2016), <https://ecigone.com/e-cigarette-reviews/juul-e-cigarette-review/> (“the e-liquid contains 50 mg of nicotine per ml of e-liquid”); West Coast Vape Supply, <http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juulstarter-kit> (“5% . . . 50 mg”); Vapor4Life, *How Much Nicotine is In a JUUL?* (“Each official JUUL pod contains a whopping 50mg of nicotine per milliliter of liquid (most other devices range from 3 to 30mg per milliliter).”), <https://www.vapor4life.com/blog/how-much-nicotine-is-in-a-JUUL/>.

⁶⁰ Erin Brodwin, *\$15 billion startup JUUL used ‘relaxation, freedom, and sex appeal’ to market its crème-brulee-flavored e-cigs on Twitter and Instagram but its success has come at a big cost*, Business Insider (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cigmarketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

129. None of these advertisements disclosed that JUUL was addictive and unsafe.

130. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee and other caffeinated drinks, sometimes with what appear to be textbooks in the picture. JLI's coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup of coffee.



b. The “Make the Switch” Campaign Intentionally Misled and Deceived Users to Believe that JUUL is a Cessation Device.

131. JLI DEFENDANTS and ALTRIA recognized that one of the keys to growing and preserving the number of nicotine-addicted e-cigarette users (and thus, JLI’s staggering market share), was to mislead potential customers about the true nature of JUUL products. DEFENDANTS knew that if it became public that JUUL was designed to introduce nicotine to youth and hook new users with its potent nicotine content and delivery, it would not survive the public and regulatory backlash. Therefore, JLI DEFENDANTS and ALTRIA repeatedly made false and misleading statements to the public that JUUL was created and designed as a smoking cessation device. JLI DEFENDANTS and ALTRIA committed these deceptive, misleading and fraudulent acts intentionally and knowingly. In making these representations, JLI DEFENDANTS and ALTRIA intended that consumers, the public, and regulators rely on misrepresentations that JUUL products were designed to assist smoking cessation.

132. The most blatant evidence of the cover-up scheme was the January 2019, \$10 million “Make the Switch” television advertising campaign. This campaign, which was the continuation of JLI DEFENDANTS’s web-based Switch campaign, was announced less than a month after ALTRIA announced its investment in JLI.

133. The “Make the Switch” television ads featured former smokers aged 37 to 54 discussing “how JUUL helped them quit smoking.”⁶¹ According to JLI’s Vice President of Marketing, the “Make the Switch” campaign was “an honest, straight down the middle of the

⁶¹ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers who quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019), <https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-adcampaign.html>

fairway, very clear communication about what we're trying to do as a company.”⁶² These statements were false as JUUL was not intended to be a smoking cessation device. JLI DEFENDANTS and ALTRIA committed acts of deceit when they caused the “Make the Switch” campaign to air on television with the fraudulent intent of deceiving and misleading the public, the United States Congress, and government regulators into believing that the company is and had been focused solely on targeting adult smokers. ALTRIA also committed acts of deceit and fraud when they caused tens of thousands, if not millions, of written versions of the Make the Switch campaign to be distributed with packages of its combustible cigarettes.

134. DEFENDANTS continually sought to frame JUUL products as smoking cessation devices in their public statements and on their website. MONSEES explained during his testimony before Congress:

The history of cessation products have extremely low efficacy. That is the problem we are trying to solve here. So, if we can give consumers an alternative and market it right next to other cigarettes, then we can actually make something work.

[T]raditional nicotine replacement therapies, which are generally regarded as the gold standard for tools, right, for quitting, those are nicotine in a patch or a gum form, typically, and the efficacy rates on those hover just below about a 10 percent or so. JUUL—we ran a very large study of JUUL consumers, ex-smokers who had picked up JUUL, and looked at them, looked at their usage on a longitudinal basis, which is usually the way that we want to look at this, in a sophisticated fashion ... what we found was that after 90 days, 54 percent of those smokers had stopped smoking completely, for a minimum of 30 days already. And the most interesting part of this study is that if you follow it out further, to 180 days, that number continues to go up dramatically, and that is quite the opposite of what happens with traditional nicotine replacement therapies.⁶³

⁶² *Id.*

⁶³ Testimony of JAMES Monsees, Co-founder and Chief Product Officer, JUUL Labs, Inc.,

Footnote continued on next page

135. JLI has advertised cost-savings calculators as part of its Switch campaign. Those calculators assume that a smoker who switches will continue consuming the same amount of nicotine that he or she did as a smoker (i.e., a pack a day smoker is presumed to consume one JUUL pod a day). DEFENDANTS know that the calculator is misleading because smokers who switch to JUUL typically increase their nicotine intake or end up consuming both cigarettes and JUUL products, rendering the calculator misleading at best.

136. The goal of these advertisements was to convey the deceptive, misleading and false impression that JUUL products could help consumers quit smoking and break nicotine addiction in a way that was healthy and safe. But, as noted above, that was simply not the case. DEFENDANTS never disclosed to consumers that JUUL e-cigarettes and JUUL pods are at least as addictive as, if not more addictive, than combustible cigarettes. And each of JLI DEFENDANTS and ALTRIA received this data and were aware of this fact.

137. The deceptive, misleading and fraudulent nature of the “Make the Switch” campaign is evident when comparing the campaign’s advertisements to JUUL’s initial advertising, as demonstrated below. The fact that these advertisements are for the same product confirms that, notwithstanding the advice that JLI DEFENDANTS and ALTRIA received from their media consultants, DEFENDANTS never intended to target only adult smokers.

Footnote continued from previous page

Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, *Hearing on Examining JUUL 's Role in the Youth Nicotine Epidemic: Part 2* (July 25, 2019), <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotineepidemic-part-ii>.



138. The FDA and other government regulators, enforcing existing laws addressing e-cigarettes,⁶⁴ publicly criticized the “Make the Switch” campaign and other efforts by DEFENDANTS to depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the Federal Food, Drug, and Cosmetics Act (FDCA) (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or labeling of a cigarette product directly or indirectly suggests that the product has a lower risk of cigarette-related disease, is less harmful than combustible cigarettes, or is otherwise ‘safer’ than combustible cigarettes, then the product becomes a “modified risk tobacco product.”

139. In late 2019, and in response to the House of Representatives hearings in which JLI DEFENDANTS testified, the FDA issued two warning letters to JLI detailing its concern that JLI was unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco products” within the meaning of the FDCA.⁶⁵

⁶⁴ Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or labeling of a cigarette product directly or indirectly suggests that the product has a lower risk of cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than traditional cigarettes, then the product becomes a “modified risk tobacco product.”

⁶⁵ U.S. Food and Drug Administration Warning Letter to JUUL Labs, (September 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warningletters/juul-labs-inc-590950-09092019>.

140. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its advertising slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes was “particularly concerning because [those] statements were made directly to children in school.”⁶⁶ The FDA concluded that in using advertising language that e-cigarettes were safer than cigarettes, JLI had violated Sections 902(8) and 911 by marketing JUUL products as “modified risk tobacco products” without prior approval.⁶⁷

**c. JLI, ALTRIA, and Others in the E-Cigarette Industry
Coordinated with Third-Party Groups to Mislead the Public
About the Harms and Benefits of E-Cigarettes.**

141. DEFENDANTS coordinated with the cigarette industry to engage consultants, academics, reporters, and other friendly sources such as the American Enterprise Institute, to serve as spokespersons and cheerleaders for e-cigarette products. Taking yet another page from the cigarette industry’s playbook, these influencers masked their connection to the e-cigarette industry as they created doubt about the product’s risks and misrepresented its benefits.

142. For example, just as JLI launched, cigarette company expert witness Sally Satel published an article in Forbes Magazine touting the benefits of nicotine—claiming it helped people concentrate and was harmless.⁶⁸ In another article, she lauded efforts by JLI and others to develop nicotine-related products, and characterized doubters as hysterical and creating a “panic.”⁶⁹

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Sally Satel, *Nicotine Itself Isn't The Real Villain*, FORBES (June 19, 2015), <https://www.forbes.com/sites/sallysatel/2015/06/19/nicotine-can-save-lives/>.

⁶⁹ Sally Satel, *Why The Panic Over JUUL And Teen Vaping May Have Deadly Results*, FORBES (Apr. 11, 2018), www.forbes.com/sites/sallysatel/2018/04/11/why-the-panic-over-juul-and-teen-vaping-may-have-deadly-results/#6b1ec693ea48.

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

144. JLI DEFENDANTS understood from the cigarette industry playbook that sowing doubt and confusion about the benefits and risks of e-cigarettes was key to long-term success. First, by creating a “two-sides-to-every-story” narrative, JLI DEFENDANTS were able to reduce barriers to reaching young people and to encourage new users to try the product. JLI DEFENDANTS also gave addicted users permission to keep using the products and avoid the pain of withdrawal. Second, by engaging people who looked like independent experts, JLI DEFENDANTS staved off regulation and suppressed political opposition, allowing it a long runway to capture market share. Third, by belittling the public health community, JLI DEFENDANTS neutered their most vocal threat.

145. JLI DEFENDANTS coordinated with third parties to unfairly conceal the risks of e-cigarettes, knowing that a campaign of doubt, misinformation and confusion benefitted them and would be the key to the industry’s survival.

d. JLI DEFENDANTS Developed Point-of-Sale Advertising That Emphasized the Products’ Positive Image Without Adequately Disclosing Its Dangers and Risks.

146. The cigarette industry spends \$8.6 billion a year in point-of-sale (“POS”) promotions—or almost \$990,000 every hour.⁷⁰ In a 2009 study of adult daily smokers, unintended cigarette purchases were made by 22 percent of study participants, and POS displays

⁷⁰ *The Truth About Tobacco Industry Retail Practices*, TRUTH INITIATIVE, https://truthinitiative.org/sites/default/files/media/files/2019/03/Point-of-Sale-2017_0.pdf.

caused nearly four times as many unplanned purchases as planned purchases.⁷¹ Younger smokers, in particular, are more likely to make unplanned tobacco purchases in the presence of POS advertising.

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

148. In particular, they designed bright, white packages similar to that used for iPhone packaging. JLI DEFENDANTS knew the packaging would resonate with young people, and stand out when displayed in store shelves. This packaging buttressed JLI's online marketing of JUUL e-cigarette as "the i-Phone of Ecigs," thereby framing them as a cool, fashionable item to own and use. JLI posters and signs at the point of sale also promoted JUUL's flavors. From 2015 through late 2018, JLI DEFENDANTS promoted JUUL products and JUUL flavors at the point of sale without disclosing that the products contained nicotine or warning that the products could lead to addiction.

⁷¹ *Id.* at 4.



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

e. **DEFENDANTS Never Warned Hawai'i Residents that JUUL Products Were Unsafe, Addictive, and Dangerous.**

150. In its advertising, marketing, and promotions, JLI DEFENDANTS have not provided any warnings about the risks of addiction, lung collapse or other pulmonary injury, strokes or other cardiovascular injury, or seizures or other neurological injury.

151. Despite having made numerous revisions to its packaging since 2015, JLI DEFENDANTS did not add nicotine warnings until forced to do so in August of 2018. The original JUUL product labels included a warning indicating that the products contain a substance known to cause cancer, and a warning to keep JUUL pods away from children and pets, but contained no warnings specifically about the known effects, and long-term effects, of nicotine or vaping/inhaling nicotine salts. Many of JUUL's advertisements also lacked a nicotine warning.

152. Hawai‘i residents did not and could have known the risks associated with JUUL, because JLI DEFENDANTS had exclusive knowledge about its products, including its design, and concealed that information from them.

153. As a result of JLI DEFENDANTS’ remarkably successful marketing campaign, based on tactics developed by the cigarette industry and amplified in social media, JUUL users in Hawai‘i reasonably believed that JUUL was safe, harmless, fun, and cool—a thing to do with friends.

154. A 2017 study by the Truth Initiative Schroeder Institute® found that 6 percent of youth and 10 percent of young adults had used a JUUL e-cigarette in the preceding 30 days. The study also found that while many young people are aware of JUUL, many are unaware that the products always contains the addictive chemical nicotine. Specifically, the study found that:

- a. Twenty-five percent of survey respondents aged 15 to 24 recognized a JUUL e-cigarette device when shown a photo of the products.
- b. Among those who recognized the JUUL products, 25 percent reported that use of these products is called “JUULing,” indicating the product is so distinctive, it is perceived as its own category.
- c. Fully 63 percent of JUUL users did not know the products always contain nicotine.

3. JLI DEFENDANTS and ALTRIA Misled the Public About its Marketing to Children.

155. Having created a product, like combustible cigarettes, that was intended to get users addicted to nicotine, and while taking steps to conceal the true nicotine content or potential harm from using JUULs, JLI FOUNDERS needed investors willing to adopt the tactics of the cigarette industry as their own. They found those investors in PRITZKER, HUH, and VALANI.

156. JLI DEFENDANTS deployed a sophisticated viral marketing campaign that strategically laced social media with false and misleading messages to ensure their uptake and distribution among young consumers. JLI DEFENDANTS’ campaign was wildly successful—burying their hook into kids and initiating a public health crisis.

157. Following the successful model of the cigarette industry, since 2015, JLI DEFENDANTS, in conjunction and in concert with unnamed Defendants Does 41 through 50 involved in providing marketing services to JLI DEFENDANTS, has been operating a viral marketing campaign targeting teenagers and young adults. This campaign extends and expands upon deceptive advertising tropes used by tobacco companies to exploit the psychological needs of consumers—especially youth—and to convert them into JUUL users.



158. JLI DEFENDANTS’ reliance on strategies proved successful by the cigarette industry is apparent when JLI advertisements are compared to historical cigarette advertisements. These comparisons are available on Stanford’s Research into Impact of Tobacco Advertising (“SRITA”) website. The side-by-side comparison of numerous JLI advertisements shows that its imagery directly parallels that used by cigarette manufacturers, including imagery relating to attractiveness, stylishness, sex appeal, fun, “belonging,” relaxation, and sensory pleasure, including taste.

a. **ALTRIA Falsely Stated That It Intended to Use Its Expertise in “Underage Prevention” Issues to Help JLI DEFENDANTS.**

159. ALTRIA announced that it intended to invest in JLI less than two months after it told the FDA that ALTRIA “believe[s] that pod-based products significantly contribute to the

rise in youth use of e-vapor products” and that it accordingly would be removing its own pod-based products from the market.⁷² ALTRIA made the same representations to its investors.⁷³

160. ALTRIA falsely claimed its investment in JLI had an altruistic motive—“we believed the transaction would give ALTRIA an unprecedented opportunity to share our experience in underage tobacco prevention with JUUL to help address youth usage,” but later said that JLI has not availed itself of that experience. In ALTRIA’s October 2019 letter to Senator Dick Durbin, ALTRIA CEO Howard Willard said that while ALTRIA “offered to JUUL services relating to underage prevention efforts,” but that to date “JUUL has not accepted ALTRIA’s offers of assistance in addressing underage vaping relating issues.”⁷⁴

161. ALTRIA recognized JLI’s market share dominance in the e-cigarette market as the path to ALTRIA’s continued viability and profitability. In a January 31, 2019 earnings call, ALTRIA explained that “[w]hen you add to JUUL’s already substantial capabilities, our underage tobacco prevention expertise and ability to directly connect with adult smokers, we see a compelling future with long-term benefits for both adult tobacco consumers and our shareholders. We are excited about JUUL’s domestic growth and international prospects and their potential impact on our investment.”⁷⁵ JLI’s growth was, as ALTRIA well knew, due to the

⁷² Letter from Howard A. Willard III, ALTRIA, to Dr. Scott Gottlieb, FDA, 2 (October 25, 2018).

⁷³ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript, (October 25, 2018) <https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>.

⁷⁴ Letter from Howard A. Willard III, ALTRIA, to Dr. Scott Gottlieb, FDA, 2 (October 25, 2018).

⁷⁵ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period ending December 31, 2018. (Jan. 31, 2019), <https://www.fool.com/earnings/calltranscripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx>.

product's viral popularity among teens. Willard acknowledged the youth vaping crisis, stating, "Briefly touching on the regulatory environment, the FDA and many others are concerned about an epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others in the industry must continue to address aggressively and promptly."⁷⁶

ALTRIA's representations that it intended to help JLI DEFENDANTS curb the prevalence of underage use was false and misleading. As discussed below, ALTRIA coordinated with JLI DEFENDANTS to capture and maintain the youth market.

b. JLI DEFENDANTS Used Flavors and Food Imagery to Attract Teenagers and Downplay Risks.

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

163. Until the FDA's recent ban on most flavors, JLI sold its pods in a variety of sweetened flavors, which they advertised as desserts in themselves. For example, it used tag lines like "save room for JUUL" and "indulge in dessert without the spoon." JLI DEFENDANTS used imagery that looked like ads for a trendy coffee shop or restaurant.



⁷⁶ *Id.*

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

165. Moreover, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”⁷⁷ Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their non-vaping peers, a new study has found.”⁷⁸

166. Research also shows that when youth see flavored ENDS liquids advertisements, they believe the advertisements and products are intended for them.⁷⁹

167. The use of attractive flavors foreseeably increases the risk of nicotine addiction, and e-cigarette related injuries, as traditional cigarette product designs aimed at reducing the unpleasant characteristics of cigarette smoke (e.g., addition of menthol to mask unpleasant flavors) have previously been shown to contribute to the risk of addiction.⁸⁰ Worse still, adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was tobacco-flavored.

⁷⁷ Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 J. AM. MED. ASS’N 1871 (Oct. 26, 2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690>.

⁷⁸ Brian A. Primack et al., *Initiation of Traditional Cigarette Smoking After Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 AM. J. MED. 443 (Apr. 2018).

⁷⁹ Karma McKelvey et al., *Youth Say Ads for Flavored E-Liquids Are for Them*, 91 ADDICTIVE BEHAVIORS 164 (Aug. 29, 2018), www.ncbi.nlm.nih.gov/pubmed/30314868.

⁸⁰ How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Chapter 4, Nicotine Addiction: Past and Present (2010) www.ncbi.nlm.nih.gov/books/NBK53017/.

168. JLI’s kid-friendly flavors included Mango, “Cool Mint,” and Menthol. Seventy-four percent of youth surveyed in a recent study indicated that their first use of a JUUL was of a flavored pod.⁸¹ More than half of teens in a nationwide survey by the Wall Street Journal stated that they use ENDS because they liked the flavors.

169. When JLI DEFENDANTS released what became two most popular flavors among youth, Mango and “Cool” Mint (“Cool Mint”), JLI DEFENDANTS promoted those flavors on Instagram, Twitter, YouTube and Facebook—all of which are skewed toward young audiences.

