

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

Toledo School District,

Plaintiff,

No.

v.

COMPLAINT
REDACTED

JUUL Labs, Inc. f/k/a PAX Labs, Inc.;
Eonsmoke LLC; Altria Group, Inc.; Altria
Client Services LLC; Altria Group Distribution
Company; Nu Mark LLC; and Nu Mark
Innovations, Ltd.,

Defendants.

COMPLAINT
()

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I. INTRODUCTION

1. One of the great public health success stories over the past nearly two decades has been a reduction in youth tobacco use and nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to 7.6% in 2017.¹ This success has been the result of years of litigation and strict regulation. It is also due to a powerful public health message that Big Tobacco can no longer dispute or contradict: smoking kills.

2. This incredible progress towards eliminating youth use of tobacco products has now largely been reversed due to e-cigarettes and vaping. Between 2017 and 2018, e-cigarette use increased 78% among high school students nationwide, from 11.7% of high school students in 2017 to 20.8% of high schoolers in 2018.² Among middle school students, e-cigarette use increased 48% between 2017 and 2018.³ The increase in youth nicotine vaping from 2017 to 2018 was the largest for any substance tracked by the national Monitoring the Future surveys over the past forty-four years.⁴

3. Youth vaping rates continued to climb from 2018 to 2019, such that vaping prevalence more than doubled among each grade level surveyed—eighth, tenth, and twelfth

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

² Jerome Adams, *Surgeon General's Advisory on E-cigarette Use Among Youth*, CDC (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

³ *2018 NYTS Data: A startling rise in youth e-cigarette use*, FDA (Feb. 2, 2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

⁴ Richard Miech, Ph.D. et al., *Trends in Adolescent Vaping, 2017-2019*, 381 New Eng. J. Med. 1490-91 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

1 graders—in the past two years.⁵ In 2019, more than five million middle and high school students
 2 reported current use of e-cigarettes, including more than one in every four high schoolers.⁶

3 4. Consistent with these national numbers, youth in Toledo School District
 4 (“Toledo” or “Plaintiff”) are vaping at high rates—rates which continue to climb. Current vapor
 5 product use among twelfth graders in Lewis County, where Plaintiff is located, jumped from
 6 23% to 37% from 2016 to 2018.⁷ Similarly, current vapor product use among local tenth graders
 7 increased from 14% to 24% over that same two-year time period.⁸ Vapor product use among
 8 every grade level surveyed in Plaintiff’s county is higher than the statewide average.⁹

10 5. According to the Centers for Disease Control and Prevention (“CDC”) Director
 11 Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year
 12 threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for
 13 nicotine addiction.”¹⁰ Former U.S. Food and Drug Administration (“FDA”) Commissioner Scott
 14 Gottlieb described the federal statistics as “astonishing,” and both the FDA and the United States
 15 Surgeon General (“Surgeon General”) have characterized youth vaping as an “epidemic.”¹¹ The
 16

17
 18
 19 ⁵ *Id.*

20 ⁶ *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, FDA (Nov. 6, 2019),
<https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey#1>.

21 ⁷ *County-level HYS 2018 press release estimates*, Wash. State Healthy Youth Survey,
<http://www.askhys.net/Home/Press> (last visited Mar. 13, 2020); *County-level HYS 2016 press release estimates*,
 22 Wash. State Healthy Youth Survey, <http://www.askhys.net/Home/Press> (last visited Mar. 13, 2020).

23 ⁸ *Id.*

⁹ *Id.*

24 ¹⁰ Amir Vera, *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019),
<https://www-m.cnn.com/2019/06/08/health/texas-new-tobacco-law/index.html#:~:targetText=Supporters%20say%20increasing%20the%20minimum,go%20into%20effect%20September%201.?r=https%3A%2F%2Fwww.google.com%2F>.

25 ¹¹ Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use doesn’t slow*, CNBC (Nov. 16, 2018), <https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html>; Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation, new enforcement*, USA Today (Sept. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/09/12/fda-scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/>.

1 Secretary of the U.S. Department of Health and Human Services (“HHS”) declared that “[w]e
2 have never seen use of any substance by America’s young people rise as rapidly as e-cigarette
3 use [is rising].”¹²

4 6. A major cause of this epidemic is Defendant JUUL Labs, Inc. (“JLI”), the maker
5 of the JUUL e-cigarette. JLI entered the e-cigarette market in 2015 and, by 2019, controlled over
6 70% of it.¹³ Over one million JUUL e-cigarettes were sold between 2015 and 2017.¹⁴ In 2017,
7 JLI’s e-cigarette products had generated over \$224 million in retail sales, a 621% year-over-year
8 increase.¹⁵ By June 2018, sales had skyrocketed another 783%, reaching \$942.6 million.¹⁶ The
9 e-cigarette category as a whole grew 97% to \$1.96 billion in the same period, largely based on
10 JUUL’s market success.¹⁷ The JUUL e-cigarette’s rise to become the dominant product on the e-
11 cigarette market was so rapid, and so complete, that the act of vaping is now often referred to as
12 “juuling.”
13
14

15 7. As JUUL’s popularity skyrocketed, Defendant Eonsmoke, LLC (“Eonsmoke”)
16 explicitly traded on JUUL’s market share, promoting its own products as “JUUL compatible,”
17 initiating a successful “Doit4juul” social media campaign, and offering its JUUL-compatible
18
19

20 ¹² Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018),
21 <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019),
22 <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

23 ¹³ Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem J. (Jan. 8, 2019),
24 https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

25 ¹⁴ Melia Robinson, *How a startup behind the ‘iPhone of vaporizers’ reinvented the e-cigarette and generated \$224 million in sales in a year*, Bus. Insider (Nov. 21, 2017), <https://www.businessinsider.com/juul-e-cigarette-one-million-units-sold-2017-11/>.

26 ¹⁵ *Id.*

¹⁶ Angelica LaVito, *Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year*, CNBC Health & Sci. (Sept. 11, 2018), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

¹⁷ *Id.*

1 pods in flavors including “Sour Gummy,” “Pineapple Crush,” and “Pink Lemonade.”¹⁸ Other
 2 copycats also hurried to mimic JUUL’s potent nicotine formulation and youth-oriented design—
 3 building on the illicit youth e-cigarette market JLI created.

4 8. By September 2018, youth vaping rates were spiraling out of control, and the
 5 FDA sent warning letters to Defendants JLI¹⁹ and Altria Client Services²⁰ regarding the
 6 alarmingly high rates of youth using their products. In October 2018, the FDA raided JLI’s
 7 headquarters and seized more than one thousand documents relating to JLI’s sales and marketing
 8 practices.²¹ By the end of 2019, the FDA, the Federal Trade Commission, and the U.S. House of
 9 Representatives Committee on Oversight and Reform had all commenced investigations into
 10 JLI’s role in the youth vaping epidemic and whether JLI’s marketing practices purposefully
 11 targeted youth. Multiple state attorneys general have now also opened investigations into or filed
 12 suit against JLI.
 13
 14

15 9. As the pressure on JLI intensified, Altria²²—maker of Marlboro cigarettes, parent
 16 company of Philip Morris USA, and one of the largest tobacco companies in the world—stepped
 17 in to publicly support JLI. While Altria first began having “confidential discussions” beginning
 18
 19
 20

21 ¹⁸ Letter from Ann Simoneau, J.D., Director FDA Center for Tobacco Products’ Office of Compliance and
 22 Enforcement, to Kelly L. Zeller, General Manager, Eonsmoke, LLC (“Eonsmoke, LLC Warning Letter”) (Oct. 24,
 23 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/eonsmoke-llc-592097-10242019>.

24 ¹⁹ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Kevin Burns, JUUL Labs, Inc. (Sept. 12, 2018),
<https://www.fda.gov/media/119669/download>.

25 ²⁰ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Howard A. Willard III, Altria Group, Inc. (Sept. 12,
 2018), <https://www.fda.gov/media/119666/download>.

26 ²¹ 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-documents-surprise-inspection-headquarters/>.

²² Altria Group, Inc. and its subsidiaries Altria Client Services LLC, Altria Group Distribution Company, and Nu
 Mark, LLC, and Nu Mark Innovations, Ltd (collectively “Altria” or “Altria Defendants”).

1 in the spring of 2017,²³ Altria did not make its relationship with JLI public until December 20,
 2 2018, when Altria announced a \$12.8 billion equity investment in JLI, giving it a 35% stake in
 3 JLI. Just several weeks prior to this announcement, Altria had seemingly criticized JLI's
 4 marketing practices in a letter to the FDA and declared that "pod-based products significantly
 5 contribute to the rise in youth use of e-vapor products." Altria removed its own pod-based
 6 products, the MarkTen Elite and Apex by MarkTen, from the market—only to commit its
 7 substantial resources, regulatory knowledge, and lobbying muscle to protecting and expanding
 8 JUUL's market share, which, as Altria and JLI both know, relies heavily on youth.
 9

10 10. Attempting to revise history and cover-up JLI's misconduct, JLI and Altria are
 11 now describing their collaboration as a "harm reduction opportunity," and insist JLI never
 12 marketed to youth. These assertions fall flat against the facts, as detailed below. Altria has
 13 described the JUUL e-cigarette as "compelling" and "a terrific product." In fact, Defendant JLI's
 14 JUUL e-cigarette has compelled a generation of youth, who were never cigarette smokers, into
 15 nicotine addiction and forced local governments to spend significant amounts of time and
 16 resources combatting the youth vaping crisis sweeping their communities. JLI and Altria are now
 17 working together and denying that JLI's products are marketed to and designed for youth and
 18 nonsmokers while maintaining JUUL's market dominance—which would not be possible if the
 19 customer base were in fact only adult smokers seeking to quit.
 20

21 11. Plaintiff Toledo School District brings this action against Defendants JUUL Labs,
 22 Inc.; Eonsmoke, LLC; Altria Group, Inc. and its subsidiaries Altria Client Services LLC, Altria
 23 Group Distribution Company, and Nu Mark, LLC, and Nu Mark Innovations, Ltd (collectively,
 24
 25

26

²³ Letter from Howard A. Willard III, Altria Group, Inc. to Senator Richard J. Durbin at 3 (Oct. 14, 2019),
<https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/Altria-Response-to-October-1-2019-Senate-Letter.pdf>.

1 “Altria” or “Altria Defendants”), for damages and injunctive relief, including abatement of the
2 public health crisis caused by Defendants’ wrongful conduct.

3 II. JURISDICTION AND VENUE

4 12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
5 1331 because Plaintiff’s racketeering claim arises under the laws of the United States, 18 U.S.C.
6 § 1961 *et seq.*, and pursuant to 28 U.S.C. § 1332(a) because: (i) the amount in controversy
7 exceeds \$75,000, exclusive of interests and costs, and (ii) the plaintiff and defendants are citizens
8 of different states. This Court has supplemental jurisdiction over the state law claims pursuant to
9 28 U.S.C. § 1367.
10

11 13. The Court has personal jurisdiction over Defendants because they do business in
12 the Western District of Washington and have sufficient minimum contacts with this District.
13 Defendants intentionally avail themselves of the markets in this State through the promotion,
14 marketing, and sale of the products at issue in this lawsuit in Washington, and by retaining the
15 profits and proceeds from these activities, to render the exercise of jurisdiction by this Court
16 permissible under Washington law and the U.S. Constitution.
17

18 14. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
19 1391 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims
20 at issue in this Complaint arose in this District and Defendants are subject to the Court’s personal
21 jurisdiction with respect to this action.
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III. PARTIES

Plaintiff

15. Plaintiff Toledo School District (“Plaintiff” or “Toledo”) is a school district located in Lewis County, Washington. Toledo School District serves approximately 800 students and employs approximately ninety staff members.

JUUL Labs, Inc.

16. Defendant JUUL Labs, Inc. (“JLI”) is a Delaware corporation, having its principal place of business in San Francisco, California. JLI was incorporated in Delaware on March 12, 2007 (file no. 4315504) under the name Ploom, Inc. (“Ploom”). In February 2015, Ploom changed its name to PAX Labs, Inc. In April 2017, PAX Labs, Inc. formed a new corporation under the name PAX Labs (Deux), Inc., incorporated in Delaware on April 21, 2017 (file no. 6387684). On June 30, 2017, PAX Labs, Inc. was renamed JUUL Labs, Inc., and PAX Labs (Deux), Inc. was given the name PAX Labs, Inc.

17. JLI manufactures, designs, sells, markets, promotes and distributes JUUL e-cigarettes, JUULpods and accessories (collectively, “JUUL products”). From JUUL’s launch in 2015 until June 2017, JLI manufactured, designed, sold, marketed, promoted, and distributed JUUL products under the name PAX Labs, Inc.

18. JUUL Labs, Inc., formerly known as PAX Labs, Inc., formerly known as Ploom, Inc., is referred to herein as “JLI.”

Eonsmoke

19. Defendant Eonsmoke, LLC (“Eonsmoke”) is a New Jersey limited liability company with its principal place of business in Clifton, New Jersey. Eonsmoke markets and sells “Juul Compatible” Eonsmoke and Eonsmoke v2.0 electronic vapor devices and flavor pods, as

well as 4X pods and disposable vape products such as Eon St!Ks.

Altria Defendants

20. Defendant Altria Group, Inc. 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% stake in JLI.

21. Defendant Altria Client Services ("Altria Client Services") is a New York corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County, Virginia. Altria Client Services provides Altria Group, Inc. and its companies with services in many areas including digital marketing, packaging design & innovation, product development, and safety, health, and environmental affairs. Pursuant to Altria's Relationship Agreement with JLI, Altria Client Services assists JLI in the sale, marketing, promotion and distribution of JUUL products.²⁴ Such services include database support, direct marketing support, and premarket product application support.²⁵ On September 25, 2019, the former senior vice president and chief growth officer of Altria Client Services, K.C. Crosthwaite, became the new chief executive officer of JLI.

22. Defendant Altria Group Distribution Company is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County, Virginia. Altria Group Distribution Company provides sales, distribution and consumer engagement services to Altria's tobacco companies. Altria Group Distribution Company

[REDACTED]

[REDACTED]

²⁴ Altria Group, Inc., *Relationship Agreement by and among JUUL Labs, Inc., Altria Group, Inc., and Altria Enterprises LLC* ("Relationship Agreement") (Form 8-K), Ex. 2.2 (Dec. 20, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex22.htm>.

²⁵ *Id.*

1 [REDACTED] Altria Group Distribution Company [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4

5 23. Defendant Nu Mark LLC is a Virginia corporation and wholly owned subsidiary
 6 of Altria Group, Inc., with its principal place of business in Richmond, Virginia. Nu Mark LLC
 7 was engaged in the manufacture and sale of Altria’s electronic vapor products. Shortly before
 8 Altria purchased a 35% stake in JLI in December 2018, Altria Group, Inc. announced that Nu
 9 Mark would be discontinuing the production and sale of all e-vapor products.

10 24. Defendant Nu Mark Innovations, Ltd. is a subsidiary of Nu Mark LLC located in
 11 Beit Shemesh, Israel. Nu Mark Innovations, Ltd. provides digital marketing and customer care
 12 services for Nu Mark LLC and Altria’s e-vapor brands, as well as product and technology
 13 development services.
 14

15 25. Collectively, Altria Group, Inc. and its subsidiaries named above will be referred
 16 to herein as “Altria” or “Altria Defendants.”

17 IV. ALLEGATIONS OF FACT

18 A. JUUL: Runaway Commercial Success and Public Health Disaster

19 1. Redesigning “the most successful consumer product of all time”

20 26. JLI was founded by Defendants Adam Bowen and James Monsees. JLI’s
 21 beginnings can be traced to the pair’s collaboration on a product design master’s thesis when
 22 they were graduate students at Stanford University in 2004—Monsees completing a Master of
 23 Fine Arts in Product Design, and Bowen a Master of Science in Mechanical Engineering in
 24 Product Design.²⁶ Their proposed product? A better cigarette.
 25
 26

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



Adam Bowen and James Monsees Source: Juul

27. Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”²⁷ But years of anti-smoking campaigns, including work by local government public health departments and school-based anti-tobacco programs, have successfully de-normalized cigarette smoking. As part of their thesis research, Monsees and Bowen interviewed smokers who talked about feeling self-conscious of the signs of smoking, for example, coming back into a room after a smoke break and smelling like smoke, or having their hands smell like cigarettes even after washing them multiple times.²⁸ When Monsees and Bowen presented their thesis and product design to their classmates, they included a clip from a South Park episode showing the characters assembled at the Museum of Tolerance and shaming a smoker.²⁹ Their goal was to design a cigarette without the stigma and self-consciousness smokers experienced—as Monsees described it, to “deliver[] solutions that refresh the magic and luxury

²⁷ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Soc. Underground (Jan. 2015), <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

²⁸ Jordan Crook, *This is the Stanford thesis presentation that launched Juul*, Tech Crunch (Feb. 27, 2019), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

²⁹ *Id.*; *Adam and James’ Thesis Presentation* at 4:04, JUUL (Feb. 27, 2019), https://www.youtube.com/watch?v=ZBDLqWCjsMM&has_verified=1.

1 of the tobacco category” and recreate the lost “ritual and elegance that smoking once
2 exemplified.”³⁰

3 28. Essentially, Monsees and Bowen saw a market opportunity in a generation of
4 consumers brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the
5 cigarette “to meet the needs of people who want to enjoy tobacco but don’t self-identify with—
6 or don’t necessarily want to be associated with—cigarettes.”³¹ Monsees saw “a huge opportunity
7 for products that speak directly to those consumers who aren’t perfectly aligned with traditional
8 tobacco products.”³²

10 29. At one point during their thesis presentation, Monsees states, “The cigarette is
11 actually a carefully engineered product for nicotine delivery and addiction.”³³ This description
12 applies just as well to the product he and Bowen would launch a decade later—JUUL.

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

18 31. After graduation, Bowen and Monsees worked on bringing their thesis project to
19 the market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of
20 time talking about what Bowen called “the kind of typical thoughts of evil Big Tobacco
21 companies like coming down and squashing you.”³⁴ But ultimately, that “was not really an
22

24 ³⁰ *Start Your Own Revolution: An Interview with James Monsees*, onboardly (Apr. 30, 2014),
25 <https://web.archive.org/web/20161108110231/http://onboardly.com/entrepreneur-interviews/an-interview-with-james-monsees/> (last visited Mar. 27, 2020).

26 ³¹ *Id.*

³² *Id.*

³³ See Crook, *supra* note 28.

³⁴ Keeley, *supra* note 26.

1 issue.”³⁵ In fact, not only did Big Tobacco not squash them, but the opposite occurred. Although
 2 Bowen and Monsees characterized their products as aimed toward consumers not aligned with
 3 traditional tobacco products, they themselves have aligned with Big Tobacco on at least two
 4 occasions: first, with Japan Tobacco International (“JTI”) and then with Altria.

5 32. In 2010, JLI (then called Ploom) launched its e-cigarette as the ModelOne, using
 6 pods of loose-leaf tobacco heated by butane. It did not catch on. JLI only sold a few thousand of
 7 them. By then a company with a dozen employees, JLI was faltering, in need of money,
 8 technological expertise, and marketing savvy.³⁶

10 33. Help came from JTI, a division of Japan Tobacco Inc., the fourth-largest tobacco
 11 company in the world. In December 2011, JTI and JLI entered into a strategic agreement, which
 12 gave JTI a minority stake in JLI and made it a strategic partner. According to internal documents,
 13

14 [REDACTED]

15 [REDACTED]³⁷ In a statement regarding the agreement, Monsees said, “We are very pleased to
 16 partner with JTI as their deep expertise, global distribution networks and capital resources will
 17 enable us to enter our next phase of growth and capitalize on global expansion opportunities.”³⁸

18 As Bowen explained in an interview, “We were still doing a lot of our own internal product
 19 development, but now we had access to floors of scientists at JTI.”³⁹
 20
 21
 22

23 ³⁵ *Id.*

24 ³⁶ David H. Freedman, *How Do You Sell a Product When You Can't Really Say What It Does?*, Inc.com (May
 25 2014), <https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html>.

26 ³⁷ INREJUUL_00371423 (Feb. 2015, [REDACTED]).

³⁸ *Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in Ploom*, Japan Tobacco Int’l (Dec. 8, 2011), <https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf>.

³⁹ D. Freedman, *supra* note 36.

34. In 2012, JLI (still known as Ploom) unveiled the PAX, a loose-leaf vaporizer that did not use pods, but which was much more successful. The following year, JLI combined elements of the PAX with the pod system as the ModelTwo. Although consumers were enthusiastic about both the PAX and the ModelTwo, the products were limited to a small, high-end market. The PAX, for example, retailed for \$250 when it was first marketed. But, as one of JLI's investors remarked in 2014, "The company is going to invade the bigger, lower-end market now dominated by e-cigarettes."⁴⁰ He explained that JLI had "lots of products in the works" and that "[w]e know we need something cheaper than Pax to go after the mass market. There are still huge opportunities out there."⁴¹

35. In February 2015, JLI and JTI ended their relationship, with JLI buying back JTI's minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the Ploom name, while JLI kept its open-system PAX vaporizer and changed its name to PAX Labs Inc. Monsees characterized the partnership as having "afforded both parties many mutual benefits," but said that the new arrangement would "fuel continued growth" and that JLI intended "rapid rollouts of new products."⁴²

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

37. In 2017, as JUUL became more and more popular, JLI changed its name from PAX to JUUL Labs, Inc.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *JTI to Acquire Ploom Product Line*, Convenience Store News (Feb. 16, 2015), <https://csnews.com/jti-acquire-ploom-product-line#close-olyticsmodal>.

38. By the close of 2017, according to Nielsen data, JLI had surpassed its competitors in capturing 32.9% of the e-cigarette market, with British American Tobacco at 27.4% and Altria at 15.2%.⁴³ The total e-cigarette market expanded 40% to \$1.16 billion.⁴⁴

39. In 2018, JLI's gross profit margins were 70%⁴⁵ and it represented 76.1% of the national e-cigarette market.⁴⁶ In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JLI asserted that it was "now responsible for over 95% of the growth in the ENDS pod refill market in the United States" and included the following chart:⁴⁷

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

⁴³ Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping company*, CNBC (Dec. 20, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

⁴⁴ *Id.*

⁴⁵ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018),

<https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

⁴⁶ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market* at 2, Stan. Res. into the Impact of Tobacco Advert. (2019),

http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴⁷ Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, *In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018).

40. JLI shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.⁴⁸ This all came just three years after its product launch.

2. Following Big Tobacco’s footsteps: Nicotine Salts

41. JLI’s staggering commercial success did not come from a blank slate. Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco’s internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents “became a very intriguing space for us to investigate because we had so much information that you wouldn’t normally be able to get in most industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started building prototypes.”⁴⁹ JLI researched how Big Tobacco companies engineered their products and chemically manipulated nicotine to maximize delivery: “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.”⁵⁰

42. JLI built on Big Tobacco’s research to formulate its nicotine solution in a manner that would be appealing to youth and nonsmokers. JLI was well aware from the historical cigarette industry documents that the future of any nicotine-delivery business depends on ensnaring customers before they age beyond the window of opportunity. Big Tobacco designed products specifically to make it easier for teens to initiate smoking. In a 1973 internal memo

⁴⁸ Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo! Fin. (Oct. 9, 2018), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

⁴⁹ Montoya, *supra* note 27.

⁵⁰ Crook, *supra* note 28.

1 Dr. Claude Teague of R.J. Reynolds Tobacco Company (“R.J. Reynolds”) observed,
 2 “Realistically, if our Company is to survive and prosper, over the long term, we must get our
 3 share of the youth market. In my opinion this will require new brands tailored to the youth
 4 market.”⁵¹ Dr. Teague noted that “‘learning’ smokers” have a low tolerance for throat irritation
 5 so the smoke should be “as bland as possible,” i.e., not harsh; and he specifically recommended
 6 an acidic smoke “by holding pH down, probably below 6.”⁵² As described below, JLI heeded Dr.
 7 Teague’s advice.
 8

9 43. Monsees, Bowen, and JLI’s employees reviewed documents in the Big Tobacco
 10 archive that included information on how to manipulate nicotine pH to maximize nicotine
 11 delivery in a vapor while minimizing the throat irritation or “throat hit” that may potentially
 12 deter new smokers. Chenyue Xing, a chemist who worked for JLI (then called PAX Labs) and
 13 helped patent its liquid-nicotine formula, told Reuters that she recalled reviewing tobacco
 14 company records and research. “We had consultants who were veterans of the big tobacco
 15 companies,” she said, “We learned all the history.”⁵³
 16

17 44. As Monsees noted in 2015 during an interview with *WIRED* magazine, “The
 18 people who understood the science and were listed on previous patents from tobacco companies
 19 aren’t at those companies anymore. If you go to Altria’s R&D facility, it’s empty.”⁵⁴ Instead,
 20 some of those people were advising JLI and helping to develop JUUL.
 21
 22
 23

24 ⁵¹ Claude E. Teague, Jr., *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for*
 25 *the Youth Market* at 1, U.C.S.F. Truth Tobacco Indus. Documents (Feb. 2, 1973),
<https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=lhvl0146>.

26 ⁵² *Id.* at 4.

⁵³ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, Reuters (Nov. 5, 2019),
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

⁵⁴ David Pierce, *This Might Just Be the First Great E-Cig*, *WIRED* (Apr. 21, 2015), www.wired.com/2015/04/pax-juul-ecig/.

45. As Dr. Teague's memo described, the solution that R.J. Reynolds scientists devised in the 1970s for reducing nicotine's harshness to make it easier for "learning smokers" to start and continue smoking was to combine the high-pH nicotine with a low-pH acid. The result was a neutralized compound referred to as nicotine salt. In a 1973 R.J. Reynolds memorandum, R.J. Reynolds highlighted that this chemical manipulation of the nicotine content was expected to give its cigarettes an "additional nicotine 'kick'" that would be more appealing and addictive.⁵⁵ A young R.J. Reynolds chemist, Thomas Perfetti, synthesized thirty different nicotine salt combinations, tested the salts' ability to dissolve into a liquid, and heated them in pursuit of the "maximum release of nicotine."⁵⁶ Perfetti published his results in a 1979 memo stamped "CONFIDENTIAL," which was found among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry research like this, [REDACTED], JLI developed a cartridge-based e-cigarette using nicotine salts. As described herein, JLI's use of nicotine salts, pioneered by major combustible Big Tobacco companies, was a critical tool for addicting non-smokers, including youth.

46. The "nicotine salt" formulation that JLI popularized follows this same approach. JLI added benzoic acid to its nicotine liquid, creating a nicotine salt called nicotine benzoate. This both reduced the nicotine's harshness and delivered it more directly to the user's lungs and brain.⁵⁷ The freebase nicotine in earlier e-cigarettes was partly absorbed in the user's mouth and throat, resulting in a much slower absorption by the body.

⁵⁵ Frank G. Colby, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market* at 1, U.C.S.F. Truth Tobacco Industry Indus. Documents (Dec. 4, 1973), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mzfx0091>.

⁵⁶ Thomas A. Perfetti, *Smoking Satisfaction and Tar/Nicotine Control* (Dec. 7, 1978), <https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecd221/nicotine-salts-investigation.pdf>.

⁵⁷ Kirkham, *supra* note 53.

1 47. JLI's use of nicotine benzoate affects the palatability of nicotine inhalation by
 2 reducing the "throat hit" that users experience when vaping. According to Ari Atkins, one of the
 3 inventors of JUUL, "[i]n the tobacco plant, there are these organic acids that naturally occur.
 4 And they help stabilize the nicotine in such a way that makes it . . . I've got to choose my words
 5 carefully here: Appropriate for inhalation."⁵⁸

6 48. Because cigarette smokers are already accustomed to a certain level of harshness
 7 and throat hit, developing a product with reduced harshness and minimal "throat hit" is only a
 8 critical concern if the goal is to appeal to first-time smokers. The tobacco industry has long
 9 recognized this; a published study of industry documents concluded that "product design changes
 10 which make cigarettes more palatable, easier to smoke, or more addictive are also likely to
 11 encourage greater uptake of smoking."⁵⁹ In the vaping context, reducing the harshness of
 12 nicotine also allows more frequent vaping, for longer periods of time, and masks the amount of
 13 nicotine being delivered.
 14

15 49. Building on Big Tobacco's research, JLI intentionally designed its product to
 16 minimize "throat hit" and maximize "buzz." [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25

26 ⁵⁸ Pierce, *supra* note 54.

⁵⁹ David A. Kessler, *Juul Says It Doesn't Target Kids, But Its E-Cigarettes Pull Them In*, N.Y. Times (July 31, 2019), <https://www.nytimes.com/2019/07/31/opinion/juul-kids.html>.

1 50. [REDACTED]

2 [REDACTED]

3 [REDACTED]⁶⁰ [REDACTED]

4 [REDACTED] “Employees tested new liquid-nicotine formulations on themselves
5 or on strangers taking smoke breaks on the street. Sometimes, the mix packed too much punch –
6 enough nicotine to make some testers’ hands shake or send them to the bathroom to
7 vomit”⁶¹

8
9 51. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]⁶²

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 52. [REDACTED]

23 [REDACTED]

24 [REDACTED]

26 ⁶⁰ INREJUUL_00002903.

⁶¹ Kirkham, *supra* note 53.

⁶² INREJUUL_00002903.

53. A later study by Anna K. Duell et al., explains why JUUL delivered a strong “buzz” but 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 was 0.07 in the “Crème Brûlée” flavor.⁶³ For comparison, “Zen” brand e-liquid has a free-base fraction of 0.84.⁶⁴ The Duell Study’s authors found that the low free-base fraction in JUUL aerosols resulted in a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”⁶⁵

54. Dramatically reducing the throat hit is not necessary for a product that is aimed at smokers, who are accustomed to the harshness of cigarette smoke, but it very effectively appeals to nonsmokers, especially youth. The Duell Study concluded that JLI’s use of nicotine salts “may well contribute to the current use prevalence of JUUL products among youth.”⁶⁶

55. 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.”⁶⁷

56. JLI contemplated features that would automatically disable the device after nicotine delivery exceeded a certain threshold; according to Xing, one idea was to disable the

⁶³ 87 U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy* (“Duell Study”), 31 Chem. Res. Toxicol. 431, 432 (Fig. 3) (May 18, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/pdf/tx8b00097.pdf>.

⁶⁴ *Id.* at 432.

⁶⁵ *Id.* at 431–34.

⁶⁶ *Id.* at 433 (citing J.G. Willett et al., *Recognition, use and perceptions of JUUL among youth and young adults*, 28 Tobacco Control 115-16 (2018)).

⁶⁷ *Id.* at 431.

1 device for thirty minutes or more following a certain number of puffs.⁶⁸ But in the end JLI
 2 launched its product without any such features.

3 **3. JLI designed JUUL products to contain and deliver as much nicotine**
 4 **as possible**

5 57. JLI claims that each JUULpod is the equivalent of a pack of cigarettes and
 6 contains up to fifty-nine mg per ml of nicotine—an alarming amount that is roughly three times
 7 the concentration of nicotine that can be sold to consumers in the European Union. Compared to
 8 the average e-cigarette, JUULpods deliver roughly twice as much nicotine at nearly three times
 9 the speed.⁶⁹ [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 [REDACTED]⁷⁰ And, while only approximately 10% of the nicotine in a cigarette is delivered to
 14 the user,⁷¹ JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the
 15 nicotine contained in a JUULpod to the user.⁷² [REDACTED]
 16 [REDACTED]⁷³

17
 18 58. JLI knew that it had designed a highly addictive product that would appeal to
 19 youth much more than adult smokers. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]

22 ⁶⁸ Kirkham, *supra* note 53.

23 ⁶⁹ *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>.

24 ⁷⁰ INREJUUL_00279931 (emphasis added).

25 ⁷¹ Lynn T. Kozlowski & Janine L. Pilliteri, *Compensation for Nicotine by Smokers of Lower Yield Cigarettes*, 7
 Smoking and Tobacco Control Monograph 161, 164
 (1983), https://cancercontrol.cancer.gov/brp/tcrb/monographs/7/m7_12.pdf.

26 ⁷² Samantha M. Reilly et al., *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*, 21 Nicotine Tobacco Research 1274 (Aug. 19, 2019),
<https://www.ncbi.nlm.nih.gov/pubmed/30346584> (about 82%, for averages of 164 µg per puff).

⁷³ See, e.g., INREJUUL_00023597 ([REDACTED]).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁵

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷⁶

60. [REDACTED]

[REDACTED]⁷⁷ [REDACTED]

[REDACTED]

[REDACTED]⁷⁸ [REDACTED]

[REDACTED]⁷⁹

⁷⁴ JLI00365905.

⁷⁵ *Id.* (emphasis added).

⁷⁶ JLI00365709.

⁷⁷ JLI00365176.

⁷⁸ INREJUUL_00058345.

⁷⁹ *Id.*

1 61. [REDACTED]

2 [REDACTED]⁸⁰ [REDACTED]

3 [REDACTED]⁸¹

4 62. [REDACTED]

9 [REDACTED]⁸² [REDACTED]

11 [REDACTED]⁸³

12 63. [REDACTED]

13 [REDACTED] JLI took no steps to offer U.S. consumers its products in
 14 a lower nicotine formulation until August 2018, when it began marketing certain flavors in 3%
 15 nicotine strength. (JLI markets 1.7% nicotine JUULpods in countries such as the UK and Israel.)
 16 Instead, JLI's sales force emphasized the addictiveness of its formulation to persuade retailers to
 17 give the new product shelf space. Vincent Latronica, head of East Coast sales and distribution for
 18 JLI (then called PAX Labs) from 2014 until early 2016, told Reuters that he used a chart
 19 showing JUUL's rapid delivery of nicotine to the bloodstream as a way to convince store owners
 20 that they would have repeat business and not be left with unsold inventory, and this became a
 21
 22
 23
 24
 25

26 ⁸⁰ JLI00364678.

⁸¹ JLI00364487.

⁸² INREJUUL_00260068.

⁸³ INREJUUL_00260065.

1 central selling point for the new JLI product.⁸⁴ JLI's sales team was, in Latronica's words,
2 "relentless."⁸⁵

3 64. [REDACTED] For
4 example, [REDACTED]

5 [REDACTED] He wrote:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 [REDACTED]
25 [REDACTED]

26

⁸⁴ Kirkham, *supra* note 53.

⁸⁵ *Id.*

1 [REDACTED]⁸⁶
2
3 65. Another example came just days later. On [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]⁸⁷

8 66. Instead of taking steps to reduce the addictive nature of its products and to stop its
9 advertising to youth, JLI doubled down. [REDACTED]
10 [REDACTED]
11 [REDACTED]⁸⁸

12
13 **B. Following Big Tobacco's Playbook, JLI Launched JUUL with a Blatantly**
14 **Youth-Oriented Campaign**

15 **1. JLI learned from Big Tobacco the importance of hooking kids.**

16 67. JLI also looked to Big Tobacco for other marketing strategies, including
17 advertisements designed to lure non-smoking youth.

18 68. [REDACTED]
19 [REDACTED]
20 [REDACTED]⁸⁹ In addition, [REDACTED]
21 [REDACTED]
22
23
24
25

26 ⁸⁶ INREJUUL_00264888-890.

⁸⁷ INREJUUL_00230416.

⁸⁸ INREJUUL_00228928-930.

⁸⁹ INREJUUL_00371447.

1 [REDACTED]
2 [REDACTED]⁹⁰
3
4 69. As discussed above, Monsees and Bowen were also able to take advantage of an
5 extensive online tobacco advertising research database maintained by the Stanford Research into
6 the Impact of Tobacco Advertising (“SRITA”), an inter-disciplinary research group devoted to
7 researching the promotional activities of the tobacco industry. SRITA’s database contains
8 approximately 50,000 original tobacco advertisements. According to Monsees, JLI’s advertising
9 was informed by traditional tobacco advertisements, and SRITA in particular had been very
10 useful to JLI.⁹¹

11 70. It is no secret that a good portion of the Big Tobacco playbook involved targeting
12 youth. Beginning in the 1950s, Philip Morris—now JLI’s corporate affiliate—intentionally
13 marketed cigarettes to young people under the age of twenty-one to recruit “replacement
14 smokers” to ensure the economic future of the tobacco industry.⁹² Philip Morris knew that youth
15 smoking was essential to the tobacco industry’s success and longevity, as one of its internal
16 documents makes clear: “It is important to know as much as possible about teenage smoking
17 patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the
18 overwhelming majority of smokers first begin to smoke while still in their teens.”⁹³ In August
19 1953, Elmo Roper & Associates on Philip Morris’ behalf, conducted a study that examined the
20 smoking habits of a “cross section of men and women 15 years of age and over.”⁹⁴ The study
21
22
23

24 ⁹⁰ INREJUUL_00371458-459.

25 ⁹¹ Jackler et al., *supra* note 46 at 27.

26 ⁹² *U.S. v. Philip Morris USA, Inc.* (“*Philip Morris*”), 449 F. Supp. 2d 1, 618-622 (D.D.C. 2006).

⁹³ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

⁹⁴ *Philip Morris*, 449 F. Supp. 2d at 580 (citing Burns W. Roper, *A Study of People’s Cigarette Smoking Habits and Attitudes*, N.Y. Roper (1953)).

1 noted that Philip Morris had “very great strength among young people-particularly under 20.”⁹⁵
 2 In 1975, Philip Morris recognized that “Marlboro’s phenomenal growth rate in the past has been
 3 attributable in large part to our high market penetration among young smokers . . . 15 to 19 years
 4 old . . . my own data, which includes younger teenagers, shows even higher Marlboro market
 5 penetration among 15-17-year-olds.”⁹⁶ Similarly, an internal Philip Morris document reported
 6 that “[t]he success of Marlboro Red during its most rapid growth period was because it became
 7 the brand of choice among teenagers who then stuck with it as they grew older.”⁹⁷ This was no
 8 accident. Philip Morris designed its marketing campaigns to appeal to youth because they
 9 recognized that “[t]oday’s teenager is tomorrow’s potential regular customer, and the
 10 overwhelming majority of smokers first begin to smoke while still in their teens.”⁹⁸ This
 11 marketing worked, and Marlboro cigarettes became the most popular brand with youth. In 2016,
 12 48.7% of high school current cigarette smokers and 38.3% of middle school current cigarette
 13 smokers reported using Marlboro cigarettes.⁹⁹
 14

16 71. Tobacco companies have focused on the fourteen to twenty-four-year-old age
 17 group because young smokers have been the critical factor in the growth of their business. As the
 18 Vice-President of Marketing at R.J. Reynolds explained in 1974, the “young adult . . . market . . .
 19 represent[s] tomorrow’s cigarette business. As this 14-24 age group matures, they will account
 20 for a key share of the total cigarette volume—for at least the next 25 years.”¹⁰⁰ In 1978,
 21

22 ⁹⁵ *Id.*

23 ⁹⁶ *Philip Morris and Targeting Kids*, Campaign for Tobacco-Free Kids (Oct. 8, 1999),
 24 https://www.tobaccofreekids.org/assets/content/what_we_do/industry_watch/doubletalk/philipmorris.pdf.

25 ⁹⁷ *Id.*

26 ⁹⁸ *Tobacco Company Quotes on Marketing to Kids*, *supra* note 93.

⁹⁹ Siobhan N. Perks *et al.*, *Cigarette Brand Preference and Pro-Tobacco Advertising Among Middle and High School Students—United States, 2012- 2016*, CDC Morbidity & Mortality Wkly. Rep. [MMWR] (Feb. 2, 2018), https://www.cdc.gov/mmwr/volumes/67/wr/mm6704a3.htm?s_cid=mm6704a3_w.

¹⁰⁰ C.A. Tucker, *Marketing Plans Presentation to RJRI B of D* at 2, U.C.S.F. Truth Tobacco Indus. Documents (Sept. 30, 1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091>.

1 Lorillard's Director of Sales in the Midwest told the president of the company that "the base of
2 our business is the high school student."¹⁰¹

3 72. According to the Surgeon General, "[n]early 9 out of 10 smokers start smoking by
4 age 18, and more than 80% of underage smokers choose brands from among the top three most
5 heavily advertised."¹⁰² The overwhelming consensus from public health authorities, independent
6 studies, and credible expert witnesses is that "marketing is a substantial contributing factor to
7 youth smoking initiation."¹⁰³

8 73. For decades, cigarette companies spun smoking as signifier of adulthood. This
9 turned smoking into a way for teenagers to project independence and enhance their image among
10 their peers.¹⁰⁴ R.J. Reynolds's now-infamous Joe Camel "ambassador of Cool" advertising
11 campaign, which ran from 1988 through 1997, exemplifies the importance the tobacco industry
12 placed on hooking young smokers early.¹⁰⁵
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22 ¹⁰¹ *Tobacco Company Quotes on Marketing to Kids*, *supra* note 93; *see also Philip Morris*, 449 F. Supp. 2d at 596.

