

[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: JUUL LABS, INC. MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

No. 19-md-2913-WHO

THIS DOCUMENT RELATES TO:
*County of Santa Cruz, Individually And on Behalf
of The People of The State of California v. JUUL
Labs, Inc., et al.*

PLAINTIFF'S AMENDED COMPLAINT

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. The battle to end nicotine addiction and its associated diseases and death has consumed our nation’s public health resources for more than half a century. After five decades of tireless efforts by public health advocates, litigators, and regulators, the war on tobacco was on the path to victory. By 2014, rates of smoking and nicotine addiction in this country were finally at an all-time low, particularly among teenagers. Until now. The United States, closer than ever to consigning the nicotine industry to the dustbin of history, now faces a youth nicotine epidemic of historic proportions.

2. JUUL products are rampant in the nation’s schools, with the percentage of 12th graders who reported consuming nicotine almost doubling between 2017 and 2018. In 2019, more than five million middle and high school students reported current use of e-cigarettes, including more than one in every four high schoolers. Consistent with this national trend, youth in Santa Cruz County (“Santa Cruz” or “Plaintiff”) are using e-cigarettes at high rates—rates which continue to climb. In 2017, 6% of eleventh graders in Santa Cruz County had used e-cigarettes in the past 30 days.¹ Just two years later, in 2019, this figure increased to 19%.² In addition, from 2017 to 2019, the number of seventh graders who reported current e-cigarette use increased by 233%, rising from 3% to 10% in just two years.³ The Surgeon General has warned that this new “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.” The swift rise in a new generation of nicotine addicts has overwhelmed parents, schools, and the medical community (including county public health departments) on the front lines dealing with this crisis, drawing governmental intervention at nearly every level—but it’s too little, too late.

¹ WestEd, *Santa Cruz County Secondary 2015-2017 Main Report* (hereinafter “2017 Healthy Kids Survey”) at 36, Cal. Healthy Kids Survey (Feb. 6, 2017), https://data.calschls.org/resources/Santa_Cruz_County_1517_Sec_CHKS.pdf.

² WestEd, *Santa Cruz COE Secondary 2018-2019 Main Report* (hereinafter “2019 Healthy Kids Survey”) at 42, Cal. Healthy Kids Survey (June 25, 2019), https://santacruzcoe.org/wp-content/uploads/2019/09/Santa_Cruz_County_Office_of_Education_1819_Sec_CHKS.pdf.

³ *Supra* note 7 at 3; *supra* note 8 at 42.

1 3. This public health crisis is no accident. What had been lauded as progress in curbing
2 cigarette use, JUUL Labs Inc.'s (JLI) co-founders Adam Bowen and James Monsees viewed as
3 opportunity. Seizing on the decline in cigarette consumption and the lax regulatory environment for e-
4 cigarettes, Bowen, Monsees, and investors in their company sought to introduce nicotine to a whole
5 new generation, with JLI as the dominant supplier. To achieve that common purpose, they knew they
6 would need to create and market a product that would make nicotine cool again, without any of the
7 stigma associated with cigarettes. With help from their early investors and board members, who
8 include Nicolas Pritzker, Huyoung Huh, and Riaz Valani (together, the "Management Defendants"),
9 they succeeded in hooking millions of youth, and, of course, earning billions of dollars in profits.
10

11 4. Every step of the way, JLI, by calculated intention, adopted the cigarette industry's
12 playbook, in coordination with one of that industry's innovators, cigarette giant Altria. JLI was created
13 in the image of the iconic American cigarette companies, which JLI founders praised for creating "the
14 most successful consumer product of all time. . . . an amazing product." The secret to that "amazing
15 product"? Nicotine, a chemical that has deleterious effects on developing young brains, is the
16 fundamental reason that people persist in using tobacco products even though they can cause
17 pulmonary injuries, cardiovascular disease and other serious, often fatal, conditions. Through careful
18 study of decades of cigarette industry documents, JLI knew that the key to developing and sustaining
19 addiction was the amount and the efficiency of the nicotine delivery.
20

21 5. Three tactics were central to decades of cigarette industry market dominance: product
22 design to maximize addiction; mass deception; and targeting of youth. JLI and its co-conspirators
23 adopted and mastered them all. *First*, JLI and Bowen designed JUUL products to create and sustain
24 addiction, not break it. JLI and Bowen were the first to design an e-cigarette that could compete with
25 combustible cigarettes on the speed and strength of nicotine delivery. Indeed, JUUL products use
26 nicotine formulas and delivery methods much stronger than combustible cigarettes, confirming that
27 what JLI and Bowen designed was a starter product designed for youth, not a cessation or cigarette
28

1 replacement product. JLI and Bowen also innovated by making an e-cigarette that was smooth and
2 easy to inhale, practically eliminating the harsh “throat hit,” which otherwise deters nicotine
3 consumption, especially among nicotine “learners,” as R.J. Reynolds’ chemist Claude Teague called
4 new addicts, primarily young people.

5
6 6. *Second*, JLI and the Management Defendants, just like cigarette companies before them,
7 targeted kids as their customer base. One of JLI’s [REDACTED] was the need to [REDACTED]
8 [REDACTED] JUUL products were designed to appear slick and high-tech like a cool gadget, including
9 video-game-like features like “party mode.” JLI offered kid-friendly flavors like mango and cool mint,
10 and partnered with Altria to create and preserve the market for mint-flavored products—all because
11 Defendants knew that flavors get young people hooked. Under the guise of youth smoking prevention,
12 JLI sent representatives directly to schools to study teenager e-cigarette preferences.

13
14 7. *Third*, JLI, the Management Defendants and Altria engaged in a campaign of deceit,
15 through sophisticated mass media and social media communications, advertisements and otherwise,
16 about the purpose and dangers of JUUL products. JUUL products’ packaging and advertising grossly
17 understates the nicotine content in its products. Advertising campaigns featured JUUL paired with food
18 and coffee, positioning JUUL as part of a healthy meal, a normal part of a daily routine, and as safe as
19 caffeine. In partnership with Altria, JLI adopted a “Make the Switch” campaign to mislead the public
20 into thinking that JLI products were benign smoking cessation devices, even though JUUL was never
21 designed to break addictions. JLI, the Management Defendants, and Altria also concealed the results of
22 studies that revealed that JUUL products were far more powerfully addictive than was disclosed. JLI’s
23 deceptive marketing scheme was carried out across the country through broad distribution channels:
24 veteran cigarette industry wholesalers, distributors and retailers ensured that JUUL products would
25 become widely available to a new market of nicotine-newcomers, especially youth. JLI and the
26 Management Defendants joined with these veteran cigarette industry marketers to secure premium
27 shelf space for vivid displays at convenience stores, like 7-11, and gas stations, including Chevron, that
28

1 would lure e-cigarette users, particularly young people, who would become long-term customers.
2 These marketing efforts have been resounding successes—when JUUL products were climbing in
3 sales, most youth—and their parents—believed that e-cigarettes did not contain nicotine at all.

4 8. JLI and the Management Defendants reached their intended demographic through a
5 diabolical pairing of notorious cigarette company advertising techniques (long banned for cigarettes
6 because they cause young people to start smoking) with cutting-edge viral marketing campaigns and
7 social media. They hired young models and advertised using bright, “fun” themes, including on media
8 long barred to the cigarette industry, such as billboards, on children’s websites such as “Nick Junior”
9 and Cartoon Network, and on websites providing games and educational tools to students in middle
10 school and high school. JLI and the Management Defendants also employed young social media
11 “influencers” and celebrities popular with teenagers. When the public, regulators, and Congress caught
12 onto JLI’s relentless focus on children, JLI and the Management Defendants simply lied, even though
13 they knew well that they had purposefully targeted youth in their marketing and those efforts had been
14 breathtakingly successful.

15 9. It should come as little surprise that JLI and the Management Defendants’ misconduct,
16 expressly patterned after decades of cigarette company practices, could not have been carried out
17 without the involvement and expertise of an actual cigarette company. In December 2018, Altria paid
18 \$12.8 billion to acquire a 35% stake in JLI. But even well before Altria announced its investment in
19 JLI, the connections between the two companies ran deep. JLI and Altria collaborated to grow the
20 e-cigarette market and the number of users addicted to nicotine, including by sharing data and
21 information and coordinating marketing activities, including acquisition of key shelf space next to
22 top-selling Marlboro cigarettes. Altria’s investment in JLI is not merely a financial proposition, but a
23 key element of Defendants’ plan to stave off regulation and public outcry and keep their most potent
24 and popular products on the market. JLI has benefitted from Altria’s expertise in designing and
25 marketing addictive products, and in thwarting regulation.

1 10. There is no doubt about it—JLI, the Management Defendants, Altria, and their co-
2 Defendants have created this youth public health crisis. At the heart of this disastrous epidemic are the
3 concerted efforts of JLI, its co-conspirators, and all those in JUUL’s supply and distribution chain to
4 continuously expand their market share and profits by preying upon a vulnerable young population and
5 deceiving the public about the true nature of the products they were selling. Nicotine is not benign like
6 coffee, contrary to what many JUUL users believe. Nor is the aerosol as harmless as puffing room air.
7 Worse, the flavors in JUUL products are themselves toxic and dangerous, and have never been
8 adequately tested to ensure they are safe for inhalation. According to the most recent scientific
9 literature, JUUL products cause acute and chronic pulmonary injuries, cardiovascular conditions, and
10 seizures. Yet JUUL products and advertising contain no health risk warnings at all. And a generation
11 of kids is now hooked, ensuring long-term survival of the nicotine industry because, today just as in
12 the 1950s, 90% of smokers start as children.
13
14

15 II. JURISDICTION AND VENUE

16 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
17 because Plaintiff’s racketeering claim arises under the laws of the United States, 18 U.S.C. § 1961 *et*
18 *seq.*, and pursuant to 28 U.S.C. § 1332(a) because: (i) the amount in controversy exceeds \$75,000,
19 exclusive of interests and costs, and (ii) the plaintiff and defendants are citizens of different states. This
20 Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
21

22 12. The Court has personal jurisdiction over Defendants because they do business in the
23 Northern District of California and have sufficient minimum contacts with the District. Defendants
24 intentionally avail themselves of the markets in this State through the promotion, marketing, and sale
25 of the products at issue in this lawsuit in California, and by retaining the profits and proceeds from
26 these activities, to render the exercise of jurisdiction by this Court permissible under California law
27 and the U.S. Constitution. In addition, Defendant JUUL Labs Inc. has its principal place of business in
28 the Northern District of California and the Management Defendants are domiciled in the Northern

1 District of California, making them subject to the general jurisdiction of this Court. The Court also has
 2 personal jurisdiction over JLI, the Management Defendants, and Altria under 18 U.S.C. § 1965,
 3 because at least one of these Defendants has sufficient minimum contacts with the District.

4 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391
 5 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims at issue in
 6 this Complaint arose in this District and Defendants are subject to the Court's personal jurisdiction
 7 with respect to this action.
 8

9 III. PARTIES

10 **Plaintiff**

11 14. Plaintiff County of Santa Cruz ("Santa Cruz County," or "County") is a political
 12 subdivision of the State of California.
 13

14 **The People of the State of California**

15 15. Plaintiff is the People of the State of California. Plaintiff brings this action by and
 16 through the County of Santa Cruz.

17 16. Jason M. Heath is the County Counsel for Santa Cruz County, which is authorized by
 18 Civil Code sections 3479, 3480, 3490, 3491, 3494, and the Code of Civil Procedure section 731, to
 19 abate public nuisances. The County is authorized under Civil Code section 731 to obtain preliminary
 20 and permanent injunctions to abate any public nuisance present in the County as defined by Civil Code
 21 sections 3480. County Counsel is authorized under Government Code 26529 to prosecute all civil
 22 actions and proceedings in which the county or any of its officers is concerned or is a party in his or
 23 her official capacity.
 24

25 **JUUL Labs, Inc.**

26 17. Defendant JUUL Labs, Inc. ("JLI") is a Delaware corporation, having its principal place
 27 of business in San Francisco, California. Ploom, Inc., a predecessor company to JLI, was incorporated
 28 in Delaware on March 12, 2007. In 2015, Ploom, Inc. changed its name to PAX Labs, Inc. In April

1 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc., and formed a new subsidiary corporation
2 with its old name, PAX Labs, Inc. That new subsidiary, PAX Labs, Inc. (“PAX”), was incorporated in
3 Delaware on April 21, 2017 and has its principal place of business in San Francisco, California.

4 18. JUUL, designs, manufactures, sells, markets, advertises, promotes and distributes JUUL
5 e-cigarettes devices, JUUL pods and accessories (collectively “JUUL” or “JUUL products”). Prior to
6 the formation of separate entities PAX Labs, Inc. and JLI in or around April 2017, JUUL designed,
7 manufactured, sold, marketed, advertised, promoted, and distributed JUUL under the name PAX Labs,
8 Inc.

9
10 19. Together with its predecessors, JUUL Labs, Inc is referred to herein as “JLI.”

11 **Altria Defendants**

12 20. Defendant Altria Group Inc, (together with its wholly owned subsidiaries and their
13 predecessors, “Altria” or the “Altria Defendants”) is a Virginia corporation, having its principal place
14 of business in Richmond, Virginia. Altria is one of the world’s largest producers and marketers of
15 tobacco products, manufacturing and selling combustible cigarettes for more than a century.

16
17 21. On December 20, 2018, Altria purchased a 35% stake in JLI. Altria and JLI executed a
18 Services Agreement that provides that Altria, through its subsidiaries, Philip Morris, Altria Client
19 Services LLC, and Altria Group Distribution Company, would assist JLI in the selling, marketing,
20 promoting, and distributing of JUUL, among other things.

21
22 22. Defendant Altria Client Services LLC (“Altria Client Services” or “ACS”) is a Virginia
23 limited liability company with its principal place of business in Richmond, Virginia. Altria Client
24 Services provides Altria Group, Inc. and its companies with services in many areas including digital
25 marketing, packaging design & innovation, product development, and safety, health, and
26 environmental affairs. Pursuant to Altria’s Relationship Agreement with JLI, Altria Client Services
27
28

1 assists JLI in the sale, marketing, promotion and distribution of JUUL products.⁴ Such services include
2 database support, direct marketing support, and premarket product application support.⁵ On September
3 25, 2019, the former senior vice president and chief growth officer of Altria Client Services, K.C.
4 Crosthwaite, became the new chief executive officer of JLI.

5
6 23. Defendant Altria Group Distribution Company (“AGDC”) is a Virginia corporation and
7 wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Richmond,
8 Virginia. Altria Group Distribution Company provides sales, distribution and consumer engagement
9 services to Altria’s tobacco companies. Altria Group Distribution Company performs services under
10 the Relationship Agreement to assist JLI in the sale, marketing, promotion and distribution of JLI.

11 [REDACTED] Altria Group Distribution Company
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 24. Defendant Altria Enterprises LLC (“Altria Enterprises”) is a wholly owned subsidiary
16 of Altria Group, Inc. Altria Enterprises is a Virginia limited liability company with its principal place
17 of business in Richmond, Virginia. Altria Enterprises is a party to the purchase agreement between
18 Altria Group, Inc. and JLI. Altria Enterprises purchased Altria’s stake in JLI on Altria’s behalf.
19
20
21
22
23
24
25
26

27 ⁴ Altria Group, Inc., *Relationship Agreement by and among JUUL Labs, Inc., Altria Group, Inc., and*
28 *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>.

⁵ *Id.*

Collectively, Altria Group, Inc. and its subsidiaries named above will be referred to herein as “Altria.” Upon information and belief, Altria conducted meetings, interviews and inspections at the JLI facilities in San Francisco and engaged in frequent communications regarding JUUL with JLI in California and elsewhere prior to, during, and subsequent to its stock purchase.

Management Defendants

25. Defendant James Monsees is a resident of the San Francisco Bay area, California. In 2007, he co-founded Ploom with Defendant Bowen. He served as Chief Executive Officer of JLI until October 2015. Since October 2015, he has been Chief Product Officer of JLI. At all relevant times, he has been a member of the Board of Directors of JLI until he stepped down in March 2020.

26. Defendant Adam Bowen is a resident of the San Francisco Bay area, California. In 2007, he co-founded Ploom with Defendant Monsees. At all relevant times, he has been Chief Technology Officer and a member of the Board of Directors of JLI.

27. Defendant Nicholas Pritzker is a resident of San Francisco, California, and a member of the Pritzker family, which owned the chewing-tobacco giant Conwood before selling it to Reynolds American, Inc., a subsidiary of British American Tobacco. Pritzker received a J.D. from the University of Chicago. He served as president of the Hyatt Hotels Corporation and was a member of its Board of Directors from 1980 to 2007. More recently, he co-founded Tao Capital, an early investor in, among other companies, Tesla Motors and Uber. In 2007, he invested in JLI.⁶ He has been on the Board of

[REDACTED] ⁷ [REDACTED]

[REDACTED]

[REDACTED]⁸

⁶ Ainsley Harris, *How JUUL went from a Stanford thesis to \$16 billion startup*, Fast Co. (Mar. 8, 2020), <https://www.fastcompany.com/90263212/how-JUUL-went-from-a-stanford-thesis-to-16-billion-startup>.

⁷ INREJUUL_00371187.

⁸ INREJUUL_00327603.

28. Defendant Hoyoung Huh lives and works in the Silicon Valley area, California. He holds an M.D. from Cornell and a Ph.D. in Genetics/Cell Biology from Cornell/Sloan-Kettering. He has been CEO or a Board member of numerous biotechnology businesses, including Geron Corporation. Huh has been on the Board of Directors of JLI since at least June 2015. [REDACTED]

29. Defendant Riaz Valani lives near San Jose, California and is a general partner at Global Asset Capital, a San Francisco-based private equity investment firm. He has been on the Board of Directors of JLI since at least May 2011.¹⁰ [REDACTED]

30. Defendants Monsees, Bowen, Pritzker, Huh, and Valani are referred to collectively as the “Management Defendants.”

31. Defendants JLI, the Altria Defendants, Monsees, Bowen, Pritzker, Huh, and Valani are referred to collectively as the “RICO Defendants.”

IV. GENERAL FACTUAL ALLEGATIONS

A. Each Defendant Was Instrumental in Seeking to Develop and Market the Blockbuster Sequel to Combustible Cigarettes, the “Most Successful Consumer Product of All Time.”

32. JLI’s co-founder James Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”¹² This statement, which ignores the fact that cigarettes have caused more deaths than any other human invention, contained a kernel of truth. When

⁹ *Id.*

¹⁰ Ploom, Inc., Notice of Exempt Offering of Securities (Form D) (May 5, 2011), https://www.sec.gov/Archives/edgar/data/1520049/000152004911000001/xslFormDX01/primary_doc.xml.

¹¹ INREJUUL_00327603.

¹² Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—James Monsees and Adam Bowen Have Cornered the US E-Cigarette Market with Juul. Up Next: The World*, FORBES INDIA (Sept. 27, 2018), www.forbesindia.com/article/leaderboard/billionairestobe-cigarette-breakers/51425/1.

1 U.S. smoking rates peaked in the mid-1960s, 42% of adults smoked cigarettes. Cigarettes were
2 everywhere; people smoked on airplanes, in movie theatres, at the office, and at sports games. Movie
3 stars and sports heroes smoked. Cigarette advertising wallpapered American life, glamorizing smoking
4 as sophisticated, cool, and the thing to do.

5
6 33. But in reality, of course, this “successful” product has long been the world’s leading
7 cause of preventable death.

8 34. Years of anti-smoking campaigns, including work by local government public health
9 departments and school-based anti-tobacco programs, have made great strides towards de-normalizing
10 cigarette smoking. But where public health officials and schools saw progress, others saw an
11 opportunity.

12
13 35. Citing “some problems” inherent in the cigarette, Monsees and JLI co-founder Adam
14 Bowen set out to “deliver[] solutions that refresh the magic and luxury of the tobacco category.”¹³
15 Monsees saw “a huge opportunity for products that speak directly to those consumers who aren’t
16 perfectly aligned with traditional tobacco products.”¹⁴ Successfully capitalizing on this opportunity
17 would mean not only billions of dollars in short-term revenue but lucrative acquisition by a cigarette
18 industry power player.

19
20 36. Bowen and Monsees took the first major step toward realizing their vision by
21 deliberately creating an extremely potent nicotine product that looked nothing like a cigarette. But
22 achieving widespread adoption of their highly addictive product required resources and expertise
23 beyond those possessed by Bowen, Monsees or others at JLI.