170. JLI’s mango pods quickly became the runaway favorite among youth, and were so popular that, incredibly, they noticeably increased the use of the word “mango” on the internet as a whole. Starting in early 2017, Google Trends reports a nearly 5 percent increase in year-over-year use of the word “mango” online.⁸²

171. “Cool Mint” became youths’ second youth favorite flavor. The 2018 Duell Study found 94 mg/mL nicotine in a JUUL “Cool Mint” pod – nearly double the amount on JUUL’s “5% strength” label would suggest. In addition to its nicotine content, the “Cool Mint” pods pose additional risks. The FDA’s Tobacco Products Scientific Advisory Committee in March 2011 issued a report on menthol cigarettes, concluding that the minty additive was not just a flavoring agent but had drug-like effects, including “cooling and anesthetic effects that reduce

⁸¹ Karma McKelvey et al., *Adolescents’ and Young Adults’ Use and Perceptions of Pod-Based Electronic Cigarettes*, 1 J. Am. Med. Ass’n (Oct. 19, 2018), www.ncbi.nlm.nih.gov/pmc/articles/PMC6324423/.

⁸² <https://trends.google.com/trends/explore?date=2014-06-01%202018-12-05&geo=US&q=mango> (as of July 5, 2019).

the harshness of cigarette smoke.”⁸³ Mint could also “facilitate deeper and more prolonged inhalation,” resulting in “greater smoke intake per cigarette.”⁸⁴

172. JLI DEFENDANTS’ advertising emphasized the flavors of its sweetened nicotine pods. Leveraging the flavors, JLI DEFENDANTS advertised pods as part of a meal, to be paired with other foods. In late 2015, JLI DEFENDANTS began a food-based advertising campaign called “Save Room for JUUL,” a play on the expression “save room for dessert.” JLI described its nicotine pods as “the perfect evening treat,” using tag lines like “indulge in dessert without the spoon.”

173. JLI DEFENDANTS similarly promoted the Fruit Medley pods using images of ripe berries. JLI described its “Cool Mint” pods as “crisp mint with a pleasant aftertaste”; encouraged consumers to “Beat The August Heat With Cool Mint”; and in a Facebook advertisement dated July 10, 2017, JLI urged customers to “Start Your Week With Cool Mint JUULpods.”⁸⁵ Along with the bright green caps of the “Cool Mint” JUUL pods, the Facebook ad included an image of a latte and an iPad.

174. JLI even hired celebrity chefs to provide pairing suggestions for JUUL flavors. On Instagram and Twitter, JLI boasted about “featured chef” Bobby Hellen creating a “seasonal

⁸³ STEPHEN PROCTOR, *GOLDEN HOLOCAUST: ORIGINS OF THE CIGARETTE CATASTROPHE AND THE CASE FOR ABOLITION*, 500.

⁸⁴ *Id.* at 500-01.

⁸⁵ See “Beat the August Heat With Cool Mint” ad; “Start Your Week With Cool Mint JUULPods” ad (July 10, 2017).

recipe” to pair with JUUL pods. On Facebook, JLI posted a link to an article on porhomme.com about “what our featured chefs created to pair with our pod flavors.”⁸⁶



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

176. By positioning JUUL pods as a delicious treat rather than a system for delivering a highly addictive drug with dangerous side effects, JLI DEFENDANTS misled consumers to believe that JUUL pods were not only healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt or adverse effect.

177. By modeling its nicotine pods’ flavor profiles on sweets, naming its nicotine pods after those sweets, and using images of the sweets in JUUL pod advertisements, JLI DEFENDANTS conditioned viewers of its advertisements to associate JUUL with those foods.

⁸⁶ JUUL Facebook Account, *JUUL’s ‘Save Room’ Campaign Yields 3 Special JUUL Recipes* (Jan. 4, 2016); Por Homme, *JUUL’s ‘Save Room’ Campaign Yields 3 Special JUUL Recipes*, JUUL (Dec. 14, 2015). See also “Seasonal Recipe to Pair With Our Brulee Pod.”

Through this conditioning process, JLI DEFENDANTS sought to link the sight or mention of JUUL products to mental images of the fruits and desserts in JLI DEFENDANTS advertising, which would in turn trigger food-based physiological arousal including increased salivation and heart rate. These physiological responses, in turn, would make JUUL use more appealing.

178. By 2017, JLI DEFENDANTS knew that the foreseeable risks posed by fruit and candy-flavored e-liquids had materialized. A significant percentage of JLI's customers included adolescents who overwhelmingly preferred Fruit Medley and Crème Brûlée over Tobacco or Menthol.⁸⁷ Instead of taking corrective action or withdrawing the sweet flavors, JLI DEFENDANTS capitalized on youth enthusiasm for its products.

179. After eleven senators questioned JLI's marketing approach and kid-friendly e-cigarette flavors like Fruit Medley, Crème Brûlée Mango, JLI visited Capitol Hill and said it never intended its products to appeal to kids and did not realize they were using the products. JLI's statements to Congress—which paralleled similar protests of innocence by cigarette company executives—were false.

180. In November 2018, in response to litigation and other mounting public pressures, JLI announced that it had “stopped accepting retail orders” for many of its flavored JUUL pods, such as mango, crème brûlée, and cucumber.⁸⁸ But JLI's promise was misleading. JLI only refused to sell them directly to retailers; it still manufactured and sold the JUUL pods. The pods could still be purchased on its website by persons under age 26. JLI also continued to sell “Cool

⁸⁷ *JUUL Fails to Remove All of Youth's Favorite Flavors from Stores*, TRUTH INITIATIVE (Nov. 15, 2018), <https://truthinitiative.org/news/juulfails-remove-all-youths-favorite-flavors-stores>.

⁸⁸ Sheila Kaplan & Jan Hoffman, *Juul Suspends Selling Most E-Cigarette Flavors in Stores*, N.Y. TIMES (Nov. 13, 2018), www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html.

Mint” in gas stations knowing that the flavor was incredibly popular with youth and would become the de facto favorite if access to other flavors was removed.

181. With increasing media and scientific studies raising the alarm about the health risks of JUUL products, in September of 2019, JLI announced that it suspended all broadcast, print, and digital product advertising in the United States.⁸⁹

182. On January 2, 2020, the FDA released its enforcement policy on flavored e-cigarettes that appealed to children, including fruit and mint.⁹⁰

183. The only responsible solution to prevent flavored JUUL pods from getting into the hands of young people is to stop manufacturing them.

c. JUUL Advertising Used Imagery that Exploited Young People’s Psychological Vulnerabilities.

184. To remain profitable, the tobacco industry must continually woo new customers. Existing customers sometimes wean themselves from addiction and the others eventually die, so replacement customers are needed. In recent years, tobacco usage in the United States has fallen dramatically, with particularly large decreases in the youth smoking rates. This is a trend cigarette companies have been trying to counteract vigorously. The cigarette industry knows that the younger a person starts smoking, the longer it will have a customer. Historically, cigarette companies fought to increase share penetration among the 14-18 age group because “young

⁸⁹ Megan Graham, *Juul Suspends Broadcast, Print and Digital Product Advertising in the US*, CNBC (Sept. 25, 2019, 9:19 AM EDT), <https://www.cnbc.com/2019/09/25/juul-suspends-broadcast-print-and-digital-product-ads-in-the-us.html>.

⁹⁰ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint*, FDA NEWS RELEASE (Jan. 2, 2020).

smokers have been the critical factor in the growth” of tobacco companies, and “the 14-18 year old group is an increasing segment of the smoking population.”⁹¹

185. It is well-established that “marketing is a substantial contributing factor to youth smoking initiation.”⁹²

186. The landmark *USA v. Philip Morris* case revealed that tobacco companies targeted adolescents for decades by: “(1) employ[ing] the concept of peers in order to market to teenagers; (2) us[ing] images and themes in their marketing that appeal to teenagers; and (3) employ[ing] advertising and promotion strategies to knowingly reach teenagers.”⁹³ The court found “overwhelming” evidence that tobacco companies intentionally exploited adolescents’ vulnerability to imagery by creating advertising emphasizing themes of “independence, adventurousness, sophistication, glamour, athleticism, social inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being ‘cool.’”⁹⁴

187. Thus, the tobacco industry has long used viral marketing campaigns to push its products on children, teens, and young adults. Prior to the advent of the Internet, cigarette companies engaged in “viral advertising” or “influential seeding” by paying “cool people” to smoke in select bars and clubs, with the “idea being that people will copy this fashion, which would then spread as if by infection.”⁹⁵ By paying attractive, stylish third parties to use their products in trendy public places, tobacco companies were able to create buzz and intrigue. As

⁹¹ Memo to: C.A. Tucker from: J.F. Hind Re: "Meet the Turk" (Jan. 23, 1978) <http://legacy.library.ucsf.edu/tid/lve76b00>.

⁹² *USA v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006).

⁹³ No. 99-cv-2396, ECF 5732, ¶ 2682 (D.D.C. 2008).

⁹⁴ *Id.* at ¶ 2674.

⁹⁵ GOLDEN HOLOCAUST, 119 (citing Ted Bates and Co., Copy of a Study of Cigarette Advertising Made by J.W. Burgard); 1953, (Lorillard), n.d., Bates 04238374-8433.

word spread, the public would develop a strong association that smoking was what young, cool adults were doing.

188. Today, cigarette manufacturers like ALTRIA are limited in their ability to advertise in the United States, but actively use viral marketing techniques outside of the United States. For example, Japan Tobacco International, one of JLI's early investors, launched social media campaigns including a "Freedom Music Festival" promoting Winston cigarettes in Kazakhstan, Kyrgyzstan, and Jordan. Similarly, Phillip Morris International has used influencer campaigns in multiple countries. A campaign in Indonesia called "I Decide To" has been viewed more than 47 million times online. A hashtag marketing campaign called #NightHunters in Uruguay used paid influencers to pose with menthol cigarettes and was seen by nearly 10 percent of Uruguay's population.⁹⁶

189. An influencer paid to promote Philip Morris brands stated that Philip Morris targets a "'super young profile' for its influencers . . . the people they selected are always the youngest. They look for young people that have large groups of friends so [the social media promotional message] gets expanded more and more."⁹⁷ Another influencer stated that "we had a training session with the person in charge of marketing in Marlboro, she talked to us about how difficult it was for them to advertise due to all the laws in place. She also talked to us about . . . [linking] the brand to certain colors or situations."⁹⁸

⁹⁶ *New Investigation Exposes How Tobacco Companies Market Cigarettes on Social Media in the U.S. and Around the World* (Aug 27, 2019) Campaign For Tobacco-Free Kids www.tobaccofreekids.org/press-releases/2018_08_27_ftc.

⁹⁷ *Id.*

⁹⁸ *Id.* (brackets in original).

190. A study carried out by the Campaign for Tobacco-free Kids, reported that “tobacco companies are secretly paying social media stars to flood your newsfeed with images of their cigarette brands.”⁹⁹ In a nutshell, “young social media stars are paid to make smoking look cool.”¹⁰⁰

191. Throughout the relevant period, JLI DEFENDANTS ran a consistent, simple message on social media that communicated, in particular, to teenagers and young adults, that JUUL products were used by popular, attractive, and stylish young adults (i.e., an idealized version of an adolescent’s future self) while conspicuously failing to disclose the risks of the products.

192. In designing the campaign, JLI DEFENDANTS knew that to increase the chances that content goes viral amongst the teen demographic, it needed to design a campaign that was simple, would generate an emotional response that would resonate with teenagers, and obscure the fact that the products were unsafe and addictive.

193. To help design these ads, JLI DEFENDANTS relied on various social media marketing companies. In 2015, JLI DEFENDANTS worked with Cult Collective, instructing Cult Collective to design an ad campaign that would catch fire and reach customers who had “heard it all before.” At the time, JLI was a young company, competing with bigger, more established companies with large advertising budgets and high brand loyalty. The solution JLI and Cult Collective reached was to position JLI as modern products that represented a better way of life for young people. That campaign was highly effective.

⁹⁹ *Id.*

¹⁰⁰ *Id.* A gallery of influencer posts is available at: <https://www.takeapart.org/wheretheressmoke/gallery/>.

194. Because teenagers are at a stage in their psychosocial development when they are struggling to define their own identities, they are particularly vulnerable to image-heavy advertisements providing cues for the “right” way to look and behave amongst peers.¹⁰¹ Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.¹⁰² By making smoking a signifier of a passage into adulthood, tobacco companies turned smoking into a way for teenagers to enhance their image in the eyes of their peers.¹⁰³

d. JUUL’s Launch Campaign Was Targeted to Create Buzz Among Young Consumers.

195. To announce the JUUL’s release in June 2015, JLI DEFENDANTS launched the “Vaporized” advertising campaign aimed at a youth audience.¹⁰⁴ The campaign used young, stylish models, bold colors, memorable imagery, and themes of sexual attractiveness, thinness, independence, rebelliousness and being “cool.” The models were often using hand gestures or poses that mimicked teenagers.



¹⁰¹ *Id.* at 578.

¹⁰² *Id.* at 570, 590

¹⁰³ *Id.* at 1072.

¹⁰⁴ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized’ Campaign*, ADAGE (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.



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

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

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

199. As Cult Collective’s creative director explained, “We created ridiculous enthusiasm for the hashtag ‘Vaporized,’ and deployed rich experiential activations and a brand sponsorship strategy that aligned perfectly with those we knew would be our best customers.”¹⁰⁵

200. As part of the Vaporized campaign, JLI DEFENDANTS advertised on a 12-panel display over Times Square.

¹⁰⁵ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*, STANFORD RESEARCH INTO THE IMPACT OF TOBACCO ADVERTISING (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (citing, Cult Creative JUUL case study. <http://cultideas.com/case-study/juul> (last accessed September 21, 2018)) (emphasis added).



201. Billboard advertising of cigarettes has for years been unlawful under the Tobacco Master Settlement Agreement (“MSA”) reached in 1998 between 46 states attorneys general and cigarette companies, but JLI DEFENDANTS took advantage of that agreement’s failure to foresee the rise of vaping products and advertised its nicotine products in a manner unequivocally deemed against public policy for other nicotine products.

202. To ensure that its message would spread, JLI DEFENDANTS utilized several other tools to put its products in front of young people. First, it ran the Vaporized campaign in the front spread of Vice magazine’s cover issue. Notably, Vice bills itself as the “#1 youth media brand” in the world and is known for running edgy content that appeal to youth. JLI DEFENDANTS also implemented a series of pop-up “JUUL bars” in Los Angeles, New York, and the Hamptons, imitating pop-up restaurants and bars typically aimed at attracting young, hip urban consumers. Again, cigarette companies are expressly prohibited by law from such conduct because it is against public policy.



203. JLI’s chief marketing officer, Richard Mumby said, “while other campaigns tend to be ‘overtly reliant on just the product,’ [JUUL’s] effort features diverse 20-to-30-year-olds using the product.”¹⁰⁶ This reliance on images of young, diverse users was specifically aimed at convincing young people who were not previously addicted cigarette smokers to purchase JUUL products; to make the use of the JUUL devices appear fun and without long-term negative consequences; to position the JUUL e-cigarette as the e-cigarette of choice for young adults; and, to introduce youth to the “illicit pleasure” of using the JUUL products.¹⁰⁷

204. JLI DEFENDANTS promoted the Vaporized campaign on Facebook, Instagram, and Twitter. The Vaporized campaign included the largest ENDS smartphone campaign of 2015, which accounted for 74% of all such smartphone advertising that year and generated over 400 unique promotions.

205. JLI DEFENDANTS also sponsored at least 25 live social events for its products in California, Florida, New York and Nevada. The invitations to JLI’s events did not indicate that the JUUL was intended for cigarette smokers, was unsafe for anyone under 26, contained nicotine, carried significant health risks and was addictive. Instead, the promised attendees “free

¹⁰⁶ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads*, *supra*.

¹⁰⁷ Additional images and videos are available at http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php.

#JUUL starter kit[s],” live music, or slumber parties. Photographs from these events confirm they drew a youthful crowd. Use of such sponsored events was a long-standing practice for tobacco companies but is now forbidden.

206. John Schachter, director of state communications for Campaign for Tobacco-Free Kids, expressed “concern about the JUUL campaign because of the youth of the men and women depicted in the campaign, especially when adjoined with the design.” Mr. Schachter said “the organization has noticed obvious trends that appeal to adolescents in e-cigarette campaigns such as celebrity endorsements, sponsorships and various flavors.”¹⁰⁸

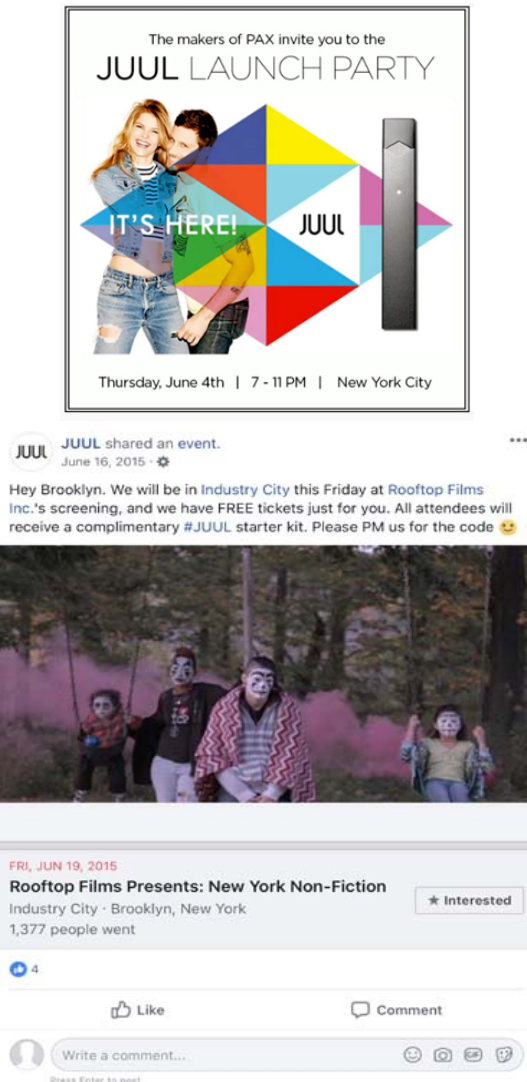
207. To the extent that the Vaporized advertisements disclosed that JUUL products contained nicotine, the warnings were in small print against low-contrast backgrounds, making them easy to overlook. By way of comparison, if the same ads had been touting cigarettes, they would have been required to display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

e. JLI Gave Away Free Products to Get New Consumers Hooked.