23 ¹⁰² *Preventing Tobacco Use Among Youths, Surgeon General Fact Sheet*, U.S. Dep't Health & Human Servs. (June
24 6, 2017), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html>.

25 ¹⁰³ *Philip Morris*, 449 F. Supp. 2d at 570.

26 ¹⁰⁴ *Id.* at 576 ("the ubiquity of Defendants' marketing increases young peoples' perceptions of the prevalence of
smoking ('everyone is doing it'), normalizes smoking, and connects positive imagery (sex appeal, popularity, peer
approval, success, and independence) with smoking, all of which work together to encourage youth smoking
initiation and continued consumption"); *see also id.* at 617-19.

¹⁰⁵ *Joe Camel: Character of the Year Advertisement*, Stan. U. Res. into the Impact of Tobacco Advert. (1990),
http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.php&token1=fm_img4072.php&theme_file=fm_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel.



74. Big Tobacco, of course, is now prohibited from employing youth-oriented marketing strategies to sell traditional cigarettes by virtue of the Master Settlement Agreement and subsequent regulations. For example, combustible cigarette companies may not:

- 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;”
- E. pay any third party to conduct any activity which the tobacco manufacturer is prohibited from doing; or
- F. sell “flavored” cigarettes.

75. All of these above activities were prohibited precisely because of their effectiveness at appealing to youth. But nothing prevented JLI from using these same strategies to market e-cigarettes.

76. As described below, all of these activities figured prominently in the marketing campaign for JUUL products.

2. JLI's advertising strategy was [REDACTED] to capture young nonsmokers, not adult smokers.

77. Contrary to JLI's and Altria's recent statements that JUUL was only ever marketed to adult smokers, JLI's internal documents show that, from the outset, JLI's target demographic was nonsmoking [REDACTED]

78. Consistent with Monsees' position that he has no "qualms" with marketing to people that were not yet addicted to nicotine,¹⁰⁶ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁷ In [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁸

79. JLI's strategy to cultivate an aura of "cool" around its nicotine-delivery device is, of course, not new. Decades before, Dr. Teague from R.J. Reynolds observed that "pre-smokers" face "psychological pressure" to smoke if their peers are doing so, "a new brand aimed at a young smoker must somehow be the 'in' brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing 'doing one's

¹⁰⁶ D. Freedman, *supra* note 36.

¹⁰⁷ INREJUUL_00441209.

¹⁰⁸ INREJUUL_00057291 *et seq.* (emphasis added).

own thing.”¹⁰⁹ Struggling to define their own identities, teenagers are particularly vulnerable to image-heavy advertisements that psychologically cue them on the “right” way to look and behave amongst peers.¹¹⁰ Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.¹¹¹

80. JLI followed this playbook to the letter. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹² [REDACTED]

[REDACTED]¹¹³ [REDACTED]

[REDACTED] fairly describes most adolescents—but has little relevance to existing smokers wishing to quit their cigarette habit.

81. [REDACTED]

[REDACTED]¹¹⁴ [REDACTED]

[REDACTED]¹¹⁵

82. Other internal documents emphasize the theme of making JUUL trendy and cool.

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁶ [REDACTED]

¹⁰⁹ Teague, *supra* note 51.

¹¹⁰ *Philip Morris*, 449 F. Supp. 2d at 578.

¹¹¹ *Id.* at 570, 590.

¹¹² INREJUUL_00057298-487.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ INREJUUL_00277080-104.

¹¹⁶ INREJUUL_00057289.

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁷ [REDACTED]

[REDACTED]¹¹⁸ For example, [REDACTED]

[REDACTED]

[REDACTED]¹¹⁹ [REDACTED]

[REDACTED]¹²⁰ [REDACTED]

[REDACTED]¹²¹

83. This focus on [REDACTED] continued up to and after launch. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²² [REDACTED]

[REDACTED]

[REDACTED]¹²³ [REDACTED]

[REDACTED]

[REDACTED]¹²⁴ [REDACTED]

¹¹⁷ INREJUUL_00057293.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ INREJUUL 00441325-326.

¹²² JLI00218598.

¹²³ JLI00206206.

¹²⁴ JLI00222528.

1 [REDACTED]¹²⁵ [REDACTED]¹²⁶ [REDACTED]

2 [REDACTED]

3 84. In addition, JLI identified [REDACTED]

4 [REDACTED]

5 [REDACTED]¹²⁷

6
7 **3. JLI's "Vaporized" campaign was intentionally youth-focused.**

8 85. As noted above, JLI's first major marketing hire was Cult Collective. JLI engaged
9 the Calgary-based advertising agency in 2014 to complete a "diagnostic" evaluation of the JLI
10 brand and to make recommendations regarding the best advertising strategy to market the JUUL
11 e-cigarette.

12 86. Cult Collective recommended that JLI position its e-cigarette technology as the
13 focus of its advertisements, emphasizing JUUL as an alternative option for existing smokers.
14 Cult Collective presented JLI with exemplar advertisements that used images of a boom box and
15 a joy stick, juxtaposed against the JUUL e-cigarette, with the tag line: "Everything changes,
16 eventually. JUUL | The evolution of smoking | *Finally, a truly satisfying alternative.*"¹²⁸
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23
24

25 ¹²⁵ JLI00461564.

26 ¹²⁶ JLI00235965.

¹²⁷ INREJUUL_00161703-715.

¹²⁸ Complaint ¶ 41, *Commonwealth of Massachusetts v. JUUL Labs, Inc.*, No. 2084CV00402 (Mass. Super. Ct. Feb. 12, 2020), <https://www.mass.gov/doc/juul-complaint/download> (emphasis added).



87. This campaign expressly invokes combustible cigarettes and positions JUUL as a technological upgrade for the modern smoker.

88. But JLI rejected Cult Collective’s suggestion, instead choosing to run a campaign that experts would later describe as “patently youth oriented.”¹²⁹

89. JLI’s 2015 ad campaign, called “Vaporized,” was designed to create a “cult-like following” for JUUL products.¹³⁰ The Vaporized campaign’s imagery featured a vivid color scheme and models in their twenties in poses that researchers noted are evocative of behaviors more characteristic of underage teens than mature adults.¹³¹ Researchers from the SRITA found it “clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young adults.¹³²

¹²⁹ Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the House Subcommittee on Economic and Consumer Policy* (“Jackler Testimony”) at 2 (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf>.

¹³⁰ *Id.* at 4.

¹³¹ Jackler et al., *supra* note 46 at 1.

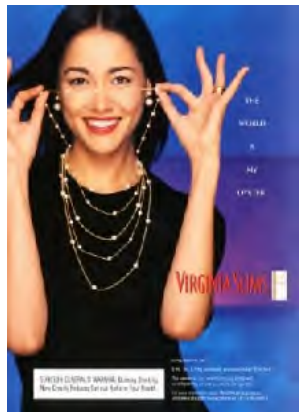
¹³² *Id.* at 7.



90. JLI recognized that the models in these advertisements looked young and were likely to appeal to youth, but it launched the campaign anyway. [REDACTED]

1 [REDACTED] 133 [REDACTED]
 2 [REDACTED] 134 [REDACTED]
 3 [REDACTED]
 4 [REDACTED] 135 “Monsees,
 5 who was CEO at the time, personally reviewed images from the billboard photo shoot while it
 6 was in session.”¹³⁶ A senior manager later told *The New York Times* that “he and others in the
 7 company were well aware” that the marketing campaign “could appeal to” teenagers.¹³⁷

9 91. JLI knew these images would be successful with a youth market because it
 10 intentionally crafted them to mimic specific ads that Big Tobacco had used to target teens. In
 11 fact, many JUUL ads were nearly identical to old cigarette ads that were designed to get teens to
 12 smoke.



138

133 INREJUUL_00371285.

134 INREJUUL_00371314.

135 INREJUUL_00174387.

136 Ainsley Harris, *How Juul, founded on a life-saving mission, became the most embattled startup of 2018: E-cigarette startup Juul Labs is valued at more than \$16 billion. It's also hooking teens on nicotine and drawing scrutiny from the FDA. Can the company innovate its way out of a crisis it helped create?*, Fast Co. (Nov. 19, 2018), <https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018>.

137 Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, N.Y. Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

138 *Virginia Slims vs Juul Advertisement*, Stan. U. Res. into the Impact of Tobacco Advert. (2015), http://tobacco.stanford.edu/tobacco_main/images-



139

92. JLI's officers and directors were well aware that JLI's branding of JUUL products was oriented toward youth and duplicated earlier efforts by the cigarette industry to hook children on nicotine. JLI's officers and directors directed and approved JLI's branding of JUUL products to be oriented toward youth. JLI's officers and directors [REDACTED]

140

93. JLI's officers and directors [REDACTED]

141

comp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL.

¹³⁹ Julia Belluz, *The Vape Company Juul Said It Doesn't Target Teens. Its Early Ads Tell a Different Story*, Vox (Jan. 25, 2019), <https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-marketing>.

¹⁴⁰ 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 Monsees, CPO, JLI).

¹⁴¹ JLI00206239.

COMPLAINT

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94. This recognition notwithstanding, JLI’s officers and directors pressed on with JLI’s youth-oriented campaign. Some of JLI’s leaders, such as Board member Hoyoung Huh, opposed any actions to curb youth sales. Youth sales were a large potential source of revenue.¹⁴⁷ As one manager explained, perhaps “people internally had an issue” with sales of JUUL to teenagers, “[b]ut a lot of people had no problem with 500 percent year-over-year growth.”¹⁴⁸

¹⁴² JLI00214617.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* (emphasis added).

¹⁴⁷ Kirkham, *supra* note 53.

¹⁴⁸ *Id.*

1 And JLI's leaders understood that the youth who were hooked on nicotine were the most likely
 2 to become lifelong customers and thus were the most profitable segment to target.¹⁴⁹

3 95. So in June 2015, JLI launched the "Vaporized" advertising campaign,¹⁵⁰ with [REDACTED]
 4 [REDACTED]¹⁵¹ JLI aggressively sought
 5 high-visibility spaces with youth appeal. For example, Vaporized ads occupied the front spread
 6 of the July 2015 issue of *VICE Magazine*, which bills itself as the "#1 youth media brand" in the
 7 world, and a twelve-unit billboard display in New York City's Times Square.¹⁵²



153

18 96. JLI's advertisements were also placed on websites attractive to children,
 19 adolescents in middle school and high school, and underage college students. These
 20 advertisements, which included the images of models from the Vaporized campaign, began
 21

22 ¹⁴⁹ *Id.*

23 ¹⁵⁰ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with 'Vaporized Campaign'*, AdAge (June 23, 2015),
<https://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142>.

24 ¹⁵¹ INREJUUL_00057291-295.

25 ¹⁵² Kathleen Chaykowski, *The Disturbing Focus of Juul's Early Marketing Campaigns*, Forbes (Nov. 16, 2018),
<https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>; see also Harty, *supra* note 150.

26 ¹⁵³ http://tobacco.stanford.edu/tobacco_web/images/pod/juul/timesquare/large/times_17.gif; see also Erin Brodwin, *Silicon Valley e-cig startup Juul 'threw a really great party' to launch its devices, which experts say deliberately targeted youth*, Bus. Insider (Sept. 4, 2018), <https://www.businessinsider.com/juul-e-cig-startup-marketing-appealed-to-teens-2018-7>.

1 appearing on websites as early as June 2015. The websites included: nickjr.com (the website for
 2 a children's television network run by Nickelodeon Group); cartoonnetwork.com (Cartoon
 3 Network's website); allfreekidscrafts.com; hellokids.com; and kidsgameheroes.com. In addition,
 4 JLI purchased banner advertisements on websites providing games targeted to younger girls,¹⁵⁴
 5 educational websites for middle school and high school students,¹⁵⁵ and other teen-targeted
 6 websites.¹⁵⁶

8 97. JLI knew these websites targeted children. [REDACTED]

12 [REDACTED]¹⁵⁷ Nevertheless, JLI continued to push its campaign on websites
 13 with young demographics.

15 98. As discussed further below, JLI also promoted the Vaporized campaign on
 16 Facebook, Instagram, and Twitter. JLI could have employed age-gating on its social media
 17 accounts to prevent underage consumers from viewing its Vaporized advertisements, but chose
 18 not to do so.

19 99. The Vaporized campaign included the largest e-cigarette smartphone campaign of
 20 2015, which accounted for 74% of all such smartphone advertising that year.¹⁵⁸

24 ¹⁵⁴ The sites included dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com,
 and girlsgogames.com.

25 ¹⁵⁵ E.g., coolmath-games.com. JLI also purchased advertisements on basic-mathematics.com, coolmath.com, math-
 aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, and purplemath.com.

26 ¹⁵⁶ E.g., teen.com, seventeen.com, justjaredjr.com, and hireteen.com. JLI purchased advertisements on websites for
 high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

¹⁵⁷ INREJUUL_00082179-185 (emphasis added).

¹⁵⁸ Jackler et al., *supra* note 46 at 19.

100. [REDACTED]

[REDACTED] 159

4. JLI hosted parties and pop-up “JUUL Lounges” to create a youthful brand and gave away free samples to get youth hooked.

101. In addition to print media, JLI utilized events, promotional models, and free samples to market JUUL products. Over the first year after JLI launched its ad campaign in June 2015, it held a series of at least twenty-five highly stylized parties, typically with rock music entertainment, in cities across the United States.¹⁶⁰



102. Photographs from these events confirm that they drew a youthful crowd.



¹⁵⁹ INREJUUL_00093933-934.

¹⁶⁰ Jackler et al., *supra* note 46 at 4.

1 103. At these launch parties, thousands of young people were given free JUUL devices
2 and nicotine-filled JUULpods (appropriately named “JUUL starter kits”), and JLI posted photos
3 of various young people enthusiastically puffing on JUULs across JLI’s social media
4 channels.¹⁶¹

5 104. In addition, JLI gave away samples at music events without age restrictions,
6 including Outside Lands in San Francisco’s Golden Gate Park, and other events aimed a youthful
7 audience, such as the annual Cinespia “Movies All Night Slumber Party” in Los Angeles. These
8 events, in addition to providing youthful crowds for handing out samples, were opportunities for
9 JLI to cultivate its brand image as youthful, hip, and trendy—but had nothing to do with smoking
10 cessation. For example, on August 7, 2015, JLI tweeted, “Need tix for @cinespia 8/15? We got
11 you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!”¹⁶²
12

13 105. As part of the Vaporized campaign, JLI also emulated trendy pop-up restaurants
14 and stores by using a shipping container “pop-up JUUL bar” at festivals and events in the Los
15 Angeles and New York City metro areas. The firm BeCore designed and created the container
16 for JLI, and managed it as a mobile JUUL product sampling lounge. BeCore reported that, on
17 average, it “exceeded the sampling goals set by JUUL for each location (average number of
18 samples/event distributed equals 5,000+.”¹⁶³
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26 ¹⁶¹ Jackler et al., *supra* note 46 at 4; Chaykowski, *supra* note 152.

¹⁶² JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015),
http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg.

¹⁶³ Jackler et al., *supra* note 46 at 9.



Juul's container bar

164

106. JLI also held sampling events of JUUL products in stores. [REDACTED]

[REDACTED]

[REDACTED]¹⁶⁵

107. Documents obtained by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff its events and required a dress code that included skinny jeans, high-top sneakers or booties, and an iPhone in a JUUL-branded case.¹⁶⁶

¹⁶⁴ Harty, *supra* note 150.

¹⁶⁵ INREJUUL_00160394.

¹⁶⁶ Jake Offenhartz, *Juul Hooked Teens Through Sick Parties and Hip Ambassadors*, NY AG Says, Gothamist (Nov. 19, 2019), <https://gothamist.com/news/juul-hooked-teens-through-sick-parties-and-hip-ambassadors-ny-ag-says>; Chaykowski, *supra* note 152.

TOOLKIT

PROVIDED BY JUUL:

1. JUUL T-Shirt (1)
2. JUUL sampling Bag (1)
3. iPhone Case (1)
4. Sampling Device (2)
5. Starter Kit for "TTF program" (1-3/sampling)
6. Sampling Pod Packs (2-5/sampling)
7. \$15 eVt Coupons (25/sampling)
8. Wall to USB Charger (1)
9. Take Away Cards (51/sampling)
10. Clear bags (10-25/sampling)

PROVIDED BY MODEL:

1. Dark navy or black fitted jeans with Converse high-top sneakers (men/ women) or Booties (women)
2. Iphone

→ The Juul-branded 'tool kit' encouraged ambassadors to dress in skinny jeans and Converse
DOCUMENT OBTAINED PURSUANT TO OAG INVESTIGATION.



108. JLI engaged PUSH Agency, LLC ("PUSH"), a promotional model and event staffing agency, to provide models and brand ambassadors to hand out coupons in trendy areas of New York City popular with young people. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 167

109. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events,¹⁶⁸ it continued to reach out to new users by offering samples, sometimes at \$1 "demo events." Like so many of JLI's initiatives, promotions of this kind are prohibited for cigarette companies by the Master Settlement Agreement.

110. The effect—and purpose—of JLI's Vaporized giveaways was to flood major cities with JUUL products that would hook thousands of new users, and to generate buzz for the

¹⁶⁷ INREJUUL_00158794-803.

¹⁶⁸ See Nik Davis (@bigbabynik), Twitter (Nov. 17, 2017 1:11 PM),

<https://twitter.com/JLIVapor/status/931630885887266816>; see also Jackler Testimony, *supra* note 129.

1 brand among urban trendsetters who would then spread JLI's message to their friends via word
2 of mouth and social media.

3 **5. By using viral advertising, JLI ensured that its advertising campaigns**
4 **would reach youth and outlast JLI's own efforts.**

5 111. JLI not only used Big Tobacco's advertising imagery and giveaways in a manner
6 that reached youth, but also coupled traditional advertisements with an aggressive social media
7 marketing campaign. Through the use of social media, JLI has been able to operate an even more
8 pervasive, insidious, and successful viral marketing campaign than its predecessors in the
9 tobacco industry. [REDACTED]
10 [REDACTED]

11 169

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 112. JLI was particularly active on Instagram, which is the most popular social media
18 site among teens.¹⁷⁰ JLI cultivated hashtags, allowing it to blend JUUL products' ads in with a
19 wide range of user content, increasing exposure while concealing the commercial nature of the
20 content.¹⁷¹ JLI then used hashtags to reinforce the themes it crafted in the JUUL products'
21 design, like #style, #technology, #smart, and #gadget. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24
25
26

¹⁶⁹ INREJUUL_00349541.

¹⁷⁰ Jackler et al., *supra* note 46.

¹⁷¹ *Id.* at 23.

113. JLI's hashtags attracted an enormous community of youthful posts on a wide array of subjects. According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and numerous Instagram hashtags contain the JUUL brand name.¹⁷³

114. A key feature of JLI's viral marketing campaign was inviting user-generated content. This strategy revolves around prompting social media followers to provide their own JUUL-related content—posting selfies in their favorite places to use JUUL products, for example. The response provided by a user is then typically distributed by the social media platform employed into the user's personal network. In this way, brands can infiltrate online communities with personalized content that promotes their products, such as a picture of a friend using a JUUL e-cigarette at the beach.



115. Just as JLI intended, JUUL users began taking photos of themselves using JUUL devices and putting them on social media with the hashtag #juul. They were creating JLI content

¹⁷² INREJUUL_00093294.

¹⁷³ Jackler Testimony, *supra* note 129 at 10.

1 that looked and felt like real JLI ads: featuring young people having fun and using JUUL. JLI's
 2 flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of
 3 thousands of user-generated posts. Within a few months of JLI's commercial release of JUUL in
 4 June 2015, a former JLI executive reportedly told *The New York Times* that JLI "quickly realized
 5 that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping
 6 JUULs on social media."¹⁷⁴ Some JLI executives sought to take advantage of this to build the JLI
 7 brand. For example, [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]¹⁷⁵ [REDACTED]
 12 [REDACTED]¹⁷⁶

13
 14 116. JLI also sought to work with high profile "influencers" that appeal to youth. JLI
 15 used these [REDACTED]
 16 [REDACTED]
 17 [REDACTED]¹⁷⁷ Influencers are prized sources of brand promotion on social media
 18 networks.

19 117. Documents obtained pursuant to a Congressional investigation show that in July
 20 2015, JLI's contract with Grit was for services that including "Influencer Relations," in which
 21 Grit agreed to provide two "Social Buzzmakers" for six events within a four-week period, with
 22 each Social Buzzmaker having a minimum of 30,000 followers and be active on at least two
 23

24
 25 ¹⁷⁴ Richtel & Kaplan, *supra* note 137.

26 ¹⁷⁵ JLI00382271.

¹⁷⁶ JLI00382271.

¹⁷⁷ See INREJUUL 00091138 ([REDACTED]).

1 social media channels, such as Instagram, Twitter, or Facebook. The contract provided that JLI
 2 would determine or approve the timing of the Buzzmakers' posts. In addition, JLI engaged Grit
 3 to "develop influencer engagement efforts to establish a network of creatives to leverage as
 4 loyalists for Juul/Pax brand activations."¹⁷⁸

5 118. Like its Vaporized campaign, [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 [REDACTED]¹⁷⁹ In keeping with this strategy, JLI targeted influencers that were young
 9 and popular with adolescents. One influencer JLI targeted was Tavi Gevinson, who was nineteen
 10 years old in the summer of 2015. The year before, *Rolling Stone* magazine described Gevinson
 11 as "possibly the most influential 18-year-old in America."¹⁸⁰

12 119. JLI contracted with Grit to enlist influencers by sending them free JUUL
 13 e-cigarettes. Grit provided free JUUL products to Luka Sabbat, known as the "the Internet's
 14 Coolest Teenager,"¹⁸¹ who was seventeen years old during the summer of 2015.

15 120. [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]¹⁸²
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 ¹⁷⁸ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel*
 24 *Charges*, Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>. See JLI-HOR-00042050.

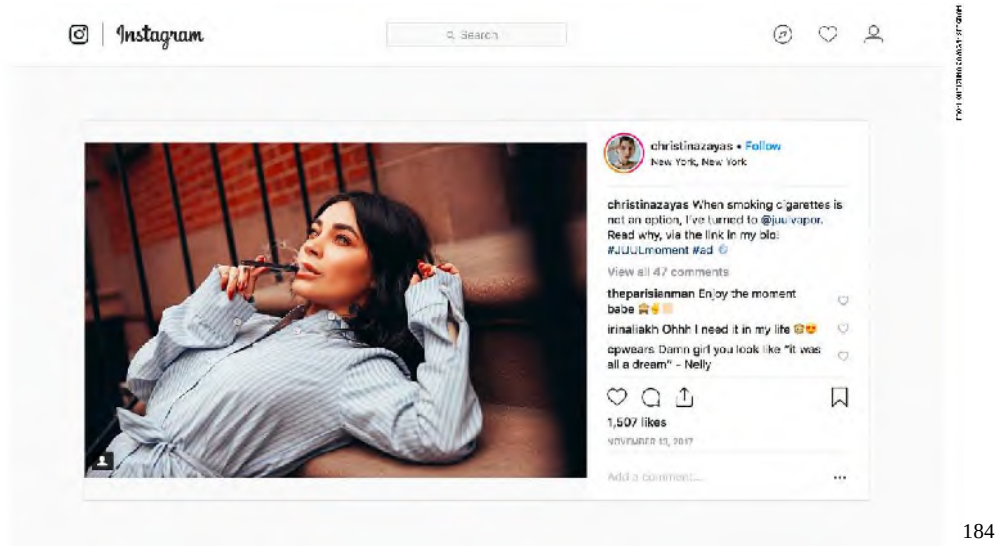
25 ¹⁷⁹ INREJUUL_00057293.

26 ¹⁸⁰ Alex Morris, *Tavi Gevinson: A Power Teen's New Direction*, Rolling Stone (Aug. 14, 2014),
<https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

¹⁸¹ Alexis Barnett, *Who Is Luka Sabbat? Meet the Internet's Coolest Teenager*, Complex (Aug. 17, 2015),
<https://www.complex.com/style/luka-sabbat-interview-on-youth-kanye-west-and-fashion>.

¹⁸² See INREJUUL_00091141 ([REDACTED]).

121. JLI paid these social media influencers to post photos of themselves with JUUL devices and to use the hashtags that it was cultivating.¹⁸³ One such influencer was Christina Zayas, whom JLI paid \$1,000 for just one blog post and one Instagram post in the fall of 2017.



122. JLI encouraged its distributors, wholesalers, and other resellers—either explicitly or implicitly—to hire affiliates and influencers to promote JLI’s brand and JUUL products. Even if not paid directly by JLI, these influencers profited from the promotion of JUUL products either because they were paid by JUUL resellers, JUUL accessory sellers, or sellers of JUUL-compatible products.

123. For example, one YouTube user Donnysmokes (Donny Karle, age twenty-one) created a JUUL products promotional video in 2017 that garnered roughly 52,000 views, many of which were from users under the age of eighteen.¹⁸⁵ Since that time, Karle has made a series of videos, including videos: *How to hide your JUUL from your parents*; and *How to HIDE &*

¹⁸³ Jackler et al., *supra* note 46 at 19-21.

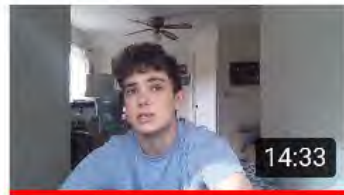
¹⁸⁴ Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, CNN Health (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

¹⁸⁵ Jackler Testimony, *supra* note 129.

*HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT.*¹⁸⁶ Karle has admitted to earning approximately \$1,200 a month from unspecified sources simply from posting videos of himself consuming e-cigarettes, especially of JUUL products online.¹⁸⁷



How to hide your JUUL from
your parents
DonnySmokes · 31K views ·
3 months ago



How To HIDE & HIT Your
JUUL at SCHOOL WITHOUT
Getting CAUGHT
DonnySmokes · 98K views ·
1 month ago

124. Karle also created a YouTube sensation called 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, went viral like the Ice Bucket Challenge it mimicked. 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 recent JUUL Challenge on YouTube, which has received nearly 500,000 views, the two individuals in the video, who appear to be teenagers, discuss the hundreds of thousands of views their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge content.¹⁸⁸

¹⁸⁶ *Id.*

¹⁸⁷ Allie Conti, *This 21-year-old is Making Thousands a Month Vaping on YouTube*, VICE (Feb. 5, 2018), https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube.

¹⁸⁸ Nate420, JUUL Challenge (Apr. 22, 2018), https://youtu.be/gnM8hqW_2oo (last visited Mar. 30, 2020).

1 125. JLI was aware of Karle's videos and his young followers. [REDACTED]
 2 [REDACTED].¹⁸⁹ And [REDACTED], it did not attempt to
 3 remove his JUUL-related content until 2018, and by then JLI's efforts were too little, too late. [REDACTED]

4 [REDACTED]¹⁹⁰ JLI knowingly sought and
 5 accepted the benefits of viral marketing and user-generated content. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 [REDACTED]¹⁹¹

9 126. JLI recruited "affiliates" to help its viral marketing campaign. [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]¹⁹² JLI's affiliates promoted JUUL products on social media
 13 platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed
 14 to disclose that they were being paid to promote JUUL products. JLI's "affiliate program"
 15 recruited those who authored favorable reviews of its products by providing such reviewers with
 16 a 20% discount of purchases of JUUL products.¹⁹³ It even recruited JUUL users to act as part of
 17 their marketing team by asking users to "refer a friend and get a discount."¹⁹⁴
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 23

24 ¹⁸⁹ INREJUUL_00199348 [REDACTED]
 25 [REDACTED]

26 ¹⁹⁰ INREJUUL_00349541.

¹⁹¹ Karle000009 ([REDACTED]).

¹⁹² INREJUUL_00113437-441.

¹⁹³ Jackler Testimony, *supra* note 129 at 9-10.

¹⁹⁴ *Id.* at 9.

127. Between 2015 and 2017, JUUL-related posts on Twitter increased quadratically, which is the exact result to be expected from an effective viral marketing campaign.¹⁹⁵ JLI's growth on Instagram was likely even more rapid.

128. A 2018 study of JLI's sales and presence on social media platforms found that JLI grew nearly 700%, yet spent "no recorded money" in the first half of 2017 on major advertising channels, and spent only \$20,000 on business-to-business advertising.¹⁹⁶ Despite JLI's apparently minimal advertising spend in 2017, the study found a significant increase in JUUL-related tweets in 2017.¹⁹⁷

129. On Instagram, the study found seven JUUL-related accounts, including @doit4juul and @JUULgirls, which accounted for 4,230 total JUUL-related posts and had more than 270,000 followers.¹⁹⁸

130. The lead author of the 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.¹⁹⁹

131. A large number of JLI's social media posts reached youth. The Surgeon General found that JLI's Twitter account was being followed by adolescents, and that 25% of those re-

¹⁹⁵ See Brittany Emelle et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, Truth Initiative (May 22, 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

¹⁹⁶ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, 28 Tobacco Control 146-52 (May 31, 2018), <https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/2/146.full.pdf>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Laura Kelley, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, Wash. Times (June 4, 2018), <https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/>.

1 tweeting official JLI tweets were under eighteen years old.²⁰⁰ Another study found that as many
 2 as half of JLI's Twitter followers were thirteen to seventeen years old.²⁰¹

3 132. A study characterizing JLI's JUUL-related Instagram posts between March and
 4 May 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram
 5 accounts, more than half were related to youth or youth lifestyle.²⁰²

6 133. By April 2018, searching "JUUL" on YouTube yielded 137,000 videos with
 7 forty-three videos having over 100,000 views.²⁰³ Of these, a huge number were plainly related to
 8 underage use, including: 1,730 videos on "hiding JUUL in school," 789 on "JUUL in school
 9 bathroom," 992 on "hiding JUUL at home," and 241 on "hiding JUUL in Sharpie."²⁰⁴

10 134. In 2018, JLI was internally collecting hundreds of social media posts—directed at
 11 JLI—informing it of JUUL's wild popularity with young people and in many cases requesting
 12 that JLI do something to stop it.²⁰⁵

13 135. But even after JLI halted its own social media posts in November 2018, viral
 14 peer-to-peer promotion among teens insured continued corporate and product visibility among
 15 youth.²⁰⁶ In fact, community posts about JUUL products increased after JLI itself quit social
 16 media in the fall of 2018. Prior to November 2018, over a quarter of a million posts appeared. In
 17
 18
 19

20
 21 ²⁰⁰ Adams, *supra* note 2.

22 ²⁰¹ Steven Reinberg, *Study: Half of Juul's Twitter followers are teens, young adults*, United Press Int'l (May 20,
 23 2019), https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/.

24 ²⁰² Lauren Czaplicki et al., *Characterizing JUUL-related posts on Instagram*, Tobacco Control 054824 (Aug. 1,
 25 2019), <https://tobaccocontrol.bmj.com/content/early/2019/07/30/tobaccocontrol-2018-054824>.

26 ²⁰³ Divya Ramamurthi et al., *JUUL and Other Stealth Vaporizers: Hiding the Habit from Parents and Teachers*, 28
 Tobacco Control 610-16 (Sept. 15, 2018),
<https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/6/610.full.pdf>.

²⁰⁴ *Id.*

²⁰⁵ Complaint for Permanent Injunction, Abatement, Civil Penalties, and Other Equitable Relief, *People v. JUUL Labs, Inc.* ("CA AG JUUL Complaint"), No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),
<https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

²⁰⁶ *Id.*

the eight months *after* JLI halted its promotional postings, the rate of community postings increased significantly, resulting in the number of posts doubling to over half a million.²⁰⁷

136. If JLI was concerned that other social media accounts were using its trademark in posts directed to underage audiences, JLI could have stepped in and attempted to stop the use of the word “JUUL,” including the use of all the hashtags that contain the word “JUUL.” JLI could have sought to shut down infringing accounts such as @doit4juul and @JUULgirls. JLI did not act promptly to do so. Instead, JLI repeatedly thanked and encouraged the owner of the @JUULnation Instagram account for his posting of youth-oriented JUUL content on Instagram.

C. JLI and Its Officers and Directors Knew JLI’s Aggressively Youth-Oriented Advertising Was Hooking Kids But Continued It Anyway

137. JLI was well aware from the beginning that its products would appeal to youth.

[REDACTED]

[REDACTED]²⁰⁸

[REDACTED]

[REDACTED]

[REDACTED]

138. But JLI’s officers and directors at this point were taking actions that went beyond the regular and legitimate business operations of JLI in order to market JUUL products to youth.

At the same time [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁰⁹

²⁰⁷ *Id.*

²⁰⁸ INREJUUL_00056077 [Confidential].

²⁰⁹ *Id.*

1 139. Within weeks of JUUL's launch, on June 23, 2015, an article in *AdAge* regarding
 2 the Vaporized campaign highlighted the concerns about the youth focus of the campaign: "John
 3 Schachter, director of state communications for Campaign for Tobacco-Free Kids, expressed
 4 concern about the Juul campaign because of the youth of the men and women depicted in the
 5 campaign, especially when adjoined with the design."²¹⁰ Reacting to the article that evening, JLI
 6 Marketing Manager Sarah Richardson commented, [REDACTED]
 7 [REDACTED]

211

9 140. A former JLI manager, who spoke to *The New York Times* on the condition that
 10 his name not be used, said that within months of JUUL's 2015 introduction, it became evident
 11 that teenagers were either buying JUUL products online or finding other individuals who made
 12 the purchases for them. Some people bought more JUUL kits on JLI's website than they could
 13 individually use—sometimes ten or more devices at a time. "First, they just knew it was being
 14 bought for resale," said the former senior manager, who was briefed on JLI's business strategy.
 15 "Then, when they saw the social media, in fall and winter of 2015, they suspected it was
 16 teens."²¹²
 17

18 141. [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

213

23
 24
 25
 26 ²¹⁰ Harty, *supra* note 150.

²¹¹ INREJUUL00278533 (emphasis added).

²¹² Richtel & Kaplan, *supra* note 137.

²¹³ INREJUUL_00339938 (emphasis added).

1 142. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 ²¹⁴ But JLI did not run this campaign

6 then and in fact did not begin focusing its advertising on switching from combustible cigarettes

7 until 2018.

8 143. JLI's officers and directors, and in particular Huh, wanted to continue their

9 fraudulent marketing, knowing that these ads were also targeted to youth, "argu[ing] that the

10 company couldn't be blamed for youth nicotine addiction."²¹⁵

11 144. JLI's officers and directors had the authority to direct the marketing to JLI and

12 approved JLI's youth marketing strategy despite their knowledge that the marketing campaigns

13 appealed to youth.

14 145. In October 2015, Monsees stepped down from his role as CEO of JLI (to become

15 Chief Product Officer) and, in his stead, Pritzker, Huh, and Valani formed an Executive

16 Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL

17 products, including to youth. Prior to the installation of Tyler Goldman as JLI's new CEO in

18 August 2016, Pritzker, Huh, and Valani used their newly formed Executive Committee to expand

19 the number of addicted e-cigarette users through fraudulent advertising and representations to the

20 public. They cleaned house at JLI by "dismiss[ing] other senior leaders and effectively tak[ing]

21 over the company."²¹⁶

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23

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25

26 ²¹⁴ JLI00214617.

²¹⁵ Kirkham, *supra* note 53.

²¹⁶ 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>.

1 146. [REDACTED]

217 [REDACTED]

2 [REDACTED]²¹⁸ Also, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]²¹⁹ Additionally, [REDACTED]

9 [REDACTED]

10 [REDACTED]²²⁰ [REDACTED]

11 [REDACTED]

12 147. Similarly, [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]²²¹

17 148. [REDACTED]

18 [REDACTED]²²²

19 149. By March 2016, however, JLI employees internally recognized that JLI's efforts

20 to market to children were too obvious. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23

24

25 ²¹⁷ See INREJUUL_00278406 *et seq.* ([REDACTED]); INREJUUL_00278410 *et seq.* ([REDACTED]).

²¹⁸ See INREJUUL_00278404 *et seq.* ([REDACTED]); INREJUUL_00278402 *et seq.* ([REDACTED]).

²¹⁹ INREJUUL_00278405 ([REDACTED]).

²²⁰ *Id.*

²²¹ INREJUUL_00061856.

²²² INREJUUL_00278359.

1 [REDACTED]²²³ [REDACTED]

2 [REDACTED]

3 [REDACTED]²²⁴ [REDACTED]

4 [REDACTED]²²⁵ [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]²²⁶ [REDACTED]

9 [REDACTED]

10 [REDACTED]²²⁷ Around this time, JLI reoriented its JUUL
 11 products advertising from the explicitly youth-oriented Vaporized campaign to a more subtle
 12 approach to appeal to youth. The advertising's key themes continued to include
 13 pleasure/relaxation, socialization/romance, and flavors²²⁸—all of which still appeal to youth, as
 14 was made clear in the Big Tobacco litigation.
 15

16 150. It is clear that JLI, like Philip Morris and other Big Tobacco companies before it,
 17 targeted youth as a key business demographic. Unsurprisingly, JLI's efforts to follow these pages
 18 of Big Tobacco's playbook has yielded results: a recent study found that 15 to 17-year-olds are
 19 *sixteen times* more likely to use JUUL products than 25 to 34-year-olds.²²⁹
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 21
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23 ²²³ INREJUUL_00178377.

24 ²²⁴ INREJUUL_00061469.

25 ²²⁵ INREJUUL_00178379.

26 ²²⁶ INREJUUL_00178384.

²²⁷ INREJUUL_00061274.

²²⁸ Jackler et al., *supra* note 46 at 9.

²²⁹ D.M. Vallone et al., *Prevalence and correlates of Juul use among a national sample of youth and young adults*,
 28 Tobacco Control 603-09 (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

D. JLI's Early Labeling and Advertising for JUUL Products Omitted the Fact that JUUL Products Contain Nicotine.

151. As part of its strategy to market to youth and nonsmokers, JLI also did not effectively inform users that JUUL products contain nicotine. Despite making numerous revisions to JUUL products' packaging since 2015, JLI did not add nicotine warnings until forced to do so in August 2018. The original JUUL product labels had a California Proposition 65 warning indicating that the product contains a substance known to cause cancer, and a warning to keep JUULpods away from children and pets, but contained no warnings specifically about the known effects, or unknown long-term effects, of nicotine or consuming e-cigarettes/inhaling nicotine salts.

152. Moreover, many of JUUL's advertisements, particularly prior to November 2017, also did not mention that JUUL contained nicotine. In the first year after its launch, not one of JLI's 171 promotional emails said anything about the nicotine content in JUUL products.²³⁰ For example, in a July 11, 2015 email, JLI advertised its promotional events with the text, "Music, Art, & JUUL. What could be better? Stop by and be gifted a free starter kit."²³¹ This email did not mention that JUULpods contain nicotine, nor did it say that JUUL or the free starter kits were only for adults.

153. Compounding these omissions, JLI's marketing strategy for JUUL products was so successful in embedding its products into pop culture that it entered the vernacular as a verb. The term "juuling" also erases the connection to terms like "smoking" or "e-cigarette," which could alert users to the true nature of the activity.

²³⁰ Jackler et al., *supra* note 46 at 25.

²³¹ *Check out our JUUL events this Summer*, JUUL (hello@juulvapor.com) (July 11, 2015), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/email/large/email_2.jpg.

1 154. As a result of these omissions, many youth were unaware that JUUL products
2 contained nicotine at all, let alone a high dose of it. One recent survey of youth and young adults
3 ages fifteen to twenty-four found that 63% of JUUL users did not know that JUULpods always
4 contain nicotine.²³²

5 **E. In Another Page from Big Tobacco’s Playbook, JLI Used Flavors to Hook**
6 **Kids**

7 155. JUULpods sold in fruity or sweet flavors made the product even more attractive
8 to adolescents. Tobacco companies have known for decades that flavored products are key to
9 nicotine adoption by youth. A 1972 Brown & Williamson memorandum: *Youth Cigarette – New*
10 *Concepts*, specifically noted the “well known fact that teenagers like sweet products.”²³³ A 1979
11 Lorillard memorandum concluded that younger customers would be “attracted to products with
12 ‘less tobacco taste,’ and even proposed borrowing data from the “Life Savers” candy company
13 to determine which flavors enjoyed the widest appeal among youth.”²³⁴

14 156. Altria’s subsidiary U.S. Smokeless Tobacco Company (formerly called United
15 States Tobacco Company) described the initiation of new customers through flavored products as
16 “the graduation theory”:
17
18

19 New users of smokeless tobacco—attracted to the product for a variety of
20 reasons—are most likely to begin with products that are milder tasting, more
21 flavored, and/or easier to control in the mouth. After a period of time, there is a
22 natural progression of product switching to brands that are more full-bodied, less
23 flavored, have more concentrated “tobacco taste” than the entry brand.²³⁵

23 ²³² Willett, *supra* note 66.