24 37. When it became clear that Bowen and Monsees could not themselves achieve their
25 vision of growing the number of nicotine-addicted e-cigarette users to ensure a base of customers for
26

27
28 ¹³ Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*, SOLID
SMACK (Apr. 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods.

¹⁴ *Id.*

1 life, the Management Defendants planned a fundamental shift in roles to allow Pritzker, Huh, and
 2 Valani to direct and take control of JLI and use it to commit the Defendants' unlawful acts.

3 38. Specifically, in October 2015, Monsees stepped down from his role as Chief Executive
 4 Officer of JLI (to become Chief Product Officer) and, in his stead, Pritzker, Huh, and Valani formed an
 5 Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing
 6 JUUL products, including to youth.
 7

8 39. Prior to the installation of Tyler Goldman as JLI's new CEO in August 2016,
 9 Defendants Pritzker, Huh, and Valani used their newly formed Executive Committee to expand the
 10 number of addicted e-cigarette users through fraudulent advertising and representations to the public,
 11 and specifically to minors. They cleaned house at JLI by "dismiss[ing] other senior leaders and
 12 effectively tak[ing] over the company."¹⁵ [REDACTED]
 13 [REDACTED]
 14 [REDACTED]¹⁶

15 40. But the Management Defendants knew that their desire to create a massive new market
 16 for JUUL on their own would be aided if they could convert Altria, an experienced cigarette company
 17 with a history of marketing to youth and covering it up, into an ally. They turned to Altria in the Spring
 18 of 2017. While Defendants JLI, Bowen, Monsees, Huh, and Valani are relative newcomers to the
 19 tobacco industry, Altria has been manufacturing and selling "combustible" cigarettes for more than a
 20 century. And Defendant Pritzker, for his part, has been long familiar with the tobacco industry from his
 21 family's ownership of chewing-tobacco giant, Conwood, before selling it to Reynolds American, Inc.,
 22 a subsidiary of British American Tobacco. Notwithstanding their different histories, JLI and the
 23 Management Defendants, for their part, invited Altria into the fold as an ally with ample resources to
 24 further expand the market of nicotine-addicted e-cigarette users and to keep litigation and regulation at
 25 bay. While JLI, Monsees, and Bowen publicly claimed to be out to "disrupt" the industry, they and the
 26
 27

28 ¹⁵ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES (Nov. 23, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

¹⁶ INREJUUL_00278359.

1 other Management Defendants privately negotiated and ultimately relinquished a 35% ownership stake
2 in the company to a cigarette giant.

3 41. Cigarette companies have long known that profitable growth requires a pipeline of
4 “replacement” customers. Altria, after decades of tobacco litigation and regulation, had little ability to
5 recruit new smokers in the ways that had driven Philip Morris’s success through most of the 1900s. In
6 2017, Altria’s combustible cigarette products were facing increasing regulatory pressures. In late July
7 2017, Altria’s stock value plummeted shortly after the FDA announced that it would reduce the
8 amount of nicotine allowed in cigarettes with an eye toward reaching non-addictive levels.¹⁷ In late
9 2017, Altria, and other major cigarette companies, also finally complied with a consent decree from the
10 1990s tobacco litigation that required them to issue corrective advertising statements that highlighted
11 the addictiveness and health impacts of smoking cigarettes.¹⁸
12

13 42. Due in large part to this litigation and regulation, cigarette use has been declining in the
14 United States in the last decade, especially among youth.¹⁹ Altria estimates that the cigarette industry
15 declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the
16 average annual U.S. cigarette industry volume for 2019 through 2023.²⁰ Altria later adjusted the
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22 ¹⁷ See Dan Caplinger, *Altria Group in 2017: The Year in Review*, THE MOTLEY FOOL (Dec. 18, 2017),
23 <https://www.fool.com/investing/2017/12/18/altria-group-in-2017-the-year-in-review.aspx>.

24 ¹⁸ Chuck Stanley, *Tobacco Cos. Settle Long-Running Health Warning Dispute*, LAW360 (Apr. 25,
25 2018, [https://www.law360.com/articles/1037281/tobacco-cos-settle-long-running-health-warning-](https://www.law360.com/articles/1037281/tobacco-cos-settle-long-running-health-warning-dispute)
26 [dispute](https://www.law360.com/articles/1037281/tobacco-cos-settle-long-running-health-warning-dispute)).

27 ¹⁹ *Current Cigarette Smoking Among Adults In the United States*, CDC,
28 https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last
visited May 5, 2020); *Youth and Tobacco Use*, CDC,
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last
visited May 5, 2020).

²⁰ *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=4](http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349)
087349.

1 estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking
2 to 21.²¹

3 43. Altria had undertaken its own efforts at marketing an e-cigarette product. Altria had
4 launched the MarkTen product nationwide in 2014 with an aggressive marketing campaign, eclipsing
5 the advertising expenditures for the market leader at that time, blu e-cigarettes.²² Of the \$88.1 million
6 spent on e-cigarette advertising in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35
7 million.²³

8 44. Altria was clear in its intent to dominate the e-cigarette market as it has the combustible
9 cigarette market: "We are the market leader today and we will continue to be," then-CEO Marty
10 Barrington told investors at the time of MarkTen's launch.²⁴ The original MarkTen was a "cigalike,"
11 designed to mimic the look and feel of a combustible cigarette.
12

13 45. Altria had also been acquiring small companies in the e-cigarette industry, starting in
14 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in
15 flavors including "Vanilla Dreams" and "Smooth Chocolate."²⁵ In 2016, Altria acquired a product
16 called Cync, from Vape Forward.²⁶ Cync is a small e-cigarette device that uses prefilled pods in a
17 variety of flavors, similar to the JUUL.
18

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20
21 ²¹ *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/>.

22 ²² Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen*
enters the marketplace, 25 Tobacco Control e125 (10) (2015),

23 <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

24 ²³ *Id.*

25 ²⁴ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, CONVENIENCE STORE NEWS (July 22,
2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

26 ²⁵ 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>; Senator
27 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>.

28 ²⁶ 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.

46. 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 excellent progress toward its long-term aspiration of becoming a leader in e-vapor.”²⁷ In his remarks, Altria’s current CEO, Howard A. Willard III, said, “Nu Mark, our e-vapor company, had a very strong year. It made excellent progress toward establishing MarkTen as a leading brand in the category, continued to improve its supply chain, and took the necessary steps to comply with the deeming regulations.” He noted, however, that the estimated “total 2016 e-vapor consumer spending was roughly flat compared to the prior year at approximately \$2.5 billion.”²⁸ In 2017, Altria’s MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI’s growing market share of 40%.²⁹ Thus, despite its public statements to the contrary, Altria knew the popularity of JUUL stood in the way of Altria becoming the dominant force in the e-cigarette market.

47. With smoking on the decline, litigation and regulatory controls were ramping up and threatening Altria’s ability to attract new smokers, and JUUL outperforming Altria’s products in the market, Altria’s best bet for maintaining its sales by increasing the number of users, and especially minors, addicted to nicotine was to partner with JLI (1) to maintain or increase the number of users, and especially minors, hooked on JUUL; and (2) to delay and prevent regulation that could interfere with this first scheme.

48. For those reasons and others, [REDACTED]

[REDACTED]

²⁷ Remarks by Marty Barrington, Altria Group, Inc.’s (Altria) Chairman, CEO and President, and other members of Altria’s senior management team 2017 Consumer Analyst Group of New York (CAGNY), (2017), <http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349>.

²⁸ *Id.*

²⁹ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, WINSTON-SALEM JOURNAL (Dec. 14, 2017), https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.

1 [REDACTED]³⁰
 2 and Ploom's advisory committee included Altria's former growth officer. In Altria's words, the
 3 company followed "JUUL's journey rather closely" from its early beginnings.³¹
 4

5 49. According to Howard Willard, Altria's CEO, Altria first contacted JLI about a
 6 commercial relationship in early 2017, with "confidential discussions" beginning in the Spring of
 7 2017.³² [REDACTED]
 8 [REDACTED]
 9 [REDACTED]³³

10 50. [REDACTED]
 11 [REDACTED]³⁴ Pritzker and Valani, together with Burns, were the lead negotiators on the Altria deal. On
 12 July 30, 2018, in advance of a meeting between the lead negotiators from JLI and Altria, Pritzker
 13 emailed Howard Willard an opening term sheet for discussions, and made clear that an end to
 14 competition from Altria's e-cigarette products was a key term of any deal. On August 1, 2018, the
 15 companies' negotiators met at the Park Hyatt Hotel in Washington, D.C., to discuss terms. Pritzker,
 16 Valani, and Burns attended for JLI. Willard and Billy Gifford, Altria's CFO, attended for Altria. By
 17 the Fall of 2017, JLI, the Management Defendants, and Altria had agreed to and had taken coordinated
 18 actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a
 19 steady and growing customer base.
 20
 21

22 51. [REDACTED], it was JLI (through its executives and
 23 employees—including Tyler Goldman and his successors) and Altria (through its executives and
 24 employees) that primarily directed and conducted fraudulent acts designed to grow the market of youth

25 ³⁰ INREJUUL_00278740.

26 ³¹ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape*
 27 *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>.

28 ³² Altria's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

³³ INREJUUL_00349529.

³⁴ *Id.*

1 nicotine-addicted e-cigarette users, although Bowen, Monsees, Pritzker, Huh, and Valani remained
 2 critical to the success of these efforts. Without their control of the JLI Board of Directors and prior
 3 fraudulent conduct, the close coordination between JLI and Altria, and Altria's investment in JLI,
 4 would not have been possible.

5
 6 52. In December 2018, Altria decided to take the next step in its coordination with JLI and
 7 the Management Defendants by making a \$12.8 billion equity investment in JLI, the largest equity
 8 investment in United States history. This arrangement was profitable for both companies, as well as
 9 Defendants Monsees, Bowen, Pritzker, Huh, and Valani. JLI employees received \$2 billion in bonuses,
 10 which, split among the Company's 1,500 employees, was approximately \$1.3 million per employee,³⁵
 11 and Altria received millions of loyal teen customers. In deciding to make a huge investment in JUUL,
 12 Altria took into account that the e-cigarette industry would see significant year-over-year growth in the
 13 near term, and that "JUUL continu[es] to be a growth driver for the e-vapor category."³⁶

14
 15 53. In July 2018, JLI's valuation was approximately \$15 billion.³⁷ But, in December 2018,
 16 Altria's investment of \$12.8 billion for a 35% stake in the company reflected a valuation of
 17 approximately \$38 billion—more than two and a half times the valuation just five months earlier.
 18 Defendants Monsees, Bowen, Pritzker, Huh, and Valani thus saw the value of their investments in JLI
 19 skyrocket as a result of the Altria agreement, allowing them to cash out via a special dividend and
 20 bonus, as well as through stock sales that were not available to other of JLI's minority shareholders.³⁸
 21

22
 23
 24 ³⁵ 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>.

25 ³⁶ Altria's October 14, 2019 letter to Senator Durbin, et. al., by Howard Willard III (2019).

26 ³⁷ Rachel Becker, *Why Is Juul Worth \$16 Billion? It's More Like a Cigarette Than You Think*, THE
 27 VERGE (Jul. 3, 2018), <https://www.theverge.com/2018/7/3/17529442/juul-vapes-nicotine-electronic-cigarettes-addiction-funding>.

28 ³⁸ Tiffany Kary, *JUUL Founders Sued for Self-Dealing Over Altria's \$12.8 Billion*, BLOOMBERG (Jan.
 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-altria-s-12-8-billion>.

1 54. This investment further intertwined JLI and Altria. According to the terms of its
2 investment, Altria may appoint one third of JLI's board. And in October 2019, JLI's CEO resigned to
3 be replaced by another career Altria executive, K.C. Crosthwaite. The key JLI negotiators of the Altria
4 deal (including Pritzker and Valani), and other officers and directors including Bowen, Monsees, and
5 Huh, would have been instrumental in bringing Crosthwaite on board at JLI. Crosthwaite had most
6 recently served as the vice president and chief growth officer of Altria Client Services LLC, overseeing
7 the company's work to assist Altria's companies, including with digital marketing, packaging design &
8 innovation, product development, and safety, health, and environmental affairs. Crosthwaite knows the
9 cigarette industry's playbook all too well, having previously served as the president and CEO of Phillip
10 Morris USA, the vice president and general manager at Marlboro—the leading cigarette brand among
11 youth—and the vice president of strategy and business development of at Altria Client Services LLC.

12
13
14 55. In addition, Joe Murillo, who headed regulatory affairs for Altria, and served as
15 President and General Manager of Nu Mark, LLC (Altria's e-cigarette business), became JLI's chief
16 regulatory officer in October 2019.

17 56. Both before and after Altria's investment, JLI, through its employees and officers,
18 provided Altria with critical information regarding the design and nicotine content of the JUUL
19 product, the labeling of the JUUL product, and related topics including advertising, retail distribution,
20 online sales, age verification procedures, information on underage user's flavor preferences, and
21 regulatory strategies. Altria, for its part, guided JLI and the Management Defendants in these areas and
22 helped them devise and execute schemes to maintain and expand the e-cigarette market.

23
24 57. JLI, the Management Defendants, and Altria worked together to implement their shared
25 goal of growing a new market in the image of the combustible cigarette market through a multi-
26 pronged strategy to: (1) create a highly addictive product that users would not associate with cigarettes
27 and that would appeal to the lucrative youth market; (2) deceive the public, and especially young
28 people, into thinking the product was a fun and safe alternative to cigarettes that would help smokers

quit; (3) actively attract young users through targeted marketing, and (4) use a variety of tools, including false and deceptive statements to the public and regulators, to delay regulation of e-cigarettes. As detailed more fully throughout this Amended Complaint, each of the Defendants played a critical role—at times overlapping and varying over time—in each of these strategies.

B. Defendants’ Strategy Was to Create a Nicotine Product That Would Maximize Profits Through Addiction.

1. Defendants Understood that the “Magic” Behind Cigarettes’ Stratospheric Commercial Success Was Nicotine Addiction.

58. The first step in replicating the success of combustible cigarettes was to create a product that, like combustible cigarettes, was based on getting users addicted to the nicotine in the product. Nicotine is an alkaloid, a class of plant-derived nitrogenous compounds that is highly addictive and the key ingredient that drives addiction to cigarettes. Nicotine’s addictive properties are similar to heroin and cocaine.³⁹

59. Route of administration and speed of delivery are key to understanding nicotine’s addictive potential. Dr. Neal Benowitz, Scientific Editor of the 1988 Surgeon General’s Report on nicotine addiction, wrote: “After a puff, high levels of nicotine reach the brain in 10–20 s[econds], faster than with intravenous administration, producing rapid behavioral reinforcement. The rapidity of rise in nicotine levels permits the smoker to titrate the level of nicotine and related effects during smoking, and makes smoking the most reinforcing and dependence-producing form of nicotine administration.”⁴⁰

60. Again, according to Dr. Benowitz, “The rapid rate of delivery of nicotine by smoking ... results in high levels of nicotine in the central nervous system with little time for development of tolerance. The result is a more intense pharmacologic action. The short time interval between puffing

³⁹ See e.g., U.S. Dep’t of Health and Human Servs., *Nicotine Addiction: A Report of the Surgeon General*, DHHS Publication Number (CDC) 88-8406, (1988).

⁴⁰ Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 HANDB. EXP. PHARMACOL. 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

1 and nicotine entering the brain also allows the smoker to titrate the dose of nicotine to a desired
 2 pharmacologic effect [often subconsciously], further reinforcing drug self-administration and
 3 facilitating the development of addiction.”⁴¹

4 61. Nicotine fosters addiction through the brain’s “reward” pathway. Both a stimulant and a
 5 relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and metabolic
 6 rate; constricts blood vessels of the heart and skin; and causes muscle relaxation. Long-term exposure
 7 to nicotine causes upregulation—an increase in the number of these high-affinity nicotinic receptors in
 8 the brain. When nicotine binds to these receptors it triggers a series of physiological effects in the user
 9 that are perceived as a “buzz” that includes pleasure, happiness, arousal, and relaxation of stress and
 10 anxiety. With regular nicotine use, however, these feelings diminish, and the user must consume
 11 increasing amounts of nicotine to achieve the same effects.
 12

13 62. Kids are particularly vulnerable to nicotine addiction, as Defendants know well. As
 14 described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.”⁴² Nine out of
 15 ten smokers begin by age 18 and 80% who begin as teens will smoke into adulthood.⁴³
 16

17 63. The above statements apply equally, if not more so, to e-cigarettes. Further, the Surgeon
 18 General has explained how the nicotine in e-cigarettes affects the developing brain and can addict kids
 19 more easily than adults: “Until about age 25, the brain is still growing. Each time a new memory is
 20 created, or a new skill is learned, stronger connections—or synapses—are built between brain cells.
 21 Young people’s brains build synapses faster than adult brains. Because addiction is a form of learning,
 22 adolescents can get addicted more easily than adults.”⁴⁴ The effects of nicotine exposure on the brain
 23

24 _____
 25 ⁴¹ *Id.*

26 ⁴² *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (“2012 Surgeon
 27 General Report”) at 539, U.S. Dep’t Health & Human Servs. (2012),
 28 https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

⁴³ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* at 1 (2012),
<https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

⁴⁴ *Know The Risks: E-Cigarettes & Young People* (2019), <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

of youth and young adults include not only addiction, priming for use of other addictive substances, but also reduced impulse control, deficits in attention and cognition, and mood disorders.⁴⁵ A highly addictive, psychoactive substance that targets brain areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting consequences for cognitive ability, mental health, and even personality.”⁴⁶

64. In 2014, the United States Surgeon General reported that nicotine addiction is the “fundamental reason” that individuals persist in using tobacco products, and this persistent tobacco use contributes to millions of needless deaths and many diseases, including diseases that affect the heart and blood vessels (cardiovascular disease), lung diseases (chronic obstructive pulmonary disease (COPD) and lung cancer), cancer almost anywhere in the body, and birth defects.⁴⁷

65. It took five decades of public health initiatives, government intervention, impact litigation, consumer education, and tobacco regulation to finally see a significant drop in cigarette smoking and nicotine addiction.

66. By 2014, the number of adults that reported using cigarettes had dropped to 18%, and the number of adult smokers who reported quitting smoking increased from 50.8% in 2005 to 59% by 2016.⁴⁸ By 2014, teen smoking also hit a record low.⁴⁹ In June 2014, the Centers for Disease Control

⁴⁵ 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-cigarettes.surgeongeneral.gov/>.

⁴⁶ Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure During Adolescence for Prefrontal Cortex Neuronal Network Function*, 2 COLD SPRING HARBOR PERSP. MED. 12 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

⁴⁷ U.S. Dep’t of Health and Human Servs. *2014 Surgeon General’s Report: The Health Consequences of Smoking—50 Years of Progress* (2014), https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report.

⁴⁸ Centers for Disease Control and Prevention, U.S. Dep’t of Health and Human Services, *Trends in Cigarette Smoking Among High School Students—United States, 1991-2001*, 51 MORBIDITY & MORTALITY WKLY. REP. 409 (May 17, 2002), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5119a1.htm>; Teresa W. Wang et al., *Tobacco*

1 and Prevention (“CDC”) reported that “in achieving a teen smoking rate of 15.7 percent, the United
 2 States has met its national Healthy People 2020 objective of reducing adolescent cigarette use to 16
 3 percent or less.”

4 67. The United States Surgeon General reported in 2014 that: “We are at a historic moment
 5 in our fight to end the epidemic of tobacco use that continues to kill more of our citizens than any other
 6 preventable cause. The good news is that we know which strategies work best. By applying these
 7 strategies more fully and more aggressively, we can move closer to our goal of making the next
 8 generation tobacco-free.”⁵⁰

10 68. Where the public health community saw progress in curbing the use of cigarettes and
 11 nicotine addiction, Defendants saw an opportunity.