208. JLI DEFENDANTS distributed free starter packs at the live social events described above—conduct that was expressly forbidden for a cigarette company under the MSA because it lured young people into nicotine addiction and related harms. BeCore, one of the firms responsible for designing and implementing JLI’s live events reported that “on average, BeCore exceeded the sampling goals set by JUUL . . . average number of samples/event distributed

¹⁰⁸ Harty, *JUUL Hopes to Reinvent E-Cigarette Ads*, *supra*.

equals 5,000+.”¹⁰⁹ At these events, BeCore distributed the appropriately-named JUUL “Starter Kits,” which contained a JUUL and 4 JUULpods of varying flavors. If BeCore indeed gave away 5,000 Starter Kits per event, JLI DEFENDANTS effectively distributed the nicotine equivalent of 20,000 packs of cigarettes at each of the 25 events described above—or the equivalent of 500,000 packs of cigarettes at all 25 events.



¹⁰⁹ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*, STANFORD RESEARCH INTO THE IMPACT OF TOBACCO ADVERTISING (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

209. Although JLI publicly acknowledged in October 2017 that it was unlawful to distribute free samples of its products at live events, JLI continued to do so, sometimes through \$1 “demo events.” Again, promotions of this kind were expressly prohibited for cigarette companies by the MSA.

210. The effect—and purpose—of JUUL’s Vaporized giveaways was to flood major cities with free products that, by its addictive nature, would hook tens or hundreds of thousands of new users. It also generated buzz among urban trendsetters who would then spread JUUL’s message to their friends via word of mouth and social media. This campaign unconscionably flooded cities with free samples of an addictive product, with distribution focusing on the youth market. Similar campaigns have long been used by drug cartels.

211. Upon information and belief, JLI DEFENDANTS’ “Vaporized” campaign and giveaways reached young people in Hawai‘i.

212. As a foreseeable result, JUUL products ended up in the hands of non-smokers and many young people who used the products became addicted to nicotine and suffered severe health consequences.

f. JLI DEFENDANTS Portrayed Its Products as Status Symbols.

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

214. Other JLI advertisements relied on graphic images with the look and feel of advertisements by Apple, Google, and similar tech companies with progressive and modern

reputations. Again, these ads resonated with teenagers as well, as they made JUUL, and especially the flavored pods, look like cool gadgets or software, something akin to an iPhone or a hot new app to download. Like the other ads, none prominently disclosed the dangers of using JUUL.

215. JLI DEFENDANTS also consistently compared its products to the iPhone, using statements like “the iPhone of e-cigarettes,” which JLI posted on its website, distributed through social media, and disseminated in its email campaign. The iPhone is the most popular smartphone among adolescents, with 82 percent of teenagers preferring Apple’s phone over the competition. JLI’s advertising images frequently include pictures of iPhones and other Apple devices, including iPads, Beats Headphones, MacBook laptops. Through these images, JLI DEFENDANTS presented JLI’s image as a “must have” technology product and status symbol, instead of a nicotine delivery system with serious health risks.

g. JLI DEFENDANTS Engaged in a Viral Marketing Campaign to Reach Young Consumers.

216. “Viral marketing” is defined as “marketing techniques that seek to exploit preexisting social networks to produce exponential increases in brand awareness, through processes similar to the spread of an epidemic.”¹¹⁰ Because the goal in a viral marketing campaign is to turn customers into salespeople who repeat a company’s representations on its behalf, a successful viral marketing campaign may look like millions of disconnected, grassroots communications, when in fact they are the result of carefully orchestrated corporate advertising campaign.

¹¹⁰ Rebecca J. Larson, *The Rise of Viral Marketing through the New Media of Social Media*, LIBERTY UNIVERSITY PUB. (Sept. 30, 2009), https://digitalcommons.liberty.edu/busi_fac_pubs/6/.

217. Viral marketing campaigns tend to share similar features, including (1) a simple message—typically implied by an image—that elicits an emotional response; (2) the strategic use of marketing platforms, especially social media, to reach and engage the target audience; (3) use of content that invites participation and engagement; and (4) use of third parties to magnify the impact of a message.

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

219. Under the 1998 MSA, participating manufacturers agreed not to “take any action, directly or indirectly, to target Youth within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State.”¹¹¹

They also agreed not to:

- a. use outdoor advertising such as billboards,
- b. sponsor events,
- c. give free samples,
- d. pay any person “to use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package . . . in any “Media,” which includes “any motion picture, television show, theatrical production or other live performance,” and any “commercial film or video,”; and

¹¹¹ MSA, § III(a).

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

220. More than ten years later, the FDA banned flavored cigarettes pursuant to its authority under the Family Smoking Prevention and Tobacco Control Act of 2009. Then-FDA commissioner Dr. Margaret A. Hamburg announced the ban because “flavored cigarettes are a gateway for many children and young adults to become regular smokers.”¹¹²

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

222. In 2017, a study found that the flavor ban was effective in lowering the number of smokers and the amount smoked by smokers, but also was associated with an increased use of menthol cigarettes.¹¹³ The same study reported that 85% of adolescents who use e-cigarettes use flavored varieties.

223. Recently, the FDA released its enforcement policy on flavored e-cigarettes that appeal to children, including fruit and mint, warning: “companies that do not cease manufacture, distribution and sale of unauthorized flavored cartridge-based e-cigarettes...within 30 days risk FDA enforcement actions.”¹¹⁴

¹¹² Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. TIMES (Sept. 22, 2009), www.nytimes.com/2009/09/23/health/policy/23fda.html.

¹¹³ Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, 52 AM. J. PREVENTATIVE MED. e139 (May 2017), www.ncbi.nlm.nih.gov/pubmed/28081999.

¹¹⁴ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint*, FDA NEWS RELEASE (Jan. 2, 2020).

h. JLI DEFENDANTS Equipped Social Media to Simultaneously Grab the Attention of Teenagers and Obscure Any Warnings about Nicotine Content or Health Effects.

224. Beyond triggering an emotional response in teenagers, through the use of clean lines, artistic arrangements, minimal text, and eye-catching graphics, JLI DEFENDANTS ensured that the advertisements would jump out at distracted teenagers scrolling through crowded social media pages on their phones and browsers.

225. All of JLI DEFENDANTS' advertisements reflect an understanding that social media users in general, and teenagers in particular, do not typically read long blocks of text on social media, and rely more heavily on imagery instead of text to convey a message.

226. Many of the ads did not include any warning about the dangers of JUUL or suggest to teenagers that the products contained nicotine. Moreover, where JLI DEFENDANTS' advertisements appeared to contain such a disclaimer, this disclaimer was not typically seen when viewing social media due to the way the posts appear in phones and browsers. In particular, Facebook and Instagram typically only present to users the image and a couple lines of text, and viewers who want to see the entire post must click on it to open it and read the entire content.

227. JLI's Instagram advertisements therefore obscured any nicotine warnings by placing them in locations that required the user to open the post and read it. As can be seen in JLI's Instagram ads, the company consistently used brief text at the beginning of a post so that it would be a complete sentence with no further content.

228. Furthermore, on Twitter, a Social Media Platform that is geared towards reading text, and on Facebook, where some users do read text, JLI DEFENDANTS typically did not even include the disclaimer in its advertisements.

229. Finally, JLI DEFENDANTS' advertisements were typically creative, giving them the look and feel of "art." Thus, teenagers were drawn to the advertisements, holding their gaze on the ads for longer periods of time, and being more inclined to share the advertisement with others in their networks, thus accomplishing JLI DEFENDANTS' goal: turning consumers into salespeople.

i. **JLI DEFENDANTS Purchased Advertising Space on Millions of Websites Across the Internet, Including Websites that Appeal to Children.**

230. Upon information and belief, JLI DEFENDANTS engaged the services of numerous companies, Does 41-50, to place advertisements on websites across the internet. These companies, known as programmatic media buyers, purchased "impressions" (i.e., the appearance of an advertisement on a particular website when visited by a single user or device) from online advertising exchanges.

231. Upon information and belief, JLI DEFENDANTS used these programmatic media buyers to purchase space for JLI advertisements on websites that were highly attractive to children and that were designed for children.

232. Upon information and belief, JLI DEFENDANTS marketed its products by purchasing banner advertisements and video advertisements on nick.com and nickjr.com. These two Nickelodeon websites feature shows and games from the Nickelodeon television network, which is a television network for children.

233. Upon information and belief, JLI DEFENDANTS purchased banner advertisements on the Cartoon Network's website at cartoonnetwork.com. This website offers children's television programs and games for children.

234. Upon information and belief, JLI DEFENDANTS also purchased banner advertisements on other websites generally designed for children, including allfreakidscraft.com,

hellokids.com, and kidsgameheroes.com; on websites providing games targeted to younger girls, such as dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com; and on websites designed to help middle school and high school students develop their mathematics and social studies skills, including basic-mathematics.com, coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, purplemath.com, and socialstudiesforkids.com; websites designed for teenagers, such as teen.com, seventeen.com, justjaredjr.com, and hireteen.com; and websites for high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

235. JLI DEFENDANTS knew or should have known that its advertisements would be viewed by underage consumers.

j. **JLI DEFENDANTS Used Paid Advertising on Social Media to Inundate Target Consumers, Particularly Youth, With Messaging Promoting Its Nicotine Products.**

236. JLI DEFENDANTS were able to deliver content directly on social media using two approaches. First, it could post its advertisements directly to its own page, where it would be viewed by those who followed JUUL, and those who shared its posts (“Unpaid Advertising”), discussed more below. And it could engage in paid advertising, whereby it could target specific demographics of people to ensure they received its advertisements (“Paid Advertising”).

237. In disseminating Paid Advertising, the Social Media Platforms allow companies like JLI to engage in micro-targeting, i.e., to select precisely what demographics of people should be exposed to its advertising. Social Media Platforms create internal profiles for the consumers that use them, tracking their online activity to determine their likes, habits, and purchasing power. When advertisers pay to disseminate ads, they can choose to target those ads so that they are received only by people whose digital footprint suggests an interest or

predisposition to the products. JLI DEFENDANTS would have had the option to exclude teenagers. It also could have elected to narrow its target audience to people with an interest in tobacco products, if it in fact wanted only to reach and convert non-smokers. Or it could target a broader audience of people whose digital footprints revealed they were smokers.

238. While JLI DEFENDANTS' precise targeting methods are unknown, on information and belief, young people in Hawai'i are known to have been exposed to JLI DEFENDANTS' Paid Advertising while on social media, suggesting that JLI DEFENDANTS did not narrow its target audience to adult smokers.

239. JLI DEFENDANTS' use of Paid Advertising was aggressive, and had the inevitable result of reaching teenagers. Paid advertising can be shared and liked just as Unpaid Advertising. JLI DEFENDANTS relentlessly advertised to its targeted audience, across all Social Media Platforms. Young people in Hawai'i saw JUUL advertising on a near daily basis, regardless of what platform they used. The continual use of Paid Advertising increased the pressure to buy, and made quitting harder because young people were continually exposed to the advertising through their phone and other electronic devices.

k. JLI DEFENDANTS Utilized Viral Marketing Tools to Turn Customers, Especially Teenagers, Into JUUL Promoters

240. JLI DEFENDANTS disseminated Unpaid Advertising across social media through its use of hashtags. Hashtags are simple phrases preceded by a #, and they operate as a way of cataloguing posts. Authors of posts use hashtags if they want their posts to be discovered and seen by people outside of their networks. On most social media platforms, users can find information by doing a search for a hashtag with that key word. Thus, people interested in JUUL, could enter into the search bar on most Social Media Platforms “#JUUL” to find posts that

include that hashtag. Instagram takes it one step farther and allows users to set up their accounts so that posts with a certain hashtag are automatically delivered to their feed.

241. JLI DEFENDANTS’ hashtag marketing played a central role in the viral spread of JUUL among teenagers. The use of hashtags in social media advertisements “can be used to get your content in front of a bigger audience, raise awareness about your brand, target a very specific group of people, ... and use hot trends and topics to your advantage.”¹¹⁵ Hashtags are “the best weapon in your arsenal, aside from influencer marketing” for getting content “in front of its intended audience.”¹¹⁶ Through hashtag marketing, brands can join in on trending topics, engaging “an insane amount of readers” by using “hashtags which aren’t closely related to your industry” by, e.g., using holiday-related hashtags.¹¹⁷ By using “branded hashtags” that include the company’s name or a specific product, advertisers can monitor the performance of specific campaigns. Another advantage of branded hashtags is user-generated content: “Every time a user puts one of your branded hashtags inside one of their posts, they are increasing your presence on social media” by promoting the branded hashtag, and the related content, to the user’s followers.¹¹⁸ Through successful hashtag marketing campaign, brands can create communities through which “followers will not only be able to communicate via chat or messages, but also connect with each other by using your hashtag.”¹¹⁹

¹¹⁵ Olivia Ryan, *Hashtag Marketing: How to Use Hashtags for Better Marketing Campaigns*, MENTION <https://mention.com/blog/hashtag-marketing-how-to-use-hashtags-for-better-marketing-campaigns/> (last visited Jan. 8, 2020).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

242. From 2015 through 2018, JLI DEFENDANTS used hashtag marketing consistently on Twitter, Instagram, and Facebook to promote its products. In various posts, JLI DEFENDANTS would slip in hashtags so that their posts would be found by young people. This post is not a paid advertisement, but a post to JUUL's Instagram feed. JUUL often used #TBT, which is an acronym for "Throwback Thursday." Throwback Thursday is a popular meme on social media, and teenagers are especially likely to understand it and use it. Thus, any teenager who had elected to follow the hashtag TBT would see this post when they logged into Instagram that day. Moreover, as discussed above, no one would see any warning regarding nicotine unless they actually opened the post.

243. JLI DEFENDANTS frequently used other hashtags that would be used by teenagers to push their products to them across social media, such as #icymi ("in case you missed it"), and many referencing JUUL and vaping (e.g., #juul, #juulvapor, #switchtojuul, #vaporized, #juulnation, #juullife, #juulmoment), as well as trending topics unrelated to JUUL, as well as topics #mothersday, #goldenglobes, #nyc, etc.

244. Within a few months of JUUL's commercial release in June 2015, a former JLI executive reportedly told the New York Times that JLI "quickly realized that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social media."

245. While JLI typically used a few different hashtags in its posts on Instagram and Twitter, #JUUL was nearly always one of those hashtags. JLI also encouraged or instructed its influencers and those in its affiliate program to use the #JUUL hashtag when posting about JUUL. Thus, by consistently using that hashtag in all parts of its viral marketing campaign, JLI not only branded its posts, but invited its consumers to do the same.

246. One prominent campaign promoted by JLI from 2015 through 2018, #JUULmoment, featured what facially appeared to be user-generated content relating to JUUL products and invited users to generate their own content. Many of these social media posts were actually placed by models and/or influencers acting at JLI's behest.

247. By inviting the creation of user-generated content related to JLI's age restricted product, JLI DEFENDANTS invited the indiscriminate promotion of its ENDS on youth-filled social media platforms. An 18-year-old who posted a #JUULmoment, for example, would likely have followers who were under the legal age to purchase tobacco products, resulting in the sharing of a #JUULmoment—and the promotion of JUUL—to minors.

248. JLI DEFENDANTS' plan worked. JUUL users began taking photos of themselves using JUUL and putting them on social media, with the hashtag #juul. As JLI DEFENDANTS intended by designing this viral campaign, their customers turned themselves into salespeople. They were creating JUUL ads that looked and felt like real JUUL ads; they featured young people having fun, and using JUUL. And they triggered the same emotional response that the JUUL ads and the JUUL influencer ads triggered; people saw their friends participating in a trendy activity and they became interested.

249. For example, the flavor-based #MangoMonday and #coolmint campaigns generated hundreds of thousands of user-generated posts. During the same period, mango and mint pods quickly became the most popular flavors among 12 to 17 year olds.

250. Because JLI DEFENDANTS were almost certainly monitoring the uses of its hashtags, JLI DEFENDANTS would have seen the tens of thousands of posts being made by minors using things like #juul and #juulmoment since 2015. JLI DEFENDANTS knew that kids were picking up on its campaign and mimicking it, and thus, advertising JUUL to their underage

friends. At no time, however, did JLI DEFENDANTS take any serious steps to discourage the use of the JUUL hashtag by teenagers.

251. Because JUUL is a trademark, JLI DEFENDANTS could have stepped in and attempted to stop the use of its mark in posts directed to underage audiences, including the use of all the hashtags that contain the word “JUUL” with respect to such posts, and it could have shut down infringing accounts such as @doit4juul and @JUULgirls. It did not do so.

252. In a similar vein, JLI DEFENDANTS used the #JUUL branded hashtag in a significant number of its hashtagged posts on Instagram and Twitter, leading #JUUL to become the most popular JUUL-related hashtag. Though JLI DEFENDANTS have stopped marketing on social media platforms, the #JUUL branded hashtag it launched continues to spread and be used by JUUL users on social media platforms. Today, the #JUUL hashtag spreads images of youth using JUULs and youth-oriented JUUL content and is used to promote sellers of JUUL products and JUUL accessories.

I. JLI DEFENDANTS Used ‘Influencers,’ Third Party Promoters, Affiliates, and Celebrities to Target Young People.

253. To broaden the reach of its campaign, JLI DEFENDANTS used “influencers” to push the products to young people. Influencers are “high-social net worth” individuals who have developed large social media followings – i.e., the “cool kids” of the social media world. People follow influencers because they tend to deliver lots of high quality, interesting photos and content, and because they are known to be trend-setters.

254. Companies seeking to market products often will pay influencers to advertise their products, similar to the ways in which they utilize “product placement” in movies. They seek out influencers with large amounts of followers in their target demographic, and will offer these influencers money or other deals to promote their products. The influencer then will create

various posts on social media using the products. Typically, these posts are images of them using the products, but sometimes these posts will include videos, longer written reviews, or other information about the products. Influencers often include in these posts company-endorsed hashtags or links to the company's website to try to direct their followers to learn more. The company gets the benefit of having word-of-mouth advertising, and the influencer is able to attract more followers because those followers want to stay in the loop about new products and deals. While influencers operate on all social media platforms, most of them rely primarily on Instagram.

255. JLI DEFENDANTS' reliance on influencers appears to have begun around June 2015, when JLI listed a position on its website for a three-month Influencer Marketing Intern.¹²⁰ JLI described the position as follows: "The Influencer Marketing Intern will create and manage blogger, social media and celebrity influencer engagements . . . to build and nurture appropriate relationships with key influencers in order to drive positive commentary and recommendations through word of mouth and social media channels, etc." JLI's efforts to solicit influencers appears to have been underway for years; until December 2018, JLI's website still called for individuals to "Join the JUUL influencers." Applicants were required to disclose their profile information for Instagram, Twitter, and Facebook, as well as various other blog and vlog platforms, suggesting that JLI DEFENDANTS were interested in understanding whether the influencers could help JLI DEFENDANTS reach their targeted youth demographic.