24 ²³³ Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New*
25 *Concepts*, U.C.S.F. Truth Tobacco Indus. Documents (Sept. 1972),
26 <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hazpd0040>.

27 ²³⁴ *Flavored Tobacco FAQs*, Students Working Against Tobacco,
28 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf>
(citing Sedgfield Idea Sessions 790606-790607 (June 8, 1979), Bates No. 81513681/3691) (last visited Mar. 27,
29 2020).

30 ²³⁵ G.N. Connolly, *The marketing of nicotine addiction by one oral snuff manufacturer*, 4 Tobacco Control 73-79
(1995), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1759392/pdf/v004p00073.pdf>.

1 157. A sales manager who worked at U.S. Tobacco in the 1980s told the Wall Street
2 Journal that “They talked about graduation all the time—in sales meetings, memos and manuals
3 for the college program. It was a mantra.”²³⁶

4 158. According to 2004 data, seventeen-year-old smokers were more than three times
5 as likely as those over the age of twenty-five to smoke flavored cigarettes and viewed flavored
6 cigarettes as safer.²³⁷ For this reason, in 2009 the FDA banned flavored cigarettes pursuant to its
7 new authority under the Family Smoking Prevention and Tobacco Control Act of 2009. In
8 announcing the ban, former FDA Commissioner Dr. Margaret Hamburg declared that “flavored
9 cigarettes are a gateway for many children and young adults to become regular smokers.”²³⁸ A
10 2017 study of the cigarette flavor ban found that the ban was effective in lowering both the
11 number of smokers and the amount smoked by smokers, though it was associated with an
12 increased use of menthol cigarettes (the only flavor still available).²³⁹

13 159. The use of flavors is just as problematic with e-cigarettes. According to the
14 Surgeon General, 85% of adolescents who use e-cigarettes use flavored varieties.²⁴⁰ Studies also
15 show that flavors motivate e-cigarette initiation among youth,²⁴¹ and that youth are much more
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20 ²³⁶ Alix Freedman, *Juiced Up: How a Tobacco Giant Doctors Snuff Brands to Boost Their ‘Kick,’* Wall St. J. (Oct.
21 26, 1994).

22 ²³⁷ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22, 2009),
23 <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

24 ²³⁸ *Id.*

25 ²³⁹ Charles J. Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, Am. J. of
26 Preventive Med. 52(5):e139 - e146 (May 2017),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5401634/pdf/nihms842675.pdf>; M.B. Harrell et al., *Flavored e-
cigarette use: Characterizing youth, young adult, and adult users*, 5 Prev. Med Rep. 33–40 (Nov. 11, 2016),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5121224/pdf/main.pdf>.

²⁴⁰ *E-Cigarette Use Among Youth and Young Adults*, U.S. Dep’t of Health & Human Servs. (2016),
[https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-
Young-Adults.pdf](https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf) (last visited Mar. 27, 2020).

²⁴¹ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb.
26, 2019), [https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-
study-shows-2019-02-25](https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25).

likely to use flavored tobacco products than adults are.²⁴² Flavored e-cigarettes play a large role in the youth vaping epidemic. As mentioned above, flavors motivate e-cigarette initiation among youth and youth are much more likely to use flavored tobacco products than adults.²⁴³ According to the FDA, 96% of twelve to seventeen-year-olds who recently begun using e-cigarettes reported using a flavored e-cigarette the first time they tried the product.²⁴⁴ Flavors work to attract youth. A survey of teenagers between the ages of thirteen to seventeen from 2014-2015 showed that this age group was six times more interested in trying e-cigarettes in fruity flavors than they were in trying e-cigarettes with only tobacco flavor.²⁴⁵

160. Research confirms that flavored products—no matter what the tobacco product—appeal to youth and young adults. According to the *2012 Surgeon General Report*, “Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth.”²⁴⁶ A study published in *JAMA* in 2015 found that approximately 80% of those between the ages of twelve and seventeen who had ever used a tobacco product initiated tobacco use with a flavored product, and that for each tobacco product, at least two-thirds of youth reported using these products “because they come in flavors I like.”²⁴⁷ Research also shows that when youth see advertisements for flavored e-cigarettes, they

²⁴² A.C. Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study*, 53 Am. J. of Preventative Med. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>.

²⁴³ See *E-Cigarette Use Among Youth and Young Adults*, *supra* note 240; Paul, *supra* note 241; Villanti, *supra* note 242.

²⁴⁴ *Modifications to Compliance Policy for Certain Deemed Tobacco Products*, FDA (Mar. 2019), <https://www.fda.gov/media/121384/download>.

²⁴⁵ J.K. Pepper et al., *Adolescents’ interest in trying flavored e-cigarettes*, 25 Tobacco Control ii62 (Sept. 15, 2016), https://tobaccocontrol.bmj.com/content/25/Suppl_2/ii62.

²⁴⁶ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (“2012 Surgeon General Report”) at 539, U.S. Dep’t Health & Human Servs. (2012), https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

²⁴⁷ Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871 at 1872, 1873 (2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690>.

1 believe the advertisements and products are intended for them.²⁴⁸ A significant majority of
 2 under-age users choose flavored e-cigarette products.²⁴⁹

3 161. Both mint and menthol flavors have been successfully used to make tobacco
 4 products more palatable to youth. Among youth smokeless tobacco users, for example, mint and
 5 menthol are the most popular flavors.²⁵⁰ And a recent study found that among high school JUUL
 6 users, mint is the most popular flavor.²⁵¹

7
 8 162. The role of mint and menthol flavors in facilitating youth tobacco use is well
 9 documented, as Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and
 10 the Director of Pediatric Research in the Tobacco Research and Treatment Center, testified
 11 before Congress:

12 [It is] completely false to suggest that mint is not an attractive flavor to children.
 13 From candy canes to toothpaste, children are introduced to mint flavor from a
 14 young age. Not only do children enjoy mint, but it has special properties that
 15 make it an especially dangerous flavor for tobacco. Menthol's anesthetic
 16 properties cool the throat, mask the harshness of nicotine, and make it easier for
 17 children to start using and continue using tobacco products. The impact of mint
 18 and menthol flavors on increasing youth tobacco addiction is well documented.²⁵²

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 20 ²⁴⁸ D.C. Petrescu et al., *What is the Impact of E-Cigarette Adverts on Children's Perceptions of Tobacco Smoking?*
 21 *An Experimental Study*, 26 Tobacco Control 421 (2016); Julia C. Chen-Sankey et al., *Perceived Ease of Flavored*
 22 *E-Cigarette Use and E-Cigarette Use Progression Among Youth Never Tobacco Users*, 14 PLOS ONE 1 (2019),
 23 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0212353>.

24 ²⁴⁹ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States, 2019*, 322 JAMA, 2095 (2019),
 25 <https://tinyurl.com/y3g75gmg> ("Among current exclusive e-cigarette users, an estimated 72.2% . . . of high school
 26 students and 59.2% . . . of middle school students used flavored e-cigarettes[.]").

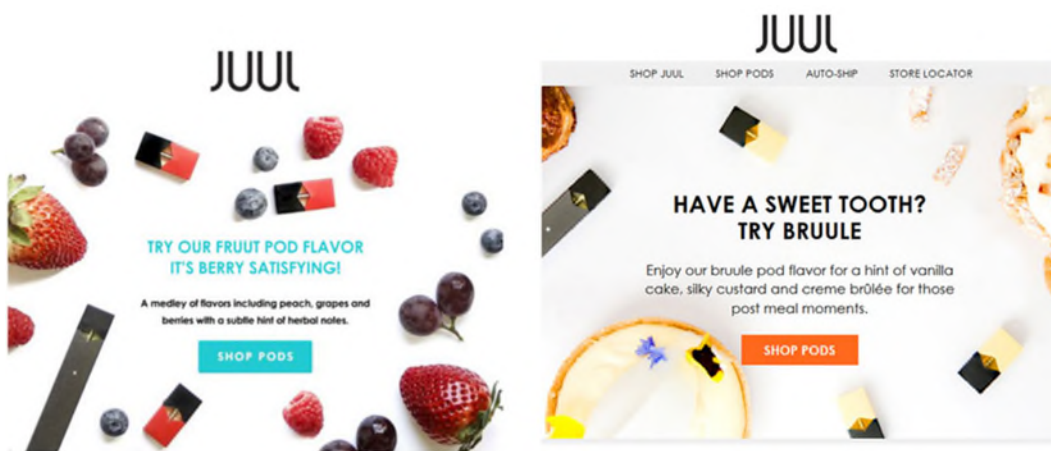
²⁵⁰ Shyanika W. Rose et al., *Flavour types used by youth and adult tobacco users in wave 2 of the Population*
Assessment of Tobacco and Health (PATH) Study 2014–2015, Tobacco Control (Sept. 21, 2019).

²⁵¹ Adam M. Leventhal et al., *Flavors of e-Cigarettes Used by Youths in the United States*, 322 JAMA 2132-34
 (2019).

²⁵² Jonathan Winickoff, *Testimony of Jonathan Winickoff before the U.S. House of Representatives Committee on*
Oversight and Reform Subcommittee on Economic and Consumer Policy ("Winickoff Testimony") at 3, U.S.
 House Committee on Oversight & Reform (July 24, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>.

163. Robin Koval, CEO and president of Truth Initiative, echoed Dr. Winickoff's testimony, stating that mint and menthol are among the most popular flavors for youth and that "[w]e also know, as does the tobacco industry, that menthol has been and continues to be the starter flavor of choice for young cigarette users."²⁵³ According to the FDA, "younger populations have the highest rate of smoking menthol cigarettes" and "menthol in cigarettes is likely associated with increased initiation and progression to regular [] cigarette smoking."²⁵⁴ Menthol cigarettes are also more addictive than regular cigarettes.²⁵⁵

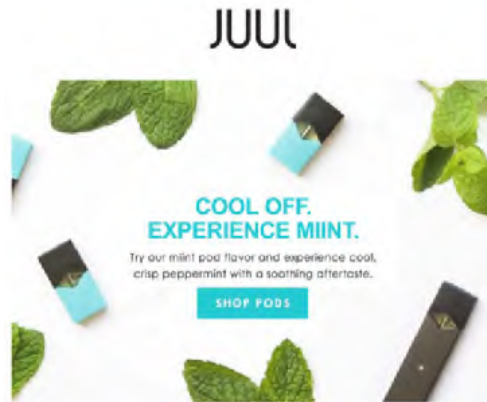
164. In June 2015, JUUL came to market in four flavors including Tabac (later renamed Tobacco), Fruut (later renamed Fruit Medley), Bruulé (later renamed Crème Brulee), and Miint (later renamed Mint).



²⁵³ *Id.*

²⁵⁴ *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes* at 5, FDA, <https://www.fda.gov/media/86497/download> (last visited Mar. 28, 2020).

²⁵⁵ *Id.* at 6.



165. JUUL later offered other kid-friendly flavors, including Cool Cucumber and Mango.

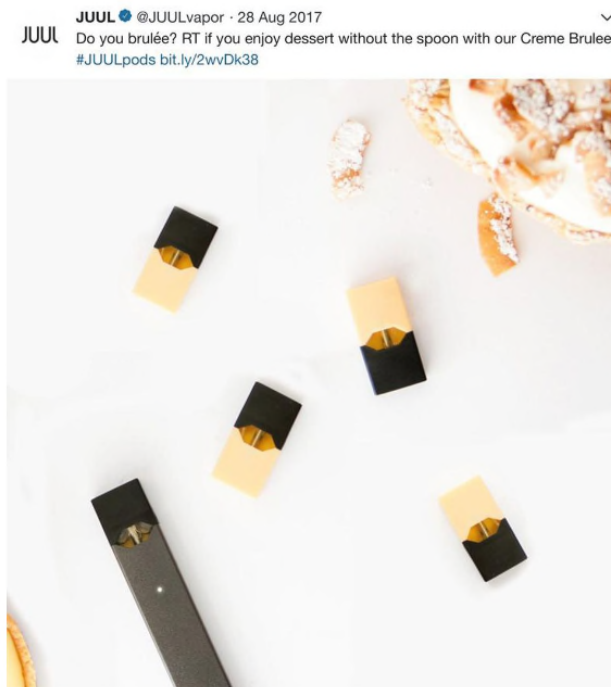


166. JUUL also offered limited edition flavors, including Coco Miint, a mint chocolate flavor.



167. [REDACTED]

[REDACTED]²⁵⁶ Instead of taking corrective action or withdrawing the kid-friendly flavors, JLI capitalized on their popularity with kids and continued to promote JUUL's flavors. In a social media post from August 2017, for example, JLI tweeted "Beat The August Heat with Cool Mint" and "Crisp peppermint flavor with a pleasant aftertaste."²⁵⁷ In another August 2017 tweet, JLI compared JUUL to dessert: "Do you brulée? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods."²⁵⁸



168. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers

²⁵⁶ See INREJLI_00265068 ([REDACTED]).

²⁵⁷ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017),

http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg.

²⁵⁸ Chaykowski, *supra* note 152.

1 have found that some of the chemicals JLI uses for flavor and perfume—particularly in the
 2 Crème Brulee flavor—contain relatively high levels of acetals.²⁵⁹ Acetals are airway-irritating
 3 chemicals that may cause lung damage.²⁶⁰ Dr. Robert Jackler reported that test results have
 4 shown that JLI’s sweet and fruity flavors “contribute[] to the increasing body of evidence
 5 documenting toxicological effects of e-cig vapor.”²⁶¹
 6

7 169. JLI also engaged market research consultants to study youth flavor preferences,
 8 and this research provided additional confirmation that JLI’s flavors appealed to youth. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]²⁶²

12 170. Under the [REDACTED]

13 [REDACTED]²⁶³ [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]²⁶⁴ [REDACTED]

19 [REDACTED]

20 [REDACTED]²⁶⁵

21
 22
 23
 24 ²⁵⁹ Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019),
<https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice>.

25 ²⁶⁰ *Id.*

26 ²⁶¹ *Id.*

²⁶² INREJUUL_00053206.

²⁶³ INREJUUL_00121627 ([REDACTED]); INREJUUL_00124965 ([REDACTED]).

²⁶⁴ *Id.*

²⁶⁵ INREJUUL_00035325.

171. [REDACTED]

172. [REDACTED]

173. [REDACTED]

174. A 2018 survey of adolescents and young adults in California found that 74% of those surveyed indicated that their first use of a JUUL was of a flavored JUULpod.²⁶⁹

175. In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco” and “Menthol” flavors, in response to “epidemic levels of youth use of e-cigarettes” because these products are “so appealing” to children.”²⁷⁰ But the damage to Plaintiff and Plaintiff’s community had already been done, and as discussed below, copycat companies exploited loopholes in the ban to continue supplying flavored nicotine products to youth.

F. JLI also used JUUL’s Discreet and Tech-Inspired Design to Attract a New Generation of Youth to Nicotine

176. The design of JUUL is also acutely attractive to youth. Unlike most of its predecessors, JUUL looks nothing like a cigarette. Instead of mimicking a cigarette, the product

²⁶⁶ INREJUUL_00124965.

²⁶⁷ *Id.*

²⁶⁸ INREJUUL_00035325.

²⁶⁹ Karma McKelvey et al., *Adolescents and Young Adults Use in Perceptions of Pod-based Electronic Cigarettes*, 1 JAMA Network Open e183535 (2018), <https://doi.org/10.1001/jamanetworkopen.2018.3535>.

²⁷⁰ *FDA News Release: FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint*, FDA (Jan. 2, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

1 that adult smokers are used to using, JUUL is sleek and linear and seems like the latest tech
 2 invention. JLI co-founder Bowen drew on his experience as a design engineer at Apple Inc.
 3 (“Apple”) to make JUUL’s design mimic technology children were already familiar with, like
 4 Apple’s iPhone.²⁷¹ This made JUUL look “more like a cool gadget and less like a drug delivery
 5 device. This wasn’t smoking or vaping, this was juuling.”²⁷² The evocation of technology makes
 6 JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers.
 7 According to a nineteen-year-old interviewed for the Vox series *By Design*, “our grandmas have
 8 iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust
 9 modern stuff a little bit more so we’re like, we can use it, we’re not going to have any trouble
 10 with it because you can trust it.”²⁷³ A sixteen-year-old agreed, explaining that “the tech aspect
 11 definitely helps people get introduced to it and then once they’re introduced to it, they’re staying,
 12 because they are conditioned to like all these different products. And then this is another product.
 13 And it’s just another product. Until you’re addicted to nicotine.”²⁷⁴

16 177. JUUL is small and discrete. Fully assembled, the device is just over 9.5 cm in
 17 length and 1.5 cm wide. JUUL resembles a memory stick and can be charged in a computer’s
 18 USB drive. This design allows the device to be concealed in plain sight, camouflaged as a
 19 thumb-drive, for use in public spaces, like schools and even charged in school computers. JLI
 20 has been so successful in emulating technology that its small, rectangular devices are often
 21 mistaken for—or passed off as—flash drives. According to one high school senior, “that’s what
 22
 23
 24

25 ²⁷¹ *How JUUL made nicotine go viral*, Vox – By Design (Aug. 10, 2018),
 26 <https://www.youtube.com/watch?v=AF0poKBUyok>.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

1 people tell the teachers a lot, too, if you charge it in class, they'll just say it's my flash drive."²⁷⁵

2 And unlike the distinct smell and odor emitted from combustible cigarettes, JUUL emits a
3 reduced aerosol with a nearly undetectable scent. Unlike other e-cigarettes, JUUL does not
4 produce large plumes of smoke. Instead, the vapor cloud is very small and dissipates very
5 quickly, allowing for concealed use. As a result, young users can, and do, use JUUL—in class or
6 at home—without detection.
7



18. The ability to conceal a JUUL is part of the appeal for adolescents. The devices
are small and slim, so they fit easily in a closed hand or a pocket. The ease and simplicity of

²⁷⁵ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

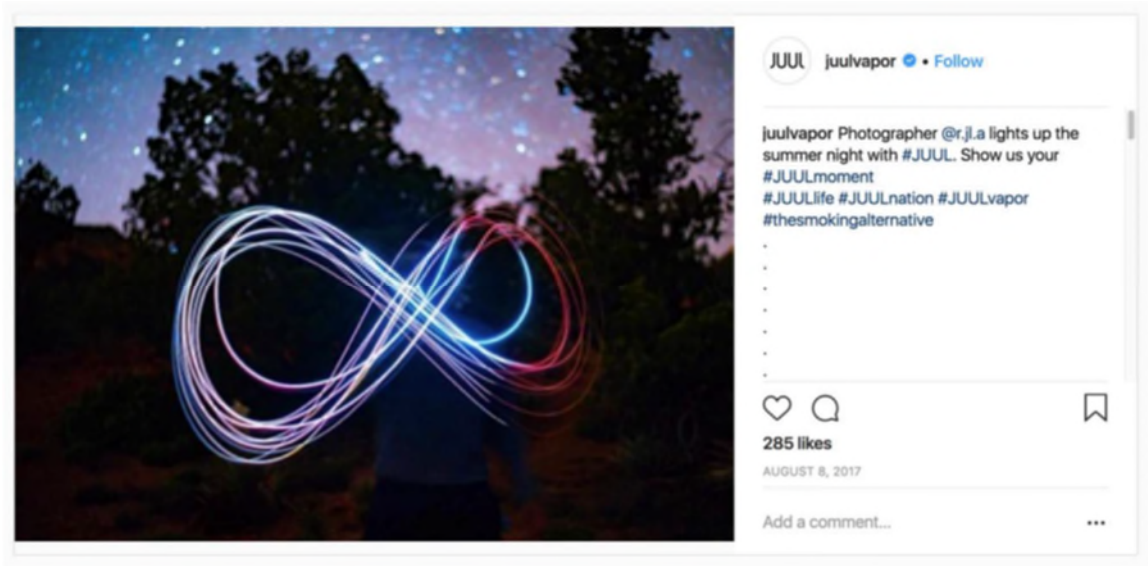
1 use—there is nothing to light or unwrap, not even an on-off switch—also make it possible to
 2 covertly use a JUUL behind a turned back, which has become a trend in many schools. As a
 3 police officer told reporters, JUUL use is “incredibly prevalent in schools,” including both high
 4 schools and middle schools, and that it is hard to catch kids in the act of vaping because JUUL
 5 does not produce a big vapor cloud. As the officer explained, students will “just take a little hit or
 6 puff off them and then can hold the vapor in their mouth for a little while . . . There’s minimal
 7 vapor. They’ll also just blow into their sleeve or into their hoodie.”²⁷⁶ Finding new ways to hide
 8 the ever-concealable JUUL has spawned products designed just for that purpose, such as apparel
 9 that allows the wearer to use the device while it is concealed in the drawstring of a hoodie or the
 10 strap of a backpack.²⁷⁷

12 179. JLI also designed JUUL with features reminiscent of youth-oriented tech culture
 13 and gaming, like “secret” features users can unlock, such as making the indicator light flash
 14 rainbow colors in “party mode.” “Party mode” is activated by the user waving the JUUL device
 15 back and forth until the white LED light starts flashing multiple colors, so that the rainbow
 16 colors are visible while the person inhales from the JUUL device. “Party mode” can also be
 17 permanently activated by the user quickly and firmly slapping a JUUL against the palm of the
 18 hand, until the LED light starts flashing multiple colors permanently. JUUL party mode is
 19 described by users to be “like an Easter egg in a video game” and allows for “some cool tricks
 20 that are going to drive [] friends crazy.”²⁷⁸ This feature made it even more appealing and “cool”
 21 to young users.
 22
 23
 24

25 ²⁷⁶ *Id.*

26 ²⁷⁷ Evie Blad, ‘Juuling’ and Teenagers: 3 Things Principals and Teachers Need to Know, *Educ. Wk.* (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

²⁷⁸ Jon Hos, *Getting Your Juul Into Party Mode*, *Vape Drive* (July 12, 2018), <https://vapedrive.com/getting-your-juul-into-party-mode>.



180. According to Dr. David Kessler, a former Commissioner of the FDA and current Professor of pediatrics at the University of California, San Francisco, JUUL's "fundamental design appears to ease young people into using these e-cigarettes and ultimately, addiction."²⁷⁹ Dr. Kessler emphasized the reduced harshness of JUUL's nicotine salt formulation, the high nicotine content, discreet vapor cloud, and use of flavors as design features that appeal to youth.²⁸⁰ On April 24, 2018, the FDA sent JLI a letter, based on the FDA's concern "about the popularity of JUUL products among youth" and stated that this popularity may be related to "the product design."²⁸¹ As a result, the FDA requested documents related to product design, including its "shape or form," "nicotine salt formulation" and "nicotine concentration/content," "flavors," and "features such as: appearance, or lack thereof, or plume . . . [and] USB port rechargeability."

²⁷⁹ Kessler, *supra* note 59.

²⁸⁰ *Id.*

²⁸¹ Letter from Matthew R. Holman, Director of the Office of Science at the Center for Tobacco Products, to Ziad Rouag, Vice President of Regulatory & Clinical Affairs, JUUL Labs, Inc. (Apr. 24, 2018), <https://www.fda.gov/media/112339/download>.

G. Eonsmoke, Riding on JLI's Coattails, Promoted JUUL and Its Own "JUUL-Compatible" Products

181. Defendant Eonsmoke took notice of JLI's successful marketing to youth and saw it as an opportunity to profit, directly using the JUUL name to reach JLI's young customers.

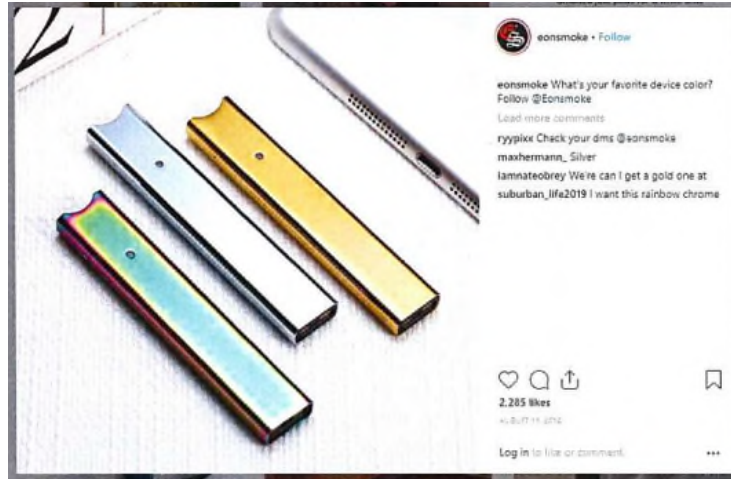
182. Eonsmoke designs, markets, and distributes e-cigarettes and accessories. Eonsmoke makes its own electronic vaping device that resembles JUUL. Eonsmoke also makes both closed-system pods, like those sold by JLI, and open-system pods that can be filled by the user. Both Eonsmoke's device and its pods are advertised as JUUL-compatible, meaning that users can use Eonsmoke's device to vape JUULpods and they can also use a JUUL to vape Eonsmoke's pods.²⁸²



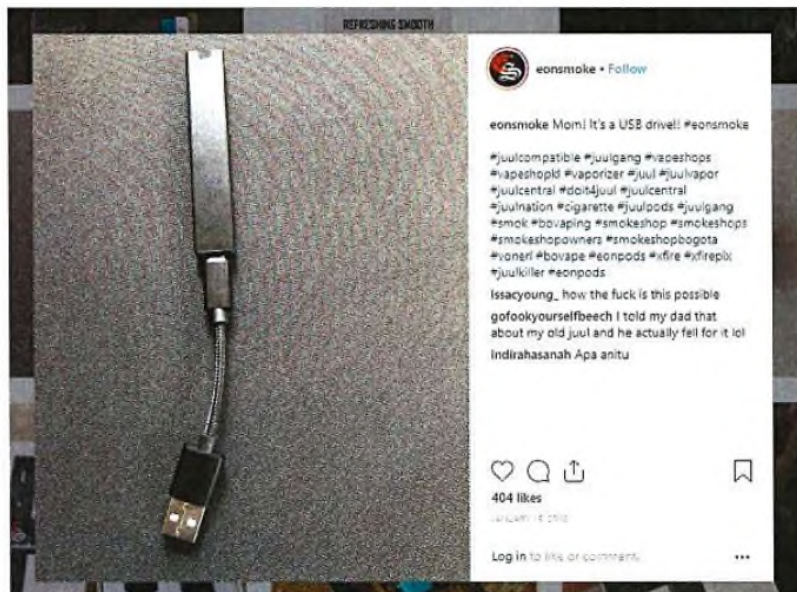
183. Below is an image of the Eonsmoke device:²⁸³

²⁸² Eonsmoke Vapes, Tumblr (June 4, 2018), <https://eonsmoke.tumblr.com/post/174567212961/mango-pods-6-tastes-like-a-sweet-and-crisp> (showing Eonsmoke mango pods compatible with JUUL, captioned by Eonsmoke as "Mango Pods 6%. Tastes like a sweet and crisp Mango! Follow @Eonsmoke"); Eonsmoke Vapes, Tumblr (June 18th, 2018), <https://eonsmoke.tumblr.com/post/175012943246/blueberry-6-restocked-on-the-sites-grab-yours> (showing Eonsmoke blueberry pods compatible with JUUL; captioned by Eonsmoke as "Blueberry 6% restocked on the sites! Grab yours today while supplies last! Follow @Eonsmoke").

²⁸³ Post by Instagram user "eonsmoke" on August 11, 2018.



184. Eonsmoke's devices, like JUUL, are designed to resemble flash drives. Eonsmoke explicitly capitalized on this confusing design by advertising that users of its products could lie to their parents and pretend the product was a flash drive. In the post pictured below, posted on Eonsmoke's Instagram page, the company shared a photograph of its device with the caption "Mom! It's a USB drive!! #eonsmoke."²⁸⁴ On this post, one user comments "I told my dad that about my old juul and he actually fell for it lol."²⁸⁵



²⁸⁴ Post by Instagram user "eonsmoke" on January 15, 2018.

²⁸⁵ *Id.*

1 185. Although the official “eonsmoke” Instagram account is now deleted, on Tumblr,
 2 another social media platform, an account called “Eonsmoke Vapes” contains links and images
 3 of Instagram posts that appear to have been originally posted by Eonsmoke. Each linked
 4 Instagram post is now-deleted. This Tumblr user holds itself out as Eonsmoke’s official page.²⁸⁶
 5 These posts show Eonsmoke frequently used, as a marketing tool, the tendency to confuse its
 6 product with a flash drive:²⁸⁷



19 "2018 we smoking purple flash drives" - @eonsmoke



20 Red devices now restocked and available on Eonsmoke.com! Vape
 21 Eon! @eonsmoke

23 ²⁸⁶ The “Eonsmoke Vapes” Tumblr page uses Eonsmoke’s logo and the page’s bio says “Buy Eonsmoke e juices at
 24 an incredibly [sic] price. Also check out our Juul compatible e-cig pods in six flavors available now! Visit
<https://www.eonsmoke.com>”. Eonsmoke Vapes, Tumblr, <https://eonsmoke.tumblr.com/> (last visited Mar. 29,
 25 2020).

26 ²⁸⁷ Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175286181941/2018-we-smoking-purple-flash-drives-eonsmoke> (showing purple vape; captioned by Eonsmoke as ““2018 we smoking purple flash
 drives’ - @eonsmoke”); Eonsmoke Vapes, Tumblr (Apr. 16, 2018),
<https://eonsmoke.tumblr.com/post/172997769276/red-devices-now-restocked-and-available-on> (showing red vape
 next to soda can with text “Smoke flashdrives all 2018”; captioned by Eonsmoke as “Red devices now restocked
 and available on Eonsmoke.com! Vape Eon! @eonsmoke”).

186. The resemblance between a vaping device and a flash drive would be meaningless if one was selling a smoking cessation device to chain smokers. But Eonsmoke was seeking to tap into the youth social media network JLI created by marketing to users of JUUL. Eonsmoke advertised its product as JUUL-compatible and used hashtags to connect itself to JUUL, including “#juulcompatible,” “#juulgang,” “#juul,” “#doit4juul,” and “#juulnation,” among others.²⁸⁸ Similarly, in a post on the “Eonsmoke Vapes” Tumblr, Eonsmoke’s device and blueberry pods are marketed as “sexy” and tagged with “#juul,” “#juulgang,” “#juulnation,” and “#doit4juul,” among other tags. Eonsmoke also told users to “[f]ollow” them for sales and giveaways as in the post shown here from 2018, even though the FDA made it clear in October 2017 that e-cigarette products are included in its ban on free samples of tobacco products:²⁸⁹

²⁸⁸ Eonsmoke has been so aggressive in copying JUUL and targeting JUUL users that JLI sued Eonsmoke for patent infringement. See Verified Complaint, *JUUL Labs, Inc. v. Eonsmoke et al.*, No. 19- 08405 (D.N.J. Mar. 12, 2019).

²⁸⁹ Eonsmoke Vapes, Tumblr (Feb. 13, 2018), <https://eonsmoke.tumblr.com/post/170841792591/so-sexy-what-do-you-guys-think-follow> (showing red vape and Eonsmoke blueberry pods, captioned by Eonsmoke “So sexy! What do you guys think? Follow @eonsmoke for sales and giveaways! #juul #juulgang #juulnation #juulcentral #doit4juul #doit4state #kangertech #kanger #aspirebreeze #aspirebreezekit #xfire #xfirevape #bovaping #bovape #bovapingus #smokeshop #vapeshop #vapor #vaporshop #smoktech #sourin #sourinair #sourindrop #bouldervape #mrsalte”); see also Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170724357236/we-are-doing-a-quick-weekend-juice-giveaway-of-our> (showing different flavor vape juice with text “Eonsmoke 60mg Juice Giveaway Tag a Friend Now!!”, captioned by Eonsmoke “We are doing a quick weekend Juice giveaway of our made in USA 60mg salt nicotine vape juice!!! Giveaway ends Sunday 11:59 EST February 11th. The rules: 1. Follow @Eonsmoke 2. Tag a friend who vapes! More friends you tag the better your chances of winning!!! We will give away 4 bottles of 30ml juice!!!!!!!!!!!!!!”); see also Eonsmoke Vapes, Tumblr (Feb. 10, 2018), <https://eonsmoke.tumblr.com/post/170725145496/you-probably-know-the-rules-by-now-we-are> (showing three vape devices with text “Gonna giveaway some devices too!!!!!!!!!! Follow @eonsmoke and tag a friend! Free devices giveaway!!!”, captioned by Eonsmoke “You probably know the rules by now.... we are feeling pretty generous! Hope you guys win something!!!! #eonsmoke #vapegiveaway #vapegiveaways #pods #podsgiveaways #vapegiveaways #vapegiveaway #podsgiveaways #eonsmoke #pods”).



187. Eonsmoke’s “Doit4juul” account on Instagram was the most-followed JUUL account on Instagram, with over 81,000 followers as of February 2018.²⁹⁰ On YouTube, one of the “Doit4juul” videos had nearly 192,000 views as of March 2018.²⁹¹ The “Doit4juul” campaign called on followers to share pictures or videos of themselves using JUUL.

188. In addition to driving social media posts about JUUL and vaping, Eonsmoke targeted the youth market by selling its pods and nicotine salts in fruity and candy flavors such as “Sour Gummy Worms,” “Gummy Bear,” “Donut Cream,” “Pineapple Crush,” “Cotton Candy” and more:²⁹²

²⁹⁰ Huang et al., *supra* note 196.

²⁹¹ *Id.*

²⁹² Eonsmoke Vapes, Tumblr (June 12, 2018), [https://eonsmoke.tumblr.com/post/174824533561/sour-gummies-60mg-restocked-today-online-and-\(showing-Sour-Gummy-Worm-salt-nicotine-vape-juice,captioned-by-Eonsmoke-‘Sour-Gummies-60mg-restocked-today-online-and-through-our-vendors!-Follow-@Eonsmoke-for-more-stock,-vape-developments,-and-new-flavors’;see-also-Eonsmoke-Vapes,Tumblr-\(July-1,-2018\),](https://eonsmoke.tumblr.com/post/174824533561/sour-gummies-60mg-restocked-today-online-and-(showing-Sour-Gummy-Worm-salt-nicotine-vape-juice,captioned-by-Eonsmoke-‘Sour-Gummies-60mg-restocked-today-online-and-through-our-vendors!-Follow-@Eonsmoke-for-more-stock,-vape-developments,-and-new-flavors’;see-also-Eonsmoke-Vapes,Tumblr-(July-1,-2018),)



Salt Nicotine Sour Gummy Worms 60mg Or 30mg E Juice E Liquid 30ML



Gummy Bear 30ML 60mg Or 30mg Salt Nicotine E Juice E Liquid

189. When JLI was pressured to stop selling certain flavors in stores, Eonsmoke was more than happy to fill the role. In 2018, Eonsmoke generated an estimated \$5.3 million in revenue.²⁹³ In 2019, after JLI stopped selling flavors like Mango in stores, Eonsmoke's business soared, with an estimated \$43.6 million in tracked sales as of mid-July 2019.²⁹⁴ According to a sixteen-year-old interviewed by *The New York Times*, Eonsmoke's wide range of flavors is a big draw for minors: "A lot of my friends use the blueberry . . . People use the mango because it's somewhat similar to the Juul mango."²⁹⁵

<https://eonsmoke.tumblr.com/post/175446333176/cop-one-of-our-world-class-salt-nicotine-juices-in> (showing Gummy Bear salt nicotine vape juice, captioned by Eonsmoke "Cop one of our world class salt nicotine juices in 60mg. #eonsmoke @eonsmoke"); *see also* Eonsmoke Vapes, Tumblr (June 27, 2018), <https://eonsmoke.tumblr.com/post/175313662276/our-salt-nic-family-of-products-try-one-today-to> (showing salt nicotine vape juices, captioned by Eonsmoke "Our Salt Nic family of products! Try one today to see what all the hype is about. Follow @Eonsmoke").

²⁹³ Sheila Kaplan, 'Juul-alikes' Are Filling Shelves with Sweet, Teen-Friendly Nicotine Flavors, *N.Y. Times* (Aug. 13, 2019), <https://www.nytimes.com/2019/08/13/health/juul-flavors-nicotine.html>.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

190. Eonsmoke followed in JLI's footsteps by advertising these flavors to youth using the apps and websites where minors often spend time, including Instagram, Tumblr, Snapchat, YouTube, and Reddit.²⁹⁶

191. For example, on the social media platform Reddit, user "Eonjuulcompatiblepod" holds itself out as a "Eonsmoke.com Juul Compatible Pods Official Representative" and claims that "Eonsmoke.com is the 2nd largest pod company in the USA and the top 5 in Salt Nicotine Bottled eLiquid. Our pods are Juul compatible so you don't have to buy another device. 7 flavors including blueberry, watermelon and strawberry."²⁹⁷ Eonsmoke used Reddit to try to recruit JUUL users. For example, Eonsmoke commented that its products are not only compatible with JUUL but also cheap, a crucial factor for youth who often do not have much money: "Our pods are compatible with the juul device and our devices are compatible with juul pods and we just lowered the retail to 20\$ online after coupon."²⁹⁸ In addition, when Reddit users were discussing additional JUUL flavors that they would like to try, including watermelon flavor, Eonsmoke was ready with its pitch: "We make watermelon. Step over to the dark side!"²⁹⁹ In a comment on social media platform Reddit, Eonsmoke also advertised that compared to JUUL, "[o]ur throat hit is smoother, buzz is the same." Eonsmoke also advertised its new "disposable pod system

²⁹⁶ Eonsmoke Vapes, Instagram (Feb. 3, 2018) (captioned by Eonsmoke "The official vaping brand of Snapchat :) #snapchat #eonsmoke #eonpods #juul #juulgang #phix #phixvapor").

²⁹⁷ Eonsmoke (@Eonjuulcompatiblepod), Reddit, <https://www.reddit.com/user/Eonjuulcompatiblepod> (last visited Mar. 29, 2020).

²⁹⁸ Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/981ti, Reddit (May 21, 2018, 8:43 PM), https://www.reddit.com/r/juul/comments/8k5wfa/are_there_any_other_devices_that_fit_juul_pods/dzeu9sj/?context=3.

²⁹⁹ Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/12gwar18, Reddit (May 21, 2018, 8:26 PM), https://www.reddit.com/r/juul/comments/8kpdun/what_flavors_do_you_guys_wanna_see_next_from_juul/.

which is 1.3ml and 7% salt nic for \$8\$ you get the battery plus one large pod that lasts like 2 juul pods.”³⁰⁰

192. Eonsmoke’s social media posts, like its products, are designed to appeal to youth. For example, Eonsmoke advertises its product as an accompaniment to candy and posts images popular with youth in the forms of “memes”:³⁰¹



193. Eonsmoke’s social media also explicitly encouraged users to associate their products with movies and toys popular with children, such as Toy Story, and with school supplies:³⁰²

³⁰⁰ Eonsmoke (@Eonjuulcompatiblepod), Comment to @u/richard_bag_DIK, Reddit (Oct. 23, 2018 3:40 PM), https://www.reddit.com/r/juul/comments/9qrxr/3rd_party_pods/e8bqkbb/?context=3.

³⁰¹ Eonsmoke (@eonsmoke), Instagram (May 1, 2018) (showing an Eonsmoke device next to a bag of M&M candies and captioned by Eonsmoke “Can you name a better combo?”); *see also* Eonsmoke (@eonsmoke), Instagram (Feb. 25, 2018) (showing a meme featuring a character from the animated show “The Simpsons”).