12 **2. Following the Cigarette Industry Playbook, Defendants Sought to Market a**
 13 **Product that would Create and Sustain Nicotine Addiction, but Without the**
 14 **Stigma Associated with Cigarettes.**

15 69. Seeking to build and dominate a new market for nicotine products without the baggage
 16 of combustible cigarettes (i.e. well-established link to death and disease), JLI engineered a cool-
 17 looking e-cigarette device capable of delivering more nicotine and fueling higher levels of consumer
 18 addiction than ever before. JLI marketed that highly-addictive device as healthy, safe, cool, and
 19 available in kid-friendly flavors.
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 21

22
 23 *Product Use Among Adults—United States, 2017*, 67 MORBIDITY & MORTALITY WKLY. REP. 1225
 24 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf>; U.S. Dep’t of
 25 Health and Human Servs. *2014 Surgeon General’s Report: The Health Consequences of Smoking—*
50 Years of Progress (2014), [https://www.cdc.gov/tobacco/data_statistics/sgr/50th-](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm#report)
 anniversary/index.htm#report.

26 ⁴⁹ Press Release, Centers for Disease Control and Prevention, *Cigarette smoking among U.S. high*
 27 *school students at lowest level in 22 years* (June 12, 2014),
<https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>.

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

70. In doing so, JLI followed the cigarette industry's playbook. Monsees admitted that when creating JLI, he and Bowen carefully studied the marketing strategies, advertisements, and product design revealed in cigarette industry documents that were uncovered through litigation and made public under the November 1998 Master Settlement Agreement between the state Attorneys General of forty-six states, five U.S. territories, the District of Columbia and the four largest cigarette manufacturers in the United States. "[Cigarette industry documents] became a very intriguing space for us to investigate because we had so much information that you wouldn't normally be able to get in most industries. And we were able to catch up, right, to a huge, huge industry in no time. And then we started building prototypes."⁵¹

71. In a thesis presentation Bowen and Monsees gave in 2004, Monsees candidly admitted, "The cigarette is actually a carefully engineered product for nicotine delivery and addiction."⁵² JLI researched how cigarette 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."⁵³ With access to the trove of documents made public to curb youth smoking and aid research to support tobacco control efforts, JLI was able to review literature on manipulating nicotine pH to maximize its delivery in a youth-friendly vapor with minimal "throat hit."

72. Through studying industry documents, JLI learned that the cigarette industry had tried for years to figure out ways to create and sustain addiction by delivering more nicotine in a way that would be easy to ingest—without the nausea, cough, or other aversive side effects that many new smokers experienced. In the 1970s, R.J. Reynolds scientists eventually found a solution: Combine the high-pH nicotine with a low-pH acid. The result was a neutralized compound referred to as nicotine

⁵¹ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

⁵² 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/>.

⁵³ *Id.*

1 salt. In a 1973 RJR memorandum titled “Cigarette concept to assure RJR a larger segment of the youth
 2 market,” RJR highlighted that this chemical manipulation of the nicotine content was expected to give
 3 its cigarettes an “additional nicotine ‘kick’” that would be more appealing and addictive. A young RJ
 4 Reynolds chemist, Thomas Perfetti, synthesized 30 different nicotine salt combinations, tested the
 5 salts’ ability to dissolve into a liquid, and heated them in pursuit of the “maximum release of
 6 nicotine.”⁵⁴ Perfetti published his results in a 1979 memo stamped “CONFIDENTIAL,” which was
 7 found among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry
 8 research like this, and assistance from Perfetti himself, JLI developed a cartridge-based e-cigarette
 9 using nicotine salts. As described in herein, JLI’s use of nicotine salts, pioneered by major combustible
 10 tobacco companies, was a critical tool for addicting non-smokers, including youth.
 11

12 73. JLI also engaged former cigarette industry researchers to consult on the design of their
 13 product. As Monsees noted in an interview with WIRED magazine: “The people who understood the
 14 science and were listed on previous patents from tobacco companies aren’t at those companies
 15 anymore. If you go to Altria’s R&D facility, it’s empty.”⁵⁵ The WIRED article stated that “[s]ome of
 16 those people are now on [PAX Lab, Inc.’s] team of advisers, helping develop JUUL.”⁵⁶
 17

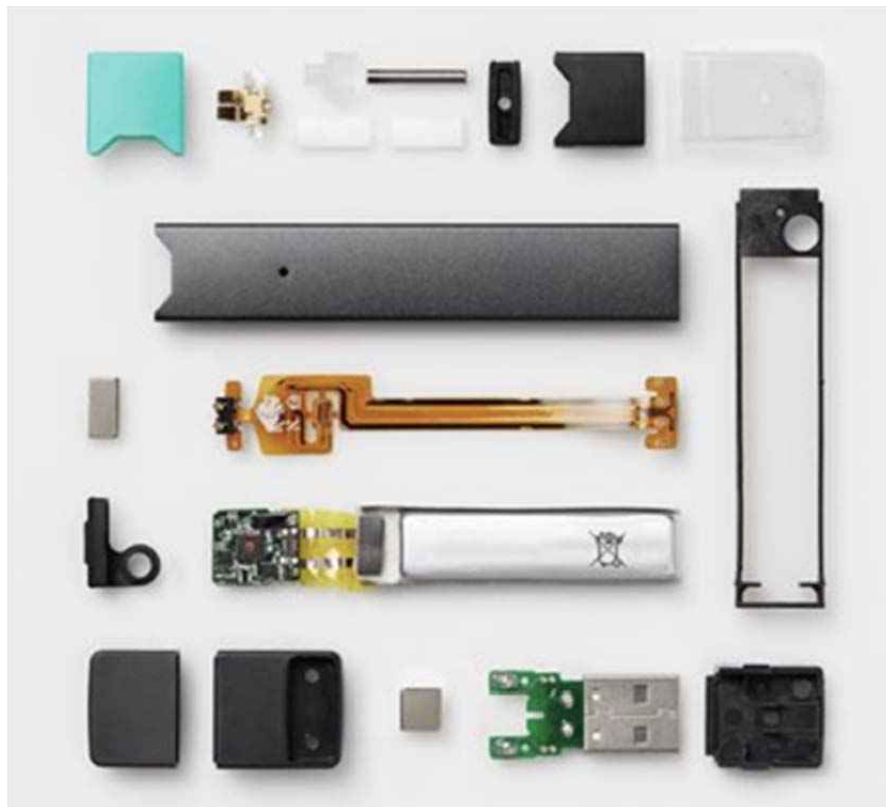
18 74. One of the keys to JLI’s success was its ability to fuse addiction and technology. The
 19 JUUL e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device (2) the JUUL pod
 20 (with e-liquid), and (3) the Universal Serial Bus [USB] charger (collectively referred to herein as
 21 “JUUL”). The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device consisting of an
 22 aluminum shell, a battery, a magnet (for the USB-charger), a circuit board, an LED light, and a
 23 pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid that includes nicotine,
 24 flavoring and other additives. Each JUUL pod is a plastic enclosure containing 0.7 milliliters of JLI’s
 25

26 ⁵⁴ Thomas A. Perfetti, *Smoking Satisfaction and Tar/Nicotine Control* (Dec. 7, 1978), <https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecdfd221/nicotine-salts-investigation.pdf>.

27 ⁵⁵ David Pierce, *This Might Just Be the First Great E-Cig*, WIRED (Apr. 21, 2015),
 28 www.wired.com/2015/04/pax-juul-ecig/.

⁵⁶ *Id.*

1 patented nicotine liquid and a coil heater. When a sensor in the JUUL e-cigarette detects the movement
 2 of air caused by suction on the JUUL pod, the battery in the JUUL e-cigarette device activates the
 3 heating element, which in turn converts the nicotine solution in the JUUL pod into a vapor consisting
 4 of nicotine, benzoic acid, glycerin, and propylene glycol along with myriad chemical flavorings and
 5 other chemicals, many of which are recognized as toxic.⁵⁷



75. JLI sells the JUUL pods in packs of four or two pods, and until recently, in a variety of
 enticing flavors. Many of the flavors have no combustible cigarette analog, including “cool” cucumber,
 fruit medley, “cool” mint, and crème brûlée. Figure 1 shows the JLI device and a JLI “Starter Kit” with
 four flavored JUUL pods:

⁵⁷ JUUL Labs, Inc., (as of April 8, 2018),
<https://web.archive.org/web/20180408102252/www.juullabs.com/>.

1 **Figure 1**



15 76. JLI attempted to distinguish JUUL products from the death and disease associated with
 16 cigarettes by deliberately providing a false assurance of safety. For example, on May 8, 2018, a
 17 document titled “Letter from the CEO” appeared on JUUL’s website. The document stated: “[JUUL]’s
 18 simple and convenient system incorporates temperature regulation to heat nicotine liquid and deliver
 19 smokers the satisfaction that they want without the combustion and the harm associated with it.”⁵⁸

20 77. JLI even took this message to ninth graders: in 2018, a representative from JLI spoke at
 21 a high school during a presentation for ninth graders, stating that JUUL “was much safer than
 22 cigarettes,” that the JUUL was “totally safe,” that the JUUL was a “safer alternative than smoking
 23 cigarettes,” and that the “FDA was about to come out and say it [JUUL] was 99% safer than
 24 cigarettes . . . and that. . . would happen very soon.”⁵⁹

25

26

27 ⁵⁸ Letter from U.S. Food & Drug Admin. to Kevin Burns, CEO of JUUL Labs, Inc. (Sept. 9, 2019),
 28 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

⁵⁹ *Id.*

78. This was not just a rogue employee. Internal messaging around JUUL, crafted by the executives, emphasized that JUUL was safer than smoking. In a “Marketing Update” presentation dated March 26, 2015, a message from then-Chief Marketing Officer Scott Dunlap stated that “[v]aporization technology is fundamentally disruptive, because it is *safer*, faster, more effective and less intrusive than alternatives.”⁶⁰ More than a year later, on April 28, 2016, Tim Danaher sent Tyler Goldman a slide deck aimed at investors which he said that “James [Monsees] owns” and “will pull / update the relevant slides.”⁶¹ The deck claimed that “PAX Labs’ new delivery system is faster, *safer*, more effective and less intrusive than[,]” among other options, “[s]moking[.]”⁶² The consistency of the wording in these presentations more than a year apart shows that this was standard company language.

79. JLI’s mission was not to improve public health. Rather, JLI sought to introduce a new generation of consumers, and especially young people, to nicotine. JLI’s business model was never about reducing addiction. As one JLI engineer put it: “We don’t think a lot about addiction here because we’re not trying to design a cessation product at all . . . anything about health is not on our mind.”⁶³

80. JLI, Bowen, and Monsees achieved their vision. Pioneering a nicotine delivery technology that eliminated the harshness of traditional free-base nicotine, JLI’s e-cigarette system provided users with palatable access to high-concentrations of nicotine like never before. Since the JUUL’s launch in 2015, JLI has become the dominant e-cigarette manufacturer in the United States. Its revenues grew by 700 percent in 2017 alone. By 2019, JLI owned three-quarters of the e-cigarette market.⁶⁴

⁶⁰ INREJUUL_00441986 (emphasis added).

⁶¹ JLI00373324.

⁶² JLI00373328 (emphasis added).

⁶³ Kevin Roose, *Juul’s Convenient Smoke Screen*, N.Y. TIMES (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

⁶⁴ Dick Durbin et al., *Durbin & Senators to JUUL: You are More Interested in Profits Than Public Health*, Durbin Newsroom (Apr. 8, 2019), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health>.

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

2 81. JLI, along with the Management Defendants, worked together to maintain and expand
3 the number of nicotine-addicted e-cigarette users, including young people in particular, in order to
4 ensure a steady and growing customer base.

5 82. That growing customer base was crucial to JLI's and the Management Defendants' long
6 term objective—lucrative acquisition by another company. They recognized that JLI's product, with its
7 potential to dominate the nicotine products market by hooking new users, would appeal to one segment
8 of the economy in particular: the cigarette industry.

9 83. JLI and the Management Defendants also recognized that their business goal—
10 becoming part of the cigarette industry—was unlikely to endear them to the consumers that they
11 needed to purchase their products. Years of anti-smoking campaigns have successfully stigmatized
12 cigarette smoking. When Monsees and Bowen presented their thesis and product design to their
13 classmates, they included a clip from a South Park episode showing the characters assembled at the
14 Museum of Tolerance and shaming a smoker.⁶⁵

15 84. Monsees and Bowen needed to shape social norms such that the public attitude towards
16 e-cigarettes would allow people to use their product without the stigma and self-consciousness
17 smokers experienced. Monsees and Bowen saw a market opportunity in a generation of non-smoking
18 young people brought up on anti-smoking norms. In Monsees' words, they wanted to redesign the
19 cigarette “to meet the needs of people who want to enjoy tobacco but don't self-identify with—or don't
20 necessarily want to be associated with—cigarettes.”⁶⁶

21 85. Part of this approach was consistently portraying JUUL as an enemy of the cigarette
22 industry, with a publicly announced goal of eliminating the cigarette. In an interview, Bowen asserted
23

24 ⁶⁵ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, SOCIAL UNDERGROUND,
25 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

26 ⁶⁶ *Id.*; see also, INREJUUL 00064696 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 that he and Monsees spent a lot of time talking about “the kind of typical thoughts of evil Big Tobacco
 2 companies like coming down and squashing you.”⁶⁷ The “Mission Statement” on JLI’s homepage
 3 proclaims:

4 Our mission is to transition the world’s billion adult smokers away from combustible
 5 cigarettes, eliminate their use, and combat underage usage of our products.

6 We envision a world where fewer adults use cigarettes, and where adults who smoke
 7 cigarettes have the tools to reduce or eliminate their consumption entirely, should they
 8 so desire.⁶⁸

86. In fact, JLI’s Chief Administrative Officer has publicly stated that the goal behind JLI is
 9 “eliminating cigarettes.”⁶⁹

87. This public message of eliminating cigarettes and challenging tobacco companies stands
 10 in direct contrast with JLI’s actual business and investment strategy, which involved replicating in
 11 JUUL’s new market the tobacco companies’ historical success in the youth market for cigarettes. From
 12 the beginning, Bowen and Monsees actively sought the investment and assistance of major cigarette
 13 companies. Bowen and Monsees’ initial foray into the e-cigarette business, Ploom, launched its e-
 14 cigarette as the ModelOne in 2010, using pods of loose-leaf tobacco heated by butane. It did not catch
 15 on. Ploom only sold a few thousand devices. By then a company with a dozen employees, Ploom was
 16 faltering, in need of money, technological expertise, and marketing savvy.⁷⁰

88. Help came from Japan Tobacco International (“Japan Tobacco”), a division of Japan
 19 Tobacco Inc., the fourth-largest tobacco company in the world. In December 2011, Japan Tobacco and
 20 Ploom entered into a strategic agreement, which gave Japan Tobacco a minority stake in Ploom and
 21 made it a strategic partner. In a statement regarding the agreement, Monsees said, “We are very

24 ⁶⁷ Alison Keeley, *Vice Made Nice? A high-tech alternative to cigarettes*, STANFORD MAGAZINE (2012),
 25 <https://stanfordmag.org/contents/vice-made-nice>.

26 ⁶⁸ JUUL Labs, *Our Mission* (2019), <https://www.juul.com/mission-values>.

27 ⁶⁹ Ashley Gould, *JUUL Labs is committed to eliminating cigarettes*, CAL MATTERS (March 18, 2019),
 28 <https://calmatters.org/commentary/e-cigarette/>.

⁷⁰ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, Inc.,
<https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html>

1 pleased to partner with [Japan Tobacco] as their deep expertise, global distribution networks and
 2 capital resources will enable us to enter our next phase of growth and capitalize on global expansion
 3 opportunities.”⁷¹ As Bowen explained in an interview, “We were still doing a lot of our own internal
 4 product development, but now we had access to floors of scientists at [Japan Tobacco].”⁷²

5 89. According to internal documents, JLI (then known as Pax) entered into a “strategic
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]⁷⁵

15 90. JLI and the Management Defendants [REDACTED]
 16 [REDACTED]
 17 [REDACTED]⁷⁶ According to [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]⁷⁷ The end result

22
 23 ⁷¹ *Innovative P’ship for Ploom and Japan Tobacco Int’l JTI to Take Minority Share in Ploom*, JAPAN
 24 TOBACCO INT’L (Dec. 8, 2011), [https://www.jti.com/sites/default/files/press-](https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf)
 25 releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf.

26 ⁷² David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, INC.
 27 MAGAZINE (2014), [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)
 28 ecigarette-company-marketing-dilemma.html.

⁷³ INREJUUL_00371423 ([REDACTED]).

⁷⁴ INREJUUL_00371447.

⁷⁵ INREJUUL_00371458-INREJUUL_00371459.

⁷⁶ INREJUUL_00016386 ([REDACTED]).

⁷⁷ *Id.*

1 of the process would be [REDACTED]

2 [REDACTED]⁷⁸

3 91. [REDACTED]

4 [REDACTED]

5 [REDACTED]⁷⁹

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 92. [REDACTED]

22 [REDACTED]⁸⁰ [REDACTED]

23 [REDACTED]

24 [REDACTED]

27 ⁷⁸ *Id.*

28 ⁷⁹ INREJUUL_0016399.

⁸⁰ INREJUUL_0016400-INREJUUL_0016401.

[REDACTED]

[REDACTED]⁸¹

93. Consistent with [REDACTED]

[REDACTED]

[REDACTED]⁸²

[REDACTED]

94. The [REDACTED]

[REDACTED]⁸³

⁸¹ INREJUUL_0016404.

⁸² INREJUUL_00061757 ([REDACTED]).

⁸³ INREJUUL_00061833.

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12
 13 95. This goal—acquisition by a major cigarette company—was a motive that the JLI and
 14 the Management Defendants would return to in making decisions about the manufacture and marketing
 15 of JUUL products. As an example, [REDACTED]
 16 [REDACTED]
 17 [REDACTED]

18 ⁸⁴ Bowen knew that to achieve
 19 the ultimate goal of acquisition, JLI and the Management Defendants would have to grow the market
 20 share of nicotine-addicted e-cigarette users, including youth in particular, regardless of the human cost.

21 96. JLI and the Management Defendants sought to grow the market share of nicotine-
 22 addicted e-cigarette users beginning by at least early 2015 through two related schemes: first, by
 23 designing an unsafe product with a high nicotine content that was intended to addict, or exacerbate the
 24 addiction, especially among young people; and, second, by marketing and misbranding that potent
 25 product to the broadest possible audience of potential customers, including young people, in particular,
 26 whose addiction would last the longest and be the most profitable for the Defendants.
 27
 28

⁸⁴ INREJUUL_00294198.

97. These schemes were an overwhelming success. 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%.⁸⁵ The total e-cigarette market expanded 40% to \$1.16 billion.⁸⁶

98. In 2018, JLI's gross profit margins were 70%⁸⁷ and it represented 76.1% of the national e-cigarette market.⁸⁸ 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:⁸⁹

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%

⁸⁵ 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>.

⁸⁶ *Id.*

⁸⁷ 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>.

⁸⁸ 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.

⁸⁹ 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).

99. JLI shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.⁹⁰ This all came just three years after its product launch.

C. JLI and Bowen Designed a Nicotine Delivery Device Intended to Create and Sustain Addiction, Particularly Among Young People.

100. JLI was well-aware from the historical cigarette industry documents that the future of any nicotine-delivery business depends on snaring kids before they age beyond the window of opportunity. One memo from a Lorillard marketing manager to the company’s president put it most succinctly, “[t]he base of our business is the high school student.”⁹¹ It is no surprise, then, that the industry designed products specifically to attract and addict teen smokers. Claude Teague of R.J. Reynolds titled one internal memo “Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market.” In it he frankly observed, “Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market.”⁹² Dr. Teague noted that “learning smokers” have a low tolerance for throat irritation so the smoke should be “as bland as possible,” i.e., not harsh; and he specifically recommended an acidic smoke “by holding pH down, probably below 6.” As seen below, JLI heeded Dr. Teague’s advice.

1. JLI and Bowen Made Highly Addictive E-Cigarettes Easy for Young People and Non-Smokers to Inhale.

101. As combustible cigarettes were on the decline, e-cigarettes were introduced to the U.S. market beginning in 2007. Over time, e-cigarettes developed a small group of regular users, who were primarily current or former smokers. By 2014, the e-cigarette market in the U.S. was in decline.

⁹⁰ 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>.

⁹¹ Internal Memo from T.L. Achey, Lorillard Tobacco Company, to Curtis Judge, Product Information (August 1978).

⁹² Internal Memo from Claude Teague, R.J. Reynolds, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market* (Feb. 2, 1973).