¹²⁰ *Influencer Marketing Intern*, PAX LABS (June 2015), <https://www.internships.com/marketing/influencer-marketing-intern-i7391759> (last accessed Nov. 14, 2018). See also Robert K. Jackler et al., *JUUL Advertising Over its First Three Years on the Market*, at Fig. 21, STANFORD UNIVERSITY SCHOOL OF MEDICINE (Jan. 31, 2019).

256. JLI DEFENDANTS’ outreach had its desired impact, as it was able to line up influencers to promote its products to teenagers, while spreading pictures of cool, young people using JUUL. For example, Christina Zayas (@christinazayas on Instagram) was, as of 2018, a Brooklyn-based influencer with over 57,700 followers, many of whom are under 18. Under JLI DEFENDANTS’ direction, a marketing firm invited Zayas to join a JUUL campaign in September 2017, asking her to “try JUUL’s premium e-cigarette and share your experience” with her many followers.¹²¹ JLI DEFENDANTS no doubt knew that Zayas could be a powerful advertiser for its brand; her Instagram feed and blog show reveal that she is a stylish young woman, who showcases fashionable clothing, makeup trends, and a hip urban lifestyle. Indeed, Zayas herself stated that her primary appeal to JUUL was that she attracted a younger market, in line with JLI DEFENDANTS’ previously aggressive targeting of underage individuals. And Zayas also lists herself as vegan, and includes “Spiritual Wellness” in her bio, and thus was a logical target for JLI marketing teams looking to distance the company from the harms typically associated with smoking and convince young people that the products were safe. Zayas was paid \$1,000 for one blog post and one Instagram post. Zayas reported that she wanted to talk about her struggle with addiction in her JLI-promoted posts but was told to instead promote the positive characteristics of the JUUL.

257. Like JLI’s own advertising on its own site, the Instagram post did not contain any information about the safety of JUUL and worked to convince young people that using JUUL was a thing that cool, Brooklyn fashionistas were doing. The Instagram post would have

¹²¹ Michael Nedelman et al., *#JUUL, How Social Media Hyped Nicotine for a New Generation*, CNN (Dec. 19, 2018, 5:30 PM ET), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

been seen by many, if not all, of Zayas' 57,000 thousand followers, as well as by any users searching the hashtag “#JUULmoment.” At least 1,509 people “liked” the post and 46 commented on it. As Instagram provides a way for users to see posts their friends engaged with, for each person who “liked” or commented on the post, the number of people who saw it increased exponentially.

258. JLI DEFENDANTS benefited from influencers on other social media platforms as well. On information and belief, JLI DEFENDANTS encouraged their distributors, wholesalers, and other resellers—either explicitly or implicitly— to hire affiliates and influencers to promote JLI's brand and products (“Third Party JUUL Promoters”). Even if not paid directly by JLI DEFENDANTS, these Influencers profited from the promotion of JUUL products either because they were paid by JLI resellers, JLI accessory sellers, or sellers of JLI-compatible products. JLI DEFENDANTS knew of these third party promotional practices, and it monitored the specific JLI promotions being distributed by these Third Party JUUL Promoters.

259. For example, on YouTube, user Donnysmokes (Donny Karle, age 21) created a JUUL “unboxing” YouTube video in 2017, in which he opened up a box of JUUL products and described them for his audience, garnered roughly 52,000 views, many of which were from users under 18. Since that time, Karle has begun making a series of videos in which he tries various e-cigarette products, especially JUUL products. While Karle recently claimed that he that “knows for a fact that JUUL is way too cheap to pay what I charge for a review,” Karle has admitted to earning approximately \$1200 a month from unspecified sources simply from posting vaping videos, especially of JUUL products, online, suggesting that JUUL has, at a minimum,

approached him, and may have at one point paid him, or that he is paid by third-party resellers of JUUL products, to which resellers he regularly links in his posts.¹²²

260. DonnySmokes also created a number of JUUL videos on YouTube, including the JUUL Challenge, which is a play on the viral Ice Bucket Challenge. In the JUUL Challenge, the goal is to suck down as much nicotine as possible within a predetermined amount of time. The JUUL Challenge, which promotes nicotine abuse and adolescent use of JUUL products, like the Ice Bucket Challenge it mimicked, went viral. Soon, youth across the country were posting their own JUUL Challenge videos – a practice that continues to this day on YouTube, Instagram, Snapchat and other social media platforms. In one JUUL Challenge on YouTube, which received 556,450 views, the two teenagers filming themselves discuss the hundreds of thousands of views their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge content.¹²³

261. Another popular YouTube Influencer, OG Nick, promotes JUUL on YouTube. The graphical component of many of his videos consists of recorded video game footage, presumably so that the adolescent viewer can put on headphones and conceal the nature of content being consumed from adults within eyeshot. OG Nick maintains accounts on YouTube, Instagram and Snapchat. OG Nick’s JUUL videos have generated well in excess of one million views.

¹²² Allie Conti, *This 21-Year-Old Is Making Thousands A Month Vaping on YouTube*, VICE (Feb. 5, 2018, 5:30 PM), https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-monthvaping-on-youtube.

¹²³ Nate420, *JUUL Challenge* (Apr. 22, 2018), https://youtu.be/gnM8hqW_2oo (last visited Jan. 27, 2020).

262. Collectively, OG Nick and DonnySmokes' JUUL-promoting videos and posts have generated millions of views, and the viral content their posts have spawned have almost certainly generated many millions of additional views. Even if not directly affiliated with JUUL, OG Nick and DonnySmokes are frequently sponsored by websites that sell JUUL products. Through the end of 2018, DonnySmokes personal website also linked to a webstore that sold JUULpods. JUUL thus profited not only from the brand awareness of Third Party JUUL Promoters like DonnySmokes and OG Nick, but also from JUUL sales generated directly through JUUL-selling retailers that sponsor these young influencers.

263. JLI DEFENDANTS knowingly accepted the benefits of these promotional activities, both in terms of brand awareness and sales generated through sponsored links on Third Party JUUL Promoters' advertisements. At no time did JLI DEFENDANTS take independent action to remove the Third Party JUUL Promoters' unlawful advertising content or to discipline the JUUL-selling sponsors of Third Party JUUL Promoters. Only in response to FDA scrutiny in 2018, did JLI take action to remove the unlawful JUUL promotions such as the JUUL Challenge. By that time, the viral content had spread, nullifying the effect of removing the original post.

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

265. One recent study concluded that JLI was "taking advantage" of the reach and accessibility of multiple social media platforms to "target the youth and young adults . . .

because there are no restrictions” on social media advertising.¹²⁴ Again, cigarette companies are prohibited by the MSA from conducting any of the practices described above. Activities such as product placement in performances and professional videos have been identified as against public policy for nicotine products.

266. To further spread its message, JLI DEFENDANTS also offered to influencers and other bloggers on social media the option to make additional money by posting links to JLI’s website. JLI DEFENDANTS used at least two companies to manage its affiliate marketing programs, Commission Junction and Impact Radius (the “Affiliate Services”). Under the terms of these programs, bloggers and influencers could receive payment if they referred individuals to JLI’s website, who in turn purchased the products. The programs had the effect of encouraging even more people to post and advertise about JUUL on the internet and social media, exposing even more teenagers to the campaign.

267. Each affiliate received a unique hyperlink to embed in the affiliate’s promotions. The Affiliate Services also provided the affiliates with analytics services, sales tracking, and a bank of graphics, logos, and other promotional materials for use in affiliate promotions.

268. In or around 2017, Impact Radius began managing JLI’s affiliate program. The Impact Radius application indicated that JLI “auto-approve[d]” applications. The Impact Radius application did not ask the affiliate’s age or require affiliates to confirm that they are at least 18 years old. JLI DEFENDANTS actively courted would-be affiliates through its Twitter account, inviting nearly 20 individuals to join the program through public messages.

¹²⁴ Laura Kelly, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, WASH. TIMES (June 4, 2018), www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/.

269. JLI's affiliates promoted JUUL on social media platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter. JLI's affiliates routinely failed to disclose or adequately disclose that the affiliate had a commercial relationship with JLI and was being paid to promote JUUL products.

270. Many of the apparently user-generated advertisements JLI posted to its accounts pictured models or influencers being paid by JLI without disclosure of the commercial relationship between JLI and the model.

271. These posts were misleadingly presented without disclosure of the payment to the party posting them. By presenting JLI advertisements featuring compensated models as unsolicited “#JUULmoment” posts, JLI DEFENDANTS misled its target audience into believing that JUUL use was more widely used than it was, that attractive, popular people used JUUL, and that these same attractive, popular people endorsed creating and posting JUUL-related social media content on Instagram and other platforms. JLI DEFENDANTS also led consumers to believe these endorsements were unsolicited, when they were in fact bought and paid for. To the extent that JLI's affiliates and influencers disclosed that they were being paid, JLI subverted these disclosures by reposting the images to JLI's timeline without disclosing that the image was from a paid advertiser.

272. JLI also used celebrities to promote JUUL use. In 2016, JLI's social media accounts promoted multiple images of pop star Katy Perry with a JUUL. By including Perry's Twitter handle in its post, JLI sought to introduce the JUUL, and Ms. Perry's apparent affinity for the JUUL, to Ms. Perry's 107,000,000 followers on Twitter, and to JLI's followers on its social media accounts. Ms. Perry has a large youth audience.

273. In September 2018, Vapor Vanity posted that JLI was canceling payments to vape reviewers. Vanity Vapor posted an email it had purportedly received from JLI indicating that as of October 21, 2018 “JUUL Labs” affiliate program which is operated by Impact Radius and any other affiliate efforts will be on hold indefinitely until further notice.”¹²⁵

274. While JLI publicly announced that it was officially halting all social media activity in late 2018, it continued to call for applications for social media influencers for at least one month after its public cessation of internet advertising. It was not until after CNN published a negative news article about JLI’s advertising practices on December 15, 2018, that JLI removed from its website its advertisement seeking influencers.

m. JLI DEFENDANTS Tracked the Efficacy of Its Youth Marketing.

275. Tracking the behaviors and preferences of youth under twenty-one, and especially those under eighteen, has long been essential to the successful marketing of tobacco products. Whether the activity is called “tracking” or “targeting,” the purpose has always been the same: getting young people to start smoking and keeping them as customers.¹²⁶

276. As early as 1953, Philip Morris was gathering survey data on the smoking habits of “a cross section of men and women 15 years of age and over.” Commenting on these data, George Weissman, then-Vice President of Philip Morris, observed that “we have our greatest strength in the 15-24 age group.”¹²⁷

¹²⁵ J.R. Reynoldson, *JUUL Labs Cancels Payments to Vape Reviewers: Here’s the Email They Sent Us*, VAPOR VANITY (Oct. 30, 2018) <https://www.vaporvanity.com/juul-labs-cancels-payments-vape-reviewers-email-they-sent/>.

¹²⁶ *Philip Morris*, 449 F. Supp. 2d at 1006.

¹²⁷ *Id.* at 581.

277. Traditional approaches to youth tracking (e.g., interviews conducted face-to-face or over the telephone) were limited, however, and often failed to capture data from certain subsets of the target market. As a Philip Morris employee noted in a June 12, 1970 memorandum, Marlboro smokers were “among the types of young people our survey misses of necessity (on campus college students, those in the military and those under 18 years of age).”¹²⁸

278. Taking a page from the Big Tobacco playbook, JLI DEFENDANTS have consistently tracked and monitored its target youth market, including those below the minimum legal age to purchase or use JUUL products. Moreover, modern technology has removed many of the hurdles that made youth tracking difficult in decades past. With e-mail, social media and online forums, JLI DEFENDANTS can track and monitor its target audience anywhere and at any time.

n. JLI DEFENDANTS Utilized a Pricing and Distribution Model Designed to Put the Product Within Reach of Youth Without Disclosing Harms.

279. Cigarette companies for years sold youth-brand cigarettes at lower prices and used discounts and other promotions to ensnare younger smokers. JLI is no different. It not only designed a marketing campaign to reach young people and entice new smokers, it priced its products to ensure they would buy them.

280. A pack of four JUUL pods, which, according to JUUL, is the equivalent of four packs of cigarettes, costs approximately \$13-\$20. JUUL’s website charges \$15.99 for a pack of four JUUL pods, or about \$4 per JUUL pod. By contrast, a single pack of cigarettes in Connecticut costs approximately \$9, and \$13 in New York.

¹²⁸ *Id.* at 1007.

281. For years, JLI DEFENDANTS directed all of JUUL products to gas stations, instead of smoke shops, vape shops, and other age-restricted stores. JLI DEFENDANTS know that teenagers and those new to smoking are likely to frequent gas stations and convenience stores rather than smoke shops. By distributing in those kinds of stores, JLI DEFENDANTS increased the chances these people would purchase the products.

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

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

o. **JLI DEFENDANTS Directed and Participated in the Youth Marketing Schemes.**

284. PRITZKER, HUH, VALANI, BOWEN, and MONSEES were well aware that JUUL branding was oriented toward teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine. After launch, executives and directors discussed whether to rein in the advertising to teenagers. Upon information and belief, in June 2015, PRITZKER commented that the branding “feels too young[.]” In early July 2015, PRITZKER, VALANI, and JLI investor Alexander Asseily “spoke[] at length on the JUUL approach[.]” and Asseily also “spoke to James [Monsees] at length” on the same topic. Asseily followed up with a lengthy email to VALANI

and PRITZKER. He began by noting that “our fears around tobacco / nicotine are not going away. We will continue to have plenty of agitation if we don’t come to terms with the fact that these substances are almost irretrievably connected to the shittiest companies and practices in the history of business.” He stated that “an approach needs to be taken that actively, if implicitly, distances us from [Big Tobacco]: what we say, the way we sell, the way we run the company, what we emphasi[z]e, who we hire, etc.” Referring to JLI’s strategy to use the same marketing techniques as major tobacco companies used to market to youths, Asseily added that “[t]he trouble with just doing ‘what the others do’ is that we’ll end up as Nick [Pritzker] rightly points out in the same ethical barrel as them, something none of us want no matter the payoff (I think).” He continued that “the world is transparent and increasingly intolerant of bullshit. It’s not about faking it - it’s about doing it correctly....which could mean **not doing a lot of things we thought we would do like putting young people in our poster ads or drafting in the wake of big players in the market.**”

285. But some company leaders, including HUH, opposed any actions to curb youth sales. Youth sales were a large potential source of revenue.¹²⁹ As one manager explained, perhaps “people internally had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people had no problem with 500 percent year-over-year growth.”¹³⁰ And company leaders understood that teenagers who were hooked on nicotine were the most likely segment to become lifelong addicts and thus were the most profitable customers to target.¹³¹

¹²⁹ Chris Kirkham, Juul Disregarded Early Evidence it was Hooking Teens, Reuters (Nov. 5, 2019, 11:00 AM GMT), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

¹³⁰ *Id.*

¹³¹ *Id.*

286. In October 2015, JUUL leadership resolved the debate in favor of selling to teens. Even though the directors and executives of JLI knew—and explicitly stated—that what they were doing was wrong, JLI DEFENDANTS pressed ahead with its youth-oriented Vaporized ad campaign through early 2016.¹³²

287. By March 2016, however, JLI employees internally recognized that its efforts to market to children were too obvious. Around this time, Pax Labs, Inc. reoriented its JUUL advertising from the explicitly youth-oriented Vaporized campaign to a more subtle approach to appeal to the young. The advertising's key themes continued to include pleasure/relaxation, socialization/romance, and flavors¹³³—all of which still appealed to teenagers.

288. JLI DEFENDANTS continued to direct and approve misleading marketing campaigns long after launch. For example, JLI DEFENDANTS deceptively marketed mint to youth, through flavor-driven advertising, hashtag campaigns and ads cross-promoting mango and mint. Through their positions on the JLI Board of Directors, JLI DEFENDANTS were directly responsible for this marketing, as they had “final say” over all of JLI’s marketing activities.¹³⁴ In other words, JLI DEFENDANTS controlled the messaging around JUUL products.

¹³² The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 7 (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

¹³³ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 9.

¹³⁴ Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform, House of Representatives, 116th Cong. 70 (2019) (statement of JAMES MONSEES, CPO, JLI Labs).

p. **PRITZKER, HUH, And VALANI Were Able to Direct and Participate in the Youth Marketing Because They Seized Control of the JLI Board of Directors.**

289. Although BOWEN and MONSEES were the visionaries behind JLI and the most hands-on in its early stages, by the time JLI was pushing its marketing campaigns in early-to mid- 2015, JLI (through the individuals running the company), BOWEN, MONSEES, PRITZKER, HUH, and VALANI were each intimately involved in the planning and execution of activities.

290. A legitimate business enterprise would typically ramp up, rather than shut down, press outreach at the very time the company is supposed to be building awareness for its recently launched product. But the JLI DEFENDANTS at this point were taking actions that went beyond the regular and legitimate business operations of JLI.

291. And at the same time the JLI DEFENDANTS had approved the early JLI marketing campaigns that intentionally targeted youth, the JLI DEFENDANTS were planning a fundamental shift in roles to allow PRITZKER, HUH, and VALANI to take charge of the instrumentalities of JLI, including its employees and resources.

292. Specifically, in October 2015, MONSEES stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, PRITZKER, HUH, and VALANI formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth. The JLI DEFENDANTS, and in particular HUH, wanted to continue their fraudulent marketing, knowing that these ads

were also targeted to youth, “argu[ing] that the company couldn’t be blamed for youth nicotine addiction.”¹³⁵

293. Over the next year, until the installation of a new CEO in August 2016, Defendants PRITZKER, HUH, and VALANI used their roles to expand the number of addicted e-cigarette users through fraudulent advertising and representations to the public. They cleaned house at JLI by “dismiss[ing] other senior leaders and effectively tak[ing] over the company.”¹³⁶ Despite any potential internal misgivings about their fraudulent conduct, notably, none of PRITZKER, HUH, VALANI, MONSEES, or BOWEN terminated their relationship with JLI during this time period.

q. JLI DEFENDANTS Knew Their Scheme to Attract Young Smokers Had Worked.

294. Within a few months of JUUL’s commercial release in June 2015, a former JLI executive reportedly told the New York Times that JLI “quickly realized that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social media.”¹³⁷

295. JLI DEFENDANTS tracked and closely monitored usage among youth through social media, online surveys, YouTube videos, hashtags, likes, email lists, and myriad other sources.

¹³⁵ Chris Kirkham, Juul Disregarded Early Evidence it was Hooking Teens, Reuters (Nov. 5, 2019, 11:00 AM), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

¹³⁶ Julie Creswell & Sheila Kaplan, How Juul Hooked a Generation on Nicotine, N.Y. Times (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

¹³⁷ Matt Richtel & Shiela Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The E-cigarette Company Says It Never Sought Teenage Users, But the F.D.A. is Investigating Whether Juul Intentionally Marketed its Devices to Youth*, N.Y. TIMES (Aug. 27, 2018), www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html.