³⁰² Eonsmoke Vapes, Tumblr (Mar. 19, 2018), <https://eonsmoke.tumblr.com/post/172051155991/wow-i-love-this-follow-eonsmoke-for-sales-and> (showing Eonsmoke device with Woody from the animated film “Toy Story” and blueberry vape pods, captioned by Eonsmoke as “Wow I love this! Follow @Eonsmoke for sales and giveaways”); *see also* Eonsmoke Vapes, Tumblr (Feb. 16, 2018), <https://eonsmoke.tumblr.com/post/170965631311/the-cotton-candy-60mg-eonsmoke> (showing Eonsmoke devices and nicotine salt vape juice on a desk, captioned by Eonsmoke as “The Cotton Candy 60mg! #eonsmoke”); *see also* Eonsmoke Vapes, Tumblr (Feb. 4, 2018), <https://eonsmoke.tumblr.com/post/170502488296/some-day-time-vibes-krissixx710> (showing Eonsmoke devices and flavor pods on a leopard print backpack, captioned by Eonsmoke as “Some Day Time Vibes @krissixx710”).



Wow I love this! Follow @Eonsmoke for sales and giveaways



The Cotton Candy 60mg! #eonsmoke



Some Day Time Vibes @krissox710

194. Like JLI, Eonsmoke advertises that “[e]ach flavored cartridge is the equivalent of up to a pack of traditional cigarettes.”³⁰³ But Eonsmoke emphasized that its products contain even more nicotine than JUUL. For example, EonSmoke sells its 4x Pods in “Blue Raspberry Flavor JUUL Compatible 6.8% Salt Nic Pods.”³⁰⁴ Eonsmoke also used social media and memes to highlight this “advantage” of their product over JUUL.

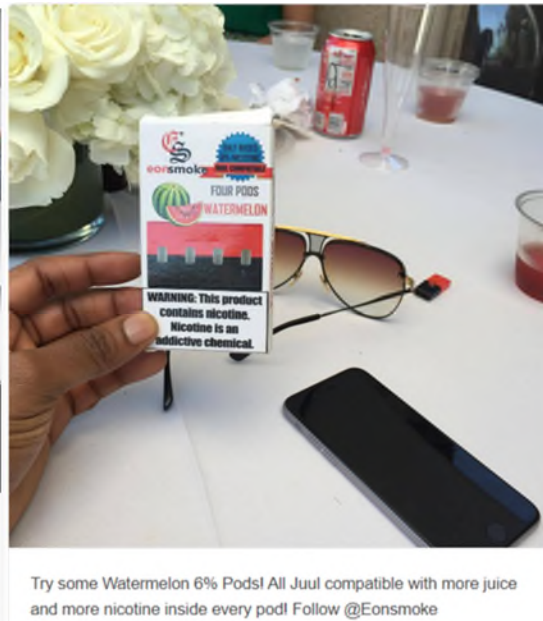
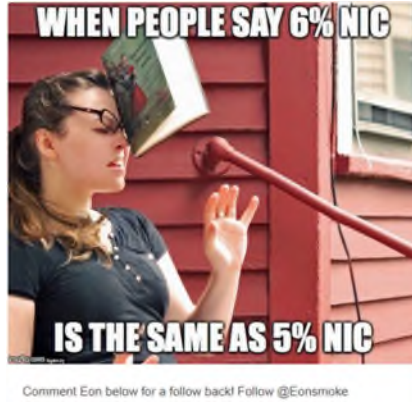
195. For example, on one post, Eonsmoke advertised that its “Watermelon 6% Pods” were “Juul compatible with more juice and more nicotine inside every pod!”³⁰⁵ Eonsmoke highlighted this difference in several of its social media posts.³⁰⁶

³⁰³ *Eonsmoke About Us*, EonSmoke, LLC (Oct. 9, 2019), <https://web.archive.org/web/20191009033001/https://www.eonsmoke.com/about-us/> (last visited Mar. 28, 2020).

³⁰⁴ *Eonsmoke Product*, EonSmoke, LLC (Oct. 9, 2019), <https://web.archive.org/web/20191009085755/https://www.eonsmoke.com/product/4x-blue-raspberry-flavor-juul-compatible-6-8-salt-nic-pods/> (last visited Mar. 28, 2020) (“Flavor profile: Your favorite snack and ejuice flavor now in pod form. Both sweet and sour at the same time, makes sour gummy one of the fan favorites. Blue Raspberry 4x pods just hit that sweet spot of flavor.”).

³⁰⁵ Eonsmoke Vapes, Tumblr (June 26, 2018), <https://eonsmoke.tumblr.com/post/175281868841/try-some-watermelon-6-pods-all-juul-compatible> (showing watermelon vape pods and sunglasses, captioned by Eonsmoke as “Try some Watermelon 6% Pods! All Juul compatible with more juice and more nicotine inside every pod! Follow @Eonsmoke”).

³⁰⁶ Eonsmoke Vapes, Tumblr (Apr. 18, 2018), <https://eonsmoke.tumblr.com/post/173080730801/comment-eon-below-for-a-follow-back-follow> (showing person getting hit in the face with a book with text “When people say 6% nic is the same as 5% nic”, captioned by Eonsmoke as “Comment Eon below for a follow back! Follow @Eonsmoke”); *see also* Eonsmoke Vapes, Tumblr (May 20, 2018), <https://eonsmoke.tumblr.com/post/174088090966/warning-pineapple-pods-contain-nicotine-and-so> (showing



196. This tactic is clearly effective on the youth market. As one sixteen-year-old boy reported “Some of my friends use Eon pods because they have a higher nicotine percentage, because they want a bigger head rush.”³⁰⁷

197. But Eonsmoke also mimicked its references to nicotine while advertising on social media when it believed it was in its marketing interests to do so. Eonsmoke was more than happy

pineapple crush vape pods, captioned by Eonsmoke as “WARNING: PINEAPPLE PODS CONTAIN NICOTINE AND SO MUCH FLAVOR IT MAY CAUSE YOU TO DROP ALL OTHER TYPES OF BRANDS FOR PODS. NICOTINE IS AN ADDICTIVE CHEMICAL. Follow @Eonsmoke”).

³⁰⁷ Kaplan, *Juul-alikes*, *supra* note 293.

1 to use nicotine as a youth-marketing gimmick, but it failed to warn its customers about the
 2 dangers of nicotine.

3 198. Like JLI, Eonsmoke also used “influencers” to advertise its products. Eonsmoke’s
 4 influencers include: Mia Khalifa, an Instagram influencer with 17.9 million followers who
 5 frequently posts suggestive or provocative photos and has a large youth audience; Stevie
 6 Emerson, who got 6.9 million views of his YouTube video titled, “Dude, Where’s my JUUL?”
 7 and frequently referred to vapor from e-cigarettes as “water vapor;” and Donny Karle who, as
 8 discussed above, is better known to youth by his handle “DonnySmokes.” As a twenty-one-year-
 9 old, Karle was getting about three million views each month reviewing vapor products on
 10 YouTube, which began in 2017 when he posted a “unboxing” video of his newly purchased
 11 JUUL.³⁰⁸ Karle’s videos were plainly aimed at youth; as mentioned above, one was titled, “*How*
 12 *to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT.*”³⁰⁹ Eonsmoke’s CEO
 13 Michael Tolmach told *VICE* that the company paid Karle \$1,000 for each review of its
 14 products.³¹⁰

17 199. As of the fall of 2019, Eonsmoke’s products were sold side by side with JUUL
 18 and the best-selling cigarette brand in the United States, Marlboro, a product of Philip Morris
 19 USA and its parent company, Defendant Altria:³¹¹

23 ³⁰⁸ Conti, *supra* note 187.

24 ³⁰⁹ *Id.*

25 ³¹⁰ *Id.*

26 ³¹¹ Eonsmoke Vapes, Tumblr (July 14, 2018), <https://eonsmoke.tumblr.com/post/175887887396/this-is-how-the-top-shelf-of-the-cigarette-shelf> (showing Juuls being sold alongside cigarettes, captioned by Eonsmoke as “This is how the Top shelf of the cigarette shelf looks now! Switch from cigarettes to Eon 6% pods now! #eonsmoke #juul.”; see also Hannah Smothers, *JUUL’s ‘Banned’ Flavors Are Still Absolutely Available in New York City*, *VICE* (Nov. 4, 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city (showing JUUL products side by side with Eonsmoke products in stores in New York City in mid-October 2019).



200. Eonsmoke's conduct did not go unnoticed. On October 24, 2019, the FDA issued a Warning Letter to Eonsmoke, stating that it was selling ninety-six e-cigarette products without a marketing authorization order.³¹² The FDA also criticized Eonsmoke for omitting nicotine warnings in its influencer posts and for making unlawful affirmative statements minimizing the risks of vaping. Although Eonsmoke is not authorized to claim that its products are safer than cigarettes, its website boasted that "Eonsmoke electronic cigarettes provide you with a premium vaping experience without the thousands of harmful chemicals and additives often found in tobacco cigarettes."³¹³

201. Eonsmoke has been sued by multiple state Attorneys General, including from Arizona, Massachusetts, and North Carolina. On February 20, 2020, the Arizona Attorney General was granted a preliminary injunction prohibiting the advertising, marketing, distribution, and sale of all ninety-six Eonsmoke products that the FDA identified as being sold without

³¹² Eonsmoke, LLC Warning Letter, *supra* note 18.

³¹³ Eonsmoke, LLC Warning Letter, *supra* note 18.

1 authorization in its October 2019 Warning Letter.³¹⁴

2 **H. The Proliferation of “JUULalikes” and Next-Generation Products Targeting** 3 **Youth**

4 202. Eonsmoke was not the only company to follow JLI’s lead. As JUUL sales
5 skyrocketed in 2017 and 2018, everyone from tobacco industry giants to vape start-ups launched
6 their own products with the key elements of JUUL’s design: flavor pods, nicotine salts, and a
7 tech-like appearance.

8 203. Imperial Brands and Reynolds American, both of which already marketed e-
9 cigarettes, launched “JUULalike” versions of their products in 2018. As Alison Cooper, the CEO
10 of Imperial Brands, put it, “The type of experience JUUL delivered was definitely a step
11 forward.”³¹⁵ In February 2018, Imperial Brands launched a new pod-based device called
12 “myblu,” noting in its press release that “[p]od-based devices are the fastest growing segment of
13 the e-vapour category in the USA.”³¹⁶ Imperial Brands offered myblu pods in eleven flavors,
14 including Polar Mint, Mango Apricot, and Green Apple.³¹⁷ In July 2018, Imperial Brands
15 introduced a line of flavor pods called myblu INTENSE, using a nicotine salt formulation, with
16 4% nicotine strength.³¹⁸
17
18
19

20 ³¹⁴ *Attorney General Mark Brnovich Obtains Injection Against Vaping Company Eonsmoke*, Off. Att’y Gen. State
21 of Ariz. (Feb. 20, 2020), <https://www.azag.gov/press-release/attorney-general-mark-brnovich-obtains-injunction-against-vaping-company-eonsmoke>.

22 ³¹⁵ Steve Birr, *The Makers of Blu E-Cigarettes Are Taking On JUUL With A New Vape Device*, Daily Caller (July 5,
2018), <https://dailycaller.com/2018/07/05/blu-e-cigarette-juul-vape/>.

23 ³¹⁶ *Imperial Brands launches new vaping product in USA*, Imperial Brands (Feb. 1, 2018),
24 <https://www.imperialbrandsplc.com/media/key-announcements/2018/imperial-brands-launches-new-vaping-product-in-usa.html>.

25 ³¹⁷ *blu Launches myblu E-Vapor Device*, CStore Decisions (Feb. 21, 2018),
<https://cstoredecisions.com/2018/02/21/blu-launches-myblu-e-vapor-device/>.

26 ³¹⁸ Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>; Angelica LaVito, *Juul’s momentum slips as NJOY woos customers with dollar e-cigarettes*, CNBC (Aug. 20, 2019), <https://www.cnbc.com/2019/08/20/juuls-momentum-slips-as-njoy-woos-customers-with-dollar-e-cigarettes.html>.

204. The launch of Imperial Brands' *myblu* as a "JUULalike" product concerned Vince Willmore, Vice President of Communications for the Campaign for Tobacco-Free Kids. According to Willmore, "Juul is our biggest concern right as it is being widely used by kids across the country . . . [b]ut we are also concerned that the introduction of a growing number of Juul-like products could make the problem even worse."³¹⁹ Willmore is not the only one worried. Then-FDA Commissioner Gottlieb expressed concern about products like *myblu*, stating that such products "closely resemble a USB flash drive, have high levels of nicotine and emissions that are hard to see. These characteristics may facilitate youth use, by making the products more attractive to children and teens."³²⁰

205. According to British American Tobacco, parent company of Reynolds American, it had used nicotine salts in its Vuse e-liquid in the U.S. since 2012, "[s]o to be clear—not in response to Juul," according to a spokesperson. But in August 2018, R.J. Reynolds Vapor Co. launched the Vuse Alto, with pre-filled pods available in 5% nicotine strength, compared to the 3% nicotine in Vuse Vibe cartridges and 1.5% nicotine in the Vuse Ciro. "Juul has achieved tremendous progress over the last 18 months," Reynolds American CEO Ricardo Oberlander told reporters, adding that he sees JUUL as "showing the great potential for growth" in the e-cigarette industry.³²¹ Seeking some of the social media marketing success that propelled JLI's

³¹⁹ Ben Tobin, *FDA targets e-cigarettes like Juul as teachers fear 'epidemic' use by students*, USA Today (Aug. 16, 2018), <https://www.usatoday.com/story/money/2018/08/16/juul-labs-back-school-teachers-e-cigarettes/917531002/>.

³²⁰ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes, FDA (Apr. 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

³²¹ Richard Craver, *Reynolds Vapor prepares national launch of new e-cig rival to JUUL*, Winston-Salem J. (July 17, 2018), https://www.journalnow.com/business/reynolds-vapor-prepares-national-launch-of-new-e-cig-rival/article_7ba10442-d438-575e-af23-794173089a8a.html.

1 growth, Reynolds American began marketing Vuse e-cigarettes on Twitter and Instagram in May
2 2019.³²²

3 206. Also in 2018, as discussed further below, Altria launched its pod-based products,
4 the MarkTen Elite and the Apex by Markten.

5 207. Researchers from SRITA called it “a nicotine arms race,” writing that “JUUL’s
6 success in the e-cigarette marketplace has spurred a variety of new pod-based products with
7 exceptionally high nicotine.”³²³ “As of September 2018,” the researchers wrote, “there were at
8 least 39 JUUL knock off devices on the market”—none of which were sold prior to the
9 introduction of JUUL.³²⁴ These new devices followed JLI’s example of high nicotine and
10 discrete design:
11

12 The vast majority of these emulate, and sometimes exceed, JUUL’s exceptionally
13 high nicotine levels. Like JUUL, they are also inconspicuous, small enough to
14 easily fit in a pocket or purse, and their purpose as a nicotine delivery system may
15 not be obvious to many casual observers, including parents and teachers.³²⁵

16 208. In addition to the thirty-nine “JUULalike” devices, the researchers identified
17 fourteen brands marketing fifteen JUUL-compatible pods, and seventy-one American e-liquid
18 brands selling nicotine salt e-liquids with 5% or greater nicotine strength.³²⁶ All but one vendor
19 of the JUUL-compatible pods offered mango flavor.³²⁷

20 209. The rapid proliferation of vape products in JUUL’s wake and the speed with
21 which the vape market evolves make it difficult to enact effective legislative and regulatory
22

23
24 ³²² Jennifer Maloney, *Reynolds, With an Eye on Juul, Wades into Social Media*, Wall St. J. (May 15, 2019),
<https://www.wsj.com/articles/reynolds-with-an-eye-on-juul-wades-into-social-media-11557921721>.

25 ³²³ Robert K. Jackler & Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine product market*. 28
Tobacco Control 623-28 (2019).

26 ³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 2.

³²⁷ *Id.*

1 measures. When the FDA finalized its policy restricting flavored pods and “cartridge-based
2 products” in January 2020, vape products sprung up in the regulatory loopholes almost
3 immediately.

4 210. The FDA’s enforcement policy took effect on February 6, 2020, and covered:

- 5 • Any flavored, cartridge-based ENDS [Electronic Nicotine Delivery System]
6 product (other than a tobacco- or menthol-flavored ENDS product);
- 7 • All other ENDS products for which the manufacturer has failed to take (or is
8 failing to take) adequate measures to prevent minors’ access; [and]
- 9 • Any ENDS product that is targeted to minors or likely to promote use of
10 ENDS by minors.³²⁸

11 211. In effect, this was a ban on flavored e-cigarette pods, other than tobacco and
12 menthol flavors. But both flavored nicotine liquid designed for refillable vape devices and
13 disposable vape products were allowed to remain on the market.³²⁹

14 212. In announcing the ban, the Secretary of HHS recognized, “The United States has
15 never seen an epidemic of substance use arise as quickly as our current epidemic of youth use of
16 e-cigarettes.”³³⁰ FDA Commissioner Stephen Hahn, M.D. added, “As we work to combat the
17 troubling epidemic of youth e-cigarette use, the enforcement policy we’re issuing today confirms
18 our commitment to dramatically limit children’s access to certain flavored e-cigarette products
19 we know are so appealing to them – so-called cartridge-based products that are both easy to use
20 and easily concealable.”³³¹

21 213. Enterprising companies recognized loopholes in a policy aimed only at cartridge-
22
23

24 ³²⁸ FDA News Release, *supra* note 270.

25 ³²⁹ Abby Goodnough et al., *With Partial Flavor Ban, Trump Splits the Difference on Vaping*, N.Y. Times (Jan. 2,
26 2020), <https://www.nytimes.com/2020/01/02/health/flavor-ban-e-cigarettes.html>; Sheila Kaplan, *Teens Find a Big Loophole in the New Flavored Vaping Ban*, N.Y. Times (Jan. 31, 2020),
<https://www.nytimes.com/2020/01/31/health/vaping-flavors-disposable.html>.

³³⁰ FDA News Release, *supra* note 270.

³³¹ *Id.*

1 based products and the opportunity to fill the demand for fruit-flavored nicotine created by JLI.
 2 Disposable vape devices, not covered by the FDA’s ban, have become increasingly popular with
 3 youth, building on the public health crisis Defendant JLI helped create. The use of disposable vape
 4 devices is now “rampant” in schools.³³² These products are typically cheaper than JUULpods and
 5 are offered in increasingly more flavors.³³³ One high school junior told *The New York Times* that
 6 she starting vaping mint and other flavored JUULs when she was in tenth grade.³³⁴ She now vapes
 7 using disposable “Puff Bars” because “[t]hey have flavors like the Juul flavors. It’s basically like
 8 smoking a Juul.”³³⁵ Other high school students confirmed the popularity of Puff Bars, saying they
 9 “saw them everywhere” and “[t]hat’s what everyone was talking about.”³³⁶

11 214. Defendant Eonsmoke also sells disposable vape devices called Eon St!Ks, in a
 12 wide variety of youth-friendly flavors such as Blue Raspberry, Mango, Pink Lemonade, Lush
 13 Ice, and Berry Gelato.³³⁷ Not only do Eonsmoke’s products come in kid-friendly flavors, they are
 14 sold in strengths of 6.8% nicotine, even stronger than JUUL’s advertised 5% nicotine.³³⁸

22 ³³² Kaplan, *Teens Find a Big Loophole*, *supra* note 329.

23 ³³³ *Id.*

24 ³³⁴ *Id.*

25 ³³⁵ *Id.*

26 ³³⁶ Angeline Jane Bernabe et al., *Loophole in vaping ban has teens turning to disposable e-cigarettes*, Good Morning Am. (Mar. 4, 2020), <https://www.goodmorningamerica.com/wellness/story/loophole-vaping-ban-teens-turning-disposable-cigarettes-69376300>.

³³⁷ *Id.* (listing Eonsmoke’s St!K disposable vape flavors as Blue Raspberry, Watermelon, Strawberry, Mango, Pineapple, Green Apple, Citrus, Cucumber, Peach, Pink Lemonade, Lush Ice, Strawberry Banana, Cubano, Kiwi Strawberry, Pomegranate, and Berry Gelato).

³³⁸ *Id.*



339

215. Eonsmoke also provides the flavoring for another disposable vape device called
 340 fruyt.³⁴⁰ Eonsmoke St!Ks and Puff Bars have been sold side by side in stores.³⁴¹



216. As a Professor at Rutgers Center for Tobacco Studies stated, “[t]hese disposable,
 completely self-contained e-cigarettes like Puff Bar and others share all of the characteristics that

³³⁹ *St!K Disposables 6.8% Nicotine 3 Pack*, Eonsmoke.com, https://www.eonsmoke.com/product/__trashed-3/ (last visited Mar. 28, 2020).

³⁴⁰ Cristine Delnevo et al., *Rapid proliferation of illegal pod-mod disposable e-cigarettes*, Tobacco Control 055485 (Jan. 6, 2020), <https://tobaccocontrol.bmj.com/content/early/2020/01/30/tobaccocontrol-2019-055485.full>.

³⁴¹ Kaplan, *Teens Find a Big Loophole*, *supra* note 329.

made Juul a problem.”³⁴² In online discussions of these disposable vape products, including Eon St!K, users focused on “tasting similar to JUUL flavours, lasting longer than a JUUL pod and having a good ‘hit’ like a JUUL . . . [and] posted images highlight the similar physical dimensions to JUUL.”³⁴³ Researchers evaluating the rise of these products noted that “these products are similar to JUUL—the brand driving high rates of youth vaping—in form and function.”³⁴⁴ Disposable vape devices like Defendant Eonsmoke’s are “nearly identical in size” to JUUL and “also contain nicotine salts,” but also offer even more flavors, even higher nicotine concentrations, colorful marketing, and low pricing.³⁴⁵ Researchers also noted that “as a ‘single use product’, disposable [vape devices] further contribute to plastic waste and microplastic pollution, which is a growing health concern.”³⁴⁶ This waste is a problem for Plaintiff as well as other municipalities, schools, and counties, as discussed below.

217. In response to increasing pressure, the founder and CEO of the company behind Puff Bar, Cool Clouds, announced that the company has “ceased all distribution” of Puff Bar products in the U.S. and stopped licensing to “prevent third parties from distributing in the U.S.”³⁴⁷ Defendant Eonsmoke’s disposable vape devices, on the other hand, are still available. Moreover, for every company selling candy-flavored vape products that exits the market, more materialize to take its place, driven by the knowledge that there is a large market of nicotine-addicted youth eager for their products.

218. The rise in disposable products as a means to evade bans on flavored e-cigarettes

³⁴² *Id.*

³⁴³ Delnevo, *Rapid proliferation*, *supra* note 340.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

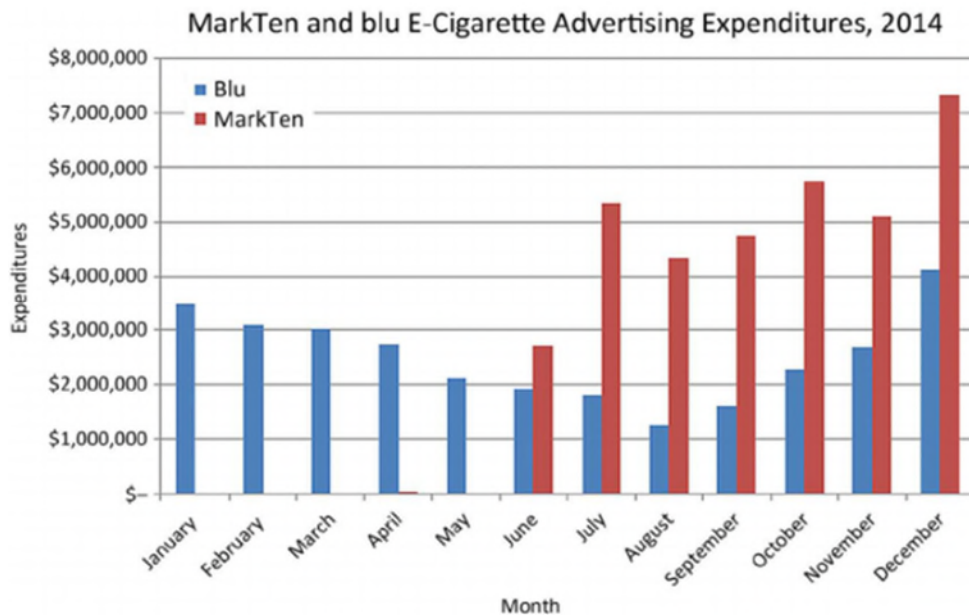
³⁴⁷ Sophie Alexander & Angelica LaVito, *Upstart L.A. company pulls back Puff Bar single-use vaping product after outcry*, L.A. Times (Feb. 20, 2020), <https://www.latimes.com/business/story/2020-02-20/vaping-loophole>.

demonstrates why partial regulatory measures—banning flavor pods but not all flavored tobacco products, for example—are not sufficient to halt the spread of youth vaping.³⁴⁸

I. JLI and Altria Join Forces to Protect JUUL’s Market Domination

1. Before conspiring with JLI, Altria tried to corner the youth e-cigarette market

219. Altria’s first e-cigarette was a cigarette-lookalike, or “cigalike,” style of e-cigarette, sold under the brand MarkTen. Following a phased roll-out of MarkTen in Indiana and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for the market leader at that time, blu e-cigarettes.³⁴⁹



³⁴⁸ Press Release: *Raising the Tobacco Age to 21 Won’t Stop the Youth E-Cigarette Epidemic and Is Not a Substitute for Eliminating the Flavored Products that Lure Kids*, Tobacco Free Kids (Dec. 16, 2019), https://www.tobaccofreekids.org/press-releases/2019_12_16_tobacco21_flavor.

³⁴⁹ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria’s MarkTen enters the marketplace*, 25 Tobacco Control e16-18 (2015), <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

220. E-cigarette advertising spending for 2014 totaled \$88.1 million, a 52% increase from 2013.³⁵⁰ Of the \$88.1 million spent in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35 million.³⁵¹ More than eighteen million middle school and high school children were exposed to e-cigarette advertisements in 2014.³⁵² Approximately one in two middle school and high school age children saw advertisements for e-cigarettes in retail stores and almost two in five saw advertisements for e-cigarettes online.³⁵³



221. At the time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were using “exactly the same themes we saw work with kids in the U.S. for decades with cigarettes.”³⁵⁴

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Carley Thompson, *How JUUL cornered the youth tobacco market and what you should know*, King Cty. Pub. Health Insider (Aug. 6, 2018), <https://publichealthinsider.com/2018/08/06/how-juul-cornered-the-youth-tobacco-market-and-what-you-should-know/>.

³⁵³ *Id.*

³⁵⁴ Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. Times (June 17, 2017), <https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

1 222. Although free samples of tobacco products are prohibited under the terms of the
2 Tobacco Master Settlement Agreement, as well as FDA regulations issued in 2010, Altria
3 exploited the grey area in the regulation of e-cigarettes and distributed coupons for free sample
4 nicotine cartridges as part of its MarkTen launch. (The FDA has since issued finalized guidance
5 clarifying the scope of the ban on distributing free samples or coupons to generally include e-
6 cigarettes or components.³⁵⁵)

7
8 223. Altria utilized its extensive distribution network, reaching 60,000 stores in a
9 month.³⁵⁶ For instance, in Arizona, Altria's distribution network allowed MarkTen to achieve a
10 48% e-cigarette market share in just seven weeks after launch, according to then-CEO Marty
11 Barrington's statements on an earnings call.³⁵⁷ Altria was clear in its intent to dominate the
12 e-cigarette market as it has the traditional cigarette one: "We are the market leader today and we
13 will continue to be," Barrington told investors at the time of MarkTen's launch.³⁵⁸

14
15 224. Altria also began acquiring small companies in the vaping industry, starting in
16 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in
17 flavors including "Vanilla Dreams" and "Smooth Chocolate."³⁵⁹ In 2016, Altria acquired a vape
18 product called Cync, from Vape Forward.³⁶⁰ Cync is a small vapor device that uses prefilled
19 pods, similar to JUUL.
20

21
22 ³⁵⁵ *The Prohibition of Distributing Free Samples of Tobacco Products: Guidance for Industry*, FDA (Oct. 2017),
<https://www.fda.gov/media/119231/download>.

23 ³⁵⁶ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014),
<https://csnews.com/markten-national-rollout-hits-60000-stores>.

24 ³⁵⁷ Mike Esterl, *Altria 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>.

25 ³⁵⁸ Kress, *supra* note 356.

26 ³⁵⁹ Esterl, *supra* note 357; 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-%20E-Cigarettes%20with%20Cover.pdf>.

³⁶⁰ Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf.

225. In 2016, Altria launched a pod-based, “closed-tank” e-cigarette like 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.”³⁶¹ Altria told investors that the product “offers a variety of flavorful liquids in a modern, discrete device format.”³⁶² After its nationwide launch, former Altria CEO Barrington, boasted that the Elite’s pods held more than twice as much liquid as JUUL’s.³⁶³



226. Altria quickly followed with another pod-based product, the Apex by MarkTen.

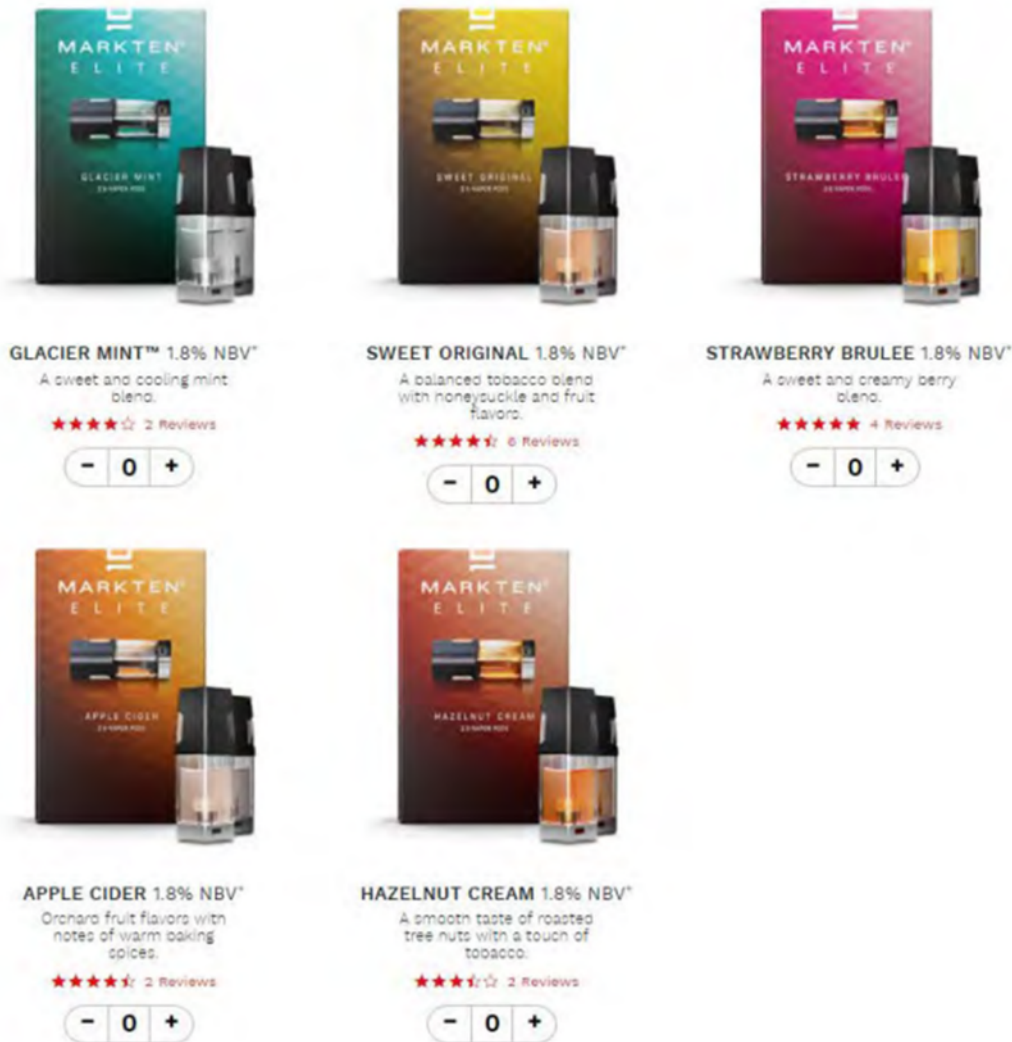


³⁶¹ Angel Abcede, *Altria Introducing Closed Vapor System*, CSP Daily News (Feb. 27, 2018), <https://www.cspdailynews.com/tobacco/altria-introducing-closed-vapor-system#page=0>.

³⁶² Remarks by Begley, *supra* note 360 at 18.

³⁶³ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.2 (Feb. 21, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000076418018000020/exhibit992-2018cagnyremarks.htm> (remarks by Barrington and other members of Altria’s senior management team).

227. As mentioned above, Altria marketed its e-cigarettes in flavors that would appeal to youth. For example, the MarkTen Elite came in “Strawberry Brulee,” “Glacier Mint,” “Apple Cider,” and “Hazelnut Cream”:³⁶⁴



228. In February 2017, Altria told investors at the 2017 Consumer Analyst Group of New York (CAGNY) Conference that over the past year, “Nu Mark LLC (Nu Mark) made

³⁶⁴ *Examples New Ecigs Post Juul* at 13, Campaign for Tobacco-Free Kids (July 18, 2018), https://www.tobaccofreekids.org/assets/images/content/2018_07_18_New_Ecigs_Post_Juul.pdf.

1 excellent progress toward its long-term aspiration of becoming a leader in e-vapor.”³⁶⁵ In his
 2 remarks, Willard said, “Nu Mark, our e-vapor company, had a very strong year. It made
 3 excellent progress toward establishing MarkTen as a leading brand in the category, continued to
 4 improve its supply chain, and took the necessary steps to comply with the deeming
 5 regulations.”³⁶⁶ He noted, however, that the estimated “total 2016 e-vapor consumer spending
 6 was roughly flat compared to the prior year at approximately \$2.5 billion.”³⁶⁷

8 229. Despite its best efforts, in 2017, Altria’s MarkTen e-cigarettes had a market share
 9 of only 13.7%, well behind JLI’s growing market share of 40%.³⁶⁸ Thus, despite its public
 10 statements to the contrary, Altria knew that it would not achieve its goal of dominating the e-
 11 cigarette market through its own products.

12 **2. JLI and Altria Decide to Work Together to Expand JUUL’s Reach** 13 **and Cover-Up JLI’s Youth Marketing**

14 230. As set forth above, Big Tobacco has long known the importance of targeting
 15 youth and addicting them to nicotine. Profitable growth requires a pipeline of “replacement
 16 smokers” or e-cigarette users. JLI was wildly successful at expanding that pipeline, hooking
 17 youth who had never smoked cigarettes—and who, having grown up in the decades of anti-
 18 smoking efforts following the Tobacco Master Settlement Agreement, never intended to try
 19 cigarettes. JLI’s customers largely represented the generation that Altria could not reach.
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24 ³⁶⁵ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.2 at 1 (Feb. 22, 2017),
<https://www.sec.gov/Archives/edgar/data/764180/000076418017000020/exhibit991-2017cagnyremarks.htm>
 25 (remarks by Barrington and other members of Altria’s senior management team).

³⁶⁶ *Id.* at 9.

³⁶⁷ *Id.* at 10.

³⁶⁸ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, Winston-Salem J. (Dec. 14, 2017),
https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.

231. While still popular overseas, cigarette use has been declining in the United States in the last decade,³⁶⁹ especially with youth. Altria estimates that the cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023.³⁷⁰ Altria later adjusted the estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking to twenty-one.³⁷¹

232. As described above, Altria marketed its own e-cigarettes, testing different versions of the MarkTen e-cigarette and acquiring products such as the GreenSmoke cigalike and the Cync vape device. But JLI, a younger, tech-oriented, social-media-savvy company, was far better at targeting youth and making its product “cool” than Altria and other Big Tobacco companies were.

233. Both JLI and Altria knew that JUUL’s meteoric growth came from young, nonsmoking customers. As described below, Altria told the FDA as much in an October 25, 2018 letter responding to the FDA’s request for a plan of action to address youth e-cigarette use. Altria informed the FDA that it was exiting the market for pod-based e-cigarettes, on the grounds that these products contributed to the youth vaping epidemic. Altria even displayed this letter to the public by posting it on its website, purporting to disclaim the very marketing and advertising tactics JLI relied on. But by this time, Altria and JLI had already been collaborating for

³⁶⁹ *Current Cigarette Smoking Among Adults In the United States*, CDC, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last visited Mar. 28, 2020); *Youth and Tobacco Use*, CDC, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Mar. 28, 2020).

³⁷⁰ *Altria’s Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019), <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

³⁷¹ *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019), <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

1 approximately one year, and just seven weeks later, Altria would publicly announce its \$12.8
2 billion investment in JLI.

3 234. Altria wanted JUUL's profits and new customer base. JLI, facing a public outcry,
4 needed Altria's help to navigate the storm that it created. The solution was a well-orchestrated
5 cover-up with JLI dramatically changing its tune to promote itself as a company focused on
6 "harm reduction," purportedly providing existing adult smokers with a way to "Make the
7 Switch" from combustible cigarettes to JUUL.
8

9 235. For that reason and others, Defendants JLI and Altria formed an association-in-
10 fact enterprise ("the Youth Marketing Cover-Up Enterprise") to protect and expand the market
11 for JUUL through fraudulent means, including disseminating false statements denying JLI's
12 efforts to target youth with nicotine products and characterizing JUUL as a cessation device that
13 was never intended for, or marketed to, youth. All the while, JLI and Altria understood that
14 maintaining and expanding JUUL's market share meant maintaining and expanding a customer
15 base predominantly made of youth users.
16

17 236. Altria was prepared for this deception. Altria, and the rest of Big Tobacco, has a
18 long history of targeting youth with nicotine products and then lying about it. In fact, this type of
19 cover-up of youth marketing formed one of the bases for the U.S. Department of Justice's
20 ("DOJ") 1999 RICO lawsuit alleging that Big Tobacco engaged in a conspiracy to deceive the
21 public about the health effects of smoking and about their marketing to youth. In 2006, in a
22 1,683-page opinion, Judge Kessler upheld the DOJ's RICO claim against Altria and the other
23 Big Tobacco companies. Judge Kessler found that Big Tobacco, including Altria and its
24 subsidiary Philip Morris USA, committed predicate racketeering acts by falsely claiming that
25 "they do not market to youth, that their marketing is only aimed at adult smokers, and that their
26

1 marketing has no impact on youth smoking.”³⁷². For example, Philip Morris³⁷³ and its co-
 2 conspirators caused to be transmitted a false claim that the cigarette industry “feel[s] very
 3 strongly that cigarette smoking is an adult custom that one should not even consider until they’ve
 4 reached the age of maturity,” which it claimed was age twenty-one.³⁷⁴ Similarly, the court found
 5 that Philip Morris’s published marketing policies, claiming that “[a]ll of our brand advertising
 6 and promotions are intended for adults who choose to smoke” were false.³⁷⁵ The court also found
 7 that Altria made false statements in support of the Enterprise at a 2000 Philip Morris
 8 shareholders meeting when the Altria Board of Directors denied that Philip Morris marketed to
 9 youth:³⁷⁶

11 [Philip Morris] has programs and policies in place, and are subject to legal
 12 restrictions, that help ensure that marketing and advertising activities be directed
 13 only to adults that choose to smoke . . . Philip Morris U.S.A. has a long-standing
 14 commitment to direct its advertising only at adults who choose to smoke [and]
 15 complies with an industry code and company policy that help ensure that its
 16 marketing efforts are directed only to adults who choose to smoke.

17 Judge Kessler concluded that “[t]hese public statements are false and misleading and have been
 18 made to further the Enterprise’s overall objective of maximizing Defendants’ profits from the
 19 sale of cigarettes.”³⁷⁷ As Judge Kessler explained, these “Defendants’ efforts to target youth
 20 [we]re based on a recognition that the youth market is critical to the growth of their industry;
 21 their denials of those efforts [we]re based on the recognition that the public considers pursuit of
 22 the youth market to be ethically unacceptable.”³⁷⁸

23 ³⁷² *Philip Morris*, 449 F. Supp. 2d at 862.

24 ³⁷³ Judge Kessler found that Altria “effectively and actively control[ed] the activities of all of its subsidiaries,
 25 including Defendant Philip Morris USA Inc.” *Id.* at 204 n.12.

26 ³⁷⁴ *Id.* at 678-79.

³⁷⁵ *Id.* at 683.

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 862.

³⁷⁸ *Id.* at 863.

237. The Youth Marketing Cover-Up Enterprise’s attempted cover-up of JLI’s youth marketing is more of the same. As part of the fraudulent Enterprise, JLI and Altria made false statements to the public and to regulators about actions they were purportedly taking to address rampant youth vaping, including removing certain JUULpod flavors from the market while continuing to promote Mint JUULpods with the knowledge that Mint was a preferred flavor with youth, with the intent that parents, policymakers, and regulators would rely on such false statements in a way that would allow JLI to keep selling JUUL products.