102. E-cigarettes struggled to compete with combustible cigarettes, because of the technical challenge of delivering enough aerosolized nicotine to satisfy a smoker's addiction in a palatable form.⁹³ Before JUUL, most e-cigarettes used an alkaline form of nicotine called free-base nicotine.⁹⁴ When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates the throat, and is perceived as harsh by the user.⁹⁵ This experience is often referred to as a "throat hit." The higher the concentration of free-base nicotine, the more intense the "throat hit."⁹⁶ While some "harshness" would not have much impact on seasoned cigarette smokers, it would deter newcomers, or nicotine "learners," as Claude Teague at R.J. Reynolds called young non-smokers decades ago.

103. Before 2015, most e-liquids on the market were between 1% and 2% concentration; 3% concentrations were marketed as appropriate for consumers who were accustomed to smoking approximately forty cigarettes a day.⁹⁷ None of these e-liquids delivered as much nicotine as quickly as a combustible cigarette.

104. Around 2013, JLI scientists developed new e-liquids and new devices to increase the amount of nicotine that e-cigarettes could deliver to users and to reduce the throat hit. JLI scientists focused on nicotine salts rather than free-base nicotine, and they tested their formulations in a variety of ways.

2. JLI's Initial Experiments Measured Non-Smokers' "Buzz" Levels and Perceptions of Throat Harshness.

105. JLI intentionally designed its product to minimize "throat hit" and maximize "buzz."

[REDACTED]

[REDACTED]

[REDACTED]

⁹³ Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine Product Market*, 28 TOBACCO CONTROL 623 (2019).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

1 [REDACTED]
2 [REDACTED]
3 106. In these early tests, [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED].⁹⁸ The aim was to develop a nicotine salt formulation that maximized buzz, minimized
7 harshness. “Employees tested new liquid-nicotine formulations on themselves or on strangers taking
8 smoke breaks on the street. Sometimes, the mix packed too much punch – enough nicotine to make
9 some testers’ hands shake or send them to the bathroom to vomit”⁹⁹
10 107. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]¹⁰⁰
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 108. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ⁹⁸ INREJUUL_00002903.

28 ⁹⁹ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

¹⁰⁰ INREJUUL_00002903.

1109. A later study by Anna K. Duell et al., which examined 4% benzoate solutions—the basis for JUUL’s subsequent commercial formulations—explains why there was so little throat hit. The Duell study determined that the fraction of free-base nicotine in JUUL’s “Fruit Medley” flavor was 0.05 and in “Crème Brulee” was 0.07.¹⁰¹ Given total nicotine content of 58 mg/ml and 56 mg/ml in each flavor, respectively, these flavors have roughly 3-4 mg/ml free-base nicotine. For comparison, “Zen” brand e-liquid contains 17 mg/ml of nicotine—less than one-third of the total nicotine content of JUUL’s flavors—but has a free-base fraction of 0.84,¹⁰² resulting in over 14 mg/ml of free-base nicotine. The Duell Study’s authors found that the low free-base fraction in JUUL aerosols suggested a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”¹⁰³

1110. 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 cigarette industry has long recognized this; a published study of industry documents concluded that “product design changes which make cigarettes more palatable, easier to smoke, or more addictive are also likely to encourage greater uptake of smoking.”¹⁰⁴ The Duell study concluded that JLI’s use of nicotine salts “may well contribute to the current use prevalence of JUUL products among youth.”¹⁰⁵

111. 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

¹⁰¹ U.S. Patent No. 9,215, 895; Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 CHEM. RES. TOXICOL. 431, 432 (Fig. 3).

¹⁰² Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 CHEM. RES. TOXICOL. 431 (*hereinafter* “Duell Study”).

¹⁰³ *Id.* at 431–34.

¹⁰⁴ 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>.

¹⁰⁵ Duell Study at 433 (citing J. G. Willett, et al., *Recognition, use and perceptions of JUUL among youth and young adults*, TOBACCO CONTROL 054273 (2018)).

creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is “particularly problematic for public health.”¹⁰⁶

3. JUULs Rapidly Deliver Substantially Higher Doses of Nicotine than Cigarettes.

112. In 2014, after [REDACTED]
[REDACTED]¹⁰⁷ [REDACTED]
[REDACTED]¹⁰⁸ [REDACTED]. From these measurements, the scientists calculated key pharmacokinetic parameters, including maximum concentration of nicotine in the blood (Cmax) and total nicotine exposure (Area Under the Curve or AUC). JLI reported the results in U.S. Patent No. 9,215,895 (the ’895 patent), for which JLI applied on October 10, 2014,¹⁰⁹ and which was granted in December 2015. The named inventors on the patent were Adam Bowen and Chenyue Xing

113. Among the formulations was a 4% benzoate formulation, which was made with 3.8% benzoic acid and 5% nicotine, as well as propylene glycol and vegetable glycerin.¹¹⁰ As a comparator, JLI also measured nicotine blood levels after smoking Pall Mall cigarettes. [REDACTED]

[REDACTED]
[REDACTED]¹¹¹ [REDACTED]

¹⁰⁶ *Id.* at 431.

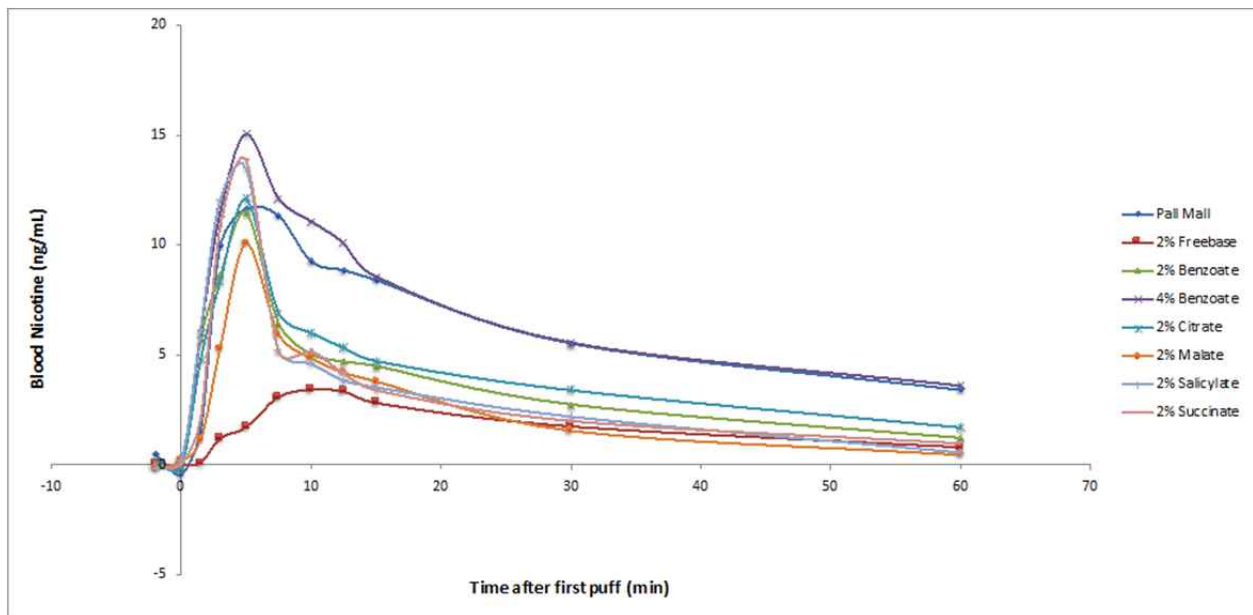
¹⁰⁷ INREJUUL_00350930.

¹⁰⁸ *Id.*

¹⁰⁹ This application was a continuation of U.S. Patent Application No. 14/271,071 (filed May 6, 2014), which claimed the benefit of U.S. Provisional Patent Application Serial No. 61/820,128, (filed May 6, 2014), and U.S. Provisional Patent Application Serial No. 61/912,507 (filed December 5, 2013).

¹¹⁰ U.S. Patent No. 9,215,895, at 19:63-20:4 (filed Dec. 22, 2015).

¹¹¹ INREJUUL_00024437.



114. According to Table 1 in the patent, the Cmax (the maximum nicotine concentration in blood) for Pall Mall cigarettes was 11.65 ng/mL, and for 4% benzoate it was 15.06 ng/mL, which is nearly 30% higher. The total nicotine exposure (as measured by Area Under the Curve or AUC) was 367.5 ng * min/mL for Pall Mall cigarettes and 400.2 ng * min/mL for 4% benzoate, which is almost 9% higher. The 4% benzoate formulation had the highest Cmax and AUC of any of the formulations measured.

115. Describing these results, JLI's '895 patent all but brags that it surpassed a commercially available combustible cigarette (Pall Mall) in maximum delivery and nearly rivaled it in how soon it could deliver peak nicotine. According to the '895 patent, "certain nicotine salt formulations [i.e., JLI's] provide satisfaction in an individual superior to that of free base nicotine, and more comparable to the satisfaction in an individual smoking a traditional cigarette."¹¹² The patent further explains that the "rate of nicotine uptake in the blood" is higher for some claimed nicotine salt formulations "than for other nicotine salt formulations aerosolized by an electronic cigarette . . . and likewise higher than

¹¹² U.S. Patent No. 9,215, 895, at 7:51-55 (filed Dec. 22, 2015) (emphasis added).

1 nicotine free-base formulations, while the peak nicotine concentration in the blood and total amount of
 2 nicotine delivered appears comparable to a traditional cigarette.”¹¹³

3 116. In other words, JLI distinguishes itself, and established the patentability of its e-liquids,
 4 by reference to their superlative ability to deliver nicotine, both in terms of peak blood concentration
 5 and total nicotine delivery. The rate of nicotine absorption is key to providing users with the nicotine
 6 “kick”¹¹⁴ that drives addiction and abuse, including among youth.¹¹⁵ Because “nicotine yield is
 7 strongly correlated with tobacco consumption,”¹¹⁶ a JUUL pod with more nicotine will strongly
 8 correlate with higher rates of consumption of JUUL pods, generating more revenue for JUUL. For
 9 example, a historic cigarette industry study that looked at smoker employees found that “the number of
 10 cigarettes the employees smoked per day was directly correlated to the nicotine levels.”¹¹⁷ In essence,
 11 JLI distinguished itself based on its e-liquids’ extraordinary potential to addict.
 12

13 117. [REDACTED]
 14 [REDACTED]

15 [REDACTED]¹¹⁸ The Reilly study tested JUUL’s
 16 tobacco, crème brûlée, fruit medley, and mint flavors and found that a puff of JUUL delivered 164 ±
 17 41 micrograms of nicotine per 75 mL puff. By comparison, a 2014 study using larger 100 mL puffs
 18
 19

20 ¹¹³ *Id.* at 7:63-8:4.

21 ¹¹⁴ Internal Memo from Frank G. Colby, R.J. Reynolds, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market* (Dec. 4, 1973).

22 ¹¹⁵ As the National Institutes of Health has noted, the “amount and speed of nicotine delivery . . . plays a critical role in the potential for abuse of tobacco products.” *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, A Report of the Surgeon General* at 181 (2010),

23 https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf

24 ¹¹⁶ Martin J. Jarvis et al., *Nicotine Yield From Machine Smoked Cigarettes and Nicotine Intakes in Smokers: Evidence From a Representative Population Survey*, 93 NT’L CANCER INST. 134 (Jan. 17, 2001), <https://academic.oup.com/jnci/article/93/2/134/2906355>

25 ¹¹⁷ Letter from Peggy Martin to Study Participants, *Resume of Results from Eight-Week Smoking Study*, UCSF Library, 1003285443-5443 (Sept. 10, 1971).

26 ¹¹⁸ 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>.

found that a Marlboro cigarette delivered 152-193 µg/puff.¹¹⁹ Correcting to account for the different puff sizes between these two studies, this suggests that, at 75 mL/puff, a Marlboro would deliver about 114-145 µg/puff. In other words, the Reilly study suggests that JUUL delivers more nicotine per puff than a Marlboro cigarette.

118. Additionally, depending on how the product is used, an e-cigarette with the 4% benzoate solution is capable of delivering doses that are materially higher [REDACTED] [REDACTED] As a paper published by the European Union notes: “[A]n e-cigarette with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in five minutes (the time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg of nicotine).”¹²⁰ With at least 59 mg/ml of nicotine in a salt form that increases the rate and efficiency of uptake (and even with a lower mg/ml amount), a JUUL pod easily exceeds the nicotine dose of a combustible cigarette. Not surprisingly, the European Union has banned all e-cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and other countries have considered similar regulations.¹²¹

119. [REDACTED]

[REDACTED]¹²²

¹¹⁹ Megan J. Schroeder & Allison C. Hoffman, *Electronic Cigarettes and Nicotine Clinical Pharmacology*, 23 TOBACCO CONTROL ii30 (May 23, 2014), www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/.

¹²⁰ E-Cigarettes, European Comm’n, https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf (citing United Kingdom Medicines and Healthcare Products Regulatory Agency and industry reports).

¹²¹ Charis Girvalaki et al., *Discrepancies in Reported Versus Measured Nicotine Content of E-cigarette Refill Liquids Across Nine European Countries Before and After the Implementation of the EU Tobacco Products Directive*, 55 EUR. RESPIR. J. 1900941 (2020), <https://doi.org/10.1183/13993003.00941-2019>.

¹²² INREJUUL_00442040-INREJUUL_00442080; INREJUUL_00442064.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 120. Given the concentration of nicotine in a JUUL pod, four to five milligrams of JUUL e-
15 liquid contains about 200-250 micrograms (μg) of nicotine. As noted by [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 ¹²³ In other words, JUUL's precisely calibrated
20 nicotine delivery system was specifically engineered to aerosolize [REDACTED]
21 [REDACTED]
22 [REDACTED]¹²⁴

23 121. JLI scientists realized in 2014 that the amount of nicotine that JUUL e-cigarettes
24 delivered could be problematic. Chenyue Xing stated that "[y]ou hope that they get what they want,
25 and they stop," but JLI scientists were concerned that "a Juul—unlike a cigarette—never burns out," so
26 the device gives no signal to the user to stop. According to Xing, JLI scientists "didn't want to
27

28 ¹²³ INREJUUL_00347306.

¹²⁴ *Id.*

1 introduce a new product with stronger addictive power.”¹²⁵ For this reason, “the company’s engineers
 2 explored features to stop users from ingesting too much of the drug, too quickly. JLI’s founders
 3 applied for a patent in 2014 that described methods for alerting the user or disabling the device when
 4 the dose of a drug such as nicotine exceeds a certain threshold.”¹²⁶ For example, “[o]ne idea was to
 5 shut down the device for a half-hour or more after a certain number of puffs[.]”¹²⁷ But upper
 6 management rejected the concerns that the scientists raised, and “[t]he company never produced an e-
 7 cigarette that limited nicotine intake.”¹²⁸

9 122. As another option, JLI could have limited the duration of each puff to prevent the JUUL
 10 from delivering doses of nicotine exceeding those of a cigarette on a per-puff basis. Instead, it

11 [REDACTED]¹²⁹ [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]¹³⁰

15 123. Further warnings about the addictive power of the JUUL e-cigarette—and its appeal to
 16 youths—came [REDACTED]

17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]¹³¹ [REDACTED]
 23 [REDACTED]

24
 25 ¹²⁵ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

26 ¹²⁶ *Id.*

27 ¹²⁷ *Id.*

28 ¹²⁸ *Id.*

¹²⁹ INREJUUL_00431693.

¹³⁰ INREJUUL_00351218; INREJUUL_00351239.

¹³¹ JLI00365905.

1 [REDACTED]

2 [REDACTED]¹³²

3 124. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]¹³³

7 [REDACTED]

8 125. [REDACTED]¹³⁴

9 [REDACTED]

10 [REDACTED]¹³⁵

11 [REDACTED]¹³⁶

12 126. [REDACTED]

13 [REDACTED]¹³⁷ [REDACTED]¹³⁸

14 127. In late 2014, knowing the results [REDACTED]

15 [REDACTED]

16 [REDACTED]. All JUUL formulations at

17 launch used the same amount of nicotine and benzoic acid as did the formulation that resulted in the

18 highest nicotine blood levels [REDACTED]. JUUL pods were foreseeably exceptionally

19 addictive, particularly when used by persons without prior exposure to nicotine.

20
21
22
23
24
25 ¹³² *Id.* (emphasis added).

26 ¹³³ JLI00365709.

27 ¹³⁴ JLI00365176.

28 ¹³⁵ INREJUUL_00058345.

¹³⁶ *Id.*

¹³⁷ JLI00364678.

¹³⁸ JLI00364487.

1 **4. JLI and the Management Defendants Knew That JUUL was Unnecessarily**
2 **Addictive Because It Delivered More Nicotine Than Smokers Needed or Wanted.**

3 128. The JUUL e-cigarette launched in 2015. After the launch, JLI and the Management
4 Defendants continued to collect information about the addictiveness of JUUL. This information
5 confirmed what they already knew: JUUL was exceptionally dangerous because of its addictiveness,
6 especially among youth.

7 129. For example, [REDACTED]

8 [REDACTED] He wrote:
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 [REDACTED]
27 [REDACTED]
28

¹³⁹ INREJUUL_00264888-INREJUUL_00264890.

1 130. Another example came just days later. On [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]¹⁴⁰

7 131. Additionally, [REDACTED]

8 [REDACTED]
9 [REDACTED]¹⁴¹ This is
10 consistent with a central goal of the product's design: capturing "users with the first hit."¹⁴²

11 132. None of this information was a surprise, nor did it cause JLI or the Management
12 Defendants to change JLI's products or marketing. In fact, they embraced it. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]¹⁴³

16 133. The following year, JLI and the Management Defendants obtained even more evidence
17 that the amount of nicotine in JUULpods was needlessly high. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]¹⁴⁴ Similarly,

22 [REDACTED]
23 [REDACTED]¹⁴⁵

24
25 ¹⁴⁰ INREJUUL_00230416.

26 ¹⁴¹ INREJUUL_00434580-INREJUUL_00434590.

27 ¹⁴² Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5, 2019),
<https://www.reuters.com/investigates/special-report/juul-ecigarette>.

28 ¹⁴³ INREJUUL_00228928-INREJUUL_00228930.

¹⁴⁴ INREJUUL_00260068.

¹⁴⁵ INREJUUL_00260065.

134. [REDACTED]

135. [REDACTED]

136. [REDACTED]

137. [REDACTED]

138. [REDACTED]

5. JUUL’s Design Did Not Look Like a Cigarette, Making it Attractive to Non-Smokers and Easy for Young People to Use Without Detection.

139. Not only did JUUL contain high levels of nicotine that delivered a strong “buzz” from the first puff, JLI designed its product to look appealing to youth and non-smokers. In [REDACTED]

¹⁴⁶ INREJUUL_00244200.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 140. JLI's strategy to position a nicotine-delivery device as the cool thing to do is not new.
8 Decades before, Dr. Teague from R.J. Reynolds observed: "pre-smokers" face "psychological
9 pressure" to smoke if their peers are doing so, "a new brand aimed at a young smoker must somehow
10 be the 'in' brand and its promotion should emphasize togetherness, belonging and group acceptance,
11 while at the same time emphasizing 'doing one's own thing.'"¹⁵¹ Again, JUUL followed the cigarette
12 playbook verbatim.

13
14 141. JLI knew that among its target audience, young people, cigarette smoking had become
15 increasingly stigmatized. JLI wanted to create a product that would create "buzz" and excitement,
16 totally different from the image of addicted cigarette smokers huddling outside their workplaces in the
17 cold to get their nicotine fix.

18 142. Unlike the distinct smell and odor emitted from combustible cigarettes, JUUL emits a
19 reduced aerosol with a nearly undetectable scent. And unlike other e-cigarettes, the JUUL device does
20 not produce large plumes of smoke. Instead, the vapor cloud is very small and dissipates very quickly,
21 allowing for concealed use. As a result, young users can, and do, use JUUL—in class or at home—
22 without detection.
23

24 143. The JUUL device is also designed to be small and discrete. Fully assembled, the device
25 is just over 9.5 cm in length and 1.5 cm wide. The JUUL device resembles a memory stick and can be
26 charged in a computer's USB drive. This design allows the device to be concealed in plain sight,
27

28 ¹⁵¹ INREJUUL_00057291 *et seq.*

¹⁵² Internal RJR Memo, Claude Teague, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market*, (Feb. 2, 1973).