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

297. From the outset, JLI DEFENDANTS were well-aware that a huge portion of its sales was going to persons under age 21, but did nothing to curb, prevent, or mitigate the harms that its products could cause.

298. Moreover, JLI DEFENDANTS even sought to take advantage of youth use of JUUL to build the JLI brand. For example, upon information and belief, on July 16, 2016, BOWEN emailed Tyler Goldman, former CEO of JLI, about social media posts by children about JUUL e-cigarettes, stating, “I’m astounded by this ‘ad campaign’ that apparently some rich east coast boarding school kids are putting on.” BOWEN added that “Riaz [Valani] was thinking maybe we can leverage user generated content.”

299. As time continued, and JLI DEFENDANTS became aware of the numbers of young people purchasing and using its products, JLI eventually announced that it suspended its broadcast, print, and digital product advertising in the United States.¹³⁸

r. **The FDA Warned JLI and Others That Their Conduct was Unlawful.**

300. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice that their practices of marketing to minors needed to stop. It issued a series of *Warnings Letters* and enforcement actions:

¹³⁸ Megan Graham, *Juul Suspends Broadcast, Print and Digital Product Advertising in the US*, CNBC (Sept. 25, 2019, 9:19 AM EDT), <https://www.cnbc.com/2019/09/25/juul-suspends-broadcast-print-and-digital-product-ads-in-the-us.html>.

301. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the popularity of its products among youth and demanding that JLI produce documents regarding its marketing practices.¹³⁹

302. In April 2018, the FDA conducted an undercover enforcement effort, which resulted in fifty-six warning letters issued to online retailers, and six civil money complaints to retail establishments, all of which were related to the illegal sale of e-cigarettes to minors.¹⁴⁰ Manufacturers such as JLI were also sent letters requesting documents regarding their marketing and sales methods.¹⁴¹

303. In May 2018, the FDA again issued more warning letters to manufacturers, distributors, and retailers of e-liquids for labeling and advertising violations; these labels and advertisements targeted children and resembled children's food items such as candy or cookies.¹⁴²

304. In September 2018, the FDA engaged in several other regulatory enforcement actions, issuing over 1300 warning letters and civil money complaints to e-cigarette and e-liquid retailers and distributors.¹⁴³

305. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette manufacturers putting them on notice that their products were being used by youth at disturbing

¹³⁹ Matthew Holman, Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc., U.S. Food & Drug Admin. (Apr. 24, 2018), <https://www.fda.gov/media/112339/download>.

¹⁴⁰ Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization, U.S. Food & Drug Admin. (Jan. 2020), <https://www.fda.gov/media/133880/download>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

rates.¹⁴⁴ The FDA additionally requested manufacturers to enhance their compliance monitoring mechanisms, implement stricter age verification methods, and limit quantities and volume of e-cigarette products that could be purchased at a time.¹⁴⁵

306. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than a thousand documents relating to JLI's sales and marketing practices.¹⁴⁶ Since then, the FDA, the Federal Trade Commission, multiple state attorneys general and the U.S. House of Representatives Committee on Oversight and Reform have all commenced investigations into JLI's role in the youth vaping epidemic and whether JLI's marketing practices purposefully targeted youth.

307. Siddharth Breja, who was senior vice president for global finance at JLI, "claims that after the F.D.A. raided Juul headquarters in October 2018, seeking internal documents, Mr. Burns instructed Mr. Breja and other executives not to put anything relating to regulatory or safety issues in writing, so that the F.D.A. could not get them in the future."¹⁴⁷

¹⁴⁴ *Letter from US FDA to Kevin Burns*, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/media/119669/download>.

¹⁴⁵ Press Release, *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access: Warning letters and civil money penalty complaints to retailers are largest coordinated enforcement effort in agency history; FDA requests manufacturers provide plan for mitigating youth sales within 60 days; warns it may restrict flavored e-cigarettes to*, US Food & Drug Administration (Sept. 11, 2018), <https://www.fda.gov/news-events/pressannouncements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historicaction-against-more>.

¹⁴⁶ Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of Headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-document-surprise-inspection-headquarters/>.

¹⁴⁷ Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*, N.Y. Times (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juulpods-contaminated.html>.

E. ALTRIA Provided Services to JLI DEFENDANTS to Expand JUUL Sales and Maintain JUUL’s Position as the Dominant E-Cigarette.

308. JLI DEFENDANTS invited ALTRIA into the fold as an ally with ample resources to further expand the market of nicotine-addicted e-cigarette users and to keep litigation and regulation at bay. While JLI FOUNDERS publicly claimed to be out to “disrupt” the industry, they and the other JLI DEFENDANTS privately negotiated and ultimately relinquished a 35% ownership stake in the company to a cigarette giant.

309. ALTRIA’s own efforts at marketing an e-cigarette product had proven largely unsuccessful. ALTRIA had launched the MarkTen product nationwide in 2014 with an aggressive marketing campaign. Of the \$88.1 million spent on e-cigarette advertising in 2014, nearly 40% of that was ALTRIA’s MarkTen campaign, at \$35 million.¹⁴⁸ ALTRIA was clear in its intent to dominate the e-cigarette market as it had the combustible cigarette market: “We are the market leader today and we will continue to be,” then-CEO Marty Barrington told investors at the time of MarkTen’s launch.¹⁴⁹ The original MarkTen was a “cigalike,” designed to mimic the look and feel of a combustible cigarette. ALTRIA had also been acquiring small companies in the vaping industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were also the “cigalike” style, and were sold in flavors including “Vanilla Dreams” and “Smooth Chocolate.”¹⁵⁰

¹⁴⁸ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as ALTRIA’s MarkTen enters the marketplace*, Tobacco Control 25 (10) (2015), <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

¹⁴⁹ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

¹⁵⁰ Mike Esterl, *AltriaALTRIA To Launch MarkTen E-Cigarette Nationally*, Wall St. J. (Feb. 19, 2014), <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>; <https://www.wsj.com/articles/ALTRIA-to-launch-markten-e-cigarette-nationally-1392832378>;

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310. In 2017, ALTRIA acquired a vape product called Cync, from Vape Forward. Cync is a small vapor device that uses prefilled pods, similar to those later used in JUUL products. ALTRIA also made a minority investment in Avail Vapor, one of the largest vape store chains in the U.S., which also produces and sells its own branded e-liquids for so-called open-systems devices, which are refillable.¹⁵¹



311. In his remarks at the February 2017 Consumer Analyst Group of New York (CAGNY) Conference, ALTRIA’s current CEO, Howard A. Willard III, said, “Nu Mark, our e-vapor company, had a very strong year. It made excellent progress toward establishing MarkTen

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Senator Richard J. Durbin et al., *Gateway to Addiction? A Survey of Popular Electronic Cigarette Manufacturers and Targeted Marketing to Youth* at 12 (Apr. 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20ECigarettes%20with%20Cover.pdf>.

<https://www.durbin.senate.gov/imo/media/doc/Report%20-%20ECigarettes%20with%20Cover.pdf>.

¹⁵¹ Timothy S. Donahue, *At the Forefront*, TOBACCO REPORTER (Dec. 1, 2017), <https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

as a leading brand in the category, continued to improve its supply chain, and took the necessary steps to comply with the deeming regulations.”¹⁵² But in 2017, ALTRIA’s MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI’s growing market share of 40%.¹⁵³ Thus, despite its public statements to the contrary, ALTRIA knew that it could not achieve its goal of dominating the e-cigarette market through its own commercially inferior products.

312. In February 2018, with JUUL dominating the e-cigarette market, ALTRIA announced the national launch of a pod-based, “closed-tank” e-cigarette like the JUUL, which it branded as the MarkTen Elite: “a pod-based product with a premium, sleek battery design” and having the “convenience of prefilled, magnetic click pods.” ALTRIA initially had brought the Elite to market in 2016, telling investors that the product “offers a variety of flavorful liquids in a modern, discrete device format.” At an analyst conference in February 2018, former ALTRIA Chief Executive officer Marty Barrington boasted that the Elite’s pods held more than twice as much liquid as JUUL’s. ALTRIA quickly followed with another pod-based product, the Apex by MarkTen. These products were available in flavors designed to appeal to youth.

¹⁵² Remarks by Marty Barrington, ALTRIA Group, Inc.’s (ALTRIA) Chairman, CEO and President, and other members of ALTRIA’s senior management team 2017 Consumer Analyst Group of New York (CAGNY) (2017), <http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349>.

¹⁵³ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, Winston-Salem Journal (Dec. 14, 2017), https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cigsales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.






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313. ALTRIA's push to target the youth market gained the attention of the FDA. On September 12, 2018, the FDA sent a warning letter to ALTRIA, requesting that ALTRIA provide a "detailed plan" to address and mitigate the widespread use of its e-cigarette products by minors.¹⁵⁴ Due to the "epidemic rate of increase in youth use" of e-cigarettes, the FDA had conducted an "enforcement blitz" of retailers nationwide and confirmed that ALTRIA's MarkTen products were being sold to minors. The FDA did not mince words, telling ALTRIA that "[t]his is unacceptable, both legally and as a matter of public health." The FDA warned ALTRIA that it had a responsibility to ensure minors were not getting access to its products and that it was "crucial" that manufacturers like ALTRIA take steps to prevent youth from using its products. First and foremost, the FDA asked ALTRIA to "take prompt action to address the rate of youth use of MarkTen products." The FDA suggested that ALTRIA could revise its current marketing practices, eliminate online sales, and remove flavored products from the market. The FDA's command was clear: "steps must be taken to protect the nation's young people."

314. On October 25, 2018, ALTRIA responded to the FDA, claiming to have "serious concerns" about youth access to e-vapor products.¹⁵⁵ It admitted that the use of e-cigarettes by youth had risen to "epidemic levels." In response, ALTRIA agreed to remove its pod-based e-cigarettes from the market and stop selling any flavored traditional e-cigarettes other than tobacco, menthol, and mint. It acknowledged that "[b]ased on publicly-available information from FDA and others, we believe pod-based products significantly contribute to the rise in youth

¹⁵⁴ Scott Gottlieb, *Letter to Altria Client Services*, U.S. FOOD & DRUG ADMIN. (Sept. 12, 2018), <https://www.fda.gov/media/119666/download>.

¹⁵⁵ Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, ALTRIA (Oct. 25, 2018), <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

use of e-vapor products. We don't believe our products are the issue, but we don't want to risk contributing to the problem." ALTRIA's letter went on to disclaim numerous practices that it associated with marketing to youth that were key components of JUUL's marketing strategy. ALTRIA specifically identified the use of flavors that go beyond traditional tobacco flavors, digitally advertising on websites with a large percentage of youth visitors, using social media to promote the brand, allowing online purchases and promotional sign-ups without age verification, advertising e-cigarettes on billboards, advertising with models who appear to be under 25 years old, distributing branded merchandise, and paying celebrities or other third parties to market or use a particular brand's e-cigarettes. ALTRIA also claimed to support "banning vaping in schools" to reduce "social access." ALTRIA ended the letter by committing to "reverse the current use trend among youth."

315. But simultaneously, ALTRIA was engaging in communications with JLI DEFENDANTS. According to Howard Willard, ALTRIA's CEO, ALTRIA first contacted JLI about a commercial relationship in early 2017, with "confidential discussions" beginning in the Spring of 2017.¹⁵⁶ PRITZKER and VALANI were lead negotiators on the ALTRIA deal. On July 30, 2018, in advance of a meeting between the lead negotiators from JLI and ALTRIA, PRITZKER, in an email to ALTRIA with an opening term sheet for discussions, made clear that an end to competition from ALTRIA's e-cigarette products was a key term of any deal. On August 1, 2018, the companies' negotiators met at the Park Hyatt Hotel in Washington, D.C., to discuss terms. PRITZKER and VALANI were among those who attended for JLI. By the Fall of 2017, JLI DEFENDANTS and ALTRIA had agreed to take, and had taken, coordinated actions

¹⁵⁶ Altria's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base.

316. These “confidential discussions” with ALTRIA involved key employees and officers of JLI, which would have included MONSEES, BOWEN, PRITZKER, HUH, and/or VALANI. During this period, it was JLI (through its executives and employees) and ALTRIA (through its executives and employees) that primarily directed and conducted fraudulent acts designed to grow the market of nicotine-addicted e-cigarette users, although BOWEN, MONSEES, PRITZKER, HUH, and VALANI remained critical to the success of these efforts. Without their control of the JLI Board of Directors and prior fraudulent conduct, the close coordination between JLI and ALTRIA, and ALTRIA’s investment in JLI, would not have been possible.

317. In July 2018, JLI’s valuation was approximately \$15 billion.¹⁵⁷ But, in December 2018, ALTRIA decided to take the next step in its coordination with JLI DEFENDANTS by making a \$12.8 billion equity investment in JLI, the largest equity investment in United States history. This investment was for a 35% stake in the company, reflecting a valuation of approximately \$38 billion—more than two and a half times the valuation just five months earlier. This arrangement was profitable for both companies, as well as MONSEES, BOWEN, PRITZKER, HUH, and VALANI. JLI employees received \$2 billion in bonuses, which, split among the Company’s 1,500 employees, was approximately \$1.3 million per employee;¹⁵⁸ ALTRIA received millions of loyal teen customers; and MONSEES, BOWEN,

¹⁵⁷ <https://www.theverge.com/2018/7/3/17529442/juul-vapes-nicotine-electronic-cigarettes-addiction-funding>.

¹⁵⁸ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in ALTRIA Deal*, BLOOMBERG
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PRITZKER, HUH, and VALANI received untold sums of money and saw the value of their shares in JLI skyrocket, allowing them to cash out via a special dividend and bonus, and through stock sales that were not available to other of JLI's minority shareholders.¹⁵⁹

318. This investment further intertwined JLI and ALTRIA. According to the terms of its investment, ALTRIA was allowed to appoint one-third of JLI's board. And in October 2019, JLI's CEO resigned to be replaced by a career ALTRIA executive, K.C. Crosthwaite. The key employees within JUUL—including BOWEN, MONSEES, PRITZKER, HUH, and/or VALANI—would have been instrumental in bringing Crosthwaite on board at JLI. Crosthwaite had most recently served as the Vice President and Chief Growth Officer of Altria Client Services, overseeing the company's work to assist ALTRIA's companies, including with digital marketing, packaging design & innovation, product development, and safety, health, and environmental affairs. Crosthwaite knew the cigarette industry's playbook all too well, having previously served as the president and CEO of Phillip Morris, and the Vice President and General Manager at Marlboro—the leading cigarette brand among youth, and the Vice President of Strategy and Business Development at Altria Client Services.

319. Both before and after ALTRIA's investment, JLI, through its employees and officers, provided ALTRIA with critical information regarding the design and nicotine content of the JUUL product, the labeling of the JUUL product, and related topics including advertising, retail distribution, online sales, age verification procedures, information on underage user's

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(Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-toget-2-billion-bonus-in-ALTRIA-deal>.

¹⁵⁹ Tiffany Kary, JLI Founders Sued for Self-Dealing Over ALTRIA's \$12.8 Billion, Bloomberg (Jan. 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-forself-dealing-over-ALTRIA-s-12-8-billion>.

flavor preferences, and regulatory strategies. ALTRIA, for its part, guided JLI DEFENDANTS in these areas and helped them devise and execute schemes to maintain and expand the e-cigarette market.

1. **JLI DEFENDANTS and ALTRIA Coordinated to Market JUUL in Highly-Visible Retail Locations.**

320. When ALTRIA announced its \$12.8 billion investment in JUUL, part of the agreement was that ALTRIA would provide JUUL with premium shelf space.¹⁶⁰

321. Throughout 2018, while ALTRIA was in active discussions with JUUL regarding a significant investment by ALTRIA, ALTRIA recognized that antitrust concerns would require it to wind down sales of its signature ENDS, the MarkTen, if it were to acquire a stake in JUUL.

322. Notwithstanding its plans to cease manufacturing and selling its then-existing e-vapor products, ALTRIA spent approximately \$100 million in 2018 to secure shelf-space at retailers for e-vapor products— purportedly for the MarkTen ENDS that it stopped manufacturing in 2018, although sales data suggests this was not the true reason for purchasing the shelf space: ALTRIA’s short-lived 2018 launch of its pod-based MarkTen Elite put that product in only 25,000 stores, whereas its 2014 launch of the original MarkTen saw the MarkTen reaching 60,000 stores in the first month in the western United States alone. ALTRIA’s payments for shelf space were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.”¹⁶¹ But ALTRIA had no need

¹⁶⁰ *Id.*

¹⁶¹ Jennifer Maloney & John McKinnon, *Altria-Juul Deal Is Stuck in Antitrust Review*, Wall St. J. (Jan. 17, 2020), <https://www.wsj.com/articles/altria-juul-deal-is-stuck-in-antitrust-review-11579257002>.

for two years of prominent shelf space while it was actively scaling back sales of the original MarkTen and had no true plans for a wide launch of the MarkTen Elite.

323. ALTRIA's purchase of shelf space in 2018 shows how ALTRIA, JLI DEFENDANTS were coordinating even before ALTRIA announced its investment in JLI. ALTRIA's actions ensured that, even after public and regulatory scrutiny forced JLI DEFENDANTS to stop its youth-oriented advertising, JUUL products would still be placed where kids are most likely to see them—next to Marlboros, the most iconic, popular brand of cigarettes among underage users—in a location they are most likely to buy them—retail establishments.¹⁶²

2. **ALTRIA Contributes to the Success of JLI DEFENDANTS' Scheme Through a Range of Coordinated Activities.**

324. While JLI and ALTRIA remained separate corporate entities, following its equity investment in JLI, ALTRIA publicly acknowledged at least some of the systemic links between ALTRIA and JLI—i.e., contractual relationships, financial ties, and continuing coordination of activities. ALTRIA provided services to JLI in the areas of “direct marketing; sales, distribution and fixture services; and regulatory affairs.”¹⁶³ These services included:

- “Piloting a distribution program to provide long haul freight, warehouse storage and last mile freight services.”
- “Making available [ALTRIA's] previously contracted shelf space with certain retailers,” thus allowing JLI products to receive prominent placement

¹⁶² Laura Bach, *Where Do Youth Get Their E-Cigarettes?*, Campaign for Tobacco Free Kids (Dec. 3, 2019), <https://www.tobaccofreekids.org/assets/factsheets/0403.pdf>.

¹⁶³ Letter from Howard A. Willard III to Senator Richard J. Durbin, 11 (October 14, 2019).

alongside a top-rated brand of combustible cigarettes, Marlboro, favored by youth.