238. The Youth Marketing Cover-Up Enterprise is an ongoing and continuing organization with a common purpose of covering up JLI’s youth focus and fraudulently maintaining and expanding JUUL’s massive and ill-gotten market share.

3. Following JLI’s Journey Closely: Formation of the Youth Marketing Cover-Up Enterprise

239. Defendants Altria and JLI formed the Youth Marketing Cover-Up Enterprise by at least late 2017 or early 2018.

240. From JLI’s beginnings, Altria, a pioneer in addicting youth to nicotine, “followed Juul’s journey rather closely.”³⁷⁹

241. According to Altria’s current CEO, Howard A. Willard III, Altria first contacted JLI about a commercial relationship in early 2017, with “confidential discussions” beginning in the spring of 2017.³⁸⁰ JLI and Altria’s “confidential discussions” occurred “over a period of approximately 18 months.”³⁸¹

³⁷⁹ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 at 4 (Feb. 20, 2019), <https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm> (Remarks by Willard and other members Altria’s senior management team).

³⁸⁰ Willard, *Letter to Senator Durbin*, *supra* note 23 at 3.

³⁸¹ *Id.*

242. In November 2017, Altria announced a minority investment in Avail Vapor, LLC (“Avail”), one of the largest vape store chains in the United States, which also produces and sells its own branded e-liquids for refillable “open-tank” devices.³⁸² Altria’s comments to investors highlighted that the investment allowed Altria access to Avail’s “extensive data around adult vaper purchasing patterns,” and “full-service analytical science laboratory,” located in Altria’s hometown of Richmond, Virginia.³⁸³

243. On information and belief, the “confidential discussions” between JLI and Altria intensified in late 2017 and early 2018, and the companies began to lay the groundwork for Altria to support the Youth Marketing Cover-Up Enterprise. Altria has acknowledged that it was monitoring JUUL sales data “in late 2017 and early 2018.”³⁸⁴ At that time, JUUL was dominating the e-cigarette market. By November 2017, JLI had sold one million units of its blockbuster product, with a 621% growth in year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.³⁸⁵

244. Altria recognized that JLI had, against the backdrop of steadily declining cigarette sales, created the perfect product to addict a new generation to nicotine. But to keep the product from disappearing off the shelves as quickly as it had arrived due to public outcry, JLI would need a more sophisticated approach to marketing and to navigating the storm of public and

³⁸² Rich Duprey, *Is Altria Trying to Corner the E-Cig Market?*, Motley Fool (Jan. 7, 2018), <https://www.fool.com/investing/2018/01/07/is-altria-trying-to-corner-the-e-cig-market.aspx>; Lauren Thomas, *Altria shares plunge after FDA releases road map to curb tobacco-related deaths*, CNBC (July 28, 2017), <https://www.cnbc.com/2017/07/28/altria-shares-fall-after-fda-releases-roadmap-to-curb-tobacco-related-deaths.html>.

³⁸³ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 at 19 (Nov. 2, 2017), <https://www.sec.gov/Archives/edgar/data/764180/000076418017000131/exhibit991-2017investorday.htm>.

³⁸⁴ Willard, *Letter to Senator Durbin*, *supra* note 23 at 6 (emphasis added).

³⁸⁵ Robinson, *supra* note 14.

1 regulatory and congressional scrutiny on the horizon. In short, JLI needed Altria's experience,
2 and Altria needed access to JLI's best-selling e-cigarette and its youth market.

3 245. While following JLI's journey closely and engaging in "confidential discussions,"
4 Altria had tested variations on the MarkTen that shared features of JUUL, such as the MarkTen
5 Bold, with a nicotine salt formulation and 4% nicotine by weight, and the MarkTen Elite, "a
6 small pod-based product that offers a variety of flavorful liquids in a modern, discrete device
7 format."³⁸⁶ But as noted above, sales of Altria's own e-cigarettes trailed behind both JUUL and
8 British American Tobacco's Vuse.
9

10 246. Altria wanted JLI's market dominance and young customer base. JLI, in the
11 crosshairs of a public and regulatory outcry, needed Altria's experience placating the public and
12 its influence in Washington. Together, by lying about JLI's efforts to addict youth to nicotine
13 and fraudulently misrepresenting the nature of JUUL, JLI and Altria could protect, maintain, and
14 expand JLI's massive and ill-gotten youth market share.
15

16 **4. Late 2017–August 2018: Early Coordination of Altria with the Youth** 17 **Marketing Cover-Up Enterprise**

18 247. As the sales of JUUL continued to mushroom, it was readily apparent, and widely
19 reported, that the rapid growth in sales was due to the surging popularity of "juuling" among
20 teenagers. By March 2018, multiple national news outlets including *National Public Radio*, *USA*
21 *Today*, and *Business Insider* reported youth were using JUUL with alarming frequency, posting
22 about "juuling" in school restrooms on social media, and bragging about being able to use the
23 device in the classroom due to JUUL's discreet design.
24

25 248. One of the priorities for the Youth Marketing Cover-Up Enterprise was therefore
26 to control the messaging and narrative around youth vaping. Faced with an urgent, growing

³⁸⁶ Remarks by Begley, *supra* note 360.

1 public health crisis, national media attention, and the ire of the public, the FDA and members of
 2 Congress, the Youth Marketing Cover-Up Enterprise realized that given the increasing public
 3 and regulatory scrutiny of JLI's marketing tactics, a dis-information campaign was urgently
 4 needed to protect its bottom line, and it turned to a sophisticated and savvy third party for
 5 assistance. By at least April 2018, both JLI and Altria were working with the global public
 6 strategy firm Mercury LLC ("Mercury"), which is part of Omnicom Group, Inc. ("Omnicom"),
 7 one of the "Big Four" advertising holding companies dominating marketing and communications
 8 worldwide since the 1990s, second only to WPP plc.³⁸⁷

10 249. Mercury filed a lobbying registration on behalf of Defendant Altria Client
 11 Services LLC, effective April 1, 2018, identifying "tobacco product regulations" as the specific
 12 issue; two of Mercury's managing directors, Stephen Aaron and Al Simpson, handle the Altria
 13 account.³⁸⁸ Aaron, who was the federal liaison for the National Rifle Association for nearly a
 14 decade, describes his role as "help[ing] clients nuance complex issues to deliver effective
 15 messages amid intense national debates to move the public in support of client agendas."³⁸⁹ Big
 16 Tobacco spin tactics are familiar territory for Mercury: another Mercury client is the Foundation
 17 for a Smoke-Free World ("Foundation"), an organization established and solely funded by Philip
 18 Morris International that claims to be an independent scientific body.³⁹⁰ The World Health
 19
 20
 21

22 ³⁸⁷ See *HISTORY's Moments in Media: The Birth of the Big 4 Holding Companies*, MediaVillage (Jan. 13, 2020),
 23 <https://www.mediavillage.com/article/historys-moments-in-media-the-birth-of-the-big-4-holding-companies/>;
 24 Nathalie Tadena & Joshua Jamerson, *Omnicom Posts Strong Sales Growth Advertising Giant's Second-Quarter Earnings Rise 12%*, Wall S. J. (July 22, 2014), <https://www.wsj.com/articles/omnicom-sees-earnings-revenue-growth-top-expectations-1406028567>.

25 ³⁸⁸ Kevin McCauley, *Altria Taps Mercury for Tobacco Regulation Work*, O'Dwyer's (June 4, 2018),
 26 <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>.

³⁸⁹ Stephen Aaron, Managing Director, Mercury LLC, <http://www.mercuryllc.com/experts/stephen-aaron/> (last visited Mar. 28, 2020).

³⁹⁰ Tess Legg et al., *The Philip Morris-funded Foundation for a Smoke-Free World: tax return sheds light on funding activities*, Vol. 393 Lancet No. 10190 at 2469-2562 (June 22, 2019), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)31347-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)31347-9/fulltext).

1 Organization strongly rejected partnering with the Foundation and urged others to do the
 2 same,³⁹¹ while other global health organizations pointed out that “[w]hile PMI and its grantee
 3 claim a commitment to reducing harm; reports show that PMIs cigarettes continue to be heavily
 4 marketed in ways that attract children and undermine public health policy.”³⁹² Working with JLI
 5 and Altria, Mercury has promoted a similar “harm reduction” message as a central feature of the
 6 Youth Marketing Cover-Up Enterprise’s dis-information campaign.
 7

8 250. [REDACTED]

11 [REDACTED]³⁹³ [REDACTED]

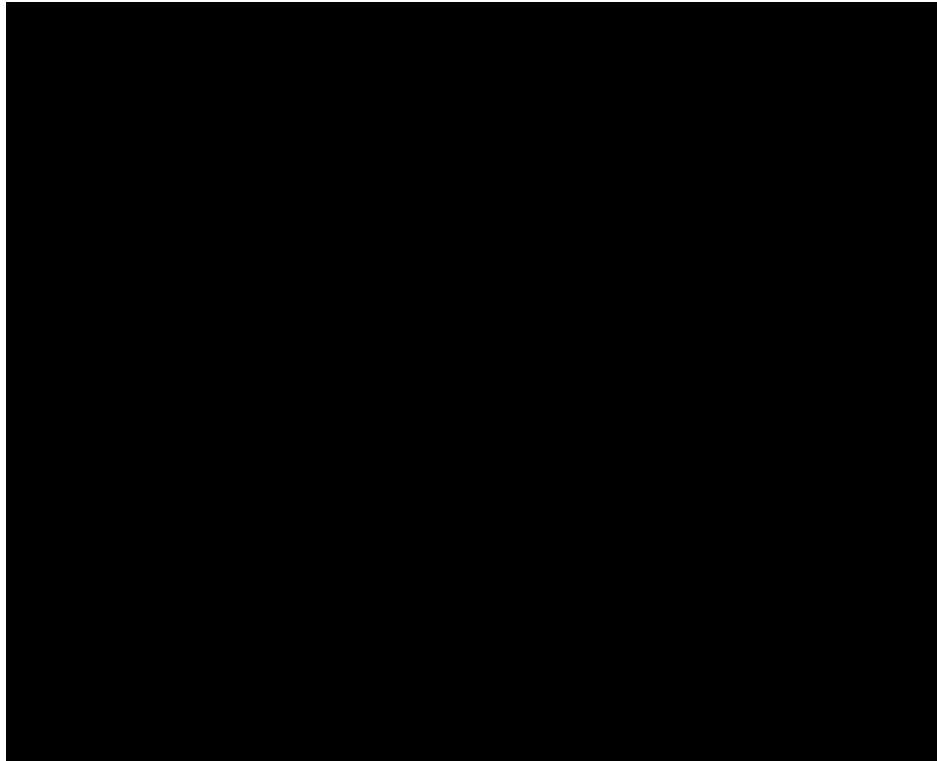
16 [REDACTED]³⁹⁴

24 ³⁹¹ WHO Statement on Philip Morris funded Foundation for a Smoke-Free World, WHO (Sept. 28, 2017),
 25 <https://www.who.int/news-room/detail/28-09-2017-who-statement-on-philip-morris-funded-foundation-for-a-smoke-free-world>.

26 ³⁹² Open Letter to Urge WHO Executive Board to Reject Foundation for a Smoke Free World (FSFW), GGTC (Jan. 28, 2019), <https://ggtc.world/2019/01/28/an-open-letter-to-urge-who-executive-board-to-reject-fsfw/>.

³⁹³ INREJUUL_00262168; see also Kate Zernike, ‘I Can’t Stop’: Schools Struggle With Vaping Explosion, N.Y. Times (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/health/vaping-ecigarettes-addiction-teen.html>.

³⁹⁴ INREJUUL_00262168.



251. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 395

252. On April 18, 2018, a group of eleven United States Senators sent JLI a letter declaring that JUUL and JUULpods “are undermining our nation’s efforts to reduce tobacco use among youth and putting an entire new generation of children at risk of nicotine addiction and other health consequences.”³⁹⁶

253. Less than a week later, on April 23, 2018, then-FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and enforcement actions

³⁹⁵ INREJUUL_00262226-227.

³⁹⁶ Letter from Senator Richard J. Durbin et al. to Kevin Burns, JUUL Labs, Inc. (Apr. 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

1 against JLI in particular.³⁹⁷ On April 24, 2018, the FDA sent JLI a request for documents
 2 “relating to marketing practices and research on marketing, effects of product design, public
 3 health impact, and adverse experiences and complaints related to JUUL.”³⁹⁸ The FDA stated
 4 clearly that it was requesting these documents because of evidence of widespread youth use,
 5 including media reporting about middle school and high school student use of JUUL on school
 6 property and social media evidence of youth use. “Widespread reports of youth use of JUUL
 7 products are of great public health concern,” the FDA warned.³⁹⁹

9 254. JLI, with the help of its “campaign manager” Mercury and Altria guiding its
 10 campaign, was ready with a response. The next day, on April 25, 2018, JLI issued a press
 11 release, pledging its support of efforts to raise the minimum age to purchase tobacco products to
 12 twenty-one and “an initial investment of \$30 million over the next three years dedicated to
 13 independent research, youth and parent education, and community engagement efforts.”⁴⁰⁰

15 255. As part of its “independent research,” in 2018, JLI, with the approval and
 16 knowledge of JLI’s officers and directors, engaged McKinsey & Company to survey teenagers
 17 regarding their e-cigarette flavor preferences, among other things, and engaged DB Research to
 18 conduct a focus group with teenagers in Maryland. As discussed above, this research confirmed
 19 the popularity of Mint JUULpods with teens. Similarly, the Altria Defendants knew from
 20 decades of experience selling a variety of tobacco products—and the development of its
 21 “graduation theory”—that both mint and menthol were popular with youth, as discussed above.
 22
 23

24 ³⁹⁷ Gottlieb, Statement Apr. 23, 2018, *supra* note 320.

25 ³⁹⁸ Letter from Matthew Holman, M.D., FDA to Ziad Rouag, JUUL Labs, Inc. (Apr. 24, 2018),
<https://www.fda.gov/media/112339/download>.

26 ³⁹⁹ *Id.*

⁴⁰⁰ JUUL Labs, Inc., *JUUL Labs Announces Comprehensive Strategy to Combat Underage Use*, MarketWatch
 (Apr. 25, 2018), <https://www.marketwatch.com/press-release/juul-labs-announces-comprehensive-strategy-to-combat-underage-use-2018-04-25>.

1 Despite this knowledge, JLI and Altria kept Mint and Menthol JUULpods on the shelves even
 2 when ostensibly removing youth-friendly flavors from retail stores in November 2018, as
 3 discussed further below.

4 256. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 257. Instead, with that knowledge and with no genuine interest in youth prevention,
 12 and as detailed below, JLI, JLI's officers and directors, and Altria committed to work to preserve
 13 Mint as a flavor for as long as possible. Indeed, to further this goal, Pritzker and Valani poured
 14 additional money into JLI a mere two months later as part of a \$600 million funding round,
 15 allowing the Youth Marketing Cover-Up Enterprise to continue the work of maintaining and
 16 expanding JUUL's youth market-share while denying that JLI marketed to youth in order to
 17 avoid public outcry.⁴⁰¹

18 258. [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24
 25
 26

⁴⁰¹ JUUL Raises \$650M Of Its \$1.25B Mega-Round, crunchbase (July 10, 2018),
<https://news.crunchbase.com/news/juul-raises-650m-of-its-1-25b-mega-round/>.

1 [REDACTED]⁴⁰² [REDACTED]

2 [REDACTED]⁴⁰³

3 259. [REDACTED]

4 [REDACTED]

5 [REDACTED]⁴⁰⁴ [REDACTED]

6 [REDACTED]

7 [REDACTED]⁴⁰⁵ Put another way, JUUL's continued market growth
8 required Altria and JLI to convince the public and regulators that contrary to the facts, JLI had
9 nothing to do with youth vaping.

10
11 260. On August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral
12 study on the prevalence of use, perceptions of use, and intentions to use JUUL and other tobacco
13 products among adolescents aged thirteen and seventeen (the "Youth Prevalence study").⁴⁰⁶ As
14 with other steps taken by the Youth Marketing Cover-Up Enterprise during this time, the Youth
15 Prevalence study was a distraction and delay tactic, meant to give the public and regulators the
16 impression that JLI was actively addressing the youth vaping epidemic. In fact, as discussed
17 further below, the Youth Prevalence study was a sham, and JLI would provide "results" to the
18 FDA in November 2018 that were directly contradicted by its own internal data.
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24 ⁴⁰² INREJUUL_00258827-828.

25 ⁴⁰³ *Id.*; see also *Start-up e-cigarette brand aims to "improve smokers' lives"*, 362 BMJ k2930 (2018),
<https://www.bmj.com/content/362/bmj.k2930>.

26 ⁴⁰⁴ INREJUUL_00258827-828.

⁴⁰⁵ *Id.*

⁴⁰⁶ Letter from Joanna Engelke, JUUL Labs, Inc., to David Portnoy, Ph.D., M.P.H., FDA Center for Tobacco
Products (Nov. 5, 2018).

261. [REDACTED]

407 [REDACTED]

[REDACTED]⁴⁰⁸ The brand campaign that Omnicom ultimately created for the Youth Marketing Cover-Up Enterprise was the “Make the Switch” campaign, which revolved around television ads featuring former smokers aged thirty-seven to fifty-four, each discussing “how JUUL helped them quit smoking.”⁴⁰⁹

262. A striking departure from JLI’s earlier advertising campaigns and launch parties, the “Make the Switch” campaign was the backdrop for the fraudulent statements disseminated by the Youth Marketing Cover-Up Enterprise in order to protect, maintain, and expand the tremendous market share gained by hooking kids on nicotine: that JUUL was only ever intended as an alternative to smoking for existing adult smokers and JLI’s marketing was never aimed at youth. According to JLI’s Vice President of Marketing, the “Make the Switch” campaign was “an honest, straight down the middle of the fairway, very clear communication about what we’re trying to do as a company.”⁴¹⁰

263. These statements, however, are belied by evidence of JLI’s early marketing campaigns and statements such as the admission by one of JLI’s engineers that “[w]e 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.”⁴¹¹ As described elsewhere herein, JLI and its officers

⁴⁰⁷ See INREJUUL_00066530-539 [REDACTED]

⁴⁰⁸ INREJUUL_00074841-844.

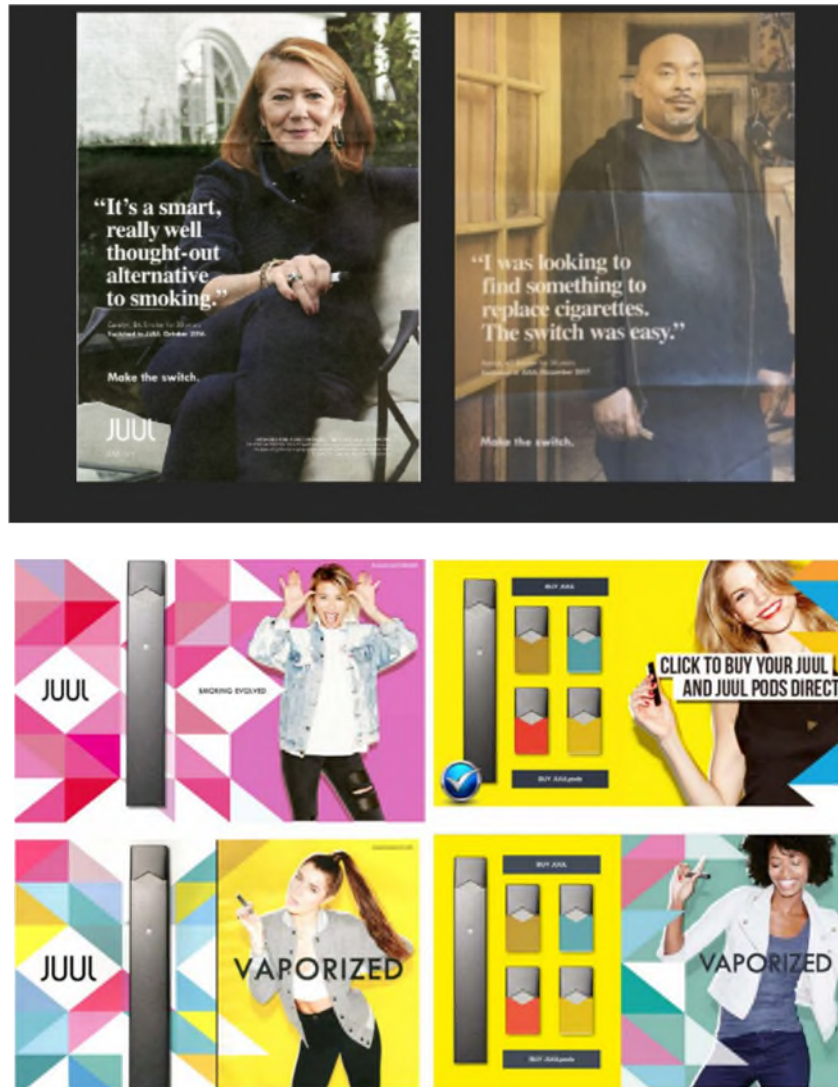
⁴⁰⁹ Angelica LaVito, *Juul combats criticism with new TV ad campaign featuring adult smokers who quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019), <https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html>.

⁴¹⁰ *Id.*

⁴¹¹ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-Cigarette*, The Verge (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

and directors directly targeted underage nonsmokers. JLI and the Altria Defendants were well aware that such users made up a significant percentage of JLI's customer base in 2018—in fact, they counted on this customer base to grow and preserve JUUL's market share—and that the statements they disseminated regarding “Make the Switch” from smoking being JLI's mission from the start were fraudulent.

264. The fraudulent nature of the “Make the Switch” campaign can literally be seen by comparing the campaign's advertisements to JLI's initial advertising, as demonstrated below. The fact that these advertisements are for the same product almost defies belief.



1 265. Indeed, JLI and Altria knew that the JUUL device was the *opposite* of a “tool[] to
2 reduce or eliminate” nicotine consumption, given JUULpods’ high nicotine content, as well as
3 the delivery of nicotine to the user. According to the National Institutes of Health, the “amount
4 and speed of nicotine delivery . . . plays a critical role in the potential for abuse of tobacco
5 products.”⁴¹² JLI designed its product to provide the largest amount of nicotine in the fastest way
6 possible. As JLI itself advertises, JUUL delivers nicotine to the bloodstream as much as 2.7
7 times faster than other e-cigarettes. And, because of JLI’s unique formula of nicotine salts and
8 organic acids, as described above, vaping a JUUL delivers a vapor that is extremely potent in
9 terms of nicotine content but also considerably smoother than cigarettes or even other e-
10 cigarettes. At some point during the coordination between JLI and Altria, but no later than the
11 due-diligence period for Altria’s investment in JLI, JLI (through its employees) provided Altria
12 with a copy of [REDACTED], described above.⁴¹³ Therefore, both JLI and Altria also
13 knew [REDACTED]
14 [REDACTED] If “harm reduction” and switching from cigarettes were the true goals, there would
15 be no need for the highly potent 5% nicotine formulation.

18 266. Far from being a product used by adults to quit smoking, JUUL has been an
19 initiation product for nonsmokers, particularly and predominantly youth. Researchers found that
20 in 2018, only 7.9% of American adults had ever used USB-shaped vape devices, like JUUL, and
21

26

⁴¹² CDC et al., *Nicotine Addiction: Past and Present, How Tobacco Smoke Causes Disease*, NCBI (2010),
<https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

⁴¹³ INREJUUL_00244200.

only 2% of adults currently used them.⁴¹⁴ And as mentioned above, youth were sixteen times more likely to use the USB-shaped JUUL than adults.⁴¹⁵

267. Thus, JLI and Altria committed predicate acts of wire fraud when they caused the “Make the Switch” campaign to air on television with the fraudulent intent of deceiving the public, Congress, and regulators into believing that JLI is and had been focused solely on targeting adult smokers.

268. Another key aspect of the Youth Marketing Cover-Up Enterprise’s early coordination was Altria’s acquisition of shelf space that it would later provide to JLI in order to sustain the exponential growth of underage users of JUUL products. By acquiring shelf space in furtherance of the Youth Marketing Cover-Up Enterprise, Altria took steps to ensure that JUUL products would receive prominent placement alongside a top-rated brand of combustible cigarettes, namely, Altria’s Marlboro brand—the best-selling cigarette overall and by far the most popular brand among youth, as described above.⁴¹⁶

269. In 2018, Altria spent approximately \$100 million to secure shelf space at retailers for e-vapor products—purportedly for the MarkTen e-cigarette 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,⁴¹⁷ 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.⁴¹⁸ Altria’s payments for shelf space

⁴¹⁴ Kristy L Marynak et al., *Use and reasons for use of electronic vapour products shaped like USB flash drivers among a national sample of adults*, 28 Tobacco Control 685 (Nov. 2019), <https://tobaccocontrol.bmj.com/content/28/6/685>.

⁴¹⁵ Vallone et al., *supra* note 229.

⁴¹⁶ See 2012 Surgeon General Report, *supra* note 246 at 164; see also Perks, *supra* note 99.

⁴¹⁷ Sheila Kaplan, *Altria to Stop Selling Some E-Cigarette Brands That Appeal to Youths*, N.Y. Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/health/altria-vaping-ecigarettes.html>.

⁴¹⁸ Kress, *supra* note 356.

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.”⁴¹⁹ But Altria had no need for two years of prominent shelf space while it was engaged in discussions with JLI, was actively scaling back sales of the original MarkTen, and had no true plans for a wide launch of the MarkTen Elite. Instead, when Altria later announced its \$12.8 billion investment in JLI, part of the agreement was that Altria would provide JLI with this premium shelf space.⁴²⁰

270. Altria’s purchase of shelf space in 2018 indicates that Altria and JLI were coordinating on the activities of the Youth Marketing Cover-Up Enterprise even before Altria announced its investment in JLI and demonstrates Altria’s commitment to maintaining and expanding JUUL’s market, including its youth market. The Youth Marketing Cover-Up Enterprise thus ensured that JUUL products are placed where kids are most likely to see them and buy them: in retail establishments, next to the most popular cigarette brand for underage users, Marlboro.⁴²¹

5. September–December 2018: Further Coordination of the Youth Marketing Cover-Up Enterprise

271. Throughout 2018, as public and government scrutiny of JLI’s practices intensified, JUUL’s market share continued to climb. In the fall of 2018, with pressure mounting, JLI and Altria stepped up the fraudulent practices of the Enterprise in response. Altria and JLI’s responses to such scrutiny reflect a coordinated, successful effort to mislead the public, including Plaintiff, and regulators. In reliance on JLI and Altria’s fraudulent statements and actions, JUUL

⁴¹⁹ 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>.

⁴²⁰ *Id.*

⁴²¹ 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>.

1 remained on the market without an overwhelming public outcry and enjoyed massive
2 commercial success in Plaintiff's community.

3 272. On September 25, 2018, then-FDA Commissioner Gottlieb called youth vaping an
4 "epidemic" and sent letters to JLI and Altria demanding each company's plan to reduce youth
5 use, requesting a "detailed plan, including specific timeframes, to address and mitigate
6 widespread use by minors."⁴²²

7
8 273. On October 2, 2018, the FDA raided JLI's headquarters and seized more than one
9 thousand documents related to JLI's sales and marketing practices.⁴²³

10 274. On October 16, 2018, JLI presented its "Action Plan" to the FDA in response to
11 then-FDA Commissioner Gottlieb's September 25, 2018 letter. [REDACTED]

12 [REDACTED]⁴²⁴ [REDACTED]
13 [REDACTED]
14 [REDACTED]⁴²⁵ As discussed
15 below, JLI also presented this Action Plan to the public a month later.

16 275. On October 25, 2018, Altria submitted a letter in response to the FDA's call to
17 combat the youth vaping epidemic, which it published to the public on its website.⁴²⁶ Altria
18 claimed to have "serious concerns" about youth access to e-vapor products and admitted that the
19 use of e-cigarettes by youth had risen to "epidemic levels."⁴²⁷ Altria agreed to remove its pod-
20 based e-cigarettes from the market and stop selling any flavored traditional e-cigarettes other
21

22
23 ⁴²² *Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, FDA (Sept. 12, 2018),
<https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access> (Letters
24 were also sent to Reynolds American, Fontem Ventures, and JTI).

25 ⁴²³ McGinley, *supra* note 21.

26 ⁴²⁴ *FDA Presentation* at 2, JUUL Labs, Inc. (Oct. 16, 2018); *see also* INREJUUL_00182989.

⁴²⁵ *Id.*

⁴²⁶ Letter from Howard A. Willard III, Altria Group, Inc., to Scott Gottlieb, M.D., FDA Commissioner (Oct. 25, 2018), <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

⁴²⁷ *Id.* at 1.

1 than tobacco, menthol, and mint.⁴²⁸ It acknowledged that “[b]ased on the publicly available
 2 information from FDA and others, we believe pod-based products significantly contribute to the
 3 rise in youth use of e-vapor products.”⁴²⁹ “Although we do not believe we have a current issue
 4 with youth access to or use of our pod-based products, we do not want to risk contributing to the
 5 issue.”⁴³⁰ Altria’s letter went on to disclaim a number of practices that it associated with
 6 marketing to youth—strategies that were key components of JLI’s marketing strategy. Altria
 7 specifically identified the use of flavors that go beyond traditional tobacco flavors, digitally
 8 advertising on websites with a large percentage of youth visitors, using social media to promote
 9 the brand, allowing online purchases and promotional sign-ups without age verification,
 10 advertising e-cigarettes on billboards, advertising with models who appear to be under twenty-
 11 five-years old, distributing branded merchandise, and paying celebrities or other third parties to
 12 market or use a particular brand’s e-cigarette. Altria also claimed to support “banning vaping in
 13 schools” in order to reduce “social access.”⁴³¹ Altria ended the letter by committing to “reverse
 14 the current use trend among youth.”⁴³²

17 276. On a public earnings conference call that same day, Altria repeated many of these
 18 statements, describing its decision to remove its pod-based products from the market as one
 19 intended to address the dramatic increase in youth e-cigarette use—while knowing that it was
 20 only weeks away from publicly announcing a \$12.8 billion investment in JLI, the company that
 21 ignited the youth vaping crisis:
 22

23 In September, the FDA asked several companies, including Altria, to provide
 24 plans to address underage use of e-vapor products. We welcomed FDA’s action

25 ⁴²⁸ *Id.* at 2.

26 ⁴²⁹ *Id.* at 2.

⁴³⁰ *Id.*

⁴³¹ *Id.* at 3.

⁴³² *Id.* at 5.

1 and ***we agreed that the reported rise in underage use of e-vapor products is***
 2 ***alarming and immediate action should be taken.***⁴³³

3 277. Throughout the call, Willard repeatedly emphasized that Altria’s withdrawal of its
 4 own pod-based products was intended to address youth use: “[W]e really feel like in light of this
 5 dramatic increase in youth usage, withdrawing those products until the PMTA is filed is one path
 6 forward.”⁴³⁴ He later said, “And frankly, the actions we took were the actions that we thought we
 7 could take that would have the biggest impact on addressing the increased use of e-vapor
 8 products by youth . . . we wanted to make a significant contribution to addressing the issue.”⁴³⁵

9 278. Willard stated that Altria had concluded that “pod-based products and flavored
 10 products” were behind the increase in youth use of e-cigarettes:
 11

12 [A]s we looked at the data that is available in some of the remarks from the FDA,
 13 I think we concluded that ***the driver of the recent increase we think is pod-based***
 14 ***products and flavored products*** and so we thought that the two actions that we
 took addressed the drivers of the increased youth usage here in the short run.⁴³⁶

15 279. Without saying anything about the massive investment it was about to make in
 16 JLI’s pod-based products, Willard declared that Altria was removing its pod-based products from
 17 the market to address youth use, and it would discontinue its cig-a-like flavors other than mint,
 18 menthol, and tobacco:

19 First, Nu Mark will remove from the market MarkTen Elite and Apex by
 20 MarkTen pod-based products until these products receive a market order from the
 21 FDA or the youth issue is otherwise addressed. Second, for our remaining
 22 MarkTen and Green Smoke cig-a-like products, ***Nu Mark will sell only tobacco,***
 23 ***menthol and mint varieties.*** Nu Mark will discontinue the sale of all other flavor
 variants of our cig-a-like products until these products receive a market order
 from the FDA or the youth issue is otherwise addressed. Although we don’t
 believe we have a current issue with youth access or use of our e-vapor products,

24
 25 ⁴³³ Altria Group Inc. (MO) Q3 2018 Earnings Conference Call Transcript, Motley Fool (Sept. 30, 2018),
[https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-](https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx)
 26 [ca.aspx](https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx) (emphasis added) (Willard’s comments).

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.* (emphasis added).

1 we are taking this action, because *we don't want to risk contributing to the*
 2 *issue.*⁴³⁷

3 280. Although Altria grouped mint and menthol flavors in the same category as
 4 tobacco flavor, it knew from decades of selling tobacco products with these flavors that mint and
 5 menthol are popular with youth, no matter what tobacco product, as discussed above.

6 281. On November 5, 2018, JLI transmitted the results of its Youth Prevalence study to
 7 the FDA.⁴³⁸ Remarkably, JLI's study concluded that only 1.5% of youth had ever used JUUL,
 8 and that only 0.8% of youth had used JUUL in the last thirty days.⁴³⁹ And [REDACTED]

9 [REDACTED] JLI's Youth
 10 Prevalence study suggested that Mango was four times as popular as Mint. Specifically, the
 11 Youth Prevalence study found that 47% of youth who reported vaping using JUUL in the last
 12 thirty days used Mango most often, with only about 12% reporting the same for Mint.⁴⁴⁰

14 282. On November 13, 2018, JLI presented its "Action Plan" to the public, largely
 15 identical to what JLI had presented to the FDA in October 2018.⁴⁴¹ JLI announced its intent to
 16 stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors on the
 17 JUUL website to adults age twenty-one and over, and shut down its social media accounts.⁴⁴²
 18 The flavors that would be available only through JUUL.com were "Mango, Fruit, Creme, and
 19 Cucumber."⁴⁴³ Through both JLI's October 2018 presentation to the FDA and JLI's Action Plan
 20

21
 22 ⁴³⁷ *Id.* (emphasis added).

23 ⁴³⁸ Engelke, *Letter to David Portnoy*, *supra* note 406.

24 ⁴³⁹ *Id.*

25 ⁴⁴⁰ *Id.* at 3.

26 ⁴⁴¹ *JUUL Labs Action Plan* ("JLI November Action Plan"), JUUL Labs, Inc. (Nov. 13, 2018),
<https://newsroom.juul.com/juul-labs-action-plan/> (JLI did not include in its November Action Plan to the public a
 proposal for Bluetooth or WiFi equipped devices that was included in JLI's October 2018 Action Plan to the
 FDA.).

⁴⁴² *Id.*

⁴⁴³ *Id.*

shared with the public in November 2018, the Youth Marketing Cover-Up Enterprise fraudulently characterized Mint as a “tobacco and menthol-based product,” as opposed to a “flavored product,” suggesting that it was a product for adult smokers. JLI include a version of the below image in in both the public-facing Action Plan and JLI’s presentation to the FDA.⁴⁴⁴



283. But JLI and Altria knew that non-smoking youth liked Mint as much as any flavor. As JLI’s internal documents confirm, Mint’s success was [REDACTED]⁴⁴⁵ JLI knew there was [REDACTED]⁴⁴⁶ and [REDACTED]⁴⁴⁷ As alleged in a whistleblower complaint, JLI’s then-CEO told his employees that “You need to have an IQ of 5 to know that *when customers don’t find mango they buy mint.*”⁴⁴⁸

⁴⁴⁴ *Id.*

⁴⁴⁵ INREJUUL_00265069.

⁴⁴⁶ INREJUUL_00079307-409 at 395.

⁴⁴⁷ *Id.*

⁴⁴⁸ Angelica LaVito, *Former Juul executive sues over retaliation, claims company knowingly sold tainted nicotine pods*, CNBC (Oct. 30, 2019), <https://www.cnbc.com/2019/10/30/former-juul-executive-sues-over-retaliation-claims-company-knowingly-sold-tainted-pods.html>; Sheila Kaplan & 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/juul-pods-contaminated.html> (emphasis added).

284. As predicted, JLI's sale of Mint pods rose from one third of its sales in September 2018 to approximately two thirds in February 2019. JLI's 2019 revenues were estimated to be between \$2.36 billion and \$3.4 billion, and Mint pods accounted for approximately 75% of JLI's total 2019 sales.

285. Seeing that the Youth Marketing and Cover-Up's scheme was successful, on December 7, 2018, Altria discontinued the production and distribution of all MarkTen and Green Smoke vapor products. "We remain committed to being the leader in providing adult smokers innovative alternative products that reduce risk, including e-vapor," Willard explained in a statement to the press.⁴⁴⁹ "We do not see a path to leadership with these particular products and believe that now is the time to refocus our resources."⁴⁵⁰

6. Publicly Announcing the Ties Between the Youth Marketing Cover-Up Enterprise Defendants

286. On December 20, 2018, Altria and JLI publicly announced the collaboration that had been taking place, on information and belief, since late 2017. In the largest equity investment in United States history, Altria invested \$12.8 billion in JLI.⁴⁵¹ The announcement came less than two months after Altria told the FDA that it "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 pod-based products from the market.⁴⁵²

⁴⁴⁹ *Altria Shifts Gears on Innovative Products Platform*, Convenience Stores News (Dec. 7, 2018), <https://csnews.com/altria-shifts-gears-innovative-products-platform>.

⁴⁵⁰ *Id.*

⁴⁵¹ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth* ("Altria Minority Investment"), Bus. Wire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

⁴⁵² Willard, *Letter to Gottlieb*, *supra* note 426.

1 287. In making this decision to place profits over public health, Altria considered that
 2 the e-cigarette industry would see significant year-over-year growth in the near term, and that
 3 “JUUL continu[es] to be a growth driver for the e-vapor category.”⁴⁵³ And although Altria
 4 claimed its investment had an altruistic motive—“we believed the transaction would give Altria
 5 an unprecedented opportunity to share our experience in underage tobacco prevention with
 6 JUUL to help address youth usage”—in reality, Altria has provided *no* underage / youth
 7 prevention services to JLI.⁴⁵⁴

9 288. Altria admitted that minors were using JUUL products and that “underage use of
 10 e-cigarette product is a problem.”⁴⁵⁵ But Altria would not have made such a sizable investment if
 11 it did not intend to grow JUUL’s already enormous market even more. In fact, Altria said as
 12 much when announcing its infusion of cash, explaining that its investment in JLI “enhances
 13 future growth prospects” and committing to applying “its logistics and distribution experience to
 14 help JUUL expand its reach and efficiency.”⁴⁵⁶ According to Willard, Altria was “excited to
 15 support JUUL’s highly-talented team and offer [Altria’s] best-in-class services to build on their
 16 tremendous success.”⁴⁵⁷

18 289. This arrangement was profitable for both companies, as well as for Monsees,
 19 Bowen, Pritzker, Huh, and Valani. JLI’s employees received \$2 billion in bonuses, which, split
 20 among the JLI’s 1,500 employees, was approximately \$1.3 million per employee;⁴⁵⁸ Altria
 21 received millions of loyal youth customers; and Monsees, Bowen, Pritzker, Huh, and Valani
 22

24 ⁴⁵³ Willard, *Letter Senator Durbin*, *supra* note 23 at 10-11.

25 ⁴⁵⁴ *Id.* at 5.

26 ⁴⁵⁵ *Id.*

⁴⁵⁶ Altria Minority Investment, *supra* note 451.