1 camouflaged as a thumb-drive, for use in public spaces, like schools and even charged in school
2 computers. JLI has been so successful in emulating harmless technology that its small, rectangular
3 devices are often mistaken for—or passed off as—flash drives. According to one high school senior,
4 “that’s what people tell the teachers a lot, too, if you charge it in class, they’ll just say it’s my flash
5 drive.”¹⁵³
6



144. 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 use—there is
nothing to light or unwrap, not even an on-off switch—also make it possible to covertly use a JUUL
behind a turned back, which has become a trend in many schools. As a police officer told reporters,

JUUL use is “incredibly prevalent in schools,” including both high schools and middle schools, and that it is hard to catch kids in the act of using JUUL because the device does not produce a large vapor cloud. As the officer explained, students will “just take a little hit or puff off them and then can hold the vapor in their mouth for a little while . . . There’s minimal vapor. They’ll also just blow into their sleeve or into their hoodie.”¹⁵⁴ Finding new ways to hide the ever-concealable JUUL has spawned products designed just for that purpose, such as apparel that allows the wearer to use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.¹⁵⁵

145. Referred to as “the iPhone of e-cigarettes,” JLI’s design was also slick and high-tech, which made it appealing to youth. JLI co-founder Bowen drew on his experience as a design engineer at Apple Inc. (“Apple”) to make JUUL resonate with Apple’s popular aesthetics. This high-tech style made JUULs look “more like a cool gadget and less like a drug delivery device. This wasn’t smoking or vaping, this was JUULing.”¹⁵⁶ The evocation of technology makes JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers. According to a 19-year-old interviewed for the Vox series By Design, “our grandmas have iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust modern stuff a little bit more so we’re like, we can use it, we’re not going to have any trouble with it because you can trust it.”¹⁵⁷ A 16-year-old agreed, explaining that “the tech aspect definitely helps people get introduced to it and then once they’re introduced to it, they’re staying, because they are conditioned to like all these different products. And then this is another product. And it’s just another product. Until you’re addicted to nicotine.”¹⁵⁸

¹⁵⁴ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

¹⁵⁵ 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>.

¹⁵⁶ *How JUUL Made Nicotine Go Viral*, VOX (Aug. 10, 2018), <https://www.youtube.com/watch?v=AF0poKBUyok>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

146. JUUL’s design also included an LED light, which allowed users to active “party mode,” whereby the LED light would flash a rainbow of colors. “Party mode” is activated by the user by waving the JUUL device back and forth until the white LED light starts flashing multiple colors, so that the rainbow colors are visible while the person inhales from the JUUL device. “Party mode” can also be permanently activated on the JUUL by the user quickly and firmly slapping the JUUL against the palm of the hand, until the LED light starts flashing multiple colors permanently. Party mode on the JUUL is described by users to be “like an Easter egg in a video game” and allows for “some cool tricks that are going to drive [] friends crazy.”¹⁵⁹ This feature was another characteristic that set JUUL apart from other e-cigarettes on the market, and made it even more appealing and “cool” to young users.



147. 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.”¹⁶⁰ Dr. Kessler emphasized the reduced harshness of JUUL’s nicotine salt formulation, the high nicotine content,

¹⁵⁹ Jon Hos, *Getting Your Juul Into Party Mode*, VAPE DRIVE (Jul. 12, 2018), <https://vapedrive.com/getting-your-juul-into-party-mode>.

¹⁶⁰ 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>.

discreet vapor cloud, and use of flavors as design features that appeal to youth.¹⁶¹ 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.”¹⁶² 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.”

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

a. JLI Develops Flavored JUUL Products That Would Appeal to Youth.

148. Cigarette companies have known for decades that flavored products are key to getting young people to acclimate to nicotine. A 1972 Brown & Williamson memorandum: *Youth Cigarette – New Concepts*, specifically noted the “well known fact that teenagers like sweet products.”¹⁶³ A 1979 Lorillard memorandum concluded that younger customers would be “attracted to products with ‘less tobacco taste,’” and even proposed borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the widest appeal among youth.¹⁶⁴

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

New users of smokeless tobacco—attracted to the product for a variety of reasons—are most likely to begin with products that are milder tasting, more flavored, and/or easier

¹⁶¹ *Id.*

¹⁶² 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>.

¹⁶³ Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New Concepts*, U.C.S.F. Truth Tobacco Indus. Documents (Sept. 1972), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hazpd0040>.

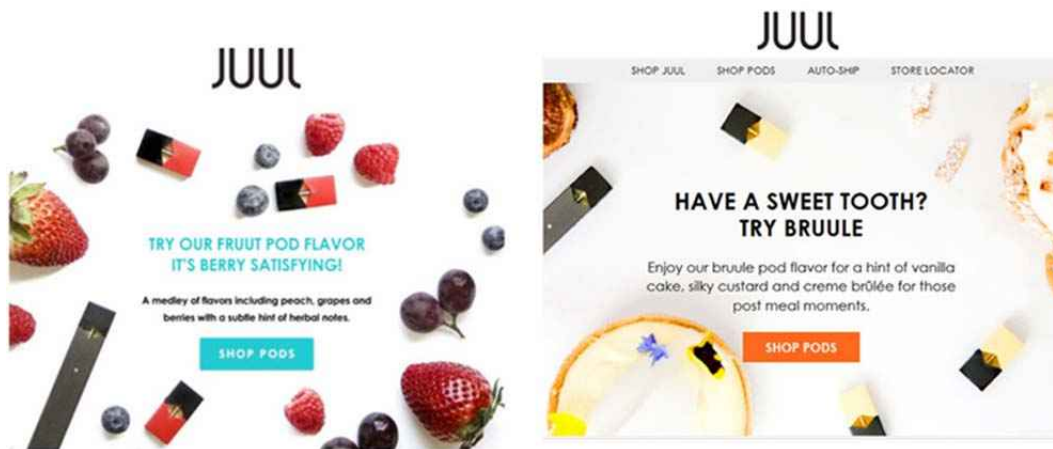
¹⁶⁴ *Flavored Tobacco FAQs*, Students Working Against Tobacco, <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (citing Sedgfield Idea Sessions 790606-790607 (June 8, 1979), Bates No. 81513681/3691) (last visited Mar. 27, 2020).

to control in the mouth. After a period of time, there is a natural progression of product switching to brands that are more full-bodied, less flavored, have more concentrated “tobacco taste” than the entry brand.¹⁶⁵

150. A sales manager who worked at U.S. Tobacco in the 1980s told the Wall Street Journal that “They talked about graduation all the time—in sales meetings, memos and manuals for the college program. It was a mantra.”¹⁶⁶

151. A 2004 study found that seventeen-year-old smokers were more than three times as likely as those over the age of twenty-five to smoke flavored cigarettes, and they viewed flavored cigarettes as safer.¹⁶⁷

152. In June 2015, JUUL came to market in four flavors including tabaac (later renamed tobacco), fruit (later renamed fruit medley), bruulé (later renamed crème brulee), and miint (later renamed mint).



153. JUUL later offered other kid-friendly flavors, including cool mint, cucumber, and mango.

¹⁶⁵ 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>.

¹⁶⁶ Alix Freedman, *Juiced Up: How a Tobacco Giant Doctors Snuff Brands to Boost Their ‘Kick,’* WALL ST. J. (Oct. 26, 1994), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mlch0185>.

¹⁶⁷ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. TIMES (Sept. 22, 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.



154. In 2009, the FDA banned flavored cigarettes (other than menthol) as its first major anti-tobacco action pursuant to its authority under the Family Smoking Prevention and Tobacco Control Act of 2009. “Flavored cigarettes attract and allure kids into addiction,” Health and Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference held to announce the ban.¹⁶⁸ In agreement, former FDA Commissioner Dr. Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young adults to become regular smokers.”¹⁶⁹ A 2017 study of the cigarette flavor ban found that the ban was effective in lowering both the number of smokers and the amount smoked by smokers, though it was associated with an increased use of menthol cigarettes (the only flavor still available).¹⁷⁰

155. 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.”¹⁷¹

¹⁶⁸ Daniel J. DeNoon, *FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors*, WebMD (Sept. 22, 2009), <https://www.webmd.com/smoking-cessation/news/20090922/fda-bans-flavored-cigarettes#2>.

¹⁶⁹ *Id.*

¹⁷⁰ Charles J. Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, AM. J. OF 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>.

¹⁷¹ U.S. Food & Drug Admin., *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-cigarettes that Appeal to Children, Including Mint* (Jan. 22, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

1 156. The availability of e-liquids in flavors that appeal to youth increases rates of e-cigarette
 2 adoption by minors. According to the Surgeon General, 85% of adolescents who use e-cigarettes use
 3 flavored varieties.¹⁷² Studies also show that flavors motivate e-cigarette initiation among youth,¹⁷³ and
 4 that youth are much more likely to use flavored tobacco products than adults are.¹⁷⁴ Flavored e-
 5 cigarettes play a large role in the youth vaping epidemic. As mentioned above, flavors motivate e-
 6 cigarette initiation among youth and youth are much more likely to use flavored tobacco products than
 7 adults.¹⁷⁵ According to the FDA, 96% of twelve to seventeen-year-olds who recently begun using e-
 8 cigarettes reported using a flavored e-cigarette the first time they tried the product.¹⁷⁶ Flavors work to
 9 attract youth. A survey of teenagers between the ages of thirteen to seventeen from 2014-2015 showed
 10 that this age group was six times more interested in trying e-cigarettes in fruity flavors than they were
 11 in trying e-cigarettes with only tobacco flavor.¹⁷⁷

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 14 157. Research confirms that flavored products—no matter what the tobacco product—appeal
 15 to youth and young adults. According to the *2012 Surgeon General Report*, “Much of the growing
 16 popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years)

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 21 ¹⁷² *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-](https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf)
 22 [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).

23 ¹⁷³ 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-](https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25)
 24 [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).

25 ¹⁷⁴ 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>.

26 ¹⁷⁵ See *E-Cigarette Use Among Youth and Young Adults*, *supra* note 169; Paul, *supra* note 170;
 Villanti, *supra* note 171.

27 ¹⁷⁶ *Modifications to Compliance Policy for Certain Deemed Tobacco Products*, FDA (Mar. 2019),
<https://www.fda.gov/media/121384/download>.

28 ¹⁷⁷ 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.

1 and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be
2 expected to be attractive to youth.”¹⁷⁸

3 158. A national survey found that that 81% of youth aged twelve to seventeen who had ever
4 used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3% of
5 current youth e-cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5% of
6 current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”¹⁷⁹

7 159. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction,
8 especially among minors, by making it easier and more pleasant to ingest nicotine.¹⁸⁰ Research has
9 shown that adolescents whose first tobacco product was flavored are more likely to continue using
10 tobacco products than those whose first product was not flavored.

11 160. In a recent study, 74% of youth surveyed indicated that their first use of a JUUL was of
12 a flavored JUUL pod.¹⁸¹

13 161. Research shows that when youth see advertisements for flavored e-cigarettes, they
14 believe the advertisements and products are intended for them.¹⁸²

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18 ¹⁷⁸ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (“2012
19 *Surgeon General Report*”) at 539, U.S. Dep’t Health & Human Servs. (2012),
20 https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

21 ¹⁷⁹ See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years,*
22 *2013-2014*, 314 JAMA 1871 (2015). Another peer-reviewed study concluded that young adults who
23 use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their
24 peers who have not used e-cigarettes. See Brian A. Primack, et al. *Initiation of Traditional Cigarette*
25 *Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 AM. J. MED.
26 443.e1 (2018).

27 ¹⁸⁰ See U.S. Dep’t of Health & Human Servs., *How Tobacco Smoke Causes Disease: The Biology and*
28 *Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, Chapter 4
(Centers for Disease Control and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

¹⁸¹ Karma McKelvey et al., *Adolescents and Young Adults Use in Perceptions of Pod-based Electronic*
Cigarettes. 1 JAMA NETWORK OPEN e183535 (2018), <https://doi:10.1001/jamanetworkopen.2018.3535>.

¹⁸² D.C. Petrescu, et al., *What is the Impact of E-Cigarette Adverts on Children’s Perceptions of*
Tobacco Smoking? An Experimental Study, 26 TOBACCO CONTROL 421 (2016); Julia C. Chen-Sankey
et al., *Perceived Ease of Flavored E-Cigarette Use and E-Cigarette Use Progression Among Youth*
Never Tobacco Users, 14 PLOS ONE 1 (2019).

1 162. Flavors like mint and menthol are attractive to youth. According to Robin Koval, CEO
 2 and president of Truth Initiative, mint and menthol are among the most popular flavors for youth and
 3 that “[w]e also know, as does the tobacco industry, that menthol has been and continues to be the
 4 starter flavor of choice for young cigarette users.”¹⁸³ According to the FDA, “younger populations
 5 have the highest rate of smoking menthol cigarettes” and “menthol in cigarettes is likely associated
 6 with increased initiation and progression to regular [] cigarette smoking.”¹⁸⁴

8 163. A significant majority of under-age users chose flavored e-cigarette products.¹⁸⁵ By at
 9 least [REDACTED]¹⁸⁶
 10 Instead of taking corrective action or withdrawing the kid friendly flavors, JLI capitalized on their
 11 popularity with kids and continued to promote JUUL’s flavors. In a social media post from August
 12 2017, for example, JLI tweeted “Beat The August Heat with Cool Mint” and “Crisp peppermint flavor
 13 with a pleasant aftertaste.”¹⁸⁷ In another August 2017 tweet, JLI compared JUUL to dessert: “Do you
 14 brulée? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods.”¹⁸⁸
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20 ¹⁸³ *Id.*

21 ¹⁸⁴ *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus*
 22 *Nonmenthol Cigarettes* at 5, FDA, <https://www.fda.gov/media/86497/download> (last visited Mar. 28,
 2020).

23 ¹⁸⁵ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States*, 322 JAMA 2095 (2019),
 24 <https://tinyurl.com/y3g75gmg> (“Among current exclusive e-cigarette users, an estimated 72.2% . . .
 of high school students and 59.2% . . . of middle school students used flavored e-cigarettes. . .”).

25 ¹⁸⁶ See INREJLI 00265068 [REDACTED]
 26 [REDACTED].

27 ¹⁸⁷ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017),
http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg.

28 ¹⁸⁸ 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/#3dale11b14f9>.

JUUL @JUULvapor · 28 Aug 2017
Do you brûlée? RT if you enjoy dessert without the spoon with our Creme Brulee
#JUULpods bit.ly/2wvDk38



164. JLI asserts that it did not intend its flavors to appeal to underage consumers. After eleven Senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette flavors, JLI visited Capitol Hill and told Senators that it never intended its products to appeal to kids and did not realize they were using the products, according to a staffer for Senator Richard Durbin.¹⁸⁹ JLI's statements to Congress—which parallel similar protests of innocence by cigarette company executives—were false.

165. A former JUUL manager, who spoke to The New York Times on the condition that his name not be used, said that within months of JUUL's 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company's website than they could individually use—sometimes ten or more devices at a time. "First, they just knew it was being bought for resale," said the

¹⁸⁹ Lorraine Woellert & Sarah Oweremohle, *Juul Tries to Make Friends in Washington as Regulators Circle*, POLITICO (Dec. 28, 2018), <https://www.politico.com/story/2018/12/08/juul-lobbying-washington-1052219>.

1 former senior manager, who was briefed on the company's business strategy. "Then, when they saw
2 the social media, in fall and winter of 2015, they suspected it was teens."¹⁹⁰

3 166. By positioning JUUL pods as a flavor-oriented product rather than a system for
4 delivering a highly addictive drug, JLI deceptively led consumers to believe that JUUL pods were not
5 only healthy (or at least essentially harmless), but also a pleasure to be enjoyed regularly, without guilt
6 or adverse effect.
7

8 **b. Defendants Developed and Promoted the Mint Flavor and Sought to**
9 **Preserve its Market.**

10 167. While JLI and the Management Defendants were developing and marketing their
11 flavored products to appeal to and recruit youth customers, Altria, recognizing the value of those
12 young "replacement smokers" committed itself to the cause. With the shared goal to grow the number
13 of nicotine-addicted users, including youth in particular, and as detailed further herein, JLI, the
14 Management Defendants, and Altria set out to do whatever was necessary to create and preserve the
15 lucrative market for flavors. In order to maximize the value of its mint line of JUULpods, JLI, with the
16 support of the Management Defendants, chemically and socially engineered its mint pods to become
17 the most popular "flavor" among youth, including through extensive surveillance of youth behavior
18 and preferences, all while seeking to conceal mint's appeal to youth.
19

20 168. In July 2013, Reynolds American Inc.¹⁹¹ released the Vuse, the first-known cartridge-
21 based nicotine salt e-cigarette to reach the domestic market.¹⁹² Altria entered the nicotine salt market
22 one month later, with the MarkTen cig-a-like.¹⁹³ JLI would enter the market in June 2015.
23

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25 ¹⁹⁰ 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>.

26 ¹⁹¹ Reynolds is now a wholly owned subsidiary of British American Tobacco.

27 ¹⁹² See FAQs, RJR Vapor Co., LLC, <http://www.vusevapor.com/faqs/product/> ("Since Vuse's launch
in 2013, all of our closed systems available for sale nationally (i.e., Vuse Solo, Vuse Ciro, Vuse Vibe,
and Vuse Alto) include nicotine salts.").

28 ¹⁹³ Additional Info, Nu Mark LLC, <https://markten.com> ("certain varieties" of MarkTen Original
"contain ... acetic acid, benzoic acid, and lactic acid.").

179. Though mint was one of the least popular e-cigarette flavor categories with youth in 2015, trailing the fruit and dessert categories,¹⁹⁴ Reynolds, Altria and JLI had all introduced mint-flavored products within a year of each company's initial release. By mid-2014, Reynolds had added "Mint, Rich Mint, Spearmint, [and] Wintergreen" to its Vuse lineup.¹⁹⁵ By February 2015, Altria's NuMark LLC, under the leadership of Joe Murillo (JLI's current regulatory head), released a Winter Mint flavor for MarkTen.

170. Unlike Reynolds and Altria, which released mint products after first releasing a menthol variant, JLI skipped menthol and went straight to mint, adding Menthol in late 2017 around the same time it released its mango JUULpods.

171. JLI's flavored JUULpods were particularly popular with its underage users and, when mango was introduced, it was the underage user's flavor of choice.

172. JLI, the Management Defendants, and Altria recognized both the potential of using flavors to hook kids and the inevitability that the government would seek to regulate said flavors. So, they sought to solidify the market presence of a "substitute" youth-friendly flavor—mint—which might escape regulation and preserve JLI's astronomical sales figures.

(i) JLI Manipulates Chemistry of Mint JUUL Pods.

173. One recent study found that JLI's mango had the lowest free-base content, making it the least harsh formula; and that mint had the highest free-base content (30% more free-base than mango), making mint the formula with the strongest nicotine impact:¹⁹⁶

¹⁹⁴ See M.B. Harrell et al., *Flavored e-cigarette use: Characterizing youth, young adult, and adult users*, 5 PREVENTIVE MEDICINE REPS. 33-40, § 3.3 (Mar. 2017), <https://www.sciencedirect.com/science/article/pii/S2211335516301346>.

¹⁹⁵ See Sen. Richard Durbin, et al., *Gateway to Addiction?* (April 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

¹⁹⁶ See Duell AK, et al. *Nicotine in tobacco product aerosols: "It's déjà vu all over Again,"* 5 TOBACCO CONTROL (Dec. 17, 2019), <https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2019/12/16/tobaccocontrol-2019-055275.full.pdf>.

Anna K. Duell et al., Nicotine in tobacco product aerosols: 'It's déjà vu all over again'

	C_{HA}/C_{NIC}	α_{th}
Benzoic acid		
JUUL 'Cool Mint' (5% nicotine)	0.97*	0.13
JUUL 'Classic Menthol' (5% nicotine)	0.98*	0.13
JUUL 'Crème Brûlée' (5% nicotine)	0.97*	0.12
JUUL 'Fruit Medley' (5% nicotine)	0.99*	0.12
JUUL 'Cool Cucumber' (5% nicotine)	1.00*	0.11
JUUL 'Classic Tobacco' (5% nicotine)	1.00*	0.11
JUUL 'Virginia Tobacco' (5% nicotine)	1.00*	0.11
JUUL 'Mango' (5% nicotine)	0.99*	0.09
JUUL 'Virginia Tobacco' (3% nicotine)	0.94*	0.14
JUUL 'Mint' (3% nicotine)	1.04*	0.11
Averages for JUUL	0.99±0.03 SD	0.12±0.01

174. These findings evidence JLI, the Management Defendants, and the Altria Defendants' plan to make the flavor whose lifespan they were working hard to preserve the most potent when it got into the hands of nonsmokers, including youth.