- “Executing direct mail and email campaigns and related activities. . . .”
- “Leveraging Altria’s field sales force to . . . provide services such as limited initiative selling, hanging signs, light product merchandising, and surveys of a subset of the retail stores that Altria calls upon.”
- “Providing regulatory affairs consulting and related services to [JUUL] as it prepares its PMTA application.”¹⁶⁴

325. ALTRIA of course also brought lobbying muscle to the table, which has played an important role in staving off regulation by preventing new federal or state legislation targeting JUUL or the ENDS category more broadly. ALTRIA “has a potent lobbying network in Washington [D.C.] and around the country.”¹⁶⁵ While an ALTRIA spokesman has denied that there was any contractual services agreement for lobbying between JLI and ALTRIA, he admitted that he did not know what informal advice and conversations ALTRIA has had with JLI about lobbying and efforts. Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and Juul begins.”¹⁶⁶ Since JLI and ALTRIA joined forces, JLI’s spending on lobbying has

¹⁶⁴ *Id.* at 13.

¹⁶⁵ Shelia Kaplan, *In Washington, Juul Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, N.Y. Times (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-statesecigarettes.html>.

¹⁶⁶ *Id.*

risen significantly. JLI spent \$4.28 million on lobbying in 2019, compared to \$1.64 million in 2018.¹⁶⁷

326. In addition to these services, ALTRIA and JLI share leadership. ALTRIA's investment allowed it to appoint one third of JLI's board, and in October 2019, JLI CEO resigned to be replaced by an ALTRIA career executive, K.C. Crosthwaite.

327. Another example of ALTRIA's efforts to aid JLI in misleading regulators is ALTRIA's role in the FDA's criticism of JLI. By the fall of 2018, JLI was under intense scrutiny. In April 2018, a group of eleven United States senators wrote JLI's CEO, Kevin Burns, a letter declaring that the JUUL device and JUUL pods "are undermining our nation's efforts to reduce tobacco use among youth and putting an entire new generation of children at risk of nicotine addiction and other health consequences."¹⁶⁸ Less than one week later, then FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against JLI in particular.¹⁶⁹ At the same time, the FDA sent JLI a request for documents relating to marketing, product design, and public health impact.¹⁷⁰ In July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JLI

¹⁶⁷ Center for Responsive Politics, Client Profile: JUUL Labs, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920> (last visited February 6, 2020).

¹⁶⁸ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*, U.S. SENATE (Apr. 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

¹⁶⁹ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D.*, (Apr. 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-newenforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

¹⁷⁰ *Id.*

regarding marketing and sale to minors.¹⁷¹ In September 2018, FDA Commissioner Gottlieb called youth vaping an “epidemic” and sent letters to JLI, ALTRIA, and other e-cigarette manufacturers demanding a plan to reduce youth use.¹⁷² In October 2018, the FDA raided JLI’s headquarters and seized more than a thousand documents relating to JLI’s sales and marketing practices.¹⁷³

328. On November 13, 2018, JLI responded with an “Action Plan,” declaring its intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors on the JLI website to adults age 21 and over, and shut down its social media accounts.¹⁷⁴

329. This was more talk than action. Under JLI’s “Action Plan,” JLI continued to offer the full range of flavors (including the popular mango) online—a market which teens are particularly adept at navigating. Also because many minors using e-cigarettes get them from social sources, such as older friends,¹⁷⁵ as long as mango and other flavors were available for sale somewhere, children would find a way to get them.

¹⁷¹ *AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to Minors*, MASS.GOV (July 24, 2018), <https://www.mass.gov/news/aghealey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

¹⁷² *See Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, FOOD & DRUG ADMIN. (Sept. 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

¹⁷³ *See Letter from US FDA to Kevin Burns*, *supra*.

¹⁷⁴ JUUL Labs, Inc., *JUUL Labs Action Plan* (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

¹⁷⁵ *See Jessica K. Pepper et al., How Do Adolescents Get Their E-Cigarettes and Other Electronic Vaping Devices?*, 33 *Am. J. Health Promotion* 420 (Aug. 1, 2018), <https://doi.org/10.1177/0890117118790366>.

330. As the pressure on JLI intensified, ALTRIA stepped in to assist – despite its previous clear criticism of JLI’s conduct in its October 25th letter to the FDA.¹⁷⁶ ALTRIA characterized its investment as one intended to “accelerate harm reduction and drive growth.”¹⁷⁷

331. As the president of the Campaign for Tobacco-Free Kids observed upon announcement of the deal, “Altria has no interest in seriously reducing the number of people who smoke cigarettes.”¹⁷⁸

332. ALTRIA would not have made such an investment if it did not intend to grow JLI’s already enormous market even more. In fact, ALTRIA said as much when it announced its investment, explaining that its investment in JLI “enhances future growth prospects.” ALTRIA committed to apply “its logistics and distribution experience to help JLI expand its reach and efficiency.”¹⁷⁹ Since the deal was inked in December 2018, ALTRIA’s actions clearly helped JLI maintain, if not expand, its market share—a market share that, based on ALTRIA’s own October 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising practices that directly contributed to youth vaping. ALTRIA’s Second Quarter 2019 Earnings Call reported that JLI continued to grow in the first half of 2019, from a 33 percent category

¹⁷⁶ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

¹⁷⁷ *Id.*

¹⁷⁸ Sheila Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. TIMES (Dec. 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

¹⁷⁹ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

share in 2018 to 48 percent by the second quarter 2019. JLI's expected revenue for 2019 is \$3.4 billion, nearly triple what it was in 2018.¹⁸⁰

333. From JLI's beginnings, ALTRIA had "followed Juul's journey rather closely."¹⁸¹ ALTRIA Chairman and CEO Howard Willard said that for years, his company "watched Juul carefully to see if it had staying power."¹⁸² ALTRIA decided it did. As Willard explained: "During 2018, we concluded that JLI had not only become the retail share leader in the U.S. e-vapor category, but that no other brand was close to it in share or future growth potential."¹⁸³

334. Notwithstanding ALTRIA's statements to the FDA that JLI was marketing and advertising its products in a way that contributed to the youth vaping epidemic, upon announcement of ALTRIA's investment in JLI, Willard stated that the deal would allow ALTRIA to "work[] with JLI to accelerate its mission."¹⁸⁴ ALTRIA committed to applying "its logistics and distribution experience to help JLI expand its reach and efficiency" and offering JLI the support of "Altria's sales organization, which covers approximately 230,000 retail locations." It also gave JLI access to its "premier" retail shelf space while allowing it to continue

¹⁸⁰ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, BLOOMBERG (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketingsales-of-3-4-billion-despite-flavored-vape-ban>.

¹⁸¹ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 (Feb. 20, 2019), <https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm> at 4.

¹⁸² *Id.* at 4.

¹⁸³ *Id.* at 4.

¹⁸⁴ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018, 7:00 AM EST), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

to sell its flavored products online and provided JLI with access to the databases of all of ALTRIA's companies. According to Willard, ALTRIA was "excited to support JLI's highly-talented team and offer [Altria's] best-in-class services to build on their tremendous success." ALTRIA admitted that minors were using JUUL products and that "underage use of e-cigarette product is a problem." Nevertheless, ALTRIA believed its investment in JLI "strengthens its financial profile and enhances future growth prospects."

335. ALTRIA's decision to prioritize profits over continuing to contribute to the dangers of youth vaping did not go unnoticed. On February 6, 2019, former FDA Commissioner Gottlieb sent ALTRIA another letter "regarding representations" made by ALTRIA acknowledging that it "has an obligation to take action to help address the mounting epidemic of youth addiction to tobacco products."¹⁸⁵ Then-Commissioner Gottlieb told ALTRIA that its recent purchase of a 35 percent ownership share of JLI "contradict[s] the commitments you made to the FDA." The FDA demanded ALTRIA be prepared to explain itself regarding its "plans to stop marketing e-cigarettes and to address the crisis of youth use of e-cigarettes." Commissioner Gottlieb told ALTRIA that "deeply concerning data" shows that "youth use of JUUL represents a significant proportion of overall use of e-cigarette products by children" and despite any steps the companies had taken to address the issue he "ha[d] no reason to believe these youth patterns of use are abating in the near term, and they certainly do not appear to be reversing."

¹⁸⁵ Scott Gottlieb, *Letter to Howard Willard*, U.S. FOOD & DRUG ADMIN. (Feb. 6, 2019), <https://www.fda.gov/media/122589/download>.

336. In March 2019, ALTRIA and JLI met with Gottlieb in a meeting the Commissioner described as “difficult.”¹⁸⁶ Gottlieb “did not come away with any evidence that public health concerns drove ALTRIA’s decision to invest in JLI, and instead said it looks like ‘a business decision.’” According to reporting by the *New York Times*, Gottlieb criticized JLI’s lobbying of Congress and the White House, stating, “We have taken your meetings, returned your calls and I had personally met with you more times than I met with any other regulated company, and yet you still tried to go around us to the Hill and White House and undermine our public health efforts. I was trying to curb the illegal use by kids of your product and you are fighting me on it.”¹⁸⁷

337. Just a few weeks later, Gottlieb resigned his position.

338. In February 2020, the Securities and Exchange Commission (“SEC”) opened a probe into ALTRIA’s investment in JLI to determine “whether Altria adequately disclosed to shareholders the risks when it spent \$12.8 billion in 2018 to take a 35% stake in Juul.”¹⁸⁸

339. ALTRIA has since revised its agreement with JLI, and “will no longer provide marketing and retail distribution for the startup as the companies had originally agreed. ALTRIA

¹⁸⁶ Kate Rooney & Angelica LaVito, *Altria Shares Fall After FDA’s Gottlieb Describes ‘Difficult’ Meeting on Juul*, CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficultmeeting-on-juul.html>.

¹⁸⁷ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

¹⁸⁸ Jennifer Maloney & Dave Michaels, *SEC Investigates Altria’s Investment in Juul*, WALL ST. J. (Feb. 21, 2020, 3:37 PM ET), <https://www.wsj.com/articles/sec-investigates-altrias-investment-in-juul-11582317475>.

will now focus on helping Juul with regulatory affairs, including the submission of its products for approval by the Food and Drug Administration.”¹⁸⁹

340. The Federal Trade Commission has now filed an administrative complaint alleging that JLI and ALTRIA entered a series of agreements that eliminated competition in violation of federal antitrust laws.¹⁹⁰

F. ALTRIA, JLI DEFENDANTS, and Others Have Successfully Caused More Young People to Start Using E-Cigarettes, Creating a Youth E-Cigarette Epidemic and Public Health Crisis.

341. DEFENDANTS’ tactics have misled the public regarding the addictiveness and safety of e-cigarettes generally, and JUUL products specifically, resulting in an epidemic of e-cigarette use among youth in particular.

342. DEFENDANTS’ advertising and third-party strategy, as discussed above, ensured that everyone from adults to young children, would believe JUULing was a cool, fun, and safe activity.

343. To this day, DEFENDANTS have not fully disclosed the health risks associated with its products, has not recalled or modified its products despite the known risks, and continues to foster a public health crisis, placing millions of people in harm’s way.

344. Because JLI DEFENDANTS’ marketing turned the JUUL into a status symbol for teens, the acute nicotine addiction a JUUL device fosters is frequently reinforced by the idea—which JLI DEFENDANTS spread—that JUULing is what “cool” popular kids do in high

¹⁸⁹ Jennifer Maloney, *Altria Takes \$4.1 Billion Charge on Juul Investment*, WALL ST. J. (Jan. 30, 2018, 1:18 PM ET), <https://www.wsj.com/articles/altria-takes-4-1-billion-writedown-on-juul-investment-11580386578>.

¹⁹⁰ *FTC Sues to Unwind Altria’s \$12.8 Billion Investment in Competitor JUUL*, FTC (Apr. 1, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul>.

school. As a result, the medical community has found itself ill-equipped to develop a treatment for JUUL-addicted youth, as evidenced by a January 2019 FDA-sponsored meeting concerning the role of drug therapies in treating e-cigarette use.

345. The vaping epidemic caused by JLI DEFENDANTS has swept the entire nation in a short period of time. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends for 2018 reported that increases in adolescent ENDS vaping from 2017 to 2018 were the “largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S.”¹⁹¹

346. The percentage of 12th grade students who reported vaping nicotine almost doubled between 2017 and 2018, rising from 11 percent to 21 percent. The ten-percentage-point increase in 12th grade students who reported vaping nicotine (an indicator of nicotine addiction) is “twice as large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”¹⁹² Indeed: “One in five 12th graders vaped nicotine in the last 30 days in 2018.” And because JLI controls over 50 percent of the e-cigarette market, and was released immediately prior to the jump in vaping prevalence from 11 percent of teens to 21 percent, the entire increase in vaping prevalence since 2016 is attributable to JLI.

347. Former FDA Commissioner Gottlieb has described the increase in e-cigarette consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for an

¹⁹¹ Nicholas Prieur, *National Adolescent Drug Trends in 2018*, U. OF MICH. INST. FOR SOC. RESEARCH (Dec. 17, 2018), <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/>.

¹⁹² *Id.*

“epidemic” of nicotine use among teenagers.¹⁹³ The rapid—indeed infectious—adoption of e-cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.” The Commissioner identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”¹⁹⁴

348. Within days of the FDA’s declaration of an epidemic, U.S. Surgeon General Dr. Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.”¹⁹⁵

349. Even more troubling are the challenges associated with getting kids to quit JUUL once they start. JLI DEFENDANTS’ aggressive social media campaign puts JLI advertisements before them every day, all day. Those that want to stop thinking about it are faced with advertising when engaging in their regular activities.

350. Moreover, many medications for breaking nicotine addictions are approved only for adults.

1. DEFENDANTS Unraveled Decades of Progress in Reducing Teen Smoking by Exploiting Regulatory Loopholes.

351. The teen e-cigarette epidemic was by design, not by accident.

352. When JUUL was first developed, the FDA’s regulations on tobacco products were vague as to whether they applied to vaping and e-cigarette devices. Because the regulations

¹⁹³ *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of E-Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply Rising Use Among Kids*, U.S. FOOD & DRUG ADMINISTRATION (Sept. 18, 2018), www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm.

¹⁹⁴ *Id.*

¹⁹⁵ Surgeon General’s Advisory on E-cigarette Use Among Youth, CDC (last updated Apr. 9, 2019), www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html.

did not explicitly identify electronic devices that dispensed tobacco and nicotine as a regulated product, JLI DEFENDANTS interpreted those regulations to mean it could sell its dangerous products to anyone, regardless of their age, and that it did not have to comply with the advertising and labeling restrictions that restricted other tobacco companies.

353. Notwithstanding ALTRIA's professed concern about flavors attracting youth customers, ALTRIA submitted comments in August 2014 opposing a rule proposed by the FDA ("2014 Proposed Rule") deeming e-cigarettes for regulation under the Tobacco Act. ALTRIA asserted that restrictions could result in more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors.¹⁹⁶

354. As other e-cigarette companies began to enter the market, JLI DEFENDANTS no doubt knew this gray area was unlikely to stay gray for long. Knowing the clock was ticking, JLI DEFENDANTS wasted no effort getting as many young people addicted as possible while it still viewed itself as "unregulated." The aggressive advertising described above was designed not just to sell the products to teenagers, but to sell the products to as many teenagers as possible while it still had a plausible defense to any assertion it was violating FDA regulations. By hooking teens, JLI DEFENDANTS not only ensured it would have loyal customers for decades, but those teens would influence their friends.

355. Even after the FDA issued its final deeming rule in 2016, e-cigarette industry lobbying continued to pay dividends to companies like JLI. In 2017, when Dr. Scott Gottlieb

¹⁹⁶ ALTRIA Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act at 47-48 (August 8, 2014), <https://www.ALTRIA.com/-/media/Project/ALTRIA/ALTRIA/about-ALTRIA/federalregulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf>.

took over as the FDA Commissioner, one of his first major acts was to grant e-cigarette companies a four-year extension to comply with the deeming rule, even as data indicated sharp increases in teen e-cigarette use.¹⁹⁷ Gottlieb had previously served on the board of Kure, a chain of e-cigarette lounges in the United States.¹⁹⁸

356. JLI DEFENDANTS and ALTRIA successfully shielded the popular mint flavor from regulation. They publicly defended mint flavoring as a substitute for menthol cigarette smokers, when in fact JLI's studies indicated that mint users are not former menthol cigarette smokers. By fighting to keep mint as the last flavor on the market, the cigarette industry could continue to appeal to non-smokers, including youth. JLI DEFENDANTS coordinated with ALTRIA to pursue a fraudulent scheme to convince the FDA into leaving the mint flavor on the market, sacrificing other flavors in the process.

357. JLI DEFENDANTS knew that mint was the most popular JUUL pod. Though other flavors might draw new customers, JLI DEFENDANTS' most addictive "flavor" predictably became its most popular.

358. JLI DEFENDANTS and ALTRIA coordinated their efforts in misleading the FDA with the "Action Plan" discussed above, and successfully saved mint JUUL pods, at least until November 2019 when JLI withdrew it from the market in the face of growing scrutiny.¹⁹⁹

¹⁹⁷ Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal Inaction*, NY Times.com (2019), <https://www.nytimes.com/2019/10/14/health/vaping-ecigarettes-fda.html> (last visited Mar 4, 2020).

¹⁹⁸ Zeke Faux & Dune Lawrence, *Vaping Venture Poses Potential Conflict for Trump's FDA Nominee*, Bloomberg (2017), <https://www.bloomberg.com/news/articles/2017-04-19/vapingventure-poses-potential-conflict-for-trump-s-fda-nominee>.

¹⁹⁹ Ellen Huet, *JLI Pulls Mint-Flavor Vaping Products, but Menthol Remains*, Bloomberg (Nov. 7, 2019), <https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mintflavored-vaping-products>.

359. JLI continues to sell menthol-flavored products.²⁰⁰

2. **JUUL Usage Increases the Risk of Cardiovascular, Pulmonary, Neurological, and Other Bodily Injuries.**

a. **JUUL Products Cause Acute and Chronic Lung (Pulmonary) Injuries.**

360. The use of e-cigarettes, including JUUL, cause significant lung toxicity²⁰¹ and have been implicated in multiple severe pathological lung injuries.

361. The flavoring compounds used in e-cigarettes include chemicals known to be toxins if inhaled, such as diacetyl, acetyl propionyl, and benzaldehyde. These chemicals are linked to serious lung disease.²⁰² In addition, ultrafine metal particles from the heating device have been found in e-cigarette aerosol, and in e-cigarette user's lungs.²⁰³

362. Very recently, researchers discovered in some JUUL nicotine pods a microbial toxin, glucan, which can cause inflammation in the airway and may lead to long-term lung damage.²⁰⁴

²⁰⁰ Sheila Kaplan, *Juul Ends E-Cigarette Sales of Mint-Flavored Pods*, N.Y. Times (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

²⁰¹ Lauren F. Chun et al., *Pulmonary Toxicity of E-cigarettes*, 313 Am. J. Physiol. Lung Cell Mol. Physiol L193 (May 18, 2017), <https://www.ncbi.nlm.nih.gov/pubmed/28522559>.