⁴⁵⁷ *Id.*

⁴⁵⁸ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20, 2018),
<https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

1 received untold sums of money and saw the value of their shares in JLI skyrocket, allowing them
 2 to cash out via a special dividend and bonus, as well as through stock sales that were not
 3 available to other JLI minority shareholders.⁴⁵⁹ In deciding to make a huge investment in JLI,
 4 Altria took into account that the e-cigarette industry would see significant year-over-year growth
 5 in the near term, and that “JUUL continu[es] to be a growth driver for the e-vapor category.”⁴⁶⁰
 6

7 290. Since the deal was inked in December 2018, Altria’s actions have clearly helped
 8 JUUL maintain, if not expand, its market share—a market share that, based on Altria’s own
 9 October 25, 2018 letter to the FDA, it believes was gained by employing marketing and
 10 advertising practices that contributed to youth vaping. Altria’s Second Quarter 2019 Earnings
 11 Call reported that JUUL continued to grow in the first half of 2019, from a 33% category share
 12 in 2018 to 48% by the second quarter 2019. JLI’s expected revenue for 2019 was \$3.4 billion,
 13 nearly triple what it was in 2018.⁴⁶¹
 14

15 291. On a December 20, 2018 call, Altria emphasized the profit opportunity from its
 16 investment, while simultaneously characterizing it as an opportunity for harm reduction and
 17 reducing youth e-cigarette use. Willard made the following statements:

18 It’s important to both Juul and us that they continue to operate with the
 19 entrepreneurial passion that has made them so successful;

20 Let’s imagine the combination of Juul’s leading market position, brand equity and
 21 deep innovation pipeline with our strong retail presence, our ability to connect
 22 directly with adult smokers on our company’s databases while avoiding
 23 unintended audiences, our leading sales organization which covers approximately
 230,000 stores, and our deep regulatory affairs expertise;

24 ⁴⁵⁹ Tiffany Kary, *JUUL Founders Sued for Self-Dealing Over Altria’s \$12.8 Billion*, Bloomberg (Jan. 13, 2020),
 25 [https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-altria-s-12-8-](https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-altria-s-12-8-billion)
 billion.

26 ⁴⁶⁰ Willard, *Letter to Senator Durbin*, *supra* note 23.

⁴⁶¹ 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-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

1 We believe the investment in Juul represents the fastest and most sustainable
2 opportunity to generate the most significant income in the e-vapor category. The
3 geo-economics today are attractive and we expect our strong distribution
infrastructure to help accelerate their financial performance;

4 We have long said that providing adult smokers with superior, satisfying products
5 with the potential to reduce harm is the best way to achieve tobacco harm
6 reduction. Through Juul, we are making the biggest investment in our history
toward that goal;

7 Altria and Juul are committed to preventing kids from using any tobacco
8 products. As recent studies have made clear, youth vaping is a serious problem
which both Altria and Juul are committed to solve; and

9 Together Juul and Altria will work to prevent youth usage through their
10 announced initiatives, further technological developments, and increased
11 advocacy for raising the minimum age of purchase for all tobacco products to
21.⁴⁶²

12 292. Willard went so far as to characterize Altria's investment in JLI as the
13 culmination of decades of pursuit of harm reduction for the sake of smokers' health and
14 wellbeing:

15 Almost my entire career, we have believed that our business would be better in
16 the long term if we could offer harm reduced products that would represent
17 attractive alternatives to our adult cigarette smokers to switch. And we have
18 invested billions of dollars in it and lots of effort. And ultimately until December
19 this year, we really didn't have the product portfolio to fully achieve our harm
20 reduction aspiration. And the opportunity to invest in JUUL, I think, really makes
that harm reduction aspiration a reality.⁴⁶³

21 293. During Altria's January 31, 2019 Earnings Call, Altria explained its investment in
JLI in more detail:

22 Through JUUL, we have found a unique opportunity to not only participate
23 meaningfully in the e-vapor category but to also support and even accelerate
24 transition to noncombustible alternative products by adult smokers. The JUUL
25 investment provides Altria with a significant stake in the largest and fastest-
growing e-vapor company with a highly talented management team, successful
end-market products, a strong innovation pipeline and significant international

⁴⁶² Melissa Kress, *Altria Takes 'Significant Action' to Prepare for Its Future*, Convenience Store News (Dec. 21, 2018), <https://csnews.com/altria-takes-significant-action-prepare-its-future>.

⁴⁶³ *Id.*

1 opportunity. When you add to JUUL's already substantial capabilities, our
 2 underage tobacco prevention expertise and ability to directly connect with adult
 3 smokers, we see a compelling future with long-term benefits for both adult
 4 tobacco consumers and our shareholders. We are excited about JUUL's domestic
 5 growth and international prospects and their potential impact on our investment;

6 JUUL's 2018 growth was quite remarkable. JUUL had net revenues in excess of
 7 \$1 billion in 2018, up from approximately \$200 million in 2017. JUUL
 8 overwhelmingly reaccelerated the U.S. e-vapor category growth rate, growing
 9 JUUL's volume by nearly 600% to over 450 million refill kit pods;

10 We estimate JUUL represents over 30% of the overall e-vapor category across
 11 open and close systems and all trade classes. After e-vapor growth plateaued from
 12 2015 to 2017, rapid growth was reignited in 2018, and we expect U.S. e-vapor
 13 volume to grow at a compounded annual rate of 15% to 20% through 2023. As a
 14 reminder, Altria's share of JUUL's international e-vapor income would be 100%
 15 incremental to Altria; and

16 We believe the global e-vapor and heat-not-burn segments, with estimated sales
 17 of roughly \$23 billion in 2018, have substantial room to grow. JUUL currently
 18 operates in eight countries with plans for additional expansion this year. We
 19 expect the JUUL product features that have driven JUUL's success in switching
 20 adult smokers in the U.S. to strongly appeal to international adult cigarette
 21 smokers.⁴⁶⁴

22 294. But as the president of the Campaign for Tobacco-Free Kids observed upon
 23 announcement of the deal, "Altria has no interest in seriously reducing the number of people who
 24 smoke cigarettes."⁴⁶⁵

25 295. Instead, Willard continued to emphasize that Altria expects to reap the benefits of
 26 JLI's expansion to international markets: "Ultimately, we expect the international revenue and
 income opportunity to end up being as large as or larger than the U.S. opportunity. Our 35%

⁴⁶⁴ *Altria Group (MO) Q4 2018 Earnings Conference Call Transcript*, Motley Fool (Dec. 31, 2018),
<https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx>.

⁴⁶⁵ 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>.

1 investment was based on a deep strategic, operational and financial analysis of JUUL and the
2 marketplace.”⁴⁶⁶

3 296. As Willard emphasized, Altria expected continued growth even in the U.S., with
4 “a U.S. e-vapor category that grows volume between 15% to 20% annually” and “JUUL
5 continuing to be the primary growth driver for the e-vapor category”—statements which are
6 inconsistent with the idea of eliminating the underage and youth non-smoker sales that had
7 driven JUUL to its position of dominance:
8

9 Clearly, we look at this opportunity over the long term, but for context, let us
10 provide a view five years out. Some of our independently developed key
11 assumptions over the next five years that informed that analysis include: **a U.S. e-**
12 **vapor category that grows volume between 15% to 20% annually; JUUL**
13 **continuing to be the primary growth driver for the e-vapor category;** attractive
14 JUUL operating margins that achieve current cigarette-like margins due to the
15 benefits of increasing scale and automation in the supply chain; international
16 revenues that equal domestic revenues by 2023; and international margins that
17 approach current international cigarette margins. Under our assumptions, our
18 investment in JUUL would generate an after-tax return exceeding our weighted
19 average cost of capital in 2023.

20 Additionally, with five-year e-vapor category volume growth in the range of 15%
21 to 20% annually, we would expect the U.S. cigarette category volume decline rate
22 to be consistent with the decline rate estimate of 4% to 5%. ***I’ll remind you that***
23 ***in 2018 with e-vapor category volume growth of 35%, the cigarette category***
24 ***decline rate was 4.5%***, including half of a percent headwind from gas prices.
25 Combined with the earnings and cash generation engine of our core tobacco
26 business, we believe this investment in JUUL will support consistent returns over
the long term by providing Altria with a significant stake in the fastest-growing --
in the fast-growing e-vapor category.

And I think we agree with the other JUUL investors that its growth prospects
are so strong that now is the time to invest in—and ultimately driving top-line
growth.⁴⁶⁷

Later in the call, Willard repeatedly referred to JUUL’s growth as “dramatic”:

I have to point out that JUUL’s growth and success in the U.S. market last year
was unique and first of its kind compared to other tobacco product successes both

⁴⁶⁶ Altria Q4 2018 Earnings Call Transcript, *supra* note 464.

⁴⁶⁷ *Id.* (emphasis added).

1 in the U.S. and overseas. *I mean, the growth rate was dramatic, it represented*
 2 *the entire growth of e-vapor for the year*, and it dramatically reaccelerated the
 growth of e-vapor.⁴⁶⁸

3 297. Such “dramatic” growth was, as Altria well knew, due to the product’s viral
 4 popularity among teens. Willard briefly acknowledged the youth vaping crisis, stating, “Briefly
 5 touching on the regulatory environment, the FDA and many others are concerned about an
 6 epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others in
 7 the industry must continue to address aggressively and promptly.”⁴⁶⁹

8 298. In response to questions from an analyst at Morgan Stanley, Willard said that
 9 even if there is “a slowdown in growth in the next year or two” due to regulatory actions aimed
 10 at reducing youth use, Altria expects overall growth in JUUL sales over the next five years:
 11

12 I think with regard to the midterm forecast, one of the reasons why we selected a
 13 five-year period to estimate the growth rate of the e-vapor category and JUUL is a
 14 significant driver of that growth is, I think, there is a bit of uncertainty as to
 15 whether or not there’ll be a slowdown in growth in the next year or two as the
 16 industry works together with the FDA to drive down youth usage. And so I think
 that is to be determined. But I think even taking into account the fact that there
 could be some impact in the short run, I think we’re confident in the long-term
 growth rate that we forecasted.⁴⁷⁰

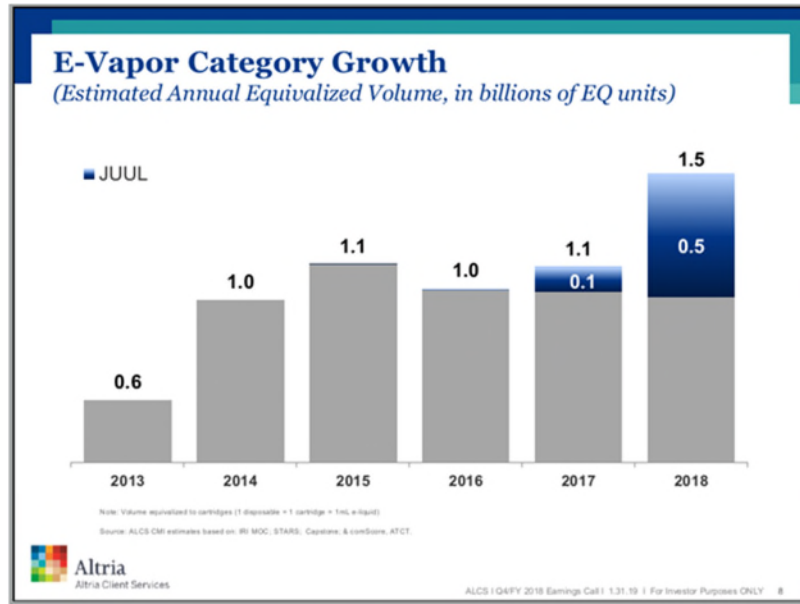
17 299. Two different analysts on the call quizzed Altria about the math behind its
 18 projections—how was it that Altria projected 15% to 20% growth in the United States e-vapor
 19 category, with JUUL as the primary driver of growth in the category, while the cigarette market
 20 decline was only predicted to be 4% to 5% annually, and JUUL’s supposed customer base was
 21 primarily smokers making the switch from cigarettes to vaping? Specifically, an analyst from
 22 Citi asked Altria about the slide shown below, representing JUUL’s growth relative to the
 23 growth of the e-vapor category as a whole:
 24
 25

26 ⁴⁶⁸ *Id.* (emphasis added).

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

So if I take what you've said about the impact basically with growth of JUUL—this is Slide 8, and equate that to cigarettes, it looks like the JUUL has grown about 0.4 billion units, which equates essentially to a 4% market share growth, and that's true for the whole e-cigarettes or e-vapor category. And yet you've also said that the impact of the growth of e-vapor on cigarettes is about 1.3%, 1.4%. So is there a right way of thinking about it, where basically two-thirds of vapor growth is incremental? Is that how we should think about it? And, I guess, if that is the right way of thinking about it, **where is that increment coming from?** Do you think it's mostly coming from people in their 20s or what?⁴⁷¹



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300. Willard did not offer a full explanation but responded by saying the increase in the vapor growth category was coming in part from smokeless tobacco users and cigar smokers.⁴⁷³ Given the forecasted dramatic growth in vaping and the relatively modest consumer base for smokeless tobacco and cigar smokers, this explanation is unconvincing at best.

301. While JLI and Altria remain distinct corporate entities, following its equity investment in JLI, Altria publicly acknowledged at least some of the systemic links between

⁴⁷¹ *Id.* (emphasis added).

⁴⁷² Altria's Fourth-Quarter 2018 Earnings Conference Call, Altria Client Services (Jan. 31, 2019), <http://investor.altria.com/Cache/IRCache/3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5.PDF?O=PDF&T=&Y=&D=&FID=3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5&iid=4087349>.

⁴⁷³ Altria Q4 2018 Earnings Call Transcript, *supra* note 464.

Altria and JLI, including contractual relationships, financial ties, and continuing coordination of activities. Altria provides services to JLI in furtherance of the Youth Marketing Cover-Up Enterprise, in the areas of “direct marketing; sales, distribution and fixture services; and regulatory affairs.”⁴⁷⁴ These services included “[p]roviding regulatory affairs consulting and related services to Juul as it prepares its PMTA application.”⁴⁷⁵

302. [REDACTED]

[REDACTED].⁴⁷⁶

303. JLI and Altria also agreed to cross-market JUUL with Marlboro cigarettes. For example, Altria offered coupons for JUUL starter kits inside packs of Marlboro cigarettes.⁴⁷⁷

⁴⁷⁴ *Id.* at 11.

⁴⁷⁵ *Id.* at 13.

⁴⁷⁶ [REDACTED]

⁴⁷⁷ [REDACTED] Points for us!, Reddit (Sept. 16, 2019), https://www.reddit.com/r/juul/comments/d50jku/points_for_us/ (depicting an image of a Marlboro carton with a JUUL starter kit coupon inside that a member of the public purchased).



304. These coupons, however, were more for show than anything else. In response to analyst questions about the JUUL coupons in Marlboro packs, Willard explained that Altria did not actually expect these coupons to cut into Marlboro sales, for two reasons. First, he said that cigarette smokers were already aware of JUUL:

So I think with regard to your question about putting JUUL inserts on our cigarette packs . . . *theoretically, I guess, it could result in a bit more volume coming out of Marlboro. But I think that that is unlikely to be the case.* And I say that for really two reasons. I think there's already very high awareness among

1 all cigarette -- adult cigarette smokers and, frankly, all Marlboro smokers about
 2 the availability of JUUL. So I think that a lot of that awareness has already been
 established. I wouldn't expect a big incremental uptick from those onsets.⁴⁷⁸

3 305. The second reason Willard gave is that JUUL is popular with younger customers,
 4 although he was careful to reference that group as twenty-one to twenty-nine-year-olds:

5 And then secondly, ***I would point out that I think JUUL tends to get more of its***
 6 ***growth from the 21- to 29-year-old cigarette smoker than it does from the 30-***
 7 ***plus cigarette smoker.*** And if you think about it, I think, as we've communicated
 8 in the past, Marlboro's share of those 21- to 29-year-old smokers is about equal to
 9 its overall share. But there are several other cigarette brands that are
 overdeveloped among 21- to 29-year olds, such as Newport, Camel or Natural
 American Spirit that, frankly, might actually give up more volume on a relative
 10 basis than Marlboro.⁴⁷⁹

11 306. By including JUUL coupons in Marlboro packs, the Enterprise creates the
 12 impression of marketing JUUL to existing smokers, to "Make the Switch." But neither Altria nor
 13 JLI expect a significant migration of Marlboro customers to JUUL. As Altria and JLI know, and
 14 as reflected by the analysts' inquiries about the growth of the e-vapor category compared to the
 15 decline in the cigarette category, JUUL sales depend on nonsmokers.

16 307. Altria also, through its provision of "services," actively sought to assist JLI in
 17 staving off regulation and keeping its products on the market and available to kids and the public
 18 at large and allow it to remain accessible in Plaintiff's community. Altria is and was working to
 19 actively help run the Youth Marketing Cover-Up Enterprise's operations and expand sales of
 20 JUUL products. Altria's investment brings legal and regulatory benefits to JLI, by helping to
 21 navigate the regulatory waters and FDA pressure while continuing to deceive the public about
 22 JLI's youth marketing.
 23
 24
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 26

⁴⁷⁸ Altria Q4 2018 Earnings Call Transcript, *supra* note 464 (emphasis added).

⁴⁷⁹ *Id.* (emphasis added).

308. From its decades of experience dealing with regulators, Altria knows the critical importance of influence in Washington. Altria “has a potent lobbying network in Washington [D.C.] and around the country,”⁴⁸⁰ and a significant priority for the Enterprise is expanding JLI’s connections to Washington insiders. In September 2018, for example, Andrew Perraut joined JLI as the Deputy Director of Public Policy; Perraut was previously a policy analyst for the White House Office of Information and Regulatory Affairs (“OIRA”) and the lead for all regulatory issues for tobacco for six years. In fact, Perraut participated in the redrafting of the FDA’s proposed deeming regulations regarding e-cigarettes before the proposed rule was published in 2014. But by the time the tobacco industry was meeting with the agency in 2015, Perraut was on the other side of the table, representing an organization called Cigar Rights of America, along with others, to lobby against restrictions. As Perraut explained in an interview, this agency review period is not a well-publicized opportunity for influence: “The OIRA process is very intentionally a little bit under the radar. . . . Parties are generally fairly informed on how to submit their comments [to the FDA]; folks are much less informed about how to engage during the White House review.”⁴⁸¹

309. Altria’s lobbying prowess in the area of e-cigarettes was on display in the context of the FDA’s deeming rule. First, notwithstanding Altria’s professed concern about flavors attracting youth customers, Altria submitted comments in August 2014 in response to the proposed rule opposing the regulation of flavors. Altria asserted that restrictions could result in more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors. Then, in April

⁴⁸⁰ 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>.

⁴⁸¹ Melissa Vonder Haar, *Deeming: Still Time to Comment, A Washington insider’s view on e-vapor and the rulemaking process*, CSP Daily (May 20, 2015), <https://www.cspdailynews.com/tobacco/deeming-still-time-comment>.

1 2015, Altria distributed draft legislation on Capitol Hill that would eliminate the new
 2 requirement that most e-cigarettes already on sale in the United States be evaluated retroactively
 3 to determine if they are “appropriate for the protection of public health.” Altria delivered its
 4 proposal, *F.D.A. Deeming Clarification Act of 2015*, to Representative Tom Cole of Oklahoma,
 5 who introduced the bill two weeks later *using Altria’s draft verbatim. Seventy other*
 6 *representatives signed on to Altria’s legislation.*
 7

8 310. Altria brings this lobbying muscle to the Youth Marketing Cover-Up Enterprise.
 9 While an Altria spokesman has denied that there was any contractual services agreement for
 10 lobbying between JLI and Altria, he admitted that he did not know what informal advice and
 11 conversations Altria has had with JLI about lobbying and efforts. Vince Willmore, a spokesman
 12 for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying
 13 battles, said, “It’s hard to say where Altria ends and Juul begins.”⁴⁸² Since JLI and Altria joined
 14 forces, JLI’s spending on lobbying has risen significantly. JLI spent \$4.28 million on lobbying in
 15 2019, compared to \$1.64 million in 2018.⁴⁸³ Successful lobbying efforts directly further Altria
 16 and JLI’s goal of deceiving the public by preventing regulators from drawing public attention to
 17 JLI’s prior youth marketing.
 18

19 311. In addition, Altria’s arrangement with JLI gives JLI greater access to retail
 20 opportunities. JUUL products have been in 90,000 retail outlets in the United States, while Altria
 21 reaches 230,000 outlets in the United States. Altria also brought its logistics and distribution
 22 experience (although, after increasing public scrutiny, Altria announced on January 30, 2020 that
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 24
 25

26 ⁴⁸² Kaplan, *In Washington, Juul Vows to Curb Youth Vaping*, *supra* note 480.

⁴⁸³ *Center for Responsive Politics, Client Profile: JUUL Labs*, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920> (last visited Mar. 28, 2020).

1 it would limit its support to regulatory efforts beginning in March 2020⁴⁸⁴). And importantly, as
 2 noted above, Altria gives JLI access to shelf space that it had obtained under fraudulent
 3 pretenses. This is not just any shelf space; it is space near Altria's products and retail displays.
 4 The arrangement allows JUUL to receive prominent placement alongside a top-rated brand of
 5 combustible cigarettes among youth.

6
 7 312. Beyond the services Altria provides for the Youth Marketing Cover-Up
 8 Enterprise, Altria and JLI share leadership. Altria's investment allows it to appoint one-third of
 9 JLI's Board. In addition, in October 2019, JLI's CEO resigned to be replaced by another career
 10 Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as the vice president
 11 and chief growth officer of Altria Client Services, overseeing the company's work, including
 12 digital marketing, packaging design and innovation, product development, and safety, health, and
 13 environmental affairs. Crosthwaite knows Big Tobacco's playbook all too well, having
 14 previously served as the president and CEO of Phillip Morris USA, the vice president and
 15 general manager at Marlboro—the leading cigarette brand among youth. In addition, Joe
 16 Murillo, who headed regulatory affairs for Altria and previously ran Altria's e-cigarette business,
 17 Nu Mark, is now JLI's Chief Regulatory Officer.⁴⁸⁵

18
 19 313. The relationship between JLI and Altria did not go unnoticed. By February 2019,
 20 the FDA became aware that it had been deceived by JLI and Altria. On February 6, 2019, then-
 21 FDA commissioner Gottlieb wrote JLI and Altria demanding in-person meetings, excoriating
 22 Altria for its “newly announced plans with JUUL [that] *contradict the commitments you made to*
 23

24
 25
 26 ⁴⁸⁴ Nathan Bomey, *Marlboro maker Altria distances itself from vaping giant Juul amid legal scrutiny*, USA Today (Jan. 31, 2020), <https://www.usatoday.com/story/money/2020/01/31/juul-altria-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/>.

⁴⁸⁵ Jennifer Maloney, *Juul Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019), *available at* <https://www.wsj.com/articles/juul-hires-another-top-altriaexecutive-11569971306>.

1 *the FDA*” in a prior meeting and Willard’s October 25, 2018 letter to the FDA.⁴⁸⁶ Gottlieb’s
 2 letter to JLI alleged that JLI’s conduct was “inconsistent with its previous representations to the
 3 FDA.”⁴⁸⁷

4 314. The FDA demanded Altria be prepared to explain itself regarding its “plans to
 5 stop marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Then-FDA
 6 Commissioner Gottlieb told Altria that “deeply concerning data” shows that “youth use of JUUL
 7 represents a significant proportion of overall use of e-cigarette products by children” and despite
 8 any alleged steps the companies had taken to address the issue he “ha[d] no reason to believe
 9 these youth patterns of use are abating in the near term, and they certainly do not appear to be
 10 reversing.”

11 315. JLI and Altria met with Gottlieb in March 2019 in a meeting the then-FDA
 12 Commissioner described as “difficult.”⁴⁸⁸ Gottlieb “did not come away with any evidence that
 13 public health concerns drove Altria’s decision to invest in JLI, and instead said it looked like a
 14 business decision. According to reporting by *The New York Times*, Gottlieb angrily criticized
 15 JLI’s lobbying of Congress and the White House, stating:

16 We have taken your meetings, returned your calls and I had personally met with
 17 you more times than I met with any other regulated company, and yet you still
 18 tried to go around us to the Hill and White House and undermine our public
 19 health efforts. I was trying to curb the illegal use by kids of your product and you
 20 are fighting me on it.”⁴⁸⁹

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24 ⁴⁸⁶ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Howard A. Willard III, Altria Group, Inc. (Feb. 9,
 25 2019) (emphasis added).

26 ⁴⁸⁷ Letter from Scott Gottlieb, M.D., FDA Commissioner, to Kevin Burns, JUUL Labs, Inc. (Feb. 9, 2019).

⁴⁸⁸ 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-difficult-meeting-on-juul.html>

⁴⁸⁹ Creswell & Kaplan, *supra* note 216.

316. But just a week after the “difficult” meeting with JLI and Altria, Gottlieb posted a statement about the FDA’s new e-cigarette policy, proposing to ban all flavors *except* “tobacco-, mint- and menthol-flavored products.”⁴⁹⁰ He cited the strong support of President Trump (whose administration JLI had aggressively lobbied⁴⁹¹), and also cited “recent evidence indicat[ing] that mint- and menthol-flavored ENDS products are preferred more by adults than minors.”⁴⁹² JLI and Altria’s success in getting the FDA to adopt their fraudulent claim that Mint was a traditional tobacco flavor was crucial to their mission to deceive the public into thinking that JLI does not market to youth despite JLI continuing to sell Mint JUULpods. Just a few weeks later, Gottlieb resigned from his position as FDA Commissioner.

317. The cover-up activities of the Enterprise are ongoing. The Youth Marketing Cover-Up Enterprise has recently taken another page out of Big Tobacco’s playbook, in working to manufacture a “grassroots” campaign of adult JUUL users—what some call an “Astroturf campaign.” In June 2019, the Enterprise retained Locust Street, another DC-based political and communications consultant, and what some have called a “political dark arts” firm. The Enterprise Defendants hired Locust Street to sway public opinion in New York in response to the state’s contemplated ban on flavored e-cigarettes. As part of this effort, Locust Street contacted adult JUUL customers by phone and/or email to encourage them to share their “switch story”:

My name is [redacted] and I am an Outreach Specialist with Locust Street Community Solutions. I’m reaching out to you on behalf of Juul Labs, who has contracted with Locust Street to support its services and collect success stories from New Yorkers who have made the switch to Juul from combustible

⁴⁹⁰ Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies aimed at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes and cigars, FDA (Mar. 13, 2019), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access>.

⁴⁹¹ Evan Sully & Ben Brody, *JLI Spent Record \$1.2 Million Lobbying as Regulators Stepped Up*, Wash. Post (Oct. 22, 2019), https://www.washingtonpost.com/business/on-small-business/jul-spent-record-12-million-lobbying-as-regulators-stepped-up/2019/10/22/2a0dbc52-f4de-11e9-b2d2-1f37c9d82dbb_story.html.

⁴⁹² *Id.*

cigarettes. We received your information as a Juul user from Juul Labs and we are only using this contact information to support our services on behalf of the company and to discuss your “switch story.”

I attempted to reach you by phone, but I’m emailing in case this is an easier way to get in touch. I hope that we can talk to discuss your experience with Juul products.

Please feel free to give me a call back at [redacted] or reply to this email if you’d like to share your story!⁴⁹³

318. This sort of fake “grassroots” campaign was a technique utilized by Big Tobacco in decades past to device the public. According to Sarah Milov, an assistant professor of history at the University of Virginia and the author of *The Cigarette: A Political History*, Big Tobacco companies “pioneered techniques of manufacturing popular outrage to proposed regulations on cigarettes because grassroots anti-smoking campaigns were beginning to gain traction in the 1970s.”⁴⁹⁴

319. JLI and Altria’s “Make the Switch” campaign was also fraudulent because, despite what it represented to the public, JLI does not have authority to claim that JUUL is healthier than cigarettes. On September 9, 2019, the FDA warned JLI that it had violated federal law by making unauthorized representations that JUUL products are safer than cigarettes.⁴⁹⁵

320. On October 17, 2019, JLI announced that it would suspend the sale of certain JUUL flavors online.⁴⁹⁶ However, this likely had minimal impact given that JLI was continuing to sell the mint and menthol flavors, which both JLI and Altria knew to be popular flavors with

⁴⁹³ Katie Notopoulos, *Juul Is Giving Its Customer Data To Its PR Firm*, BuzzFeed News (Sept. 5, 2019), <https://www.buzzfeednews.com/article/katienotopoulos/juul-user-privacy-publicity-new-york>.

⁴⁹⁴ Alex Norcia, *Get Ready for JUUL's Grassroots Rebrand*, VICE (Oct. 3, 2019), https://www.vice.com/en_us/article/qvgwmp/get-ready-for-juuls-grassroots-rebrand.

⁴⁹⁵ *Juul Labs, Inc. Warning Letter*, FDA (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

⁴⁹⁶ Allison Aubrey, *Juul Suspends Sales of Flavored Vapes and Signs Settlement to Stop Marketing to Youth*, NPR (Oct. 17, 2019), <https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to->.

1 youth, as discussed above. Recent research confirmed that 60% of high school e-cigarette users
 2 prefer mint and menthol flavors.⁴⁹⁷ As former New York City Mayor Mike Bloomberg stated,
 3 “JUUL’s decision to keep mint- and menthol-flavored e-cigarettes on the shelves is a page right
 4 out of the tobacco industry’s playbook.”⁴⁹⁸ Almost a month later, JLI announced that it would
 5 stop selling Mint, but it continues to sell its Menthol JUUL products.⁴⁹⁹

6
 7 321. JLI’s purported attempts to limit the sale of flavored JUUL products have not
 8 been effective, thereby demonstrating that JLI’s so-called remedial measures have been about
 9 swaying public opinion and not about preventing youth access to JUUL. On November 4, 2019,
 10 *VICE Magazine* reported that when it visited more than twenty stores in New York City, all but
 11 two of the stores selling JUUL products had at least one of the banned flavors available in stores,
 12 including Mango.⁵⁰⁰ Some of these stores were displaying these products even after JLI
 13 announced that it would suspend the sale of these flavors online. According to one bodega
 14 owner, the last time a JLI representative came into his store, flavored pods including Mango
 15 were on display, but the representative said nothing about them.⁵⁰¹ Photographs taken for that
 16 article showed both Mango-flavored JUULpods and flavored Eonsmoke products still being sold
 17 side by side as recently as mid-October 2019.

18 19 **J. The Cost of JUUL’s Success**

20 322. JLI’s success in addicting a new generation to nicotine, and Altria’s support to
 21 insulate JLI from a public outcry that could have mitigated this harm, have come at a terrible cost
 22
 23

24 ⁴⁹⁷ Lindsey Tanner, *US teen vaping numbers climb, fueled by Juul & mint flavor*, Associated Press (Nov. 5, 2019),
 25 <https://apnews.com/8151770f69fd43c4b132854a335d0ef1>.

⁴⁹⁸ *Id.*

⁴⁹⁹ Associated Press, *Juul Halts Sales of Mint, Its Top-Selling e-Cigarette Flavor*, N.Y. Times (Nov. 7, 2019),
 26 <https://www.nytimes.com/aponline/2019/11/07/health/bc-us-med-juul-flavor.html>.

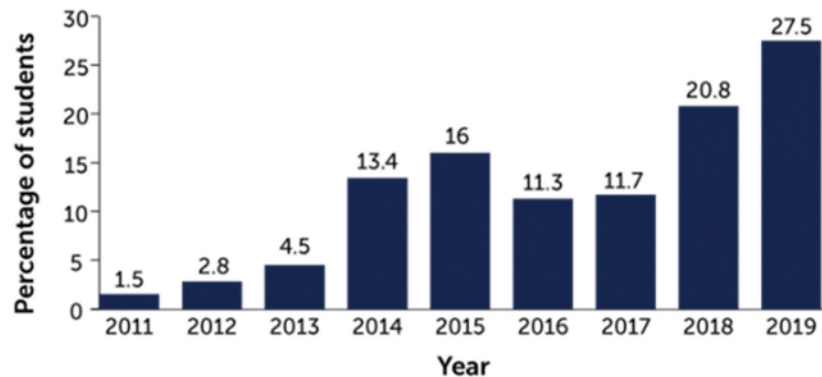
⁵⁰⁰ Smothers, *supra* note 311.

⁵⁰¹ *Id.*

to public health. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends for 2018 reported that increases in adolescent e-cigarette use from 2017 to 2018 were the “largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S.”⁵⁰²

323. The percentage of twelfth grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%.⁵⁰³ This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in twelfth grade.”

324. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly,⁵⁰⁴ and one in five twelfth graders reported using an e-cigarette containing nicotine in the last thirty days.⁵⁰⁵ As of late 2019, five million students reported active use of e-cigarettes, with 27.5% of high school students and 10.5% of middle school students using them within the last thirty days and with most youth reporting JUUL as their usual brand.⁵⁰⁶



⁵⁰² *National Adolescent Drug Trends in 2018*, Univ. of Mich. Inst. for Soc. Res. (Dec. 17, 2018), <http://monitoringthefuture.org/pressreleases/18drugpr.pdf>.

⁵⁰³ *Teens Using Vaping Devices in Record Numbers*, Nat’l Insts. of Health (Dec. 17, 2018), <https://www.nih.gov/news-events/news-releases/teens-using-vaping-devices-record-numbers>.

⁵⁰⁴ See Jan Hoffman, *Addicted to Vaped Nicotine, Teenagers Have no Clear Path to Quitting*, N.Y. Times (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/health/vaping-nicotine-teenagers.html>.

⁵⁰⁵ *Id.*

⁵⁰⁶ *National Youth Tobacco Survey (2019)*, *supra* note 6; Cullen, *supra* note 249.

325. The Secretary of HHS declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”⁵⁰⁷ Then-FDA Commissioner Gottlieb described the increase in e-cigarette consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for an “epidemic” of nicotine use among teenagers.⁵⁰⁸ 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.”⁵⁰⁹ CDC Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”⁵¹⁰ Then-Commissioner Gottlieb identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”⁵¹¹

326. Within days of the FDA’s declaration of an epidemic, 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.”⁵¹² The Surgeon General’s 2018 Advisory states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine . . . and also could make it easier to progress to regular e-cigarette use and nicotine dependence.”⁵¹³

⁵⁰⁷ Hoffman, *supra* note 12; Bahl, *supra* note 12.

⁵⁰⁸ *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*, FDA (Sept. 18, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm>.

⁵⁰⁹ *Id.*

⁵¹⁰ Vera, *supra* note 10.

⁵¹¹ *Id.*

⁵¹² Adams, *supra* note 2.

⁵¹³ *Id.*

327. As described above, JUUL uses patented nicotine salts rather than freebase nicotine.⁵¹⁴ Similarly, Big Tobacco and Eonsmoke launched their own JUUL lookalikes, using the same high concentrations of nicotine, formulated in the same manner; *myblu* contains 4.0% nicotine salts, Vuse Alto contains 5.0% nicotine salts, and Eonsmoke's products contain 6.8% nicotine.⁵¹⁵ Between 2013 and 2018, the average nicotine concentration in e-cigarettes more than doubled.⁵¹⁶

328. The increased nicotine exposure facilitated by JUUL and similar vape devices has serious health consequences. The ease of use and "smoothness" strip away external inhibitors and enable extreme levels of unfettered use. Using JLI's own calculations, consuming two JUULpods in a day is the equivalent of consuming two to four packs of cigarettes a day. In this way, JLI has not only cultivated a new generation of e-cigarette smokers, but it has also accelerated a new style of smoking—vaping—that is more nicotine-saturated than ever before. Kids are consuming so much nicotine that they are experiencing symptoms of nicotine toxicity, including headaches, nausea, sweating, and dizziness, and they have even coined a term for it: "nic sick." As one high school student explained to *CBS News*, it "kinda seems like a really bad flu, like, just out of nowhere. Your face goes pale, you start throwing up and stuff, and you just feel horrible."⁵¹⁷

⁵¹⁴ Becker, *supra* note 318.

⁵¹⁵ *About INTENSE Flavors*, blu, <https://www.blu.com/en/US/explore/explore-vaping/about-blu-products/about-blu-intense-flavors> (last visited Mar. 28, 2020); *faqs*, Vuse Vapor, <https://vusevapor.com/faqs/product/> (last visited Mar. 28, 2020); *Eonsmoke Product*, *supra* note 304.

⁵¹⁶ Alexa R. Romberg et al., *Patterns of nicotine concentration in electronic cigarettes sold in the United States, 2013-2018*, 203 *Drug & Alcohol Dependence* 1 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0376871619302571>.

⁵¹⁷ *High school students say about 20% of their peers are vaping, some as young as 8th grade*, CBS News (Aug. 30, 2019), <https://www.cbsnews.com/news/high-school-students-say-about-20-of-their-peers-are-vaping-some-as-young-as-8th-grade/>.

329. Increased rates and duration of vaping lead to greater overall exposure to nicotine. Nicotine is a highly addictive neurotoxin. Nicotine's addictive properties are similar to heroin and cocaine.⁵¹⁸ Nicotine fosters addiction through the brain's "reward" pathway. Both a stimulant and a relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and metabolic rate; constricts blood vessels of the heart and skin; and causes muscle relaxation. Long-term exposure to nicotine causes upregulation—an increase in the number of these high-affinity nicotinic receptors in the brain. When nicotine binds to these receptors it triggers a series of physiological effects in the user that are perceived as a "buzz" that includes pleasure, happiness, arousal, and relaxation of stress and anxiety. With regular nicotine use, however, these feelings diminish, and the user must consume increasing amounts of nicotine to achieve the same effects.

330. Youth are particularly vulnerable to nicotine addiction, as Defendants know well. As described by the Surgeon General, "Tobacco use is a pediatric epidemic." Nine out of ten smokers begin by age eighteen and 80% who begin as teens will smoke into adulthood.⁵¹⁹

331. The above statements apply equally, if not more so, to e-cigarettes. 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 faster than adult brains. Because addiction is a form of learning, adolescents can get addicted more easily than adults."⁵²⁰

⁵¹⁸ See e.g., U.S. Dep't of Health & Human Servs., *The Health Consequences of Smoking: Nicotine Addiction, A Report of the Surgeon General*, DHHS Publication Number (CDC) 88-8406 (1988), https://stacks.cdc.gov/view/cdc/22014/cdc_22014_DS1.pdf.

⁵¹⁹ 2012 Surgeon General Report, *supra* note 246 at 1.

⁵²⁰ *Know The Risks: E-Cigarettes & Young People*, U.S. Dep't Health & Human Servs., <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html> (last visited Mar. 20, 2020).

332. Studies confirm that exposure to nicotine as a teen—even minimal exposure—biologically primes the brain for addiction and greatly increases likelihood of dependence on nicotine as well as other substances later in life.⁵²¹ In a study done on mice, even “very brief, low-dose exposure to nicotine in early adolescence increases the rewarding properties of other drugs, including alcohol, cocaine, methamphetamine—and these are long-term changes.”⁵²² E-cigarette use also puts adolescents at increased risk for cigarette smoking. Compared to adolescents who do not use e-cigarettes, those who do are four times more likely to begin smoking cigarettes.⁵²³

333. The use of flavors only amplifies vape devices’ addictive qualities. Research done by Nii Addy, Associate Professor of psychiatry and cellular and molecular physiology at the Yale University School of Medicine, found that “sweet flavors can make the nicotine more palatable . . . but also act in the brain to increase nicotine taking.”⁵²⁴ This effect is especially troubling for teenage brains, which are more sensitive than adult brains to rewards. According to University of Pennsylvania psychologist Janet Audrain-McGovern, research shows that “if the first e-cigarette you used was flavored, then you’re more likely to go on and use an e-cigarette again.”⁵²⁵

334. As Dr. Winickoff explained in his testimony before Congress:

Nicotine addiction can take hold in only a few days, especially in the developing adolescent brain that is particularly vulnerable to addiction to nicotine. . . . Many

⁵²¹ *Principles of Adolescent Substance Use Disorder: A Research Based Guide*, Nat’l Inst. on Drug Abuse (2014), <https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-based-guide/introduction>.

⁵²² Jon Hamilton, *How Vaping Nicotine Can Affect A Teenage Brain*, NPR (Oct. 10, 2019), <https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

⁵²³ Kaitlyn M. Berry et al., *Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in US Youths*, JAMA Network Open (Feb. 1, 2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2723425>.

⁵²⁴ Hamilton, *supra* note 522.