(ii) JLI's Youth Surveillance Programs Confirmed that Mint JUUL Pods are Preferred by Teens.

175. In January 2018, Kevin Burns, JLI's new CEO, deployed his experience as the former CEO of a yogurt company to begin developing JUUL's flavor portfolio.

176. One part of this initiative included studying reactions to flavor names. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁹⁷

177. In April 2018, JLI received a document request from the FDA on April 24, 2018, seeking information about the design and marketing of JLI's products, among other things.¹⁹⁸

178. In response, JLI announced a commitment of \$30 million to youth prevention efforts and began sending JLI representatives to schools to present what were essentially advertising

¹⁹⁷ INREJUUL_00053172.

¹⁹⁸ Matthew Holman, U.S. Food & Drug Admin., to Ziad Rouag, Juul Labs, Inc., *Letter from Director of Office of Science, Center for Tobacco Products* (Apr. 24, 2018), <https://www.fda.gov/media/112339/download>.

1 campaigns for JUUL products. This conduct resulted in a Warning Letter from the FDA’s Center for
 2 Tobacco Products to JLI in September 2019.¹⁹⁹

3 179. Under the [REDACTED]

4 [REDACTED]²⁰⁰ [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]

10 180. [REDACTED]

11 [REDACTED]²⁰¹ [REDACTED]
 12 [REDACTED]²⁰²
 13 [REDACTED]

14 181. [REDACTED]
 15 [REDACTED]
 16 [REDACTED]²⁰³ [REDACTED]²⁰⁴

17 182. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]

20 183. In other words, [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 [REDACTED]. This is unsurprising, as the “Mint” flavor was designed not to taste like

24 ¹⁹⁹ Letter from U.S. Food & Drug Admin. to Kevin Burns, CEO of Juul Labs, Inc. (Sept. 9, 2019),
 25 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

26 ²⁰⁰ INREJUUL_00121627 ([REDACTED]); INREJUUL_00124965 ([REDACTED]).

27 ²⁰¹ *Id.*

²⁰² INREJUUL_00035325.

²⁰³ INREJUUL_00124965.

28 ²⁰⁴ *Id.*

²⁰⁵ INREJUUL_00035325.

1 a Menthol cigarette. Users have described JLI's Menthol flavor as "tast[ing] like a [N]ewport"
 2 cigarette that "doesn't have that good peppermint taste like [C]ool [M]int."²⁰⁶

3 184. [REDACTED]

4 [REDACTED]. According to Siddharth Breja, who was
 5 senior vice president for global finance at JLI, after JLI pulled most flavored pods, including mango,
 6 from the market in a purported attempt to reduce youth usage of JUUL, then-CEO Kevin Burns said
 7 that "[y]ou need to have an IQ of 5 to know that when customers don't find mango they buy mint."²⁰⁷

8 185. And it was public knowledge that mint and menthol have a well-documented history of
 9 facilitating youth tobacco use, as Dr. Jonathan Winickoff testified before Congress:
 10

11 [it is] completely false to suggest that mint is not an attractive flavor to children. From
 12 candy canes to toothpaste, children are introduced to mint flavor from a young age. Not
 13 only do children enjoy mint, but it has special properties that make it an especially
 14 dangerous flavor for tobacco. Menthol's anesthetic properties cool the throat, mask the
 15 harshness of nicotine, and make it easier for children to start using and continue using
 tobacco products. The impact of mint and menthol flavors on increasing youth tobacco
 addiction is well documented.²⁰⁸

16 186. [REDACTED]

17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 ²⁰⁶ Reddit, *How does Classic Menthol compare to Cool Mint*,
 24 https://www.reddit.com/r/juul/comments/7wo39m/how_does_classic_menthol_compare_to_cool_mint/.

25 ²⁰⁷ Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive*
 26 *Say*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

27 ²⁰⁸ *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight*
 28 *and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 3 (2019) (statement of Jonathan
 P. Winickoff, American Academy of Pediatrics),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>.

187. With that knowledge and with no genuine interest in youth prevention, and as detailed below, JLI, the Management Defendants, and Altria committed to work to preserve mint as a flavor for as long as possible. Indeed, to further this goal, Defendants Pritzker and Valani poured additional money into JLI a mere two months later as part of a \$600 million funding round.²⁰⁹

188. By keeping mint on the market long after other flavors were pulled, these Defendants continued to expand the number of addicted e-cigarette users, including youth in particular.

D. Defendants Developed and Implemented a Marketing Scheme to Mislead the Public, Including Youth, into Believing that JUUL Products Contained Less Nicotine Than They Actually Do and Were Healthy and Safe.

189. Having created a product designed to hook users to its nicotine, JLI had to mislead consumers, including youth in particular, into believing JUUL was something other than what it actually was. So, the company engaged in a years' long campaign to downplay JUUL's nicotine content, nicotine delivery, and the unprecedented risks of abuse and addiction JUUL poses. Defendants devised and knowingly carried out a material scheme to defraud and addict consumers, including youth in particular, by (a) misrepresenting the nicotine content, nicotine delivery profile, and risks of JUUL products, (b) representing to the public that JUUL was a smoking cessation tool, and (c) using third-party-groups to spread false and misleading narratives about e-cigarettes, and JUUL in particular.

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

190. As part of their strategy to market to youth and nonsmokers, JLI and the Management Defendants also did not effectively inform users that JUUL products contain nicotine. [REDACTED]
[REDACTED], JLI did not include nicotine warnings until forced to do so in August 2018.²¹⁰

²⁰⁹ Alex Wilhelm & Jason D. Rowley, *JUUL Raises \$650M Of Its \$1.25B Mega-Round*, CRUNCHBASE (Jul. 10, 2018), <https://news.crunchbase.com/news/juul-raises-650m-of-its-1-25b-mega-round/>.

²¹⁰ See INREJUUL 00444332 [REDACTED]

, see e.g.,

1 191. Moreover, many of JUUL's advertisements, particularly prior to November 2017, also
 2 did not mention that JUUL contained nicotine. In the first year after JUUL's launch, not one of JLI's
 3 171 promotional emails said anything about the nicotine content in JUUL products.²¹¹ For example, in
 4 a July 11, 2015 email, JLI advertised its promotional events with the text, "Music, Art, & JUUL. What
 5 could be better? Stop by and be gifted a free starter kit."²¹² This email did not mention that JUULpods
 6 contain nicotine, nor did it say that JUUL or the free starter kits were intended for adults only.
 7

8 192. Similarly, none of JLI's 2,691 tweets between June 2015 and October 6, 2017
 9 mentioned that JUUL contained nicotine.²¹³ For example:

- 10 a. 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
 12 tix!"²¹⁴ This tweet did not mention that JUUL contained nicotine.
- 13 b. On July 28, 2017, JLI tweeted an image of a Mango JUULpod next to
 14 mangos captioned "#ICYMI: Mango is now in Auto-ship! Get the
 15 #JUULpod flavor you love delivered & save 15%. Sign up today."²¹⁵
 16 This tweet did not mention that JUUL contained nicotine.
- 17 c. On August 4, 2017, JLI tweeted "Beat The August Heat with Cool Mint"
 18 and "Crisp peppermint flavor with a pleasant aftertaste," captioned "A
 19 new month means you can stock up on as many as 15 #JUULpod packs.
 20 Shop now."²¹⁶ This tweet did not mention that JUUL contained nicotine.

21 INREJUUL 00021583-586 at 583 ([REDACTED]).

22 ²¹¹ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
 23 Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019),
 24 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

25 ²¹² *Check out our JUUL events this Summer*, JUUL (hello@juulvapor.com) (July 11, 2015),
 26 http://tobacco.stanford.edu/tobacco_web/images/pod/juul/email/large/email_2.jpg.

27 ²¹³ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
 28 Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019),
 29 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

30 ²¹⁴ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015),
 31 http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg.

32 ²¹⁵ JUUL Labs, Inc. (@JUULvapor), Twitter (July 28, 2017),
 33 http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_38.jpg.

34 ²¹⁶ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017),
 35 http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg.

d. On August 28, 2017, JLI tweeted “Do you brulée? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods.”²¹⁷ This tweet did not mention that JUUL contained nicotine.

193. Even after Defendants added a nicotine warning to JUUL products, they continued to mislead youth and the public about the amount of nicotine in a JUULpod. Every 5% strength JUUL pod package represents that one pod is equivalent to one pack of cigarettes. This statement is deceptive, false and misleading. As [REDACTED]

[REDACTED]²¹⁸

194. In addition, and as JLI and the Management Defendants know, it is not just the amount of nicotine, but the efficiency with which the product delivers nicotine into the bloodstream, that determines the product’s narcotic effect, risk of addiction, and therapeutic use. Most domestic cigarettes contain 10–15 mg of nicotine per cigarette²¹⁹ and each cigarette yields between 1.0 to 1.4 mg of nicotine,²²⁰ meaning that around 10% of the nicotine in a cigarette is typically delivered to the user. JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine contained in a JUUL pod to the user.²²¹ [REDACTED]

[REDACTED]²²²

²¹⁷ 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>.

²¹⁸ INREJUUL_00279931.

²¹⁹ Neal L Benowitz & Jack E Henningfield, *Reducing the nicotine content to make cigarettes less addictive*, 22 TOBACCO CONTROL Supp. 1, i14-17 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632983/>.

²²⁰ 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.

²²¹ Samantha M. Reilly et al., *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic Cigarettes*, 21 NICOTINE TOBACCO RESEARCH 1274 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/30346584> (about 82%, for averages of 164 µg per puff).

²²² See, e.g., INREJUUL_00023597 ([REDACTED]).

1 195. Defendants also knew that the use of benzoic acid and nicotine salts in JUUL pods
 2 affects pH and facilitates “absorption of nicotine across biological membranes.”²²³ JUUL’s e-liquid
 3 formulation is highly addictive not only because it contains a high concentration of nicotine, but
 4 because it contains a particularly potent form of nicotine, i.e., nicotine salts. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]²²⁴ And the Altria Defendants were aware of the research showing the potency
 8 of nicotine salts from their many years in the tobacco business.

9 196. JLI and Defendant Bowen, [REDACTED]
 10 [REDACTED], sought to engineer test results that differed from
 11 those results and were more consistent with JLI’s deceptive messaging. [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]²²⁵ [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED] As Defendants JLI and Bowen knew, this difference is critical. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]²²⁶ [REDACTED]
 23 [REDACTED]
 24 [REDACTED]²²⁷

25
 26 ²²³ Neal L. Benowitz et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 HANDB.
 27 EXP. PHARMACOL. 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>

28 ²²⁴ INREJUUL_00278408.

²²⁵ INREJUUL_00014159-INREJUUL_00014226.

²²⁶ INREJUUL_00002526-INREJUUL_00002625.

²²⁷ *Id.*

1 197. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 198. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 199. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 200. JLI and the Management Defendants knew that [REDACTED]

15 [REDACTED]

16 [REDACTED] to market

17 JUUL as providing a nicotine experience on par with a cigarette, even though they designed JUUL to

18 ensure that was not true. In reality, there were never any measured test results in accord with JLI's

19 marketing to distributors, retailers, and the public at large.

20

21 201. In the United States, the unsupported extrapolations from what [REDACTED]

22 [REDACTED] were used to create charts, which JLI posted on its website, shared with journalists, sent to

23 retailers, and distributed to third party promoters, showing that JUUL's 5% solution achieved a pk

24

25

26

27

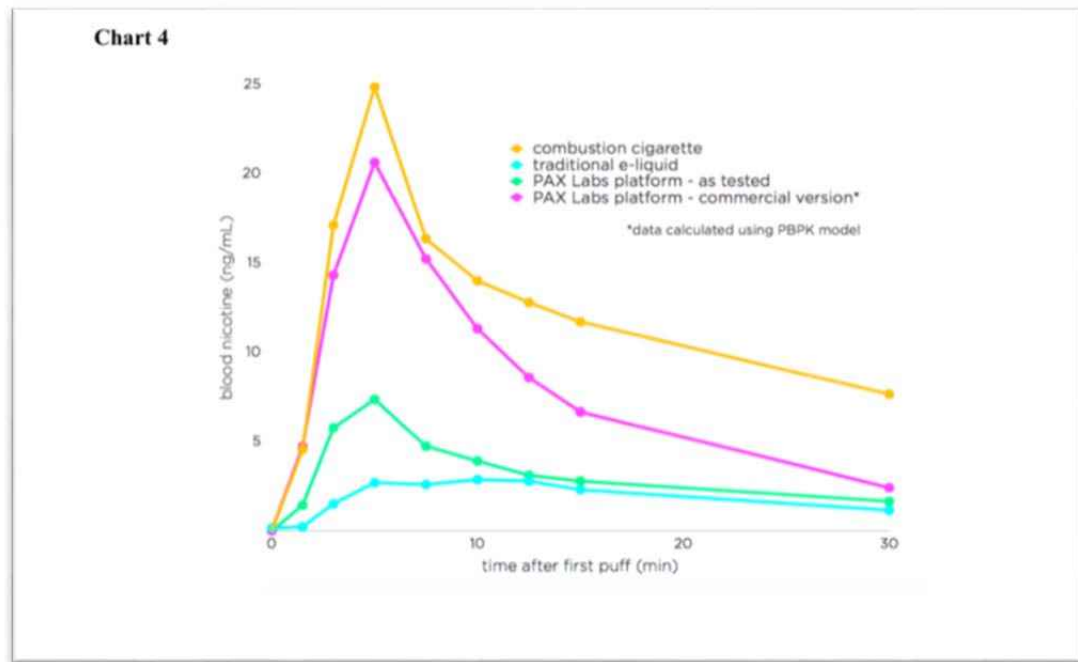
28

²²⁸ *Id.*

²²⁹ INREJUUL_00351717-INREJUUL_00351719.

²³⁰ *Id.*

profile just below that of a cigarette. For example, the following chart appeared on the online publication TechCrunch:²³¹



202. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ²³² [REDACTED] ²³³ [REDACTED]

²³¹ Ryan Lawler, *Vaporization Startup Pax Labs Introduces Juul, Its Next-Gen-E-Cigarette*, TECH CRUNCH (Apr. 21, 2015), <https://techcrunch.com/2015/04/21/pax-juul/>.

²³² See JLI00363360.

²³³ INREJUUL_00448896.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 203. These misrepresentations to the public were not accidental, nor were they the work of a
13 rogue employee. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]²³⁴ [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]. Thus, Defendants Bowen,
20 Monsees, Pritzker, and Valani were privy to both the [REDACTED]. And they *knew* that
21 the data JLI (then Ploom) was pushing on the public was false and misleading, but none made any
22 efforts to correct or withdraw those false and misleading statements. Aside from submitting the testing
23 protocol and [REDACTED] with the '895 patent, JLI, Bowen, Monsees, Pritzker, and
24 Valani otherwise ignored the [REDACTED] and omitted it from public discussion of JUUL's nicotine
25 delivery.
26
27
28

²³⁴ INREJUUL_00016443-INREJUUL_00016507.

2. **JLI, the Management Defendants, and Altria Transmitted, Promoted and Utilized Statements Concerning JUUL’s Nicotine Content that They Knew Were False and Misleading.**

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

205. JLI and the Management Defendants caused deceptive, false and misleading statements that a JUUL pod had an equivalent amount of nicotine as one pack of cigarettes to be distributed via the wires and mails. These Defendants have thus materially misrepresented the nicotine content of JUUL products to the consuming public including Plaintiffs, through acts of mail and wire fraud.

206. By no later than October 30, 2016 (and likely earlier), the JLI Website—which, as discussed above, the Management Defendants on JLI’s Board of Directors reviewed and approved—advertised that “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight, approximately equivalent to 1 pack of cigarettes or 200 puffs.”²³⁵ The language on the website would later change, but still maintained the same fraudulent misrepresentation—i.e., that “[e]ach 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”²³⁶

207. As noted above, JLI and the Management Defendants directed and approved the content of the JUUL website, and they also directed and approved the distribution channels for JUUL pods and deceptive, misleading and fraudulent statements regarding JUUL’s nicotine content. And although they knew that these statements, which they caused to be transmitted over the wires and mails, were untrue, JLI and the Management Defendants have made no effort to retract such statements or correct their lies.

²³⁵ JUULpod, JUUL Labs, Inc. (Oct. 30, 2016), <https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>.

²³⁶ What is Vaping?, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/What-is-Vaping-How-to-Vape>.

208. In addition to approving the JLI website, knowing that it contained deceptive, misleading and false statements, JLI (through its employees) and the Management Defendants also were directly responsible for the interstate transport, *via* U.S. mail, of JUULpod packaging contained misrepresentations and omissions. [REDACTED]

209. JUUL pod packages that were sent *via* U.S. mail stated that a single JUUL pod is “approximately equivalent to about 1 pack of cigarettes.”²³⁸ These statements, as well as the statements on the JLI website, are false and misleading.

210. The statement on the JLI website, and in its advertisements and packaging, that each JUUL pod contains 5% nicotine and is approximately equivalent to a pack of cigarettes is false and likely to deceive and mislead, because the actual amount of nicotine contained in a JUUL pod is as much as twice as high as that in a pack of cigarettes.

211. The Altria Defendants greatly expanded the reach of this fraud by providing their retail and distribution might for JLI products, causing millions of JUUL pods to be sent *via* U.S. mail with packaging stating that JUUL pods contain only 5% nicotine by weight and are “approximately equivalent to about 1 pack of cigarettes.”²³⁹ JLI, the Management Defendants, and the Altria Defendants knew that these statements were false and misleading, but nevertheless utilized JUUL product packing, marketing and advertising to maintain their fraud.

212. The Altria Defendants knew in 2017 that a JUUL pod delivered more nicotine than one pack of cigarettes. In 2017, the Altria Defendants launched its MarkTen Bold e-cigarette, a relatively high-strength 4% formulation compared to the 2.5% and 3.5% strength MarkTen products initially

²³⁷ INREJUUL_00278408.

²³⁸ Juul Labs, Inc., Twitter, (Feb. 14, 2018), <https://twitter.com/JUULvapor/status/963844069519773698>.

²³⁹ *Id.*

offered. Even though JUUL was already on store shelves and was rapidly gaining market share with its 5% nicotine formulation, the Altria Defendants chose to bring a less potent 4% formulation to market.

213. According to the Altria Defendants own pharmacokinetic testing as reflected in the chart below, this 4% less potent formulation was nevertheless sufficient to raise plasma nicotine to levels approaching those generated by combustible cigarettes. In other words, the Altria Defendants' own pharmacokinetic testing suggested the highly addictive nature of a 5% formulation, as such a formulation would readily equal or exceed the nicotine delivery profile of a combustible cigarette.

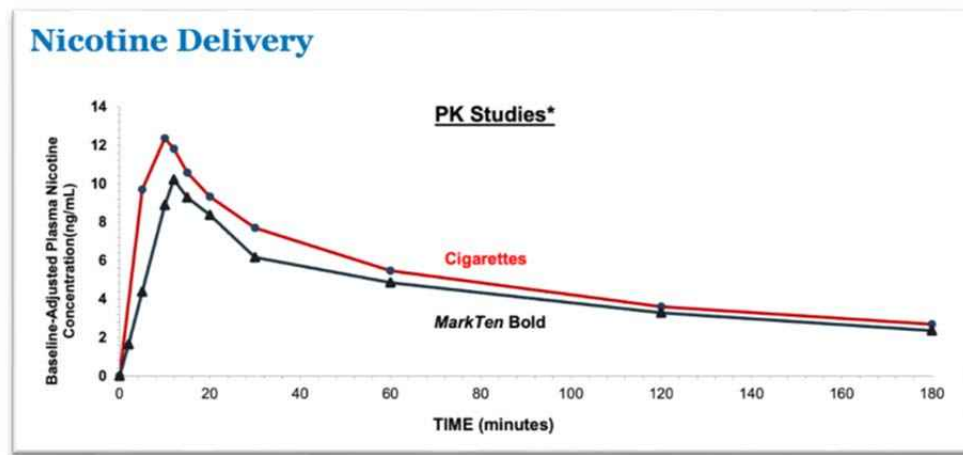


Figure 2: Presented at Altria Group Inc.'s November 1, 2017 Investor Day Presentation. MarkTen Bold 4%

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

215. Thus, JLI, the Management Defendants, and the Altria Defendants knew that the statement on JUUL pod packaging that each JUUL pod contains 5% nicotine and about as much nicotine as a pack of cigarettes is literally false and they intended such statements to mislead users, including youth. Neither the Altria Defendants nor JLI or the Management Defendants have made any

1 effort to correct or retract the false and misleading statements as to the true nicotine content in JUUL
 2 pods. Instead, they have continued to misrepresent the product's nicotine content and design, with the
 3 goal of misleading and deceiving consumers.