²⁰² Centers for Disease Control & Prevention, *Flavorings-Related Lung Disease* (2017), <https://www.cdc.gov/niosh/topics/flavorings/default.html>; Lee, *Modeling Cardiovascular Risks of E-Cigarettes*, *supra*; Sheila Kaplan & Matt Richtel, *Mysterious Vaping Illness That's 'Becoming an Epidemic'*, N.Y. TIMES (Aug. 31, 2019), <https://www.nytimes.com/2019/08/31/health/vaping-marijuana-ecigarettes-sickness.html?auth=login-email&login=email>.

²⁰³ Caporale, *Acute Effects of Electronic Cigarette Aerosol Inhalation on Vascular Function*, *supra*.

²⁰⁴ Forty-six percent of the samples contained detectable levels of glucan. Diane Caruna, *A Microbial Toxin Found in Some Juul Products*, VAPING POST (Jan. 8, 2020); Abby Haglage, *Harvard Researchers Discovery Toxin in Juul Pods That Can Cause Longterm Lung Damage*, YAHOO LIFESTYLE (Jan. 7, 2020); *Glucan, A Microbial Toxin, Found in Juul's Nicotine Vaping Liquids*, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH (Jan. 2, 2020).

363. Recent studies also have linked lung inflammation, poor immune response, weakened lung structure, ‘liquid pneumonia,’ chest abnormalities, and clinical respiratory symptoms, some requiring intubation and mechanical ventilation, to e-cigarette use.²⁰⁵ Spontaneous pneumothorax (lung collapse) is also linked to vaping and use of e-cigarettes.²⁰⁶

364. It is well-established that endothelial dysfunction and injury from direct toxic effects of inhalants such as cigarette smoke, cause lung injuries such as chronic obstructive pulmonary disease (COPD), emphysema, asthma and chronic bronchitis.²⁰⁷

365. Recent epidemiological and toxicological studies detected links between asthma frequency and e-cigarette use in adolescents and reported that vaporized e-liquids containing the same flavor aldehydes found in JUUL induce inflammation in human respiratory epithelia.²⁰⁸

²⁰⁵ Travis S. Henry, et al., *Imaging of Vaping-Associated Lung Disease*, 381 NEW ENGLAND J. OF MED. 1486 (Sept. 6, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1911995>; Jennifer E. Layden et al., *Pulmonary Illness Related to E-Cigarette Use in Illinois and Wisconsin—Preliminary Report*, 381 NEW ENGLAND J. OF MED. (Sept. 6, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMoa1911614>; Matthew C. Madison, *Electronic Cigarettes Disrupt Lung Lipid Homeostasis and Innate Immunity Independent of Nicotine*, 129 J. CLINICAL INVESTIGATION 4290 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31483291>; Sean D. Maddock, et al., *Pulmonary Lipid-Laden Macrophages and Vaping*, 381 NEW ENGLAND J. OF MED. 1488 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1912038>; Martin, et al., *E-Cigarette Use Results in Suppression of Immune and Inflammatory-Response Genes in Nasal Epithelial Cells Similar to Cigarette Smoke*, 311 AM. J. OF PHYSIOLOGY L135 (July 2016), <https://www.ncbi.nlm.nih.gov/pubmed/27288488>.

²⁰⁶ Alex Bonilla et al., *Recurrent Spontaneous Pneumothoraces and Vaping in an 18-year-old Man: a Case Report and Review of the Literature*, 13 J. OF MED. CASE REPORTS 283 (Sept. 9, 2019), <https://doi.org/10.1186/s13256-019-2215-4>.

²⁰⁷ Francesca Polverino et al. *COPD as an Endothelial Disorder: Endothelial Injury Linking Lesions in the Lungs and Other Organs?* 8 Pulm. Circ. 2045894018758528 (2018), <https://www.ncbi.nlm.nih.gov/pubmed/29468936>.

²⁰⁸ Phillip W. Clapp and Ilona Jaspers, *Electronic Cigarettes: Their Constituents and Potential Links to Asthma*, 79 Curr Allergy Asthma Rep. 17 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28983782>.

366. Over the summer of 2019, healthcare providers started to note an influx of acute respiratory failure and a myriad of lung injuries in patients who were using e-cigarettes. This prompted a Center for Disease Control (“CDC”) investigation of an outbreak of vaping-associated lung injuries. The reported injuries mirrored the injuries that had been reported in the medical literature since 2012.

367. Recognizing the seriousness of the vaping epidemic, in October 2019, the CDC issued treatment guidelines to assist doctors in clinical practice including a protocol for inquiring about vaping or e-cigarette history of use. The CDC defined a new recognized medical condition referred to as E-cigarette, or Vaping, Product Use Associated Lung Injury illnesses (EVALI).

368. Hypersensitivity pneumonitis is a disease of the lungs in which the lungs become inflamed as a result of an allergic reaction to inhaled dust, fungus, molds or chemicals. Hypersensitivity pneumonitis has been linked to the use of e-cigarettes, such as JUUL, since 2015.²⁰⁹

369. The multiple pathological lung injuries and toxicity associated with e-cigarette use, including JUUL, can lead to acute respiratory failure, intubation with mechanic ventilation and death.

370. It has been established that the use of e-cigarettes, including JUUL, can lead to acute and chronic lung injuries such as EVALI, lipoid pneumonia, organizing pneumonia, chemical pneumonitis, alveolar hemorrhage, bronchiolitis obliterans (popcorn lung), pneumothorax, acute respiratory failure, acute respiratory distress syndrome (ARDS), asthma, emphysema and COPD. DEFENDANTS never warned the public of the risk of serious acute and

²⁰⁹ Graham Atkins et al., *Acute Inhalational Lung Injury Related to the Use of Electronic Nicotine Delivery Systems (ENDS)*, 148 Chest 83A (2015).

chronic lung injuries that were associated with the use of e-cigarettes, including JUUL. In fact, JLI DEFENDANTS downplayed any risk associated with the inhalation of JUUL aerosol and continues to overtly promote JUUL as safe.

b. JUUL Products Cause Cardiovascular Injuries.

371. In addition to severe lung injuries and addiction, JUUL products cause significant and severe risks of cardiovascular injuries. Studies have shown that use of e-cigarettes such as JUUL increase the risk of strokes and heart attacks.²¹⁰

372. Research has demonstrated that e-cigarettes significantly increase blood pressure and arterial stiffness, which also increases the risk of for strokes and heart attacks.²¹¹ Further, scientists have found that e-cigarettes cause oxidative stress, which leads to vascular disease and damage, known risk factors for cardiovascular injuries.²¹²

373. The overarching conclusion from dozens of studies published in the past 8 years is that use of e-cigarettes, including JUUL, increases the risk of cardiovascular injury which can lead to strokes, heart attacks and death.

²¹⁰ *E-cigarettes linked to higher risk of stroke, heart attack, diseased arteries*, American Stroke Association News Release, Abstract 9, Session A2 (Jan. 30, 2019), <https://newsroom.heart.org/news/e-cigarettes-linked-to-higher-risk-of-stroke-heart-attackdiseased-arteries>; Mohindar R. Vindhyal et al., *Impact on Cardiovascular Outcomes Among E-cigarette Users: A Review From National Health Interview Surveys*, 73 J. of the Am. College of Cardiology Suppl. 2 (2019), www.onlinejacc.org/content/73/9_Supplement_2/11.; Paul M. Ndunda & Tabitha M. Muutu, *Electronic Cigarette Use is Associated with a Higher Risk of Stroke*, 50 Int'l Stroke Conference 2019 Oral Abstracts: Community/Risk Factors, Suppl. 1, Abst. 9, www.ahajournals.org/doi/10.1161/str.50.suppl_1.9.

²¹¹ Charalambos Vlachopoulos et al., *Electronic Cigarette Smoking Increases Aortic Stiffness and Blood Pressure in Young Smokers*, 67 J. Am. Coll. Cardiol. (2016).

²¹² Dennis Thompson, *Vaping May Hurt the Lining of Your Blood Vessels*, WebMD HealthDay Reporter (May 28, 2019), www.webmd.com/mental-ealth/addiction/news/20190528/vapingmay-hurt-the-lining-of-your-blood-vessels#1; JUUL e-cigarettes and JUUL pods deliver dangerous toxins and carcinogens to users. The ingredients in JUUL pods include glycerol, propylene glycol, nicotine, benzoic acid, and flavoring chemicals, www.juul.com/learn/pods.

374. JLI DEFENDANTS never warned the public or consumers of the serious and significant risk of cardiovascular injuries associated with its products.

c. JUUL Products Cause and Contribute to Seizure(s)

375. On April 3, 2019 the FDA Center for Tobacco Products issued a Special Announcement notifying the public of an increase in reports of tobacco-related seizures, specifically relating to an increase in e-cigarette use, particularly among youth.²¹³

376. It is well-documented that nicotine poisoning can cause seizures, including ingestion of e-cigarette fluid.²¹⁴

377. Nicotine has proconvulsive actions and, when overdosed, induces convulsive seizures both in humans and animals.²¹⁵ JUUL's high nicotine content and addictive nature cause JUUL users to be highly susceptible to seizures.

378. Seizures following e-cigarette use are a significant cause for concern due to the unnecessarily high levels of nicotine delivered, by design, via JUUL. As described herein, JLI FOUNDERS intentionally designed its products to deliver a higher amount of nicotine, particularly targeting young people, and then failed to warn of the subsequent risks. JUUL devices were deliberately designed to deliver higher concentrations of nicotine per puff as

²¹³ *Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults*, U.S. Food & Drug Administration (April 10, 2019), <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involvingyouth-and-young-adults>.

²¹⁴ Gerdinque C. Maessen et al., *Nicotine Intoxication by E-cigarette Liquids: A Study of Case Reports*, *Pathophysiology*, 58 *Clinical Toxicology* 1 (2020), <https://www.tandfonline.com/doi/full/10.1080/15563650.2019.1636994>.

²¹⁵ Higor Iha et al. *Nicotine Elicits Convulsive Seizures by Activating Amygdalar Neurons*, 8 *Frontiers in Pharmacology* 57 (2017).

compared to cigarettes, creating the risk for addiction as well as the risk of seizure due to potentially toxic levels of nicotine exposure.

379. JLI DEFENDANTS never warned the public or consumers of the risk of seizures associated with the use of e-cigarettes including JUUL.

G. Hawai‘i Has a Statutory Framework Governing the Use, Sale, Distribution, and Marketing of Products Including E-Cigarettes.

380. Electronic cigarettes are heavily regulated at the federal, state, and local levels. The FDA regulates electronic cigarettes in various ways, including through manufacturer and product registration, setting product standards and required warnings, and ensuring that modified risk health or exposure claims and cessation claims are not made without prior FDA approval. To date, no electronic cigarette has received FDA approval to make a cessation or modified risk claim. Upon information and belief, JLI has not submitted a Premarket Tobacco Product Application for JUUL products.

381. The FDA issued its foundational rule, to regulate electronic cigarettes and certain other tobacco products on August 8, 2016, titled “Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products.” 21 Code of Federal Regulation parts 1100, 1140 and 1143 (2016).

382. As a result of this rulemaking, on August 8, 2016, it became illegal in all states to sell electronic cigarettes to people younger than 18.²¹⁶ Retailers also became legally

²¹⁶ Since 2016, in Hawai‘i, the sale of electronic cigarettes to individuals under 21 has been illegal. Haw. Rev. Stat. § 712-1258.

responsible for requiring age verification by photo ID for individuals under 27 before the sale of a tobacco product.

383. Hawai‘i has enacted a strong statutory framework governing the use, sale, distribution, licensing and taxation of electronic cigarettes. Under Hawai‘i law, a “tobacco product” means “any product made or derived from tobacco that contains nicotine or other substances and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means.” Hawai‘i law also defines “electronic smoking device” as “any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.” HRS § 712-1258(7).

384. Hawai‘i law imposes several restrictions to prevent youth access to electronic cigarettes. For example, the sale of electronic cigarettes to persons under age 21 is prohibited. HRS § 712-1258(1). Retailers must check the identifications of any seeking to purchase tobacco products, and must post signs informing customers that the “sale of tobacco products or electronic smoking devices to persons under twenty-one is prohibited” near the point of sale. HRS § 712-1258(3)-(4).

385. Despite this prohibition, JLI DEFENDANTS repeatedly targeted teenagers through its vast advertising campaigns and sold its products in a variety of appealing flavors to underage Hawai‘i residents through its website, and in local advertising and retail stores throughout Hawai‘i in violation of Hawai‘i law.

H. Student Use of Electronic Cigarettes Has Affected Hawaii’s Public Schools.

386. Despite efforts by the legislature, state agencies, and public schools, use of electronic cigarettes by students, and the adverse effects of such use, have increased.

387. In October of 2019, the Hawai‘i State Health Department issued an advisory urging anyone who vapes to stop immediately, citing investigations into hundreds of lung and stomach injuries associated with the use of e-cigarettes: “Do not use e-cigarettes or vaping devices of any kind. If you don’t use vaping devices, don’t start. If you are using a vaping device, stop.”²¹⁷

388. Schools and the State Department of Education have expended large sums of money and substantial amounts of time on actions and programs relating to electronic cigarettes that, had it not been for the dramatic increase in use of electronic cigarettes by youth, could have been expended on reducing access to and use of cigarettes or on other purposes.

389. The adverse effects of electronic cigarette use and possession on school campuses are increasing.²¹⁸ Multiple news stories report JUUL products use in Hawai‘i schools and the burden this use places on schools.²¹⁹

²¹⁷ STATE OF HAWAII DEPARTMENT OF HEALTH, HEALTH ADVISORY ON VAPING (Oct. 7, 2019), <https://health.hawaii.gov/about/current-advisories-warnings/>.

²¹⁸ See Moriah Balingit, *School Systems Sue Juul, Saying E-Cigarette Firm Spurred Vaping Epidemic in Students*, WASH. POST. (Oct. 8, 2019), https://www.washingtonpost.com/local/education/school-systems-sue-juul-saying-e-cigarette-firm-spurred-vaping-epidemic-in-students/2019/10/08/00aacb08-e9fc-11e9-9c6d-436a0df4f31d_story.html; Denisa R. Superville & Ariana Prothero, *The Student Vaping Crisis: How Schools Are Fighting Back*, ED. WEEK (Aug. 27, 2019), <https://www.edweek.org/ew/articles/2019/08/28/the-student-vaping-crisis-how-schools-are.html>.

²¹⁹ See Wayne Yoshioka, *Teen Vaping Epidemic in Hawai‘i*, HAWAII PUBLIC RADIO (Jan. 17, 2019), <https://www.hawaiipublicradio.org/post/teen-vaping-epidemic-hawaii#stream/0>; Holly Harvey, *American Lung Association in Hawaii Combats Vaping Epidemic Through Education and Keeps Students in Schools*, AM. LUNG ASSOC. (Sept. 26, 2019), <https://www.lung.org/local-content/content-items/about-us/media/press-releases/american-lung-association-in-12.html>; HNN Staff, *State Urges Anyone Who Vapes to Stop Immediately, But Decides Against A Ban*, HAWAII NEWS NOW (Oct. 7, 2019, 10:53 AM HST), <https://www.hawaiinewsnow.com/2019/10/07/state-everyone-should-stop-vaping-until-more-is-known-serious-lung-diseases/>.

390. As discussed above, the use of e-cigarettes among high school teens in Hawai‘i is two to three times higher than the national average.²²⁰ According to the CDC, 25 percent of teens have tried e-cigarettes nationwide,²²¹ while the 2017 Hawaii Youth Risk Behavior Survey reported that 42 percent of high school students and 27 percent of middle school students have tried e-cigarettes.²²²

391. Identification, confiscation, storage, and disposal of electronic cigarettes such as JUUL products places a substantial burden on public schools in Hawai‘i, including in the City and County of Honolulu.

²²⁰ Jason C. Seto et al., *E-Cigarette Use Related to Demographic Factors in Hawai‘i*, 75 HAWAI‘I J. OF MED. & PUB. HEALTH 295 (2016); Pallav Pokhrel et al., *Smokers Who Try E-Cigarettes to Quit Smoking: Findings From a Multiethnic Study in Hawai‘i*, 103 AM. J. PUB. HEALTH 57 (2013); Sherry Bracken, *Hawai‘i Youth Vape More Than National Average*, HAWAI‘I PUBLIC RADIO (Sept. 17, 2018), <https://www.hawaiipublicradio.org/post/hawaii-youth-vape-more-national-average#stream/0>.

²²¹ *More Than 1 in 4 Teens Vape: ALA Responds to New CDC Data on Youth E-Cigarette Epidemic*, AMERICAN LUNG ASSOCIATION (Sept. 12, 2019), <https://www.lung.org/about-us/media/press-releases/national-youth-tobacco-survey.html>; FDA News Release, *Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products*, U.S. FOOD AND DRUG ADMINISTRATION (Sept. 11, 2019), https://www.fda.gov/newsevents/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non?utm_medium=email&utm_term=stratcomms&utm_content=pressrelease&utm_campaign=CTP%20News%26Connect%26SoS%3A%20HHS%20Youth%20ECig%20Use%20Response%20-%2091119; Petula Dvorak, *Why You Should Be Worried If Your Teen Smells Like Berries, Cotton Candy or Mint*, WASH. POST (Sept. 12, 2019), https://www.washingtonpost.com/local/why-you-should-be-worried-if-your-teen-smells-like-berriescotton-candy-or-mint/2019/09/12/180ef6b4-d56d-11e9-9610-fb56c5522e1c_story.html?noredirect=on; Thomas A. Wills et al., *Longitudinal Study of E-Cigarette Use and Onset of Cigarette Smoking Among High School Students in Hawaii*, 26 TOB. CONTROL 34 (2017).

²²² *Hawai‘i Youth Vaping at Epidemic Levels*, HEALTHYHAWAII.COM, https://www.healthyhawaii.com/wp-content/uploads/2018/11/18405-DOH_Vaping_resource-guide_ONLINE_Parents-pages_1101_HiRes.pdf.

392. Implementing measures and disciplinary procedures to deter use of electronic cigarettes such as JUUL products is a financial and resource burden on public schools in Hawai‘i, including in the City and County of Honolulu.

393. Further, when a disciplinary procedure results in a determination that a student has violated school policy by being in possession and/or use of an e-cigarette, that determination may result in suspension or other disciplinary procedures, all of which are disruptive to the student’s educational experience.

394. Implementing public awareness campaigns and other actions to deter use of electronic cigarettes such as JUUL products has caused, and continues to cause, a financial and resource burden on Hawai‘i and on the City and County of Honolulu.