⁵²⁵ *Id.*

1 of my patients find Juul nearly impossible to stop. Nicotine withdrawal can cause
 2 headaches, insomnia, irritability, anxiety, and depression, and these withdrawal
 3 symptoms are one of the primary reasons a nicotine addiction is difficult to
 overcome.”⁵²⁶

4 335. Moreover, there is a lack of effective tools to help adolescents overcome nicotine
 5 addiction: there is no good data on how to treat adolescents with e-cigarette dependence; there
 6 has not been enough research on youth tobacco cessation strategies; and most of the
 7 pharmacological therapies approved for adults have been shown to be ineffective or only
 8 marginally effective in adolescents.⁵²⁷

9 336. Research indicates that daily e-cigarette use is much more likely to continue than
 10 daily cigarette smoking. Out of surveyed students who reported ever using cigarettes daily, only
 11 17% indicated that they remained daily smokers.⁵²⁸ Out of surveyed students who reported ever
 12 using e-cigarettes daily, 58% remained daily users.⁵²⁹ This data demonstrates both that e-
 13 cigarette use in teens is very persistent, a result consistent with the addictiveness of these
 14 products and the difficulty youth have in trying to quit.⁵³⁰

15 337. The effects of nicotine exposure on the brain of youth and young adults include
 16 not only addiction, priming for use of other addictive substances, but also reduced impulse
 17 control, deficits in attention and cognition, and mood disorders.⁵³¹ A psychoactive substance that
 18 targets brain areas involved in emotional and cognitive processing, nicotine poses a particularly
 19 potent threat to the adolescent brain, as it can “derange the normal course of brain maturation
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23 ⁵²⁶ Winickoff Testimony, *supra* note 252 at 2.

24 ⁵²⁷ *Id.*

25 ⁵²⁸ *Id.*

26 ⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. of Physiology 3397 (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* (2019), [https://e-](https://e-cigarettes.surgeongeneral.gov/)
[cigarettes.surgeongeneral.gov/](https://e-cigarettes.surgeongeneral.gov/).

1 and have lasting consequences for cognitive ability, mental health, and even personality.”⁵³²

2 Animal researchers from Yale University School of Medicine found that vaping during
3 adolescence can lead to long-term brain changes, like attention deficit hyperactivity disorder.⁵³³

4 338. The dangerous and destructive nature of nicotine is no recent discovery. As a key
5 ingredient in tobacco products, the drug and its deleterious effects have been the subject of
6 scientific research and public health warnings for decades. Nicotine causes cardiovascular,
7 reproductive, and immunosuppressive problems with devastating effects. In 2014, the Surgeon
8 General reported that nicotine addiction is the “fundamental reason” that individuals persist in
9 using tobacco products, and this persistent tobacco use contributes to millions of needless deaths
10 and many diseases, including diseases that affect the heart and blood vessels (cardiovascular
11 disease), lung diseases (chronic obstructive pulmonary disease (“COPD”) and lung cancer),
12 cancer almost anywhere in the body, and birth defects. Part of the reason the national decline in
13 cigarette use in recent years was such a victory for public health was because there was a
14 corresponding decline in youth exposure to nicotine. From 2000 to 2017, the smoking rate
15 among high school students fell by 73%.⁵³⁴

16 339. In June 2014, the CDC reported that “by achieving a teen smoking rate of 15.7
17 percent, the United States has met its national Healthy People 2020 objective of reducing
18 adolescent cigarette use to 16 percent or less.”⁵³⁵ The Surgeon General reported in 2014:
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23 ⁵³² N.A. Goriounova & H.D. Mansvelter, *Short- and Long-Term Consequences of Nicotine Exposure during*
24 *Adolescence for Prefrontal Cortex Neuronal Network Function*, Cold Spring Harbor Persp. in Med. 2(12) (Dec.
25 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

26 ⁵³³ Hamilton, *supra* note 522.

⁵³⁴ Matthew L. Myers, *On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for Bold Action to*
Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids (Nov. 26, 2018),
https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

⁵³⁵ *Current cigarette smoking among U.S. high school students lowest in 22 years*, CDC (June 12, 2014),
<https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>.

1 We are at a historic moment in our fight to end the epidemic of tobacco use that
 2 continues to kill more of our citizens than any other preventable cause. The good
 3 news is that we know which strategies work best. By applying these strategies
 4 more fully and more aggressively, we can move closer to our goal of making the
 5 next generation tobacco-free.”⁵³⁶

6 340. That trend has completely reversed. In 2018, more than one in four high school
 7 students in the United States reported using a tobacco product in the past thirty days, a dramatic
 8 increase from just one year before.⁵³⁷ But there was no increase in the use of cigarettes, cigars, or
 9 hookahs during that same time period.⁵³⁸ There was only increased use in a single tobacco
 10 product: e-cigarettes. While use of all other tobacco products continued to decrease as it had
 11 been for decades, e-cigarette use increased 78% in just one year.⁵³⁹ This drastic reversal caused
 12 the CDC to describe youth vaping an “epidemic.”⁵⁴⁰

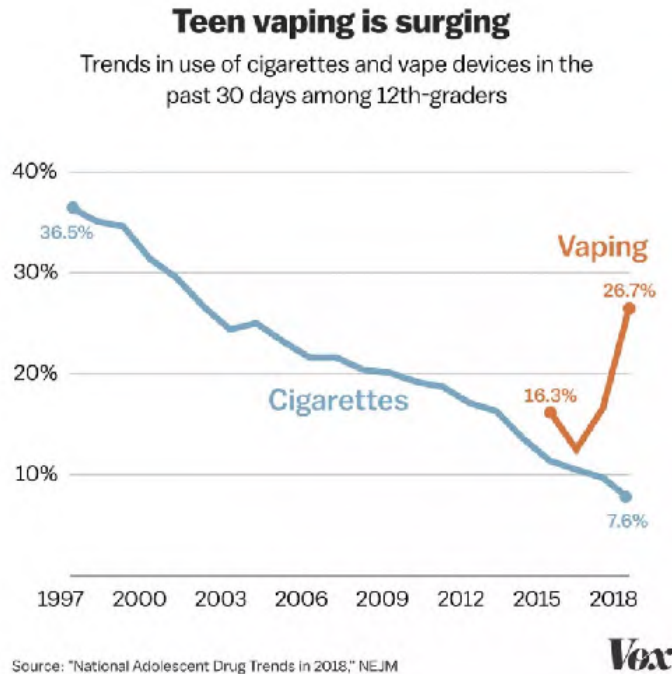
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22 ⁵³⁶ *LET’S MAKE THE NEXT GENERATION TOBACCO-FREE: Your Guide to the 50th Anniversary Surgeon
 23 General’s Report on Smoking and Health*, U.S. Dep’t of Health & Human Servs. (2014),
<https://www.hhs.gov/sites/default/files/consequences-smoking-consumer-guide.pdf>.

24 ⁵³⁷ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, CDC (Feb. 11, 2019),
<https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

25 ⁵³⁸ *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, CDC (Feb. 2019),
<https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

26 ⁵³⁹ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth
 by preventing access to flavored tobacco products and banning menthol in cigarettes, FDA (Nov. 15, 2018),
<https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

⁵⁴⁰ Adams, *supra* note 2.



341. The teen vaping epidemic has had, and will continue to have, significant costs for individual users and society alike. Nicotine addiction alone carries significant health consequences, and these are exacerbated when adolescents are involved. Adolescent nicotine addiction leads to memory and attention problems, and increases chances of addiction later in life, all of which will continue to have long-lasting impacts on society.

342. Science is also beginning to show that e-cigarettes have the potential to cause even more distinct health risks and costs. E-cigarettes were initially considered to be a safer alternative to cigarettes, but recent studies done on rats and mice have demonstrated results that they are “as damaging to pulmonary structures as traditional tobacco cigarettes.”⁵⁴¹ Mice exposed to e-cigarette fluids containing nicotine experienced effects that are associated with chronic obstructive pulmonary disease, such as cytokine expression, airway hyper-reactivity, and

⁵⁴¹ Viktorija Reinikovaite et al., *The effects of electronic cigarette vapour on the lung: direct comparison to tobacco smoke* at 2, 51 Eur. Respiratory J. (Jan. 23, 2018), <https://erj.ersjournals.com/content/erj/51/4/1701661.full.pdf>.

lung tissue destruction.⁵⁴² The use of e-cigarettes also caused inflammation in mice and impaired their immune defenses against various bacterial and viral infections.⁵⁴³ Moreover, a recent study that monitored 32,000 adults in the United States for three years found that e-cigarette users were 30% more likely to develop a chronic lung disease, such as asthma, bronchitis, and emphysema, than people who did not smoke either e-cigarettes or traditional cigarettes.⁵⁴⁴

343. It is not just these consequences that raise public health concerns. The CDC and FDA recently investigated an outbreak of e-cigarette, or vaping, product use associated lung injuries, known as EVALI.⁵⁴⁵ As of February 18, 2020, there were over 2,800 reported cases of hospitalization due to e-cigarette or vaping product use-associated lung injury (“EVALI”) in all fifty states and sixty-eight deaths had been confirmed by the CDC.⁵⁴⁶ While public health officials believe this outbreak is associated with vitamin E acetate, which is often used in connection with vaping marijuana, 14% of patients have reported vaping nicotine only.⁵⁴⁷

344. Many teenagers are simply unaware of these risks, an ignorance that Defendants have capitalized on. According to Dr. Winickoff, many of his patients believe vaping is harmless:

Counseling teens and preteens on e-cigarette use is challenging. Many of my patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes are dangerous, but assume that Juul—since it’s ubiquitous, comes in child-friendly flavors, and is marketed as a healthier alternative to smoking—must be harmless. I have to explain to kids that e-cigarettes do not have the same positive

⁵⁴² Itsaso Garcia-Arcos et al., *Chronic electronic cigarette exposure in mice induces features of COPD in a nicotine-dependent manner*, 71 *Thorax*, 1119, 1119-29 (Aug. 24, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5136722/pdf/thoraxjnl-2015-208039.pdf>.

⁵⁴³ *Id.*

⁵⁴⁴ Dharma N. Bhatta & Stanton A. Glantz, *Association of E-Cigarette Use with Respiratory Disease Among Adults: A Longitudinal Analysis*, *Am. J. Preventive Med.* (Dec. 16, 2019), <https://www.sciencedirect.com/science/article/abs/pii/S0749379719303915>.

⁵⁴⁵ *Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping*, CDC, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last visited Mar. 28, 2020).

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

health benefits as the fruits whose flavor they copy. Even the term vapor calls to mind harmless water vapor. There is no water in these products.⁵⁴⁸

K. Vaping in Schools

345. In addition to severe health consequences, widespread vaping and “juuling” has placed severe burdens on society and schools in particular. It is not an overstatement to say that JUUL has changed the educational experience of students across the nation. As one vape shop manager told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”⁵⁴⁹

346. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created patterns of youth usage, illegal youth transactions, and addiction, that are consistent with this account from Reddit in 2017:

Between classes the big bathroom in my school averages 20-25 kids, and 5-10 JUULs. Kids usually will give you a dollar for a JUUL rip if you don’t know them, if you want to buy a pod for 5\$ you just head into the bathroom after lunch. We call the kids in there between every class begging for rips ‘JUUL fiends.’ Pod boys are the freshman that say ‘can I put my pod in ur juul?’ and are in there every block. I myself spent about 180\$ on mango pods and bought out a store, and sold these pods for 10\$ a pod, making myself an absolutely massive profit in literally 9 days. Given because I’m 18 with a car and that’s the tobacco age around here, I always get offers to get pod runs or juuls for kids. people even understand the best system to get a head rush in your 2 minutes between classes, is all the juuls at once. So someone yells “GIVE ME ALL THE JUULS” and 3-7 are passed around, two hits each. This saves us all juice, and gives you a massive head rush. Kids also scratch logos and words onto their juuls to make i[t] their own, every day you can find the pod covers in my student parking lot. I know this sounds exaggerated, but with a school with 1400 kids near the city and JUULs being perceived as popular, it’s truly fascinating what can happen.⁵⁵⁰

347. In response to the post above, several others reported similar experiences:

⁵⁴⁸ Winickoff Testimony, *supra* note 252 at 1.

⁵⁴⁹ *Juuling at School*, *supra* note 275.

⁵⁵⁰ *What’s Juul in School*, https://www.reddit.com/r/juul/comments/61is7i/whats_juul_in_school/ (last visited Mar. 20, 2020).

- a. “[T]his is the exact same thing that happens at my school, we call [JUUL fiends] the same thing, kind of scary how similar it is.”⁵⁵¹
- b. “Same thing at my school. JUUL fiend is a term too.”⁵⁵²
- c. “Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are.”⁵⁵³
- d. “[S]ame [expletive] at my school except more secretive because it’s a private school. It’s crazy. Kids hit in class, we hit 3-5 at once, and everyone calls each other a juul fiend or just a fiend. Funny how similar it all is.”⁵⁵⁴
- e. “[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now.”⁵⁵⁵
- f. “Made an account to say that it’s exactly the same way in my school! LOL. I’m from California and I think I know over 40 kids that have it here just in my school. We do it in the bathrooms, at lunch etc. LMAO. ‘Do you have a pod man?’”⁵⁵⁶
- g. “It’s the same at my school and just about every other school in Colorado.”⁵⁵⁷
- h. “2 months into this school year, my high school made a newspaper article about the ‘JUUL epidemic.’”⁵⁵⁸
- i. “Wow do you go to high school in Kansas because this sounds EXACTLY like my school. I’ll go into a different bathroom 4 times a day and there will be kids in there ripping JUUL’s in every single one.”⁵⁵⁹
- j. “At my high school towards the end of lunch everyone goes to the bathroom for what we call a ‘juul party.’ People bring juuls, phixes,

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.* (citing Juuls Now Rule the School as Students Frenzy Over E-cig (Oct. 5, 2016),

<https://imgur.com/a/BKewp>).

⁵⁵⁹ *Id.*

etc. It's actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping."⁵⁶⁰

k. "To everyone thinking that this is just in certain states, it's not. This is a nationwide trend right now. I've seen it myself. If you have one you're instantly insanely popular. Everyone from the high-achievers to the kids who use to say 'e-cigs are for [expletives]' are using the juul. It's a craze. I love it, I've made an insane amount of money. It's something that has swept through our age group and has truly taken over. And it happened almost overnight."⁵⁶¹

348. E-cigarette use has completely changed school bathrooms—now known as “the Juul room.”⁵⁶² As one high school student explained, “it’s just a cloud.”⁵⁶³ The ubiquity of e-cigarette use in high school bathrooms has generated numerous online spoofs about “the juul room.”



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⁵⁶⁰ *Id.*

⁵⁶¹ *Id.* (emphasis added).

⁵⁶² Moriah Balingit, *In the 'Juul room': E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, Wash. Post (July 26, 2019), https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html.

⁵⁶³ Greta Jochem, *Juuling in School: e-Cigarette Use Prevalent Among Local Youth*, Daily Hampshire Gazette (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.

⁵⁶⁴ *Juul Hashtag Meme*, Stan. U. Res. into the Impact of Tobacco Advert. (2018), http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_img37610.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul.

1 349. As another high school student explained, “You can pull it out, you can have it
2 anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the
3 bathroom, it’s easy.”⁵⁶⁵ He added that JLI “market[s] it as an alternative to cigarettes but really
4 it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine addiction
5 there.”⁵⁶⁶ Students at another high school stated that classmates had “set off the fire alarm four
6 times last year from vaping in the bathrooms [at school],” adding that it is commonplace to see
7 students vaping in school bathrooms or in the parking lot.⁵⁶⁷

9 350. This impact was only made worse by JLI intentionally targeting schools, as
10 described above.

11 351. Such rampant vapor product use has effectively added another category to
12 teachers’ and school administrators’ job descriptions; many now receive special training to
13 respond to the various problems that vaping presents, both in and out of the classroom. A
14 national survey of middle schools and high schools found that 43.3% of schools have had to
15 implement not only an e-cigarette policy but a e-cigarette-specific policy. Participants in the
16 survey reported multiple barriers to enforcing these policies, including the discreet appearance of
17 the product, difficulty pinpointing the vapor or scent, and the addictive nature of the product.
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19 352. Across the United States, schools have had to divert resources and administrators
20 have had to go to extreme lengths to respond to the ever-growing number of students vaping on
21 school grounds. According to the *Truth Initiative*, more than 40% of all teachers and
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23

24 ⁵⁶⁵ Alison Grande, ‘Juuling’: Vaping device that looks like USB drive popular with teens, KIRO 7 (Dec. 8, 2017),
25 <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605/>.

26 ⁵⁶⁶ *Id.*

⁵⁶⁷ Manisha Jha, ‘You need to stop vaping right now’: Students and faculty react to Washington vape ban, The Daily, U. of Wash. (Sept. 30, 2019), http://www.dailyuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html.

1 administrators reported that their school uses camera surveillance near the school's restroom,
 2 almost half (46%) reported camera surveillance elsewhere in the school, and 23% reported using
 3 assigned teachers for restroom surveillance.⁵⁶⁸ Some schools have responded by removing
 4 bathroom doors or even shutting bathrooms down, and schools have banned flash drives to avoid
 5 any confusion between flash drives and JUULs or the new "JUULalike" products—like
 6 Eonsmoke's device or the other copycats. Schools have also paid thousands of dollars to install
 7 special monitors to detect vaping, which they say is a small price to pay compared to the
 8 plumbing repairs otherwise spent as a result of students flushing vaping paraphernalia down
 9 toilets. Other school districts have sought state grant money to create new positions for tobacco
 10 prevention supervisors, who get phone alerts when vape smoke is detected in bathrooms.

12 353. Many schools have also shifted their disciplinary policies in order to effectively
 13 address the youth vaping epidemic. Rather than immediately suspending students for a first
 14 offense, school districts have created anti-vaping curricula which students are required to follow
 15 in sessions held outside of normal school hours, including on Saturdays. Teachers prepare
 16 lessons and study materials for these sessions with information on the marketing and health
 17 dangers of vaping—extra work which requires teachers to work atypical hours early in the
 18 mornings and on weekends. Some schools will increase their drug testing budget to include
 19 random nicotine tests for students before they join extracurricular activities. Under this drug-
 20 testing protocol, first offenders will undergo drug and alcohol educational programming; second
 21 and third offenders will be forced to sit out from extracurriculars and attend substance abuse
 22 counseling.
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⁵⁶⁸ *How are schools responding to JUUL and the youth e-cigarette epidemic?*, Truth Initiative (Jan. 18, 2019),
<https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-and-youth-e-cigarette>.

354. JUUL’s prevalence in schools is not a coincidence; JLI actively sought to enter school campuses while it was coordinating with Altria. The U.S. House Subcommittee on Economic and Consumer Policy (“Subcommittee”) conducted a months-long investigation of JLI, including reviewing tens of thousands of internal documents, and concluded that JLI “deliberately targeted children in order to become the nation’s largest seller of e-cigarettes.”⁵⁶⁹ The Subcommittee found that “(1) JUUL deployed a sophisticated program to enter schools and convey its messaging directly to teenage children; (2) JUUL also targeted teenagers and children, as young as eight years-old, in summer camps and public out-of-school programs; and (3) JUUL recruited thousands of online ‘influencers’ to market to teens.”⁵⁷⁰

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

356. Among the more egregious incidents reported by the Subcommittee was a July 24, 2019 presentation in which no parents or teachers were in the room for the presentation, the message conveyed was that JUUL was “totally safe,” and the presenter even demonstrated to the students how to use a JUUL. The school was presumably paid for this meeting, which was

⁵⁶⁹ *Memorandum*, U.S. House Subcommittee on Econ. & Consumer Policy (July 25, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

⁵⁷⁰ *Id.*

1 marketed to the school as an anti-smoking initiative. A JLI spokesman said the company is no
2 longer funding such programs.

3 357. The problems with JLI's youth prevention programs were widespread. According
4 to outside analyses, "the JUUL Curriculum is not portraying the harmful details of their product,
5 similar to how past tobacco industry curricula left out details of the health risks of cigarette
6 use."⁵⁷¹ Although it is well-known that teaching children to deconstruct ads is one of the most
7 effective prevention techniques, JLI programs entirely omitted this skill, and JLI's curriculum
8 barely mentioned JUUL products as among the potentially harmful products to avoid.⁵⁷² As one
9 expert pointed out, "we know, more from anecdotal research, that [teens] may consider [JUULs]
10 to be a vaping device, but they don't call it that. So when you say to a young person, 'Vapes or e-
11 cigarettes are harmful,' they say, 'Oh I know, but I'm using a JUUL.'"⁵⁷³

12 358. Internal emails confirm both that JLI employees knew about the similarities of
13 JLI's "youth prevention program" to the earlier pretextual antismoking campaigns by the
14 cigarette industry and that JLI management at the highest levels was personally involved in these
15 efforts. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]⁵⁷⁴ [REDACTED]
21 [REDACTED]⁵⁷⁵ [REDACTED]
22 [REDACTED]

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24 ⁵⁷¹ Victoria Albert, *Juul Prevention Program Didn't School Kids on Dangers, Expert Says: SMOKE AND*
25 *MIRRORS. JUUL—which made up 68 percent of the e-cigarette market as of mid-June—seems to have taken a*
26 *page from the playbook of Big Tobacco*, The Daily Beast (Oct. 19, 2018), [https://www.thedailybeast.com/juul-](https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says)
[prevention-program-didnt-school-kids-on-dangers-expert-says](https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says).

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ INREJUUL_00197608.

⁵⁷⁵ INREJUUL_00197607.

[REDACTED]⁵⁷⁶

[REDACTED]⁵⁷⁷ The paper concluded that “the Philip Morris[’s ‘youth prevention’] campaign had a counterproductive influence.”⁵⁷⁸

359. The Board was intimately involved in these “youth prevention” activities. For example, [REDACTED]⁵⁷⁹

360. [REDACTED]⁵⁸⁰ Eventually, JLI ended this version of its youth prevention program, but the damage had been done: following the playbook of Big Tobacco, JLI had hooked more youth on nicotine.

L. Impact of the Youth Vaping Crisis on Plaintiff Toledo School District

361. Plaintiff Toledo School District is located in rural Lewis County, Washington, situated southeast of the state capitol Olympia. The Toledo School District operates Toledo Elementary School, Toledo Middle School, and Toledo High School, and serves approximately 800 students.⁵⁸¹ Including teachers, educational assistants, counselors, principals, and

⁵⁷⁶ INREJUUL_00196624.

⁵⁷⁷ INREJUUL_00265202.

⁵⁷⁸ Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 Am. J. Public Health 901 (2002).

⁵⁷⁹ JLI00151300.

⁵⁸⁰ INREJUUL_00194646.

⁵⁸¹ *Toledo School District*, Niche, <https://www.niche.com/k12/d/toledo-school-district-wa/> (last visited Mar. 19, 2020).

1 administrators at the respective schools, Plaintiff employs approximately ninety staff
2 members.⁵⁸²

3 362. Plaintiff has been hit hard by the youth vaping epidemic. According to the
4 *Washington State Healthy Youth Survey*, from 2016 to 2018, current vapor product use among
5 twelfth graders in Plaintiff's county jumped from 23% to 37%.⁵⁸³ Similarly, current vapor
6 product use among local tenth graders increased from 14% to 24% over that same two-year time
7 period.⁵⁸⁴ Vaping has also become more prevalent among students in middle schools in Lewis
8 County, with current vapor product use by eighth graders increasing by 75% and current use by
9 sixth graders increasing by 300%.⁵⁸⁵ Vapor product use among every grade level surveyed in
10 Lewis County is higher than the statewide average.⁵⁸⁶ These numbers are self-reported, and
11 many officials think they likely underestimate the actual prevalence of youth vaping.
12

13 363. Plaintiff Toledo School District has been directly affected by this surge in youth
14 vaping. Plaintiff first noticed a major increase in vaping at its schools beginning in 2017, and
15 since then vaping has only intensified. At Toledo High School, students are vaping in
16 classrooms, in the bathrooms and parking lots, and devices are falling out of students' pockets.
17 Similarly, at Toledo Middle School, students are frequently caught vaping at school and in the
18 school bathroom. Even some Toledo elementary students have been caught vaping.
19

20 364. Not only are the youth vaping rates surging in Plaintiff's community, they are
21 doing so at a time when youth use of traditional cigarettes is falling. In Lewis County, although
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24 ⁵⁸² *Toledo Schools*, Toledo Sch. Dist., <http://toledoschools.us/district-office.html> (last visited Mar. 19, 2020).

25 ⁵⁸³ *County-level HYS 2018 press release estimates*, Wash. State Healthy Youth Survey,
26 <http://www.askhys.net/Home/Press> (last visited Mar. 13, 2020); *County-level HYS 2016 press release estimates*,
Wash. State Healthy Youth Survey, <http://www.askhys.net/Home/Press> (last visited Mar. 13, 2020).

⁵⁸⁴ *Id.*

⁵⁸⁵ *County-level HYS 2018 press release estimates*, *supra* note 583.

⁵⁸⁶ *Id.*

1 the percentage of twelfth graders who reported smoking cigarettes fell from 22% to 10% from
 2 2008 to 2018, e-cigarette use increased dramatically since 2016.⁵⁸⁷

3 365. These increasing vaping rates in Plaintiff's community are consistent with the rise
 4 in youth vaping throughout the State of Washington. In Washington State, use of vapor products
 5 among twelfth grade students increased from 20% in 2016 to nearly 30% in 2018.⁵⁸⁸ In addition,
 6 Washington state students do not understand the dangers of vaping. Only about a third of tenth
 7 graders thought vaping was harmful.⁵⁸⁹

9 366. In response to the youth vaping epidemic sweeping Washington State and the
 10 illness caused by EVALI, on September 27, 2019, Governor Jay Inslee ordered the Washington
 11 State Department of Health to temporarily ban all flavored vaping products.⁵⁹⁰ In his executive
 12 order, Governor Inslee agreed with the FDA: "[E]-cigarette use among youth has reached
 13 epidemic proportions and this epidemic presents a clear and present danger."⁵⁹¹ He explained
 14 that "vapor products containing nicotine are the most commonly used nicotine products in
 15 Washington among youth," that "vapor product use increased dramatically among eighth, tenth,
 16 and twelfth graders between 2016 and 2018" and that "an overwhelming majority" of youth who
 17 use vape using flavored products."⁵⁹² Inslee found that "[t]he appeal of flavored nicotine
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22 ⁵⁸⁷ *Id.*

23 ⁵⁸⁸ Amy Blondin and Kristen Maki, *Alcohol use remains at an all time low while vaping use increases among*
 24 *Washington youth*, Wash. State Health Youth Survey (Mar. 18, 2019),
<http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf>.

25 ⁵⁸⁹ *Executive Order 19-03 Addressing the Vaping Use Public Health Crisis*, State of Wash. Office of the Governor,
https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery (last visited Mar. 19, 2020).

26 ⁵⁹⁰ *Supra* note 588.

⁵⁹¹ *Id.*

⁵⁹² *Id.*

1 products, as well as advertising and promotion activities targeted at youth, are contributing to the
2 dramatic increase in youth vaping.”⁵⁹³

3 367. The rapid spread of youth vaping has affected Plaintiff and its schools in
4 numerous ways, including impacts on curriculum development and class time, increased staff
5 time spent addressing discipline and supervision issues, and increased counselor time spent
6 speaking to addicted students and peers who are concerned about the vaping epidemic. This
7 work is necessary as a result of Defendants’ intentional actions to target youth.
8

9 368. Recognizing that youth vaping has become a public health crisis, Plaintiff has
10 taken steps to address it. For example, as vaping has increased, Plaintiff’s teachers and
11 administrators have educated themselves about Defendants’ products and their dangers. One
12 component of the necessary education has been simply recognizing the devices for what they are:
13 due to the USB-mimicking design of JUUL and its copycats, many teachers do not recognize the
14 vape devices in students’ backpacks. Plaintiff’s staff now must regularly meet to learn how
15 identify vaping devices, and to discuss the health effects of these products as well as how to
16 prevent students from using them at school. Plaintiff’s staff also works with local drug and
17 alcohol agencies to stay up to date with a rapidly evolving e-cigarette market.
18

19 369. Plaintiff has also had to develop new curriculum material and devote class time to
20 discuss youth vaping with students. In addition, Plaintiff has dedicated time at school assemblies
21 and in student advisory classes to address the issue of vaping, time that could have otherwise
22 been devoted to other important issues facing Plaintiff’s students.
23

24 370. Plaintiff’s counselors are also affected, spending significant time discussing the
25 risks associated with vaping with students, while also trying to help students who have become
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⁵⁹³ *Id.*

1 addicted. In addition to working with students, Plaintiff's counselors and administrators also
2 train the district's teachers and work to educate parents in Plaintiff's community.

3 371. The work that Plaintiff does to educate students and parents is particularly
4 important, and necessary, as a result of the widespread misinformation about vapor products.
5 Many members of Plaintiff's community have been deceived by Defendants' marketing and
6 misinformation and are unaware of the true nature, health risks, and addictiveness of vapor
7 products. As a result of Defendants' advertising campaigns, some members of Plaintiff's
8 communities believe that Defendants' products contain only flavoring, not nicotine.
9 Additionally, both teens and their parents have been deceived into thinking vaping is harmless,
10 and as a result of the low perception of harm, youth vape more frequently.

11 372. Staff are also spending increased time addressing discipline problems related to
12 student e-cigarette use. Plaintiff has had to create and write new protocols into the student
13 handbook in order to ensure that e-cigarettes like JUULs are included and to determine
14 appropriate disciplinary actions. While the initial response was to suspend students for vaping
15 offenses, Plaintiff was concerned that this time away from school only enabled further e-cigarette
16 use. Consequently, Plaintiff's school administrators and teachers are having to address these
17 issues during school hours, which interferes with curriculum and regular teaching time.

18 373. Relatedly, because e-cigarette use in bathrooms is pervasive at schools at both
19 Toledo Middle School and Toledo High School, Plaintiff's staff has had to devote staff time and
20 resources to monitoring the bathrooms, including regularly walking through them both during
21 class and between classes. Plaintiff's staff also has had to conduct more frequent locker searches
22 to find and confiscate vape products from youth who are vaping at school.
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374. Not only have Defendants' vapor products addicted a new generation to nicotine, Defendants are also creating a growing hazardous waste problem in Plaintiff's District. Defendants' vapor products contain chemicals that can be toxic or fatal if ingested in their concentrated forms,⁵⁹⁴ as well as lithium-ion batteries.⁵⁹⁵ The surge in youth vaping has led to hazardous waste from these vapor products being spread around Plaintiff's schools, in addition to the products Plaintiff has confiscated from its students. Plaintiff does not currently have resources allocated to the hazardous waste disposal of vapor products.

375. Plaintiff has been taking important steps to combat the youth vaping crisis, but it cannot fully address the existing widespread use of vapor products and resulting nicotine addiction among youth. Because of the smoothness of nicotine salts contained in Defendants' vapor products as well as Defendants' discreet device designs, many youth use their vape devices with high frequency throughout the day—with some kids taking a puff as often as every few minutes. Unlike a combustible cigarette with its telltale emissions of smoke and distinct smell, the JUUL device and "JUULalikes" allow kids to vape undetected behind closed doors and even behind their teachers' backs in the classroom. Such frequent use makes it much more likely that nicotine addiction will develop, particularly when coupled with the high nicotine

⁵⁹⁴ See, e.g., *How do I dispose of a JUULpod?*, JUUL Labs, Inc., <https://support.juul.com/hc/en-us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-> (last visited Mar. 3, 2020) ("JUULpods should be recycled along with other e-waste."); American Acad. of Pediatrics, *Liquid Nicotine Used in E-Cigarettes Can Kill Children*, [healthychildren.org](https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx), <https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx> (last visited Mar. 3, 2020).

⁵⁹⁵ See, e.g., JUUL Labs, Inc. (2020), <https://support.juul.com/hc/en-us/articles/360023319614-What-kind-of-battery-is-in-the-device-> (last visited Feb. 3, 2020) ("JUUL uses a lithium-ion polymer battery. All portable electronics containing lithium-ion batteries present rare, but potentially serious safety hazards."); JUUL Labs, Inc. (2020), <https://support.juul.com/hc/en-us/articles/360023366194-How-do-I-dispose-of-a-JUUL-device-> (last visited Mar. 13, 2020) ("Unlike other e-cigarettes, JUUL isn't disposable and should be treated as a consumer electronic device. Follow your city's local recommendations for disposing of a lithium-polymer rechargeable battery.").

1 content in JUULpods and copycat products. Youth vaping has therefore resulted in a higher
 2 incidence of addiction than that caused by youth smoking of combustible cigarettes.

3 376. As the researchers conducting the national *Monitoring the Future* survey wrote in
 4 a letter to the *New England Journal of Medicine* in October 2019, current efforts are insufficient
 5 to address youth nicotine addiction from vaping:
 6

7 Current efforts by the vaping industry, government agencies, and schools have
 8 thus far proved insufficient to stop the rapid spread of nicotine vaping among
 9 adolescents. Of particular concern are the accompanying increases in the
 10 proportions of youth who are physically addicted to nicotine, an addiction that is
 11 very difficult to overcome once established. The substantial levels of daily vaping
 suggest the development of nicotine addiction. New efforts are needed to protect
 youth from using nicotine during adolescence, when the developing brain is
 particularly susceptible to permanent changes from nicotine use and when almost
 all nicotine addiction is established.⁵⁹⁶

12 377. In order to support students in the Toledo School District who are addicted to
 13 nicotine, school counselors connect students with community resources to receive health
 14 assessments, but these resources are not sufficient. Due to Plaintiff's rural geography, most
 15 agencies and resources are over a twenty-five-minute drive away, which makes it difficult for
 16 students to receive cessation help. While some agencies do come to schools, they are typically
 17 unwilling to do this on a case-by-case basis. More accessible treatment options are necessary for
 18 Plaintiff to be able to fully support at-risk students in its schools.
 19

20 378. The lack of treatment options for students within the Toledo School District who
 21 are addicted to nicotine is a significant concern for Plaintiff, but such treatment options will be
 22 difficult to develop. The available FDA-approved tobacco cessation products are not intended
 23 for, and are not approved for, pediatric use. With additional resources, Plaintiff would support
 24 the development of additional, youth-appropriate cessation options that can meet the needs of its
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 26

⁵⁹⁶ Richard Miech, Ph.D. et al., *Trends in Adolescent Vaping, 2017-2019*, New Eng. J. Med. (Oct. 10, 2019),
<https://www.nejm.org/doi/full/10.1056/NEJMc1910739>. **Error! Hyperlink reference not valid.**

1 students. Plaintiff would also support the development of vaping-specific cessation resources to
2 address the ways in which vaping cessation may differ from traditional smoking cessation.

3 Development of such resources is a crucial step to combat the youth vaping epidemic.

4 379. With sufficient funding, Plaintiff would also purchase vape detectors to install in
5 its bathrooms, in order to both reduce the amount of staff time devoted to patrolling the
6 bathroom and ensure that students vaping at school are identified and connected with resources
7 to help them quit.

8 380. Plaintiff also believes it is necessary to develop and implement a district-wide
9 education and outreach campaign about vaping and its dangers in order to combat Defendants'
10 marketing and the social pressures the youth vaping epidemic has created. Carrying out such a
11 campaign effectively and countering Defendants' extensive marketing will require significant
12 funding as well as staff time.

13 381. This district-wide education and outreach campaign must include developing
14 prevention and education materials appropriate for sixth grade and middle school students, as the
15 vaping crisis continues to spread to even younger children. Developing appropriate educational
16 materials for Plaintiff's sixth graders is particularly important because health classes are not part
17 of the curriculum in elementary school. And critically, Plaintiff wants to establish more
18 comprehensive parent education programs to broaden capacity for families to support their
19 children who are struggling with vaping and addiction.

20 382. In addition, while the State of Washington has historically provided some funding
21 for tobacco use prevention, the spread of youth vaping has outpaced available resources.

22 Washington allocated \$1.5 million to spend on tobacco prevention in 2019,⁵⁹⁷ but youth e-

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⁵⁹⁷ *Tobacco use in Washington 2019*, Truth Initiative (June 28, 2019), <https://truthinitiative.org/research-resources/smoking-region/tobacco-use-washington-2019>.

1 cigarette use continues to rise. Money available to support anti-smoking efforts has been
2 declining as youth use of traditional cigarettes goes down, which means that little tobacco
3 prevention funding is available to address youth vaping rates just as they are surging.

4 383. Fully addressing the harms to Plaintiff caused by Defendants' conduct will
5 require a comprehensive approach, one that includes addiction counselors in schools, prevention
6 education featuring information about the immediate health consequences of vapor product use
7 for kids, such as impaired ability to play sports, peer-to-peer mentoring to promote healthy
8 behaviors and strengthen refusal skills, and addiction treatment options. Without the resources to
9 fund measures such as those described herein, Plaintiff and others similarly situated will continue
10 to be harmed by the ongoing consequences of Defendants' conduct.

11
12 **M. No Federal Agency Action, Including by the FDA, Can Provide the Relief**
13 **Plaintiff Seeks Here**

14 384. The injuries Plaintiff has suffered and will continue to suffer cannot be addressed
15 by agency or regulatory action. There are no rules the FDA could make or actions the agency
16 could take that would provide Plaintiff the relief it seeks in this litigation.

17 385. Even if e-cigarettes were entirely banned today or only used by adults, millions of
18 youth, including Plaintiff's residents, would remain addicted to nicotine.

19 386. Regulatory action would do nothing to compensate Plaintiff for the money and
20 resources it has already expended addressing the impacts of the youth vaping epidemic and the
21 resources it will need in the future. Only this litigation has the ability to provide Plaintiff with the
22 relief it seeks.

23 387. Furthermore, the costs Plaintiff has incurred in responding to the public health
24 crisis caused by youth vaping and in rendering public services described above are recoverable
25 pursuant to the causes of actions raised by Plaintiff. Defendants' misconduct alleged herein is not
26

1 a series of isolated incidents, but instead the result of a sophisticated and complex marketing
 2 scheme and related cover-up scheme that has caused a continuing, substantial, and long-term
 3 burden on the services provided by Plaintiff. In addition, the public nuisance created by
 4 Defendants and Plaintiff's requested relief in seeking abatement further compels Defendants to
 5 reimburse and compensate Plaintiff for the substantial resources it has expended and will need to
 6 continue to expend to address the youth vaping epidemic.
 7

8 **V. CAUSES OF ACTION**

9 **COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUISANCE LAW, 10 *RCW 7.48.010 ET SEQ.***

11 388. Plaintiff Toledo School District incorporates each preceding paragraph as though
 12 set forth fully herein.

13 389. Plaintiff brings this claim under Washington Public Nuisance law, RCW
 14 7.48.020, as to all Defendants.

15 390. Pursuant to RCW 7.48.010, an actionable nuisance is defined as, *inter alia*,
 16 "whatever is injurious to health or indecent or offensive to the senses . . ."
 17

18 391. Specifically, a "[n]uisance consists in unlawfully doing an act, or omitting to
 19 perform a duty, which act or omission either annoys, injures or endangers the comfort, repose,
 20 health or safety of others, offends decency . . . or in any way renders other persons insecure in
 21 life, or in the use of property." RCW 7.48.120.

22 392. Under Washington law, conduct that substantially and/or unreasonably interferes
 23 with the Plaintiff's use of its property is a nuisance even if it would otherwise be lawful.

24 393. Pursuant to RCW 7.48.130, "A public nuisance is one which affects equally the
 25 rights of an entire community or neighborhood, although the extent of the damage may be
 26 unequal."

1 394. Employees and patrons, including students, of Toledo School District have a right
2 to be free from conduct that endangers their health and safety. Yet Defendants have engaged in
3 conduct which endangers or injures the health and safety of the employees and students of
4 Toledo School District by their production, promotion, distribution, and marketing of JUUL,
5 MarkTen, and Eonsmoke products for use by minors in Toledo School District and in a manner
6 that substantially interferes with the functions and operations of Toledo School District and
7 impacts the public health, safety, and welfare of the entire Toledo School District and
8 Washington State communities.
9

10 395. Each Defendant has created or assisted in the creation of a condition that is
11 injurious to the health and safety of Plaintiff and its students interferes with the comfortable
12 enjoyment of life and property of the entire communities of Toledo School District and
13 Washington State at large.
14

15 396. Defendants' conduct has directly caused a severe disruption of the public health,
16 order, and safety. Defendants' conduct is ongoing and continues to produce permanent and long-
17 lasting damage.
18

19 397. This harm to the Plaintiff outweighs any social utility of the Defendants' wrongful
20 conduct because Defendants' conduct violates Washington's public policy against marketing
21 vapor products to minors. This policy is expressed through Washington State Governor Jay
22 Inslee's Executive Order 19-03, finding that "it is the policy of the state of Washington to
23 support the health, safety, and well-being of all Washingtonians" and that "e-cigarette use among
24 youth has reached epidemic proportions and that this epidemic presents a clear and present
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1 danger.”⁵⁹⁸ This policy is also expressed through statutes and regulations, including but not
 2 limiting to

- 3 A. RCW 26.28.080, under which any person who sells, gives, or permits to be
 4 sold or given vapor products to a minor is guilty of a gross misdemeanor;
- 5 B. RCW 70.345.140, under which it is illegal for minors to purchase vapor
 6 products; and
- 7 C. RCW 70.345.090, under which it is illegal for any person to conduct a
 8 delivery sale or otherwise ship or transport, or cause to be shipped or
 9 transported, any vapor product ordered or purchased by mail or through the
 10 internet to a minor.