4 216. From JUUL's pre-release announcements to this day, JLI has continuously represented
 5 that each pod is approximately equivalent to a pack of cigarettes. These claims, which JLI repeats
 6 widely in advertisements, press releases, and its web site, have been distributed *via* the wires and mails
 7 and disseminated by reputable and widely reliable sources that accepted those representations as
 8 true.²⁴⁰

9 217. Moreover, the form of nicotine JUUL pods contain is particularly potent. JUUL's use of
 10 "strength" to indicate concentration by weight is also at odds with the industry standard of reporting
 11 concentration by volume,²⁴¹ leading users to believe it contains less nicotine than other formulations
 12 advertised as 6% nicotine, when JUUL pods in fact contain approximately the same nicotine as a
 13 solution that is 6% nicotine by volume.

14 218. The "5% strength" statement in Defendants' advertisements misrepresents the most
 15 material feature of the JUUL product—the nicotine content—and has misled young people to their
 16 detriment. Resellers, apparently assuming that "5% strength" means "50mg/ml" nicotine by volume,
 17

18
 19 ²⁴⁰ See Truth Initiative, *6 Important Facts about Juul*, <https://truthinitiative.org/research-resources/emerging-tobacco-products/6-important-facts-about-juul>; Erin Brodwin, *An e-cigarette with twice the nicotine of comparable devices is taking over High Schools – and scientists are sounding the alarm*, BUSINESS INSIDER (Apr. 30, 2018), <https://www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3>; Caroline Kee, *Everything you need to know about the JUUL, including the health effects*, BUZZFEED NEWS (Feb. 5, 2018), <https://www.buzzfeednews.com/article/carolinekee/juul-ecigarette-vape-health-effects>; Jan Hoffman, *The Price of Cool: A teenager, a juul and nicotine addiction*, NEW YORK TIMES, (November 16, 2018), <https://www.nytimes.com/2018/11/16/health/vaping-juul-teens-addiction-nicotine.html>; Sarah Milov, *Like the tobacco industry, e-cigarette manufacturers are targeting children*, THE WASHINGTON POST, (Sept. 23, 2018) <https://www.washingtonpost.com/outlook/2018/09/23/like-tobacco-industry-e-cigarette-manufacturers-are-targeting-children/>; Washington State Dep't of Health, *What are vapor products?*, <https://www.doh.wa.gov/YouandYourFamily/Tobacco/VaporProducts>.

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 28 ²⁴¹ See, e.g., American E-Liquids Manufacturing Standards Association, *E-Liquids Manufacturing Standards*, § 1.05 (2017), <https://www.aemsa.org/wp-content/uploads/2017/03/AEMSA-Standards-v2.3.3.pdf>, (quantifying e-liquid nicotine content in terms of volume).

1 compound confusion among young people by stating that JUUL pods contain “50 mg/ml,” which they
2 do not.²⁴²

3 219. If JLI and the Management Defendants did not know when JLI released JUUL pods that
4 the “5% strength” representation in Defendants’ advertisements was misleading, they learned that there
5 was widespread confusion about the JUUL pods’ nicotine content. By 2017, studies revealed that users
6 did not understand “5% strength,” and some understood that phrase to mean 5% of a cigarette. [REDACTED]

8 [REDACTED],²⁴³ JLI and the Management Defendants (and later
9 the Altria Defendants) did nothing to stop or correct this confusion about the nicotine content.

10 220. The “5% strength” statement in Defendants’ advertisements is also misleading. At least
11 two independent studies testing multiple varieties of JUUL pods have likewise found significantly
12 higher concentrations of nicotine than the 59 mg/mL JUUL’s website represents, suggesting that the
13 difference in the total nicotine content of a JUUL pod vs. a pack of combustible cigarettes could be
14 even greater.²⁴⁴

16 **3. Defendants Used Food and Coffee Themes to Give False Impression that JUUL**
17 **Products Were Safe and Healthy.**

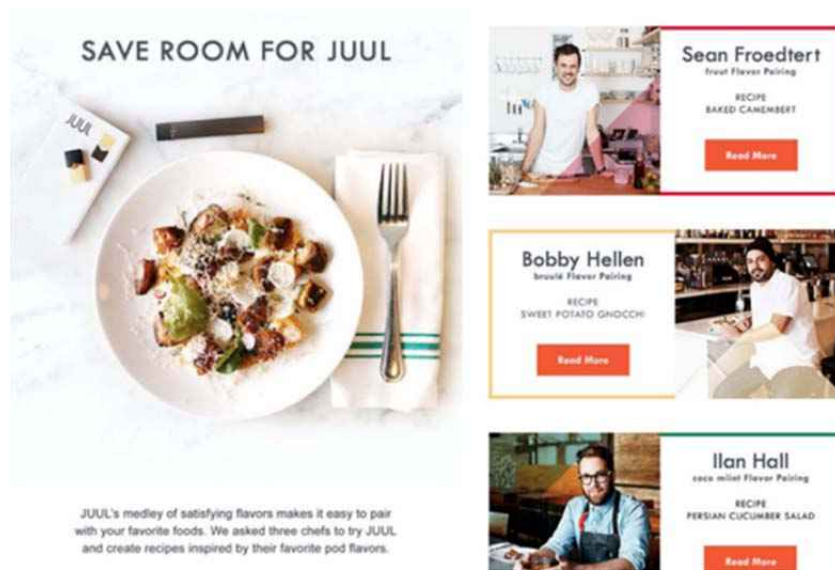
18 221. In late 2015, JLI and the Management Defendants employed a deceptive marketing
19 scheme to downplay the harms of e-cigarettes with a food-based advertising campaign called “Save

20 ²⁴² See, e.g. Tracy Vapors, Starter Kit,
21 <http://web.archive.org/web/20190422143424/https://www.tracyvapors.com/collections/starter-kit>;
22 Lindsey Fox, *JUUL Vapor Review, E-cigarette Reviewed*, (Mar. 20, 2017),
23 <https://ecigaretterevuewed.com/juul-review> (“The nicotine content of the JUUL pods is always the
24 same: 5% or 50 mg/ml”); Jason Artman, *JUUL E-Cigarette Review*, eCig One (Oct. 26, 2016)
25 <https://ecigone.com/e-cigarette-reviews/juul-e-cigarette-review/> (“the e-liquid contains 50 mg of
26 nicotine per ml of e-liquid”); West Coast Vape Supply, Juul Starter Kit (July 18, 2019),
27 [http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-](http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-kit)
28 [kit](http://web.archive.org/web/20190718190102/https://westcoastvapesupply.com/products/juul-starter-kit) (“5% . . . 50 mg”); Vapor4Life, *How Much Nicotine is In a JUUL?* (Aug. 24, 2018),
<https://www.vapor4life.com/blog/how-much-nicotine-is-in-a-JUUL/> (“Each official JUUL pod
contains a whopping 50mg of nicotine per milliliter of liquid (most other devices range from 3 to
30mg per milliliter.”).

²⁴³ INREJUUL_00123540.

²⁴⁴ See J.F. Pankow et al., *Benzene formation in electronic cigarettes*, 12 PLoS ONE 1 (2017); see also
Anna K. Duell, et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by 1H NMR*
Spectroscopy, 31 CHEM. RES. TOXICOL. 431, 431-34 (2018).

Room for JUUL.” The campaign framed JUUL’s addictive pods as “flavors” to be paired with foods.²⁴⁵ JLI described its Crème Brûlée nicotine pods as “the perfect evening treat” that would allow users to “indulge in dessert without the spoon.”²⁴⁶ In one 2016 email, JLI bluntly suggested that users satisfy their sugar cravings with JUUL’s highly-addictive nicotine vapor: “Have a sweet tooth? Try Brulee.”²⁴⁷ JLI similarly promoted the fruit medley pods using images of ripe berries.²⁴⁸ JLI described its “Cool” Mint pods as having a “crisp peppermint taste with a pleasant aftertaste” and encouraged consumers to “Beat The August Heat With Cool Mint.”²⁴⁹



²⁴⁵ Erin Brodwin, *\$15 billion startup JUUL used ‘relaxation, freedom, and sex appeal’ to market its crème-brûlée-flavored e-cigs on Twitter and Instagram—but its success has come at a big cost*, BUSINESS INSIDER (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cig-marketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

²⁴⁶ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_3.jpg.

²⁴⁷ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_34.jpg.

²⁴⁸ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_6.jpg.

²⁴⁹ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_15.jpg.

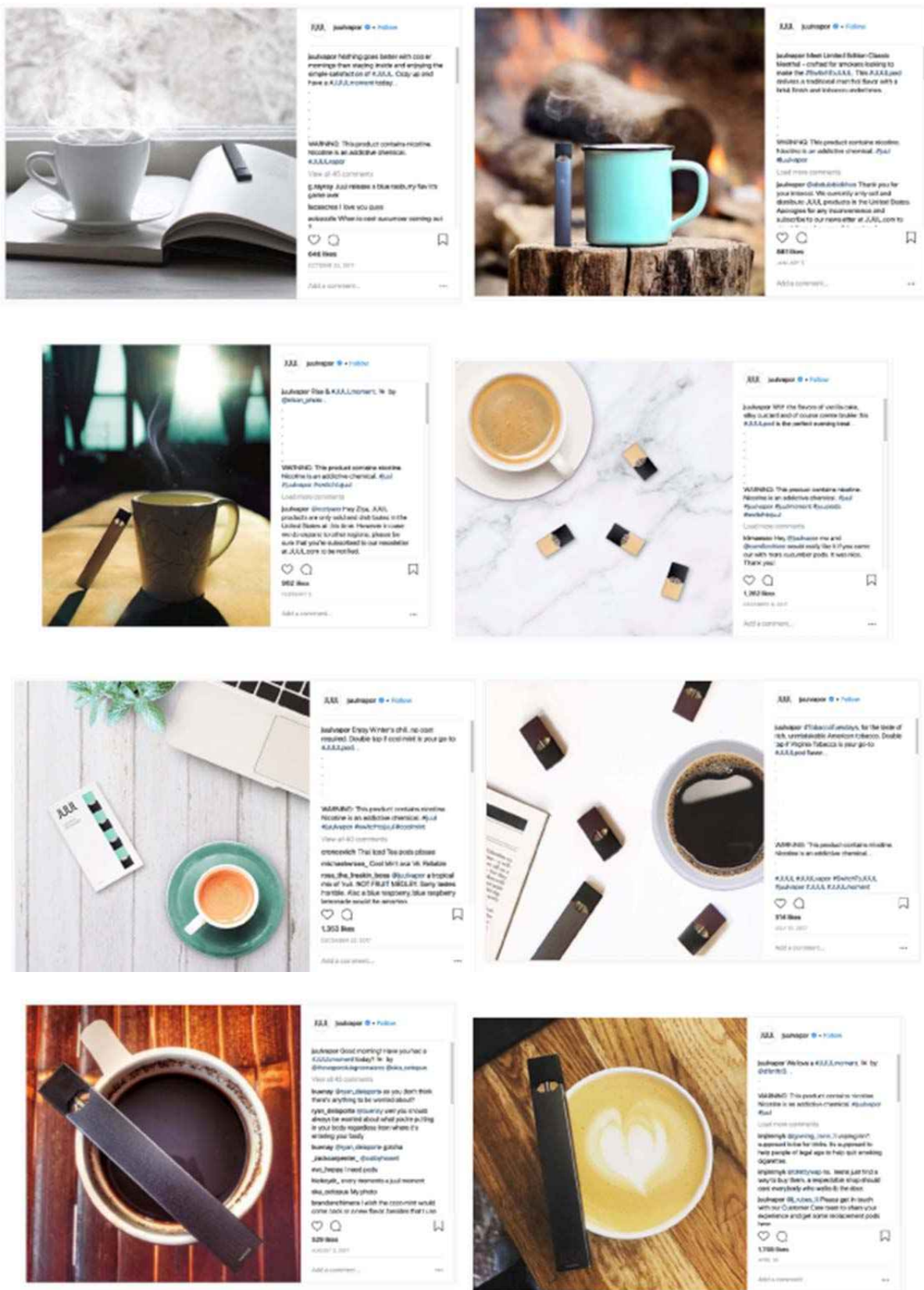


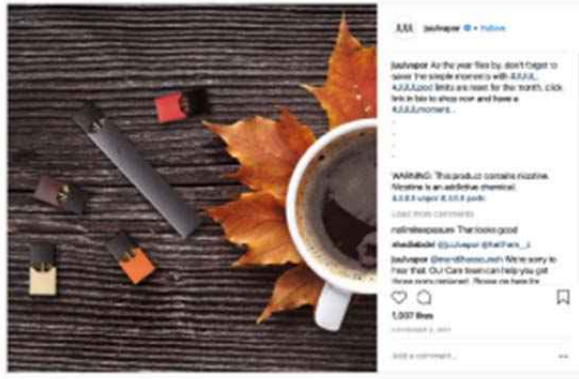
222. Again, none of these advertisements disclosed that JUUL was addictive and unsafe.

223. In several caffeine-pairing advertisements, JUUL devices or pods sit next to coffee and other caffeinated drinks, sometimes with what appear to be textbooks in the picture.²⁵⁰ JLI's coffee-based advertisements suggest that JUUL should be part of a comfortable routine, like a cup of coffee.

224. JLI's reference to coffee is no mere marketing gimmick, it reflects the larger effort to mislead customers, including young people in particular, into believing that JUUL is no more harmful than coffee, reinforcing the false and dangerous concept that if a substance is "not harmful," then addiction to that substance cannot be harmful.

²⁵⁰ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st659.php&token1=fm_pods_img36083.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Instagram.





225. Defendants knew that tying JUUL to caffeine and food would mislead their target audience—youth and non-smokers—into believing that JUUL was a healthy, safe treat.

4. JLI’s “Make the Switch” Campaign Intentionally Misled and Deceived Users to Believe that JUUL Is a Cessation Device.

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

227. The most blatant evidence of the cover-up scheme was the January 2019, \$10 million “*Make the Switch*” television advertising campaign. This campaign, which was a continuation of JLI’s

1 web-based Switch campaign, was announced less than a month after the Altria Defendants announced
2 Altria's investment in JLI.

3 228. The "*Make the Switch*" television ads featured former smokers aged 37 to 54 discussing
4 "how JUUL helped them quit smoking."²⁵¹ According to JLI's Vice President of Marketing, the "*Make*
5 *the Switch*" campaign was "an honest, straight down the middle of the fairway, very clear
6 communication about what we're trying to do as a company."²⁵²

7
8 229. These statements were false as JUUL was not intended to be a smoking cessation
9 device.

10 230. JLI and the Management Defendants committed acts of wire fraud when they caused
11 the "*Make the Switch*" campaign to air on television with the fraudulent intent of deceiving and
12 misleading the public, the United States Congress, and government regulators into believing that JLI is
13 and had been focused solely on targeting adult smokers. The Altria Defendants also committed acts of
14 mail fraud when they caused tens of thousands, if not millions, of written versions of the *Make the*
15 *Switch* campaign to be distributed with packages of Altria's combustible cigarettes.

16
17 231. The "*Make the Switch*" campaign was fraudulent and was made to protect, maintain,
18 and expand the tremendous market share gained by hooking kids on nicotine by convincing regulators
19 and the public that JUUL was only ever intended as an alternative to smoking for existing adult
20 smokers and JLI's marketing was never aimed at youth.

21
22 232. Defendants continually sought to frame JUUL products as smoking cessation devices in
23 their public statements and on their website. Defendant Monsees explained during his testimony before
24 Congress:

25
26
27 ²⁵¹ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers who quit*
28 *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>.

²⁵² *Id.*

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

[T]raditional nicotine replacement therapies, which are generally regarded as the gold standard for tools, right, for quitting, those are nicotine in a patch or a gum form, typically, and the efficacy rates on those hover just below about a 10 percent or so. JUUL—we ran a very large study of JUUL consumers, ex-smokers who had picked up JUUL, and looked at them, looked at their usage on a longitudinal basis, which is usually the way that we want to look at this, in a sophisticated fashion ... what we found was that after 90 days, 54 percent of those smokers had stopped smoking completely, for a minimum of 30 days already. And the most interesting part of this study is that if you follow it out further, to 180 days, that number continues to go up dramatically, and that is quite the opposite of what happens with traditional nicotine replacement therapies.²⁵³

233. In response to a direct question about whether people buy JUUL to stop smoking, Defendant Monsees responded: “Yes. I would say nearly everyone uses our product as an alternative to traditional tobacco products.”²⁵⁴

234. Other illustrative and non-exhaustive examples include the following:

Statements by Defendant JLI:²⁵⁵

- “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 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));²⁵⁶
- “JUUL Labs, which exists to **help adult smokers switch** off of combustible cigarettes.” (JLI Website, September 19, 2019);²⁵⁷ and,

²⁵³ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.), <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-ii>.

²⁵⁴ *Id.*

²⁵⁵ Although these statements are attributed to Defendant JLI, JLI’s Board of Directors had [REDACTED], accordingly, Defendants Bowen, Monsees, Pritzker, Huh, and Valani are each directly responsible for the transmission of these fraudulent statements.

²⁵⁶ *Our Mission*, JUUL Labs, Inc. (2019), <https://www.juul.com/mission-values>.

²⁵⁷ CONSUMER UPDATE: 9/19, JUUL Labs, Inc. (Sept. 19, 2019), <https://newsroom.juul.com/consumer-update-9-19/>.

- “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018).²⁵⁸

Statements by the Altria Defendants:

- “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 Website, December 20, 2018);²⁵⁹
- “We believe e-vapor products present an **important opportunity to adult smokers to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb, 10/25/18);²⁶⁰
- “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 Press Release, Dec. 20, 2018);²⁶¹
- “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 Earning Call, January 31, 2019);²⁶² and,
- 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 Earning Call, January 31, 2019).²⁶³

²⁵⁸ JLI Labs Action Plan, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of then-CEO Kevin Burns).

²⁵⁹ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>

²⁶⁰ Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, at 2 (Oct. 25, 2018).

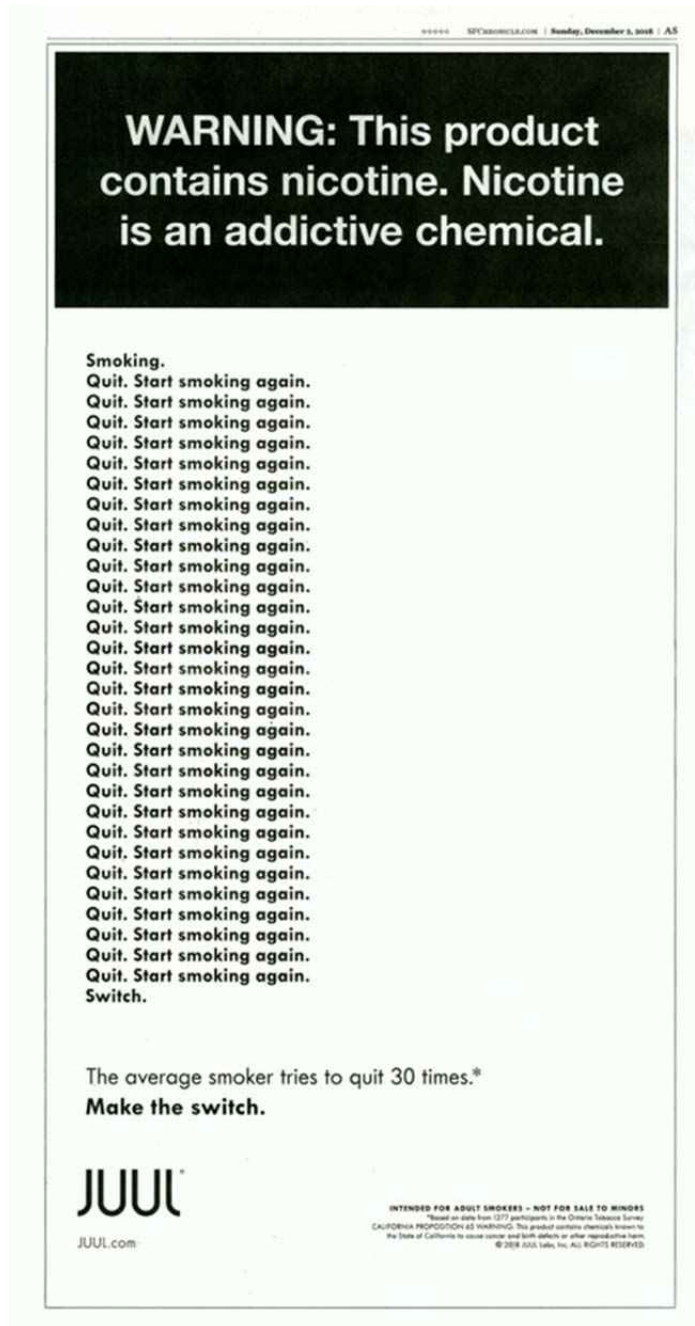
²⁶¹ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, (Dec. 20, 2018), BUSINESS WIRE, <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

²⁶² Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period ending December 31, 2018, (Jan. 31, 2019), <https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx>.

²⁶³ *Id.*

235. Defendants knew at the time of making these statements that they were false, deceptive and misleading. JUUL does not have FDA approval as a cessation product.

236. The *Switch* advertisements reinforced the impression left by the testimony of JLI’s co-founder, clearly linking JUUL to cessation and quitting. For example:



237. Representative Rashida Tlaib, upon presenting this ad to Monsees, had the following exchange:

1 **Rep. Tlaib:** After 30 lines, starting with “quit,” the ad says “switch,” followed by no
 2 further mentions of start smoking again. You were a smoker. Does this ad give a
 3 smoker hope that there might be a way to quit cigarettes for good?

4 **Mr. Monsees:** I think the intention of this ad is to make it very clear to consumers that
 5 there is an alternative, finally, to combustible cigarettes. I am one of those people.²⁶⁴

6 238. Defendants’ tacit message in their *Switch* advertisements is: switch because, unlike
 7 cigarettes, JUUL is harmless to your health.

8 239. Defendants’ false, deceptive and misleading *Switch* campaign suggests that JUUL is
 9 designed to “switch” adult smokers off cigarettes rather than to addict youth to nicotine.

10 240. Defendants know that a large number of smokers who use JUUL products do not end up
 11 switching but end up consuming cigarettes and JUUL.

12 241. Moreover, Defendants know that, by design, a large number of their customers are
 13 youth and that JUUL was never designed to be a cessation device.

14 242. JLI has advertised cost-savings calculators as part of its *Switch* campaign. Those
 15 calculators assume that a smoker who switches will continue consuming the same amount of nicotine
 16 that he or she did as a smoker (*i.e.*, a pack a day smoker is presumed to consume one JUUL pod a day).
 17 Defendants know that the calculator is misleading because smokers who switch to JUUL frequently
 18 increase their nicotine intake.
 19

20 243. JUUL labels and advertisements also marketed the product as an “alternative” to
 21 cigarettes:
 22
 23
 24
 25
 26

27
 28 ²⁶⁴ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.), at 12:33-13:04.



244. Other advertisements similarly marketed the product as smoking “evolved”:



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

246. In addition, the notions that JUUL products are designed only for existing cigarette smokers, and safer than combustible cigarettes are belied by JLI’s own knowledge, marketing plan and intentions on several fronts. *First*, Defendants sought to grow a new group of users of nicotine

1 products (e.g., “vapers”), including young people in particular, not just to market to the shrinking
 2 number of existing cigarette smokers. *Second*, JLI and Bowen designed the JUUL device to be easy to
 3 use for youth and others who have never smoked and to create and exacerbate nicotine addiction
 4 among those groups by encouraging ingestion of excessive amounts of nicotine. *Third*, as noted above,
 5 JLI’s own internal testing revealed that JUUL products were often more potent than combustible
 6 cigarette smokers prefer. Each of the Management Defendants knew this from his position on JLI’s
 7 Board of Directors, and the Altria Defendants knew the same when they began to actively coordinate
 8 with JLI and the Management Defendants. Despite this knowledge, these Defendants made numerous
 9 deceptive, false and misleading public statements that JUUL was intended to be a cessation device.
 10

11 247. JUUL is not a product adults typically use to quit smoking. Researchers have found that
 12 as of 2018, only 7.9% of American adults had ever used USB shaped e-cigarettes, like JUUL, and only
 13 2% of adults currently used them.²⁶⁵ By contrast, a recent study found that 15 to 17-year-olds are
 14 sixteen times more likely to use JUUL products than 25 to 34-year-olds.²⁶⁶
 15

16 248. JLI’s own marketing research indicated that JUUL was not appropriate as a cessation
 17 device for adults. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]²⁶⁷
 23 [REDACTED]
 24

25 ²⁶⁵ Kristy L. Marynak et al., *Use and reasons for use of electronic vapour products shaped like USB*
 26 *flash drivers among a national sample of adults*, 28 TOBACCO CONTROL 685 (Nov. 2019),
 27 <https://tobaccocontrol.bmj.com/content/28/6/685>.

28 ²⁶⁶ D.M. Vallone et al., *Prevalence and correlates of JLI use among a national sample of youth and*
young adults, TOBACCO CONTROL (Oct. 29, 2018), [http://dx.doi.org/10.1136/tobaccocontrol-2018-](http://dx.doi.org/10.1136/tobaccocontrol-2018-054693)
 054693.

²⁶⁷ JLI00365905.

1 [REDACTED] 268 [REDACTED]

2 [REDACTED]

3 [REDACTED] 269 [REDACTED]

4 [REDACTED] 270

5 [REDACTED] 271

6

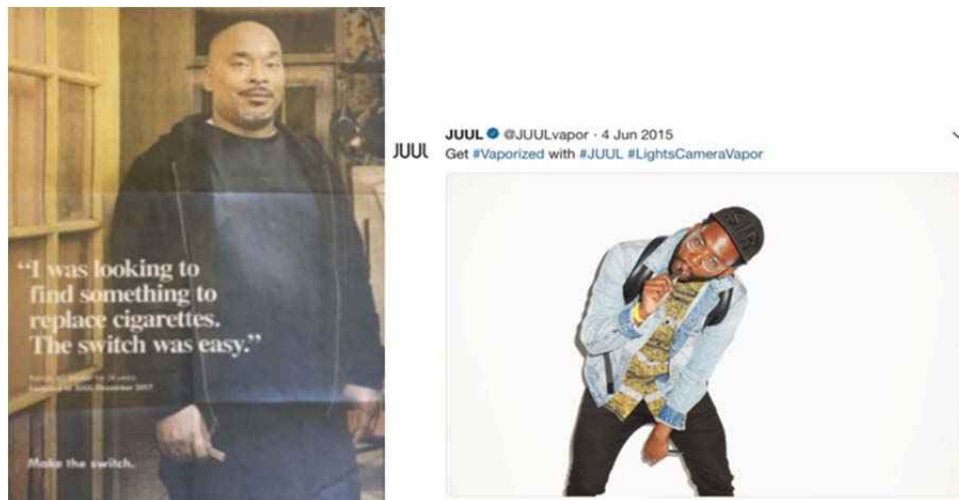
7 249. The deceptive, misleading and fraudulent nature of the “*Make the Switch*” campaign is

8 evident when comparing the campaign’s advertisements to JUUL’s initial advertising, as demonstrated

9 below. The fact that these advertisements are for the same product confirms that, notwithstanding the

10 advice JLI and the Altria Defendants received from their media consultants, the Defendants never

11 intended to target only adult smokers.



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22

23

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27 ²⁶⁸ *Id.* (emphasis added).

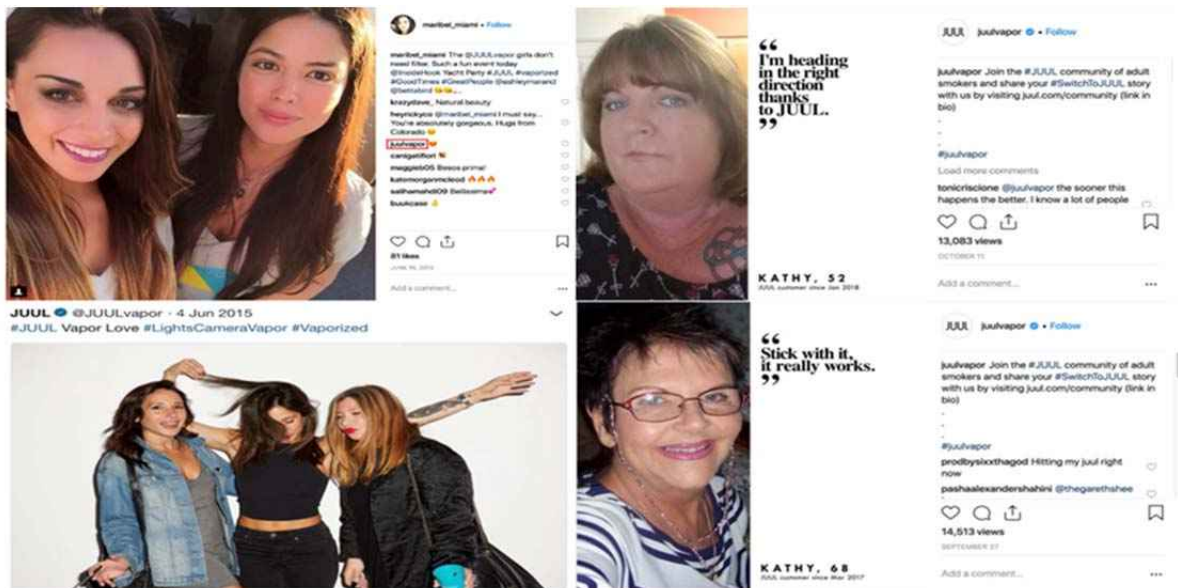
28 ²⁶⁹ JLI00365709.

²⁷⁰ JLI00364678.

²⁷¹ JLI00364487.



And



250. Defendants ensured that JUUL was the *opposite* of a “tool[] to reduce or eliminate” nicotine consumption. According to the National Institutes of Health, the “amount and speed of nicotine delivery . . . plays a critical role in the potential for abuse of tobacco products.”²⁷² As described above, JLI and Bowen designed the JUUL product to deliver nicotine in larger amounts and at a faster rate than even cigarettes, and then knowingly misled the public about those facts.

251. The *Switch* campaign also does not disclose or warn about the risks of using multiple tobacco products, “dual use” or that the JUUL is not a smoking cessation product. In addition to the

²⁷² U.S. Dep’t of Health & Human Servs., Nicotine Addiction: Past and Present, How Tobacco Smoke Causes Disease (2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

1 heightened risks of addiction that multiple tobacco product use poses, one recent study found that
 2 persons who use e-cigarettes and smoke have blood toxin levels far higher than one would expect
 3 given the blood toxin levels that e-cigarettes and cigarettes generate individually.²⁷³

4 252. The FDA and other government regulators, enforcing existing laws addressing e-
 5 cigarettes,²⁷⁴ publicly criticized the “*Make the Switch*” campaign and other efforts by Defendants to
 6 depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the Federal Food, Drug, and
 7 Cosmetics Act (FDCA) (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or labeling of a
 8 cigarette product directly or indirectly suggests that the product has a lower risk of cigarette-related
 9 disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than traditional cigarettes,
 10 then the product becomes a “modified risk tobacco product.”²⁷⁵

11 253. In late 2019, and in response to the House of Representatives hearings in which JLI
 12 executives testified, the FDA issued two warning letters to JLI detailing its concern that JLI was
 13 unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco products”
 14 within the meaning of the FDCA.²⁷⁶

15 254. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its advertising
 16 slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes was “particularly
 17 concerning because [those] statements were made directly to children in school.”²⁷⁷ The FDA
 18 concluded that in using advertising language that e-cigarettes were safer than cigarettes, JLI had
 19
 20
 21

22
 23 ²⁷³ Julie B. Wang et al., *Cigarette and E-Cigarette Dual use and Risk of Cardiopulmonary Symptoms*
 24 *in the Health eHeart Study*, 13 PLoS ONE 1 (2018).

25 ²⁷⁴ Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. § 387k(b)(2)(A)(i)) states that when advertising or
 26 labeling of a cigarette product directly or indirectly suggests that the product has a lower risk of
 cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than
 traditional cigarettes, then the product becomes a “modified risk tobacco product.”

27 ²⁷⁵ *Id.*

28 ²⁷⁶ Letter from U.S. Food and Drug Admin. to Kevin Burns, CEO of JUUL Labs, Inc., (Sept. 9, 2019),
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

²⁷⁷ *Id.*

1 violated Sections 902(8) and 911 by marketing JUUL products as “modified risk tobacco products”
 2 without prior approval.²⁷⁸

3 255. The September 9, 2019 letter also detailed the FDA’s concerns with JLI’s “Switch”
 4 marketing campaign. “[T]roubled by recent testimony” that JLI had given to the House Subcommittee
 5 on Economic and Consumer Policy of the Committee on Oversight and Reform, the FDA noted that
 6 JLI’s *Switch* advertising campaign “may also convey that switching to JUUL is a safer alternative to
 7 cigarettes.”²⁷⁹

8 256. The FDA specifically highlighted the *Switch* campaign slogans which referenced
 9 smoking cigarettes, or attempts to quit smoking, followed by “*Make the Switch.*” The FDA stated that
 10 JLI’s campaign was in violation of multiple FDA regulations and the FDCA subsections, and that JLI’s
 11 *Switch* campaign purported to tell the public that using e-cigarettes was an alternative to smoking, or a
 12 possible cessation tool.²⁸⁰

13 257. On the same day, the FDA requested that JLI provide all documents related to its
 14 decision to market the Switch campaign to the Cheyenne River Sioux Tribe, in light of the testimony
 15 by JLI that it had taken a “public health” approach to Native American tribes, and had sought
 16 healthcare professionals to refer Native American smokers to JLI’s Switching Program.²⁸¹

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

25
 26 ²⁷⁸ *Id.*

27 ²⁷⁹ Letter from U.S. Food and Drug Admin. Ctr. for Tobacco Prods. to JUUL Labs, Inc. (Sept. 9,
 28 2019).

²⁸⁰ *Id.*

²⁸¹ *Id.*

1 [REDACTED],²⁸² [REDACTED]

2 [REDACTED].²⁸³

3 259. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]²⁸⁴ [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]²⁸⁵

11 260. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]²⁸⁶

15 261. [REDACTED]²⁸⁷ [REDACTED]

16 [REDACTED]

17 [REDACTED]²⁸⁸ This campaign was “*Make the Switch.*”

21 ²⁸² Kevin McCauley, *Altria Taps Mercury For Tobacco Regulation Work*, O’DWYER’S (Jun. 4, 2018),
22 <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>.

23 ²⁸³ See, e.g., INREJUUL_00262168; INREJUUL_00262226-INREJUUL_00262227.

24 ²⁸⁴ See INREJUUL_00262168; see also Kate Zernike, ‘I Can’t Stop’: Schools Struggle With Vaping
25 *Explosion*, N.Y. Times (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/health/vaping-ecigarettes-addiction-teen.html>.

26 ²⁸⁵ INREJUUL_00262168.

27 ²⁸⁶ INREJUUL_00262226-227.

28 ²⁸⁷ See INREJUUL_00066530-539 ([REDACTED])

²⁸⁸ See INREJUUL_00074841; see also INREJUUL_00074842-844 at 842.

1 **5. JLI, Altria, and Others in the E-Cigarette Industry Coordinated with Third-Party**
 2 **Groups to Mislead the Public, Including Minors, About the Harms and Benefits of**
 3 **E-Cigarettes.**

4 262. Through a collective and parallel effort of funding, leadership, and board membership,
 5 JLI, the Altria Defendants and others in the e-cigarette industry leveraged third-parties, ranging from
 6 industry-funded non-governmental organizations to online blogs more accessible to youth, to mislead
 7 the public about the impacts of consuming e-cigarettes.

8 263. An assortment of lobbyists, trade associations, and online publications have coordinated
 9 with the e-cigarette industry, including JLI and the Altria Defendants, to promote a consistent message
 10 that consuming e-cigarettes is not harmful, that nicotine is not harmful, and that the impacts of e-
 11 cigarettes are greatly exaggerated. These organizations receive funding from the e-cigarette industry,
 12 feature executives on those companies' boards of directors, and in return, promote industry products,
 13 industry views, or fund "independent" studies of their own that reach the same conclusions as e-
 14 cigarette industry-funded research.
 15

16 **a. The American Vaping Association**

17 264. The American Vaping Association ("AVA") is a pro-e-cigarette lobby group founded
 18 by Greg Conley, who notably publishes articles criticizing the CDC for its stance on restricting e-
 19 cigarette use.²⁸⁹ Other executive members of the AVA possess business interests in e-cigarettes; for
 20 example, Treasurer David J. Danzak Jr. is associated with an e-cigarette business called Vapornine
 21 LLC.²⁹⁰ Vice-President Antoinette Lanza is an owner of an exclusively e-cigarette shop in Hoboken,
 22
 23
 24
 25
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27 ²⁸⁹ Jeff Stier & George Conley, *The War on E-Cigarettes*, NATIONAL REVIEW (Sept. 19, 2011),
 28 <https://www.nationalreview.com/2011/09/war-e-cigarettes-jeff-stier-gregory-conley/>.

²⁹⁰ Vapornine LLC, BUZZFILE, <http://www.buzzfile.com/business/Vapornine-LLC-904-372-3244>
 (business information page).

1 New Jersey called Smokeless Image.²⁹¹ Half of the AVA's functional expenses are for lobbying
 2 efforts.²⁹² It lists several sponsors, all of which are e-cigarette, e-liquid, or cigarette companies.²⁹³

3 265. Conley has a prolific social media presence and frequently appears on television and
 4 radio to tout the benefits of consuming e-cigarettes and dispute negative news. The AVA website lists
 5 "studies" which are uniformly authored by noted industry-funded or industry-friendly authors, such as
 6 Polosa and Shahab.²⁹⁴ AVA lists CASAA, Not Blowing Smoke, and the VTA, all established fronts for
 7 the e-cigarette industry, as "Resources."

8 266. The AVA receives its funding from sponsors, who are organized into tiers such as
 9 Platinum, Gold, Silver, Bronze, and Green.²⁹⁵ Current advertised sponsors include e-cigarette
 10 distributors and retailers such as E-Cigarette Empire, and VaporBeast.²⁹⁶ Prior sponsors are a who's
 11 who of e-cigarette retailers. In 2016, Platinum sponsors included AltSmoke and Vapor Kings, while
 12 Gold sponsors included the now defunct Smokeless Image.²⁹⁷

13 267. On social media, the AVA regularly downplays the risks of consuming e-cigarettes,
 14 criticizes negative coverage as myths or exaggerations, and lauds efforts to curb any regulation of the
 15 e-cigarette industry.²⁹⁸

16 268. JLI actively sought out the AVA to promote JUUL. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]²⁹⁹

22 ²⁹¹ Stacy Jones, *Tobacco regulators mull more oversight as e-cigarettes see increased popularity*,
 23 NJ.com (Mar. 30, 2019),

https://www.nj.com/business/2013/07/tobacco_regulators_mull_more_o.html.

24 ²⁹² Form 990, American Vaping Association Inc.'s Return of Organization Exempt from Income Tax (2018), https://apps.irs.gov/pub/epostcard/cor/464203951_201812_990O_2019122716980021.pdf.

25 ²⁹³ AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

26 ²⁹⁴ Research Reports, American Vaping Association, <https://vaping.org/research-report/>.

27 ²⁹⁵ AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

28 ²⁹⁶ *Id.*

²⁹⁷ AVA Sponsors, American Vaping Association, Wayback Machine – Internet Archive (Aug. 14, 2017), <https://web.archive.org/web/20170814221226/http://vaping.org/about-us/ava-sponsors/>.

²⁹⁸ American Vaping Association (@AVABoard), Twitter, <https://twitter.com/AVABoard>.

269. In 2018, JLI took advantage of its coordinated efforts with the AVA to downplay the risks associated with JUUL. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁰⁰ [REDACTED]

[REDACTED]

[REDACTED]³⁰¹

270. The AVA also coordinated with JLI on pro-e-cigarette research. In March 2018, Conley facilitated a conversation between Dr. Konstantinos Farsalinos, a researcher at the University of Patras, Greece, who regularly publishes e-cigarette industry-friendly articles, and Gal Cohen, then