395. JLI DEFENDANTS’ marketing of its products failed to notify Hawai‘i residents that JUUL products could not be disposed of in a trash can, and that disposal of JUUL products would be subject to Hawaii’s hazardous waste laws.

396. Hawai‘i has been financially harmed by the widespread use of JUUL e-cigarettes. It has expended additional resources to manage youth addiction; to fund and support school disciplinary and academic procedures; to fund and support medical and public health interventions and services to treat and prevent addiction and other health effects, including but not limited to pulmonary, cardiovascular, neurological, and mental health illnesses caused by using e-cigarettes; and to expend resources to dispose of used e-cigarettes, particularly those used by and confiscated from underage youth, which may involve hazmat and other protection from hazardous e-cigarette chemicals.

I. JLI DEFENDANTS Sold Tobacco Products to Underage Persons in Hawai‘i.

397. Hawai‘i law prohibits selling electronic cigarettes and tobacco products to persons under age 21. HRS § 712-1258(1).

398. Upon information and belief, JLI DEFENDANTS sold JUUL tobacco products to underage persons in Hawai‘i, including in the City and County of Honolulu. From early on, JLI employees suspected that underage individuals were buying their products. A former JLI manager told The New York Times that “within months of Juul’s 2015 introduction, it became evident that teenagers were either buying Juuls online or finding others who made the purchases for them. Some people bought more Juul kits on the company’s website than they could individually use—sometimes 10 or more devices.” As he explained, “‘First, they just knew it was being bought for resale [...] Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.’”²²³

399. Similarly, a former JLI manager told Reuters, “the first signs that Juul had a strong appeal to young people came almost immediately after the sleek device went on sale in 2015[....] Employees started fielding calls from teenagers asking where they could buy more Juuls, along with the cartridge-like disposable ‘pods’ that contain the liquid nicotine.”²²⁴ According to the former manager, JLI directors and early investors argued against “immediate action to curb youth sales” because they “had no problem with 500 percent year-over-year growth” and “understood the long-term benefit of young users on [JLI’s] bottom line....”²²⁵ In 2017, employees joked about the traffic in JLI’s eCommerce site, “fuckin [sic] 40 people in checkout right now,” “40 teenagers trying to buy 200 juuls.”

²²³ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The E-cigarette Company Says It Never Sought Teenage Users, But the F.D.A. is Investigating Whether Juul Intentionally Marketed its Devices to Youth*, N.Y. TIMES (Aug. 27, 2018), www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html.

²²⁴ Chris Kirkham, *Juul Disregarded Early Evidence It Was Hooking Teens*, REUTERS (Nov. 5, 2019, 11:00 AM GMT), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

²²⁵ *Id.*

400. JLI DEFENDANTS have sold JUUL devices, pods, and accessories directly to consumers in Hawai‘i through physical retailers and distributors, and through its online store at juulvapor.com and later at juul.com.

FIRST CLAIM FOR RELIEF
Against All Defendants
(Violations of The Unfair or Deceptive Acts or Practices Act, “UDAP,”
Haw. Rev. Stat. §§ 480-2)

401. Plaintiff re-alleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

402. At all relevant times, all DEFENDANTS named herein designed, manufactured, marketed, advertised, promoted, supplied, distributed, sold and/or otherwise placed JUUL Products into the stream of commerce.

403. From a date unknown to Plaintiff and continuing to the present, DEFENDANTS have engaged in and continue to engage in, unfair and unlawful acts or practices that constitute violation of HRS § 480-2, by making or causing to be made untrue or misleading statements with the intent to induce members of the public to purchase DEFENDANTS’ products, as described in the foregoing paragraphs. DEFENDANTS’ untrue or misleading representations additionally include, but are not limited to, the following:

a. DEFENDANTS represented that their products would allow users to reduce or eliminate their cigarette consumption entirely, even though DEFENDANTS’ products have not been approved by the U.S. Food & Drug Administration as a smoking cessation product or as a modified risk product, and even though DEFENDANTS’ products are more potent in the delivery of nicotine than combustible cigarettes;

b. DEFENDANTS represented that their products are a less harmful alternative to other tobacco products and/or present a lower risk of tobacco-related disease, even

though DEFENDANTS' products have not been approved by the U.S. Food & Drug Administration as a smoking cessation product or as a modified risk product;

c. DEFENDANTS misrepresented, directly or by implication, the nicotine content of JUUL products;

d. DEFENDANTS represented, directly or by implication, that one JUUL pod is functionally equivalent to one pack of combustible cigarettes;

e. DEFENDANTS engaged in misleading and deceptive acts and practices in their marketing, advertising, and promotions that create a likelihood of confusion and of misunderstanding, in violation of HRS § 481A-3(a), and that create a likelihood of unlawfully selling tobacco products and electronic smoking devices to persons under age 21, in violation of HRS § 712-1258(1), including but not limited to:

i. Unfairly targeting underage youth through marketing campaigns on social media, offering free products at events and malls, sponsoring and engaging social media influencers in direct violation of Hawai'i's prohibition of the sale of tobacco products and electronic cigarettes to individuals under 21 years of age;

ii. Unfairly targeting underage youth through marketing, making DEFENDANTS' products appear stylish, flavorful, and trendy, with the knowledge that youth would likely start using these products, in direct violation of Hawai'i's prohibition of the sale of tobacco products and electronic cigarettes to individuals under 21 years of age; and

iii. Unfairly targeting underage youth by marketing dessert and fruit flavors that appealed to underage youth, such as mango, cool mint, crème brûlée, and cucumber, in direct violation of Hawai'i's prohibition of the sale of tobacco products and electronic cigarettes to individuals under 21 years of age.

f. DEFENDANTS misled the public into believing that it could dispose of their nicotine-containing products in a regular trash can, in violation of Hawai‘i hazardous waste laws, HRS § 342J-1 *et seq.*

404. DEFENDANTS, and their agents, employees, and/or directors, engaged in concerted and coordinated actions with each other to accomplish these unlawful purposes, by taking the following actions, including, but not limited to:

a. DEFENDANTS collaborated to grow the e-cigarette market by sharing data and information and coordinating marketing activities, including acquisition of prime shelf space;

b. DEFENDANTS coordinated to transmit, promote, and utilize statements concerning JUUL’s nicotine content that they knew were false and misleading, including by providing retail and distribution for JLI products with misleading packaging;

c. DEFENDANTS collaborated to design and market a product attractive to youth, building off of each other’s experience and expertise, including using ALTRIA’s background in designing and marketing successful nicotine products to youth;

d. DEFENDANTS collaborated to stave off regulation, including by misleading and deceiving the public and government regulators into believing that JLI is and had been focused solely on targeting adult smokers through its “Make the Switch” campaign and by continually seeking to frame JUUL products as smoking cessation devices; and

e. DEFENDANTS coordinated with others in the e-cigarette industry and with third party groups to mislead the public, and especially young people, about the harms and benefits of e-cigarettes.

405. DEFENDANTS' violations of HRS § 480-2 justify penalties of up to \$10,000, per Defendant, for each violation. HRS § 480-3.1. In addition, DEFENDANTS' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

SECOND CLAIM FOR RELIEF
Against All Defendants
(Unjust Enrichment)

406. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

407. As an expected and intended result of its conscious wrongdoing as set forth in this Complaint, DEFENDANTS have profited and benefitted enormously. Hawai'i has expended, and will continue to expend, substantial amounts of money to remedy or mitigate the societal and public health harms caused by increases nicotine addiction and the harmful health effects caused by e-cigarettes, especially among teenagers and young adults.

408. These expenditures include, but are not limited to, the provision of education services to educators and students, the expenditures associated with disposing of used DEFENDANTS' products in compliance with hazardous waste protocols, as well as the investigation into the health effects of vaping. These expenditures have helped sustain DEFENDANTS' businesses.

409. Additionally, Hawai'i residents, including teenagers and young adults, have made payments to DEFENDANTS for goods and services that they otherwise would not have purchased or in amounts that they should not have been required to pay, thereby causing them harm.

410. Plaintiff and Hawai'i residents have conferred a benefit upon DEFENDANTS by paying for the cost of the harms caused by Defendants' improper and unlawful practices.

DEFENDANTS knowingly accepted and retained such benefits. Further, Defendants have failed to pay for the consequences of its unlawful conduct.

411. Because of their deceptive and unlawful actions, DEFENDANTS obtained enrichment that they would not otherwise have obtained. Because of the conduct, practices, actions, and material omissions described in this Complaint, DEFENDANTS obtained enrichment that they would not otherwise have obtained. The enrichment was without justification, and Plaintiff lacks an adequate remedy provided by law.

THIRD CLAIM FOR RELIEF
Against All Defendants
(Negligence And Negligence *Per Se*)

412. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

413. At all relevant times, DEFENDANTS owed Hawai'i and its citizens a duty to exercise reasonable care in designing, marketing, advertising, distributing, and selling their products. DEFENDANTS also owed a duty to effectively communicate all dangers of their products, the exact content and nicotine values of their products, the addictiveness and harm of their products, and the true usefulness and safety of their products as cigarette alternatives.

414. DEFENDANTS owed a duty of reasonable care to ensure that their products were not attractive to youth.

415. DEFENDANTS breached their duties, among other things, by failing to communicate the harmfulness and highly addictive quality of their products. DEFENDANTS also misrepresented the true nicotine product in their products; that their products were safe, and less addictive than cigarettes; and that they were effective in helping users quit cigarettes.

416. Additionally, it is unlawful to sell "tobacco product(s)" and "electronic smoking device(s)" to persons under age 21 in Hawai'i, under HRS § 712-1258(1).

417. As articulated above, DEFENDANTS flouted their duty to not sell their tobacco and electronic smoking devices to teenagers and young people under age 21 in Hawai‘i.

418. DEFENDANTS’ breach of HRS § 712-1258(1) is conclusive evidence of duty and breach.

419. Hawai‘i young people, who were harmed by DEFENDANTS’ violations, are among those the legislature intended to protect. Further, the harm to Hawai‘i residents under age 21 is of the type the legislature intended to prevent.

420. Therefore, DEFENDANTS’ breach of HRS § 712-1258(1) constitutes negligence per se for which Defendants are liable.

421. As stated above, Hawai‘i has expended large sums of money and substantial amounts of time on actions, programs, and responses relating to electronic cigarettes that, had it not been for the dramatic increase in use of electronic cigarettes by youth, could have been expended on reducing access to and use of cigarettes or on other purposes.

422. Each and every one of the above acts or omissions, together with others, or a combination of them, constituted negligence and negligence per se which were a proximate and direct cause of the State’s damages.

FOURTH CLAIM FOR RELIEF

Against All Defendants

(Public Nuisance)

423. Plaintiff realleges all paragraphs set forth above and incorporates them by reference as though they were fully set forth in this cause of action.

424. DEFENDANTS, individually and/or acting through their employees and agents, have engaged in conduct or omissions which offend, interfere with, or cause damage to the public in the exercise of rights common to all, in a manner such as to endanger or injure the property, health, safety, or comfort of a considerable number of persons in Hawai‘i by the sale

and marketing of JUUL and other e-cigarette products for use by residents of Hawai‘i, and DEFENDANTS’ conduct in connection with these activities.

425. DEFENDANTS’ conduct has resulted in substantial and unreasonable interference with the public health and safety, and the public’s enjoyment of its right not to be injured by wrongful conduct.

426. DEFENDANTS’ conduct is continuing in nature and has produced permanent and long-lasting effects. DEFENDANTS’ unlawful conduct has so impacted e-cigarette addiction and consumption rates—particularly among young people—and public health that the public nuisance caused in substantial part by DEFENDANTS’ conduct is commonly referred to as a “public health crisis,” the “JUUL epidemic,” or a “teen vaping epidemic.”²²⁶

427. Plaintiff has had to take steps to mitigate the harm and disruption caused by DEFENDANTS’ conduct, including but not limited to the following:

- a. Assigning additional employees to monitor the school bathrooms and other areas to ensure students are not using JUUL or other e-cigarette products;
- b. Spending more time and resources addressing discipline problems that have arisen as a result of JUUL and other e-cigarette use;
- c. Confiscating JUUL and other e-cigarette products;
- d. Training teachers and staff regarding JUUL and other e-cigarette products and use;
- e. Training teachers and staff to recognize JUUL products and other e-cigarettes;

²²⁶ S.C. Walley et al., *A Public Health Crisis: Electronic Cigarettes, Vape, and JUUL*, 143 PEDIATRICS 6 (2019), <https://doi.org/10.1542/peds.2018-2741>.

- f. Training teachers and staff on the harms of JUUL and other e-cigarette use;
- g. Training teachers and staff on safe confiscation and storage of JUUL products;
- h. Educating students as to the harm of JUUL and other e-cigarette use;
- i. Conducting an epidemiological investigation of health conditions suspected to have been caused by the use of JUUL and other e-cigarettes;
- j. Educating medical professionals on what to look for and how to treat health conditions suspected to have been caused by the use of JUUL and other e-cigarettes; and
- k. Educating health officials on the causes and health conditions suspected to have been caused by the use of JUUL and other e-cigarettes.

428. By engaging in the acts described above, DEFENDANTS' conduct constitutes a public nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against DEFENDANTS, as follows:

1. Declaring that DEFENDANTS' conduct as described in this Complaint constitutes a public nuisance, and permanently enjoining them from continuing in the acts, practices, and conduct that created the nuisance;
2. Declaring that DEFENDANTS' acts as described in this Complaint constitute multiple, separate violations of HRS § 480-2;
3. Enjoining DEFENDANTS and their employees, officers, directors, agents, successors, assignees, affiliates, representatives, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons who act in concert with them from

engaging in conduct in violation of HRS § 480-2, including any untrue or misleading statements in violation of such laws, including but not limited to those statements alleged in this Complaint, under the authority of HRS § 480-15;

4. Ordering DEFENDANTS to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and its respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of vaping and health;

5. Ordering DEFENDANTS to fund a corrective public education campaign in Hawai‘i relating to the issue of vaping and health, administered and controlled by an independent, third party;

6. Ordering DEFENDANTS to fund clinical vaping cessation programs in Hawai‘i, including programs appropriate for minors;

7. Ordering DEFENDANTS to take reasonable, necessary, and adequate affirmative steps to prevent the distribution and sale of its e-cigarette products to individuals under the age of 21;

8. Awarding judgment against DEFENDANTS for maximum civil penalties for each separate violation of HRS § 480-2, pursuant to HRS § 480-3.1;

9. Awarding judgment against DEFENDANTS for monetary relief in the amount of threefold the actual damages sustained by Plaintiff as a result of DEFENDANTS’ unlawful acts and omissions, including but not limited to those detailed in this Complaint, pursuant to HRS § 480-14;

10. Awarding judgment against DEFENDANTS for reimbursement of all the Hawai‘i has expended to control nicotine use among youth, to the extent that DEFENDANTS’ misconduct has erased many of those hard-won and expensive gains;

11. Ordering DEFENDANTS to abate the public nuisance they have created, including by ordering judgment against DEFENDANTS in an amount necessary to abate the public nuisance by creating an abatement fund with sufficient capital to eliminate the public nuisance they are responsible for creating, exacerbating, and/or perpetuating;

12. Ordering DEFENDANTS to produce an accounting of profits and to disgorge all profits resulting from their unlawful conduct alleged herein;

13. Making such orders or judgments as may be necessary, including preliminary injunctive and ancillary relief, to prevent the use or employment by any DEFENDANTS of any practice which violates HRS § 480-2, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any such practice, under the authority of HRS § 661-10;

14. Awarding Plaintiff punitive damages, in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof, under the authority of HRS § 661-10;

15. Awarding Plaintiff its costs of suit, including costs of investigation and reasonable attorneys’ fees, pursuant to HRS § 480-14;

16. Awarding Plaintiff all other relief to which it is legally entitled; and

17. Awarding such other relief that the Court deems just, proper, and equitable.

DATED: Honolulu, Hawai‘i, June 29, 2020.

/s/ *Judith A. Pavey*

CLARE E. CONNORS

Attorney General of Hawai‘i

LAWRENCE L. TONG

BRYAN C. YEE

THOMAS F. M. MORIARTY

DAVID D. DAY

Deputy Attorneys General

JUDITH A. PAVEY

DOUGLAS S. CHIN

Starn O’Toole Marcus & Fisher

Attorneys for Plaintiff

STATE OF HAWAI‘I

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

Plaintiff,

v.

JUUL LABS, INC., previously d/b/a PAX
LABS, INC. and PLOOM INC.; ALTRIA
GROUP, INC.; ADAM BOWEN; JAMES
MONSEES; NICHOLAS PRITZKER;
HOYOUNG HUH; RIAZ VALANI; and
DOES 1-60,

Defendants.

CIVIL NO. _____
(Other Civil Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff State of Hawai'i hereby demands a trial by jury by the maximum number of jurors permitted by law on all issues triable herein.

DATED: Honolulu, Hawai'i, June 29, 2020.

/s/ Judith A. Pavey

CLARE E. CONNORS

Attorney General of Hawai'i

LAWRENCE L. TONG

BRYAN C. YEE

THOMAS F. M. MORIARTY

DAVID D. DAY

Deputy Attorneys General



JUDITH A. PAVEY

DOUGLAS S. CHIN

Starn O'Toole Marcus & Fisher

Attorneys for Plaintiff

STATE OF HAWAI'I

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF STATE OF HAWAII	VS.	DEFENDANT(S) JUUL LABS, INC., previously d/b/a PAX LABS, INC. and PLOOM INC.; ALTRIA GROUP, INC.; ADAM BOWEN; JAMES MONSEES; NICHOLAS PRITZKER; HOYOUNG HUH; RIAZ VALANI; and DOES 1-60
<p>PLAINTIFF'S NAME & ADDRESS, TEL. NO.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> CLARE E. CONNORS #7936-0 LAWRENCE L. TONG #3040-0 BRYAN C. YEE #4050-0 THOMAS F. M. MORIARTY #9227-0 DAVID D. DAY #9427-0 Department of the Attorney General, State of Hawai'i 425 Queen Street Honolulu, Hawai'i 96813 Telephone: (808) 586-0618 </div> <div style="width: 48%;"> JUDITH A. PAVEY #2173-0 DOUGLAS S. CHIN #6465-0 Starn O'Toole Marcus & Fisher Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, Hawai'i 96813 Telephone: (808) 537-6100 </div> </div> <p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon</p> <p>Clare E. Connors, Lawrence L. Tong, Bryan C. Yee, Thomas F. M. Moriarty, David D. Day, Judith A. Pavey, and Douglas S. Chin</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i </div> <div style="flex: 0.2; text-align: center;">  </div> </div>	
<div style="display: flex; align-items: center;">  <div> In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date. </div> </div>		