11 398. Defendants’ conduct violated this public policy, including by

- 12 A. Actively seeking to enter school campuses, targeting children as young as
 13 eight through summer camps and school programs, extensively targeting
 14 youth through social media campaigns, and recruiting “influencers” to
 15 market to teens;
- 16 B. Engaging in marketing tactics specifically designed to mislead children
 17 and youth and to ensnare minors into nicotine addiction, including by
 18 explicitly adopting tactics prohibited from Big Tobacco, with the
 19 knowledge that those tactics were likely to ensnare children and youth into
 20 nicotine addiction, including using billboards and outdoor advertising,
 21 sponsoring events, giving free samples, paying affiliates and “influencers”
 22 to push vapor products, and by selling vapor products in flavors designed
 23 to appeal to youth;
- 24 C. Engaging in advertising modeled on cigarette ads and featuring youthful-
 25 appearing models and designing advertising in a patently youth-oriented
 26 fashion;
- 27 D. Directing advertising to youth media outlets and media designed to appeal
 to children and youth, such as Instagram and other social media channels;
- 28 E. Hosting youth-focused parties across the United States, at which free
 samples were dispensed and in which vaping was featured prominently
 across social media;

⁵⁹⁸ *Executive Order*, *supra* note 589.

F. Formulating vapor products with flavors with the knowledge that such flavors appealed to youth and with the intent that youth become addicted or dependent upon vapor products; and

G. Promoting and assisting the growth of the vapor product market and its availability with knowledge that vapor products were being purchased and used by large numbers of youth.

399. The health and safety of the youth of Toledo School District, including those who use, have used, or will use vapor products, as well as those affected by others' use of vapor products, are matters of substantial public interest and of legitimate concern to the Plaintiff, as well as to the entire Toledo School District and Washington State communities.

400. Defendants' conduct has affected and continues to affect a substantial number of people within Toledo School District and is likely to continue causing significant harm.

401. But for Defendants' actions, vapor product use by minors would not be as widespread as it is today, and the youth vaping public health epidemic that currently exists as a result of the Defendants' conduct would have been averted.

402. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair and deceptive conduct has caused the damage and harm complained of herein. Defendants knew or reasonably should have known that their statements regarding the risks and benefits of vaping were false and misleading, that its marketing methods were designed to appeal to minors, and that its false and misleading statements, marketing to minors, and active efforts to increase the accessibility of vapor product and grow JUUL's market share, or the market share of Defendants' products, were causing harm to minors and to counties, including minors in Toledo School District and the District itself.

403. Thus, the public nuisance caused by Defendants was reasonably foreseeable, including the financial and economic losses incurred by Toledo School District.

1 404. Alternatively, Defendants' conduct was a substantial factor in bringing about the
2 public nuisance even if a similar result would have occurred without it. By directly marketing to
3 youth and continuing marketing practices after it was evidence that children were using JUUL
4 products in large numbers and were specifically using these products in school, JLI directly
5 facilitated the spread of the youth vaping epidemic and the public nuisance affecting Toledo
6 School District. By seeking to capitalize on JLI's success in addicting minors to nicotine and by
7 directly marketing to youth and continuing marketing practices after it was evident that children
8 were using JUUL products and Eonsmoke products in large numbers and were specifically using
9 these products in school, Eonsmoke directly facilitated the spread of the youth vaping epidemic
10 and the public nuisance affecting Toledo School District. By investing billions of dollars in JLI
11 and actively working to promote the sale and spread of JUUL products with knowledge of JLI's
12 practice of marketing its products to youth and failure to control youth access to its products,
13 Altria directly facilitated the spread of the youth vaping epidemic and the public nuisance
14 affecting Toledo School District.
15
16

17 405. In addition, engaging in any business in defiance of a law regulating or
18 prohibiting the same is a nuisance per se under Washington law. Defendants' conduct described
19 herein of deceptively marketing vapor products to minors violates RCW 7.48.010 and therefore
20 constitutes a nuisance per se.
21

22 406. Defendants' conduct is specially injurious to Toledo School District because, as a
23 direct and proximate result of Defendants' conduct creating or assisting in the creation of a
24 public nuisance, Plaintiff and its students and employees have sustained and will continue to
25 sustain substantial injuries.
26

407. Plaintiff has taken steps to address the harm caused by Defendants’ conduct, including, but not limited to, those listed in section IV.L.

408. Fully abating the epidemic of youth vaping resulting from Defendants’ conduct will require much more than these steps.

409. Pursuant to RCW 7.48.020, Toledo School District requests an order providing for abatement of the public nuisance that Defendants have created or assisted in the creation of, and enjoining Defendants from future violations of RCW 7.48.010.

410. Pursuant to RCW 7.48.020, Plaintiff also seeks the maximum statutory and civil penalties permitted by law, including actual and compensatory damages, as a result of the public nuisance created by Defendants.

411. Pursuant to RCW 4.22.070, Defendants are jointly and severally liable because they have acted in concert with each other and because Plaintiff is not at fault.

COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961 *ET SEQ.*

412. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

413. This claim is brought by Plaintiff against Defendants JLI and the Altria Defendants (“Youth Marketing Cover-Up Enterprise Defendants”) for actual damages, treble damages, and equitable relief under 18 U.S.C. § 1964 for violations of 18 U.S.C. § 1961 *et seq.*

414. At all relevant times, each Youth Marketing Cover-Up Enterprise Defendant is and has been a “person” within the meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

1 415. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has
2 standing to sue as it was and is injured in its business and/or property as a result of the Youth
3 Marketing Cover-Up Enterprise Defendants’ wrongful conduct described herein.

4 416. Section 1962(c) makes it “unlawful for any person employed by or associated
5 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
6 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through
7 a pattern of racketeering activity” 18 U.S.C. § 1962(c).

8 417. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
9 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

10 418. Each Youth Marketing Cover-Up Enterprise Defendant conducted the affairs of
11 an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c) and §
12 1962(d).
13
14

15 **A. Description of Defendants’ Youth Marketing Cover-Up Enterprise**

16 419. RICO defines an enterprise as “any individual, partnership, corporation,
17 association, or other legal entity, and any union or group of individuals associated in fact
18 although not a legal entity.” 18 U.S.C. § 1961(4).

19 420. Under 18 U.S.C. § 1961(4) a RICO “enterprise” may be an association-in-fact
20 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among
21 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise’s
22 purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).
23

24 421. Defendants JLI and Altria formed an association-in-fact enterprise—referred to
25 herein as the Youth Marketing Cover-Up Enterprise. This Enterprise exists separately from the
26 otherwise legitimate business operations of JLI and Altria.

1 422. The Youth Marketing Cover-Up Enterprise is an ongoing and continuing business
 2 organization consisting of “persons” within the meaning of 18 U.S.C. § 1961(3) that created and
 3 maintained systematic links for a common purpose: fraudulently maintaining and expanding
 4 JLI’s massive, and ill-gotten, share of the e-cigarette market.

5 423. As set forth above, JLI obtained its massive market share over a short time period
 6 by successfully targeting youth and addicting youth to nicotine.

7
 8 **B. The Enterprise Sought to Fraudulently Deny Having Marketed to Youth**
 9 **in Maintaining and Expanding JUUL’s Youth Market Share**

10 424. As described above, Altria—having long followed JUUL’s market-share
 11 dominance with envy—decided to go from JLI’s competitor to its co-conspirator. Altria and JLI
 12 thus formed the Youth Marketing Cover-Up Enterprise with the goal of preserving, and profiting
 13 from, JUUL’s ill-gotten market share.

14 425. The Youth Marketing Cover-Up Enterprise recognized that one of the keys to
 15 preserving JUUL’s market share was to continue to falsely deny that JLI marketed its tobacco
 16 products to youth. Both JLI and Altria knew that once JLI had established a base of young
 17 customers, the focus had to be on covering up JLI’s past youth marketing in order to keep JUUL
 18 products available in communities like Plaintiff’s. To further this effort, JLI and Altria have also
 19 made repeated statements through the mail and wires, in advertising and otherwise, that JLI does
 20 not market to youth and its marketing is only aimed at adult smokers, that none of the Youth
 21 Marketing Cover-Up Defendants want youth to vape, and vaping is for adults only. But this is
 22 not now, and has not ever been, an effective tactic to prevent youth initiation, as Altria well
 23 knows. In upholding the United States’ lawsuit against Altria and other Big Tobacco defendants,
 24 for marketing to youth and civil violations of RICO, the court recognized that “smoking has
 25 traditionally been viewed by adolescents and young adults as sophisticated adult behavior to be
 26

1 emulated.”⁵⁹⁹ As mentioned above, “[e]mphasizing that smoking is an adult activity underscores
2 the desirability of engaging in adult behavior for adolescents who are particularly motivated to
3 appear mature.”⁶⁰⁰

4 426. JLI and the Altria Defendants worked in concert to defraud the public and
5 regulators in order to quell a public outcry and prevent regulation that would have impeded their
6 plan to maintain and expand sales of JUUL products to a customer base primarily consisting of
7 youth. Specifically, they worked to ensure that certain flavors popular with youth such as mint
8 remained on the market as long as possible, even while publicly declaring that they were
9 removing flavors from the market to specifically address the youth vaping crisis and despite their
10 knowledge that mint was a particularly attractive flavor to youth.
11

12 427. Thus, in furtherance of their Enterprise, JLI and Altria repeatedly made
13 statements denying that youth were intended targets for JUUL products and asserting that JUUL
14 products were really created and designed as a smoking cessation device, intended from the start
15 for “switchers” (existing smokers who are open to vaping). These statements are false, and
16 constitute mail and wire fraud, predicate acts under RICO.
17

18 428. At all relevant times, each Youth Marketing Cover-Up Enterprise Defendant was
19 aware of the conduct of the Youth Marketing Cover-Up Enterprise, was a knowing and willing
20 participant in that conduct, and reaped profits from that conduct in the form of sales and
21 distribution of JUUL products.
22
23
24
25
26

⁵⁹⁹ *Philip Morris*, 449 F. Supp. 2d at 617.

⁶⁰⁰ *Id.* at 669.

1 429. The persons engaged in the Youth Marketing Cover-Up Enterprise are
2 systematically linked through contractual relationships, financial ties, and continuing
3 coordination of activities.

4 430. There is regular communication between JLI and the Altria Defendants in which
5 information regarding the Youth Marketing Cover-Up Enterprise Defendants' scheme to protect,
6 maintain and expand JUUL's market share is shared. Typically, this communication occurred,
7 and continues to occur, through the use of the mail and wires in which Defendants share
8 information regarding the operation of the Youth Marketing Cover-Up Enterprise and its cover-
9 up of JLI's efforts to target and addict youth.
10

11 431. The Youth Marketing Cover-Up Enterprise functions as a continuing unit for the
12 purposes of executing and accomplishing its objectives, and when issues arise, each member of
13 the Enterprise agrees to take action to support the Enterprise.
14

15 432. Each Youth Marketing Cover-Up Enterprise Defendant participated in the
16 operation and management of the Youth Marketing Cover-Up Enterprise by directing its affairs
17 as described herein.

18 433. While the Youth Marketing Cover-Up Enterprise Defendants participate in, and
19 are members of, the Youth Marketing Cover-Up Enterprise, they have an existence separate from
20 the Enterprise, including distinct legal statuses, affairs, offices and roles, officers, directors,
21 employees, and individual personhood.
22

23 434. Without the willing participation of each Youth Marketing Cover-Up Enterprise
24 Defendant, the Youth Marketing Cover-Up Enterprise's common course of conduct would not be
25 successful.
26

1 **C. Predicate Acts: Mail and Wire Fraud**

2 435. To carry out, or attempt to carry out, the objectives of the Youth Marketing
3 Cover-Up Enterprise, the members of the Enterprise, each of whom is a person associated-in-fact
4 with the Enterprise, did knowingly conduct or participate in, directly or indirectly, the affairs of
5 the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§
6 1961(1), 1961(5) and 1962(c), and employed the use of the mail and wire facilities, in violation
7 of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).
8

9 436. Specifically, the members of the Youth Marketing Cover-Up Enterprise have
10 committed, conspired to commit, and/or aided and abetted in the commission of, at least two
11 predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the
12 past ten years.
13

14 437. The multiple acts of racketeering activity which the members of the Youth
15 Marketing Cover-Up Enterprise committed, or aided or abetted in the commission of, were
16 related to each other, posed a threat of continued racketeering activity, and therefore constitute a
17 “pattern of racketeering activity.”

18 438. The racketeering activity was made possible by the Enterprise’s regular use of the
19 facilities, services, and employees of the Enterprise.
20

21 439. The members of the Youth Marketing Cover-Up Enterprise participated in the
22 Enterprise by using mail, telephone, and the internet to transmit mailings and wires in interstate
23 or foreign commerce.

24 440. The members of the Youth Marketing Cover-Up Enterprise used, directed the use
25 of, and/or caused to be used, thousands of interstate mail and wire communications in service of
26 the Enterprise’s objectives through common misrepresentations, concealments, and material
omissions.

1 441. In devising and executing the objectives of the Youth Marketing Cover-Up
2 Enterprise, its members devised and knowingly carried out a material scheme and/or artifice to
3 defraud the public by marketing JUUL products to youth, ensuring that youth could access JUUL
4 products, and then denying that JUUL products were marketed to youth, and maintained that
5 JUUL was really created and designed as a smoking cessation device.
6

7 442. For the purpose of furthering its desire to preserve and increase its market share,
8 even at the expense of exposing and addicting youth to nicotine, the Youth Marketing Cover-Up
9 Enterprise committed these racketeering acts, which number in the thousands, intentionally and
10 knowingly with the specific intent to advance its objectives.
11

12 443. In order to protect JLI's ability to continue to sell JUUL products and market to
13 youth, the Altria Defendants and JLI, through their operation of the Youth Marketing Cover-Up
14 Enterprise, worked in concert to defraud the public and regulators in order to prevent the public
15 and political condemnation that would have impeded the Youth Marketing Cover-Up
16 Enterprise's common purpose: maintaining and expanding JLI's massive, and ill-gotten, share of
17 the e-cigarette market.
18

19 444. In furtherance of their Enterprise, JLI and Altria repeatedly made statements to
20 the public disclaiming any desire to build a youth market, and statements that JUUL was always
21 intended for and marketed to adult smokers and/or as a smoking cessation device. In truth, JUUL
22 was a potent nicotine delivery system designed to addict non-smokers, particularly youth, to
23 nicotine, and in fact was specifically marketed to appeal to children. It was only in the face of
24 widespread public outrage and increased scrutiny that Youth Marketing Cover-Up Enterprise
25 dramatically re-shaped its marketing message and launched its "Make the Switch" campaign. In
26 making these representations, JLI and Altria intended that consumers, the public, and regulators

1 rely on misrepresentations that JUUL products were designed to assist smoking cessation, did
2 not pose a threat to public health, and were never intended to be used or marketed to appeal to
3 youth.

4 445. These statements by the Youth Marketing Cover-Up Enterprise Defendants are
5 false, and constitute mail and wire fraud, predicate acts under RICO.
6

7 446. Each of the Youth Marketing Cover-Up Enterprise Defendants knew at the time
8 of making these statements that they were untrue and misleading. JUUL is not FDA-approved as
9 a cessation product.

10 447. Each of the foregoing statements and transmissions constitutes a predicate act of
11 wire fraud. The Youth Marketing Cover-Up Enterprise Defendants made these transmissions and
12 statements, knowing they would be transmitted via wire, with the intent to market to youth and to
13 deceive the public, the FDA, and Congress as to JLI and its officers and directors' true intentions
14 of hooking underage users.
15

16 448. As set forth herein, JLI obtained its massive market share over a short time period
17 by successfully targeting youth and addicting youth to nicotine. Altria's investment in and
18 provision of "services" to JLI reflect an intention to further the Enterprise's common purpose of
19 fraudulently maintaining and expanding JUUL's market share, including by maintaining and
20 growing JLI's youth sales. JUUL's predominantly youth customer base ensures a steady supply
21 of nicotine-addicted customers—creating a new generation of customers for Altria's products.
22 The Enterprise has worked to maintain and expand JUUL's market share—which, based on
23 Altria's own October 25, 2018 letter to the FDA, Altria believes was obtained by employing
24 marketing and advertising practices that contributed to youth vaping. The Enterprise's efforts to
25
26

cover up the role of youth in JUUL's sales are knowing, intentional, and fraudulent in violation of RICO.

449. The Youth Marketing Cover-Up Enterprise's predicate acts of racketeering (18 U.S.C. § 1961(1)) include, but are not limited to:

A. Mail Fraud: the Youth Marketing Cover-Up Enterprise violated 18 U.S.C. § 1341 by sending or receiving, or by causing to be sent and/or received, fraudulent materials via U.S. mail or commercial interstate carriers for the purpose of deceiving the public regarding its efforts to market to youth and the true purpose and design behind its products; and

B. Wire Fraud: the Youth Marketing Cover-Up Enterprise violated 18 U.S.C. § 1343 by transmitting and/or receiving, or by causing to be transmitted and/or received, fraudulent materials by wire for the purpose of deceiving the public regarding its efforts to market to youth and the true purpose and design behind its products.

450. The Youth Marketing Cover-Up Enterprise falsely and misleadingly used the mail and wires in violation of 18 U.S.C. § 1341 and § 1343. Illustrative and non-exhaustive examples include the following:

1. "Here at JUUL we are focused on driving innovation to eliminate cigarettes, with the corporate goal of improving the lives of the world's one billion adult smokers." (JLI's Twitter Feed, July 5, 2017).⁶⁰¹
2. "It's a really, really important issue. We don't want kids using our products." (CNBC Interview of JLI's Chief Administrative Officer, December 14, 2017).⁶⁰²
3. "We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences." (JLI Social Media Post, March 14, 2018).⁶⁰³
4. "JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world's one billion adult smokers by **eliminating**

⁶⁰¹ Jackler et al., *supra* note 46 at 25 (This was the first mention of the term "adult" or "adult smoker" on JLI's Twitter Feed).

⁶⁰² Angelica LaVito, *Nearly one-quarter of teens are using pot*, CNBC (Dec. 14, 2017), <https://www.cnbc.com/2017/12/13/marijuana-and-nicotine-vaping-popular-among-teens-according-to-study.html> (Interview with Ashely Gould, JUUL Chief Administrative Officer).

⁶⁰³ Jackler et al., *supra* note 46 at 2 (citing a JUUL social media post from March 14, 2018).

cigarettes. We envision a world where fewer adults use cigarettes, and **where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely**, should they so desire.” (JLI Website, April 2018 (or earlier)).⁶⁰⁴

5. “Our company’s mission is to eliminate cigarettes and help the more than one billion smokers worldwide switch to a better alternative,” said JUUL Labs Chief Executive Officer Kevin Burns. “We are already seeing success in our efforts to enable adult smokers to transition away from cigarettes and believe our products have the potential over the long-term to contribute meaningfully to public health in the U.S. and around the world. At the same time, we are committed to deterring young people, as well as adults who do not currently smoke, from using our products. We cannot be more emphatic on this point: No young person or non-nicotine user should ever try JUUL.” (JLI Press Release, April 25, 2018).⁶⁰⁵
6. “Our objective is to provide the 38 million American adult smokers with meaningful alternatives to cigarettes while also ensuring that individuals who are not already smokers, particularly young people, are not attracted to nicotine products such as JUUL,” said JUUL Labs Chief Administrative Officer Ashley Gould, who heads the company’s regulatory, scientific and youth education and prevention programs. “We want to be a leader in seeking solutions, and are actively engaged with, and listening to, community leaders, educators and lawmakers on how best to effectively keep young people away from JUUL.” (JLI Press Release, April 25, 2018).⁶⁰⁶
7. “JUUL was not designed for youth, nor has any marketing or research effort since the product’s inception been targeted to youth.” (Letter to FDA, June 15, 2018).⁶⁰⁷
8. “With this response, the Company hopes FDA comes to appreciate why the product was developed and how JUUL has been marketed — to provide a viable alternative to cigarettes for adult smokers.” (Letter to FDA, June 15, 2018).⁶⁰⁸
9. “We welcome the opportunity to work with the Massachusetts Attorney General because, we too, are committed to preventing underage use of JUUL. We utilize stringent online tools to block attempts by those under the age of 21 from purchasing our products, including unique ID match and age verification technology. Furthermore, we have never marketed to anyone underage. Like many Silicon Valley technology startups, our growth is not the result of marketing but rather a superior product disrupting an archaic industry. When adult smokers find an effective alternative to cigarettes, they tell other adult smokers. That’s

⁶⁰⁴ *Our Mission*, JUUL Labs, Inc., <https://www.juul.com/mission-values> (last visited Mar. 28, 2020) (emphasis added).

⁶⁰⁵ *JUUL Labs Announces Comprehensive Strategy*, *supra* note 400.

⁶⁰⁶ *Id.*

⁶⁰⁷ Letter from JUUL’s Counsel at Sidley Austin to Matthew Holman, M.D., FDA at 2 (June 15, 2018).

⁶⁰⁸ *Id.* at 3.

1 how we've gained 70% of the market share. . . Our ecommerce platform utilizes
 2 unique ID match and age verification technology to make sure minors are not able
 3 to access and purchase our products online." (Statement from Matt David, JLI
 4 Chief Communications Officer, July 24, 2018).⁶⁰⁹

5 10. "We adhere to strict guidelines to ensure that our marketing and commercial
 6 communications are directed toward existing adult smokers." (JLI Website, July
 7 26, 2018).

8 11. "We did not create JUUL to undermine years of effective tobacco control, and we
 9 do not want to see a new generation of smokers." (JLI's website as of July 26,
 10 2018).⁶¹⁰

11 12. "Although we do not believe we have a current issue with youth access to or use
 12 of our pod-based products, we do not want to risk contributing to the issue."
 13 (Letter from Altria CEO to FDA Commissioner Gottlieb, October 25, 2018).⁶¹¹

14 13. "We believe e-vapor products present **an important opportunity to adult
 15 smokers to switch from combustible cigarettes.**" (Letter to FDA Commissioner
 16 Gottlieb, October 25, 2018).⁶¹²

17 14. "We don't want anyone who doesn't smoke, or already use nicotine, to use JUUL
 18 products. We certainly don't want youth using the product. It is bad for public
 19 health, and it is bad for our mission. JUUL Labs and FDA share a common goal –
 20 preventing youth from initiating on nicotine." (JLI Website, November 12,
 21 2018).⁶¹³

22 15. "To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult
 23 smokers** to switch from cigarettes, not an on-ramp for America's youth to initiate
 24 on nicotine." (JLI Website, November 13, 2018).⁶¹⁴

25 16. "We won't be successful in our mission to serve adult smokers if we don't narrow
 26 the on-ramp. . . . Our intent was never to have youth use JUUL products." (JLI
 Website, November 13, 2018).⁶¹⁵

⁶⁰⁹ *Statement Regarding The Press Conference Held By The Massachusetts Attorney General*, JUUL Labs, Inc. (July 24, 2018), <https://newsroom.juul.com/statement-regarding-the-press-conference-held-by-the-massachusetts-attorney-general/>.

⁶¹⁰ *Our Responsibility*, JUUL Labs, Inc. (July 26, 2018), <https://web.archive.org/web/20180726021743/https://www.juul.com/our-responsibility> (last visited Mar. 29, 2020).

⁶¹¹ Willard, *Letter to Gottlieb*, *supra* note 426 at 2.

⁶¹² *Id.* (emphasis added).

⁶¹³ *JUUL Labs Action Plan*, *supra* note 441 (statement of Ken Burns, former CEO of JUUL).

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

17. ***“Altria and JUUL are committed to preventing kids from using any tobacco products.*** As recent studies have made clear, youth vaping is a serious problem, which both Altria and JUUL are committed to solve. As JUUL previously said, ‘Our intent was never to have youth use JUUL products.’” (Altria News Release, December 20, 2018).⁶¹⁶
18. “Altria’s investment sends a very clear message that JUUL’s technology has given us a truly historic opportunity to improve the lives of the world’s one billion adult cigarette smokers,” said Kevin Burns, Chief Executive Officer of JUUL. “This investment and the service agreements will accelerate our mission to increase the number of adult smokers who switch from combustible cigarettes to JUUL devices.” (Altria News Release, December 20, 2018).⁶¹⁷
19. “We have long said that **providing adult smokers with superior, satisfying products with the potential to reduce harm** is the best way to achieve tobacco harm reduction. **Through Juul**, we are making the biggest investment in our history toward that goal.” (Altria News Release, December 20, 2018).⁶¹⁸
20. “We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, **a world leader in switching adult smokers . . .** We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.” (Altria News Release, December 20, 2018).⁶¹⁹
21. “Almost my entire career, we have believed that our business would be better in the long term if we could offer harm reduced products that would represent attractive alternatives to our adult cigarette smokers to switch. And we have invested billions of dollars in it and lots of effort. And ultimately until December this year, we really didn’t have the product portfolio to fully achieve our harm reduction aspiration. And the opportunity to invest in JUUL, I think, really makes that harm reduction aspiration a reality.” (Altria Earnings Call, January 31, 2019).⁶²⁰
22. “Through JUUL, we have found a unique opportunity to not only participate meaningfully in the e-vapor category but to also **support and even accelerate transition to noncombustible alternative products by adult smokers.**” (Altria Earnings Call, January 31, 2019).⁶²¹

⁶¹⁶ Altria Minority Investment, *supra* note 451.

⁶¹⁷ *Id.*

⁶¹⁸ *Id.* (emphasis added).

⁶¹⁹ *Id.* (emphasis added).

⁶²⁰ Altria Q4 2018 Earnings Call Transcript, *supra* note 464.

⁶²¹ *Id.* (emphasis added).

23. “We expect the **JUUL product features that have driven JUUL's success in switching adult smokers in the U.S.** to strongly appeal to international adult cigarette smokers.” (Altria Earnings Call, January 31, 2019).⁶²²
24. “Throughout our analysis, it became clear that investing with JUUL to accelerate its global growth was more value accretive than investing internally to leap frog its product. We determined that our services and infrastructure could complement JUUL’s terrific product and capabilities, and help advance a compelling long-term commercial and harm-reduction opportunity.” (Remarks by Altria CEO, Feb. 20, 2019).⁶²³
25. “First of all, I’d tell them that I’m sorry that their child’s using the product. It’s not intended for them. I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.” (CNBC Interview of JLI CEO, July 13, 2019).⁶²⁴
26. “We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use Juul products. . . .That is a serious problem. Our company has no higher priority than combatting underage use.” (Testimony of James Monsees, July 25, 2019).⁶²⁵
27. James Monsees, one of the company’s co-founders, said selling JUUL products to youth was “antithetical to the company’s mission.”(James Monsees’ Statement to *The New York Times*, August 27, 2019).⁶²⁶
28. “**Our focus is and will remain entirely on helping adult smokers switch** away from combustible cigarettes, the leading cause of preventable death in the world.” (Statement by JLI spokesman to *The New York Times*, August 27, 2019).⁶²⁷

⁶²² *Id.* (emphasis added).

⁶²³ Altria, *supra* note 379.

⁶²⁴ Angelica LaVito, *As Juul grapples with teen vaping ‘epidemic,’ CEO tells parent ‘I’m sorry’*, CNBC (July 13, 2019), <https://www.cnbc.com/2019/07/13/as-juul-deals-with-teen-vaping-epidemic-ceo-tells-parents-im-sorry.html>.

⁶²⁵ *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the House Committee on Oversight and Reform Subcommittee on Economic and Consumer Policy* at 1 (July 25, 2019), <https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MonseesJ-20190725.pdf> (testimony of JUUL Founder James Monsees).

⁶²⁶ Richtel & Kaplan, *supra* note 137.

⁶²⁷ Sheila Kaplan, *Philip Morris and Altria Are in Talks to Merge*, N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/health/philip-morris-altria-merger-tobacco.html> (statement made by Joshua Raffel, JUUL spokesperson).

29. “We have no higher priority than to prevent youth usage of our products which is why we have taken aggressive, industry leading actions to combat youth usage.” (JLI Website, August 29, 2019).⁶²⁸
30. “JUUL Labs, which exists to **help adult smokers switch** off of combustible cigarettes. . .” (JLI Website, September 19, 2019).⁶²⁹
31. “We have never marketed to youth and we never will.” (JLI Statement to *Los Angeles Times*, September 24, 2019).⁶³⁰
32. “In late 2017 and into early 2018, we saw that the previously flat e-vapor category had begun to grow rapidly. JUUL was responsible for much of the category growth and **had quickly become a very compelling product among adult vapers**. We decided to pursue an economic interest in JUUL, believing that an investment would **significantly improve our ability to bring adult smokers a leading portfolio of non-combustible products** and strengthen our competitive position with regards to potentially reduced risk products.” (Letter from Altria CEO to Senator Durbin, October 14, 2019).⁶³¹
33. “The growth of the e-vapor category since 2017 illustrates the willingness of adult smokers to try these products, and **JUUL in particular has been highly successful at moving adult smokers away from cigarettes**.” (Remarks by Altria CEO, Feb. 19, 2020).⁶³²
34. “**JUUL was designed with adult smokers in mind**. . . . By accommodating cigarette-like nicotine levels, JUUL provides **satisfaction to meet the standards of adult smokers** looking to switch from smoking cigarettes.” (JLI Website, last visited March 29, 2020).⁶³³

451. The mail and wire transmissions described herein were made in furtherance of the Youth Marketing Cover-Up Enterprise Defendants’ scheme and common course of conduct designed to fraudulently grow the market of nicotine-addicted youth and to cover up JLI and the

⁶²⁸ *Our Actions to Combat Underage Use*, JUUL Labs, Inc. (Aug. 29, 2019), <https://newsroom.juul.com/ouractions-to-combat-underage-use/> (JUUL statement in response to lawsuits).

⁶²⁹ CONSUMER UPDATE: 9/19, JUUL Labs, Inc (Sept. 19, 2019), <https://newsroom.juul.com/consumer-update-9-19/> (emphasis added).

⁶³⁰ Michael Hiltzik, *Column: Studies show how Juul exploited social media to get teens to start vaping*, L.A. Times (Sept. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens> (statement made on behalf of JUUL).

⁶³¹ Willard, *Letter to Senator Durbin*, *supra* note 23 at 3 (emphasis added).

⁶³² Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 at 5 (Feb. 19, 2020), <https://www.sec.gov/Archives/edgar/data/764180/000076418020000013/exhibit991-2020cagnyre.htm> (emphasis added).

⁶³³ JUUL Labs, Inc., <https://www.juul.com/> (last visited Mar. 29, 2020) (emphasis added).

1 its officers and directors' marketing to youth, thereby increasing or maintaining JUUL's market
2 share, resulting in corresponding high profits for all Youth Marketing Cover-Up Enterprise
3 Defendants.

4 452. Some of the precise dates of the fraudulent uses of the mail and interstate wire
5 facilities have been deliberately hidden and cannot be alleged without access to the Youth
6 Marketing Cover-Up Enterprise Defendants' books and records. However, Plaintiff has
7 described the types of predicate acts of mail and/or wire fraud, including the specific types of
8 fraudulent statements upon which, through the mail and wires, the Youth Marketing Cover-Up
9 Enterprise engaged in fraudulent activity in furtherance of its scheme.

10
11 453. The members of the Enterprise have not undertaken the practices described herein
12 in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §
13 1962(d), the members of the Youth Marketing Cover-Up Enterprise conspired to violate 18
14 U.S.C. § 1962(c), as described herein. On information and belief, various other persons, firms,
15 and corporations, including third-party entities and individuals not named as Defendants herein,
16 have participated as co-conspirators with the Youth Marketing Cover-Up Enterprise Defendants
17 and the members of the Youth Marketing Cover-Up Enterprise in these offenses and have
18 performed acts in furtherance of the conspiracy to increase or maintain revenue, maintain or
19 increase market share, and/or minimize losses for the Youth Marketing Cover-Up Enterprise
20 Defendants and their named and unnamed co-conspirators throughout the illegal scheme and
21 common course of conduct.
22
23

24 454. To achieve their common goals, the members of the Enterprise hid from Plaintiff
25 and the public: (1) the fraudulent nature of the Youth Marketing Cover-Up Enterprise scheme;
26 (2) the fraudulent nature of statements made by the Youth Marketing Cover-Up Enterprise

1 Defendants regarding JLI's efforts to target youth and the nature of JLI's products; and (3) the
2 true nature and objective of the relationship between the members of the Enterprise.

3 455. Each member of the Youth Marketing Cover-Up Enterprise, with knowledge and
4 intent, agreed to the overall objectives of the schemes and participated in the common course of
5 conduct. Indeed, for the conspiracy to succeed, each of the members of the Youth Marketing
6 Cover-Up Enterprise had to agree to conceal their fraudulent scheme.

7 456. The members of the Youth Marketing Cover-Up Enterprise knew, and intended
8 that, the public would rely on the material misrepresentations and omissions made by them.

9 457. As described herein, the members of the Youth Marketing Cover-Up Enterprise
10 engaged in a pattern of related and continuous predicate acts for years. The predicate acts
11 constituted a variety of unlawful activities, each conducted with the common purpose of
12 maintaining JUUL's ill-gotten market share and thereby continuing to receive significant monies
13 and revenues from the public, including youth, based on their misconduct.

14 458. The predicate acts also had the same or similar results, participants, victims, and
15 methods of commission.

16 459. The predicate acts were related and not isolated events.

17 460. The public, including youth and parents in Plaintiff's community, relied on
18 Defendants' fraudulent misrepresentations and omissions, as alleged above.

19 461. The Youth Marketing Cover-Up Enterprise Defendants' fraudulent concealment
20 was material to Plaintiff and the public. The pattern of racketeering activity described above is
21 currently ongoing and open-ended, and threatens to continue indefinitely unless this Court
22 enjoins the racketeering activity.

D. Plaintiff Has Been Damaged by the Youth Marketing Cover-Up Enterprise Defendants' RICO Violations

462. Plaintiff has been injured by the Youth Marketing Cover-Up Enterprise Defendants' predicate acts. By fraudulently denying JLI's youth marketing and working to preserve and expand the market of underage JUUL customers, the Youth Marketing Cover-Up Enterprise caused the expansion of an illicit e-cigarette market for youth in Plaintiff's community and caused a large number of youth in Plaintiff's community to become addicted to nicotine. In addition, the Youth Marketing Cover-Up Enterprise Defendants intentionally sought to reach into schools and deceive public health officials in order to continue growing JLI's youth customer base. The repeated fraudulent misstatements by the Youth Marketing Cover-Up Enterprise Defendants denying that JLI marketed to youth have served to preserve JUUL's market share—a market share that is based upon children purchasing JLI's tobacco products.

463. Plaintiff was a direct victim of Defendants' misconduct. The Youth Marketing Cover-Up Enterprise Defendants displayed a wanton disregard for public health and safety by intentionally addicting youth, including youth in Plaintiff's community, to nicotine and then attempted to cover up their scheme in order to maintain and expand JUUL's market share. Defendants actively concealed that they marketed to youth in order to avoid public condemnation and keep their products on the market and continue youth sales. This forced Plaintiff to shoulder the responsibility for this youth vaping crisis created by Defendants' misconduct. The harm created by the illicit youth e-cigarette market created by Defendants required Plaintiff to expend its limited financial resources to mitigate the health crisis of youth vaping. The expansion of this youth e-cigarette market was the goal of the Youth Marketing Cover-Up Enterprise and is critical to its success. Therefore, the harm suffered by Plaintiff

1 because it must address and mitigate the youth vaping crisis was directly foreseeable and in
2 fact an intentional result of Defendants' misconduct.

3 464. The creation and maintenance of this youth e-cigarette market directly harms
4 Plaintiff by imposing costs on its business and property. Plaintiff's injuries were not solely the
5 result of them having to spend money to act governmentally. Instead, as a result of Defendants'
6 misconduct, Plaintiffs have been and will be forced to go far beyond what a governmental
7 entity might ordinarily be expected to pay to enforce the laws to promote the general welfare in
8 order to combat the youth vaping crisis. This includes providing new programs and new
9 services as a direct result and in direct response to Defendants' misconduct. As a result of the
10 conduct of the Youth Marketing Cover-Up Defendants, Plaintiff has incurred and will incur
11 costs that far exceed the norm.
12

13 465. The Youth Marketing Cover-Up Enterprise Defendants' violations of 18 U.S.C. §
14 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiff, its
15 community, and the public, and Plaintiff is entitled to bring this action for three times its actual
16 damages, as well as for injunctive/equitable relief, costs, and reasonable attorneys' fees and costs
17 pursuant to 18 U.S.C. § 1964(c).
18

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff prays for judgment as follows:

21 466. Entering an Order that the conduct alleged herein constitutes a public nuisance
22 under Washington law, including RCW 7.48 *et seq.*;

23 467. Entering an Order that Defendants are jointly and severally liable;

24 468. Entering an Order requiring Defendants to abate the public nuisance described

25 herein and to deter and/or prevent the resumption of such nuisance;

1 469. Enjoining Defendants from engaging in further actions causing or contributing to
2 the public nuisance as described herein;

3 470. Awarding equitable relief to fund prevention education and addiction treatment;

4 471. Awarding actual and compensatory damages;

5 472. Awarding statutory damages in the maximum amount permitted by law;

6 473. Awarding reasonable attorneys' fees and costs of suit;

7 474. Awarding pre-judgment and post-judgment interest; and

8 475. Such other and further relief as the Court deems just and proper under the
9 circumstances.
10

11 **JURY TRIAL DEMANDED**

12 Plaintiff hereby demands a trial by jury.

13 DATED this 1st day of April, 2020.
14

15 KELLER ROHRBACK L.L.P.

16 By /s/ Dean Kawamoto

17 By /s/ Derek W. Loeser

18 By /s/ Gretchen Freeman Cappio

19 By /s/ Alisom S. Gaffney

20 By /s/ Felicia J. Craick

21 Dean Kawamoto, WSBA #43850

22 Derek W. Loeser, WSBA #24274

23 Gretchen Freeman Cappio, WSBA #29576

24 Alison S. Gaffney, WSBA #45565

25 Felicia J. Craick, WSBA #54505

26 1201 Third Avenue, Suite 3200

Seattle, WA 98101

Tel: (206) 623-1900

Fax: (206) 623-3384

Email: dloeser@kellerrohrback.com

gcappio@kellerrohrback.com

dkawamoto@kellerrohrback.com

agaffney@kellerrohrback.com

fcraick@kellerrohrback.com

Attorneys for Plaintiff Toledo School District

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Toledo School District

(b) County of Residence of First Listed Plaintiff Lewis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Dean Kawamoto, Keller Rohrbach L.L.P.
1201 Third Avenue, Suite 3200, Seattle, WA 98101
(206) 623-1900, dkawamoto@kellerrohrbach.com

DEFENDANTS

JUUL Labs, Inc. /k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSD Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☒ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. sections 1961, et seq.

Brief description of cause:
Public Nuisance and RICO

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE William Orrick (ND Cal)DOCKET NUMBER 19-md-2913

DATE

SIGNATURE OF ATTORNEY OF RECORD
/s/ Alison S. Gaffney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Western District of Washington

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of Washington

Toledo School District

Plaintiff(s)

V.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Altria Group Distribution Company
c/o CT Corporation System
4701 Cox Rd., Ste. 301
Glen Allen, VA 23060

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Dean Kawamoto
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of Washington

Toledo School District

Plaintiff(s)

V.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Altria Group, Inc.
c/o CT Corporation System
4701 Cox Rd., Ste. 301
Glen Allen, VA 23060

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Dean Kawamoto
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of Washington

Toledo School District

Plaintiff(s)

V.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Eonsmoke LLC
1500 Main Avenue, 2nd Floor
Clifton, NJ 07011

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Dean Kawamoto
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Toledo School District

Plaintiff(s)

v.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Juul Labs, Inc.
c/o CT Corporation System
560 20th St.
San Francisco, CA 94107

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Dean Kawamoto
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of Washington

Toledo School District

Plaintiff(s)

V.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.; Eonsmoke LLC; Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company; Nu Mark LLC; and Nu Mark Innovations, Ltd.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Nu Mark Innovations Ltd.
HaMelacha St. 203
Bet Shemesh, Israel

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Dean Kawamoto
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Western District of Washington

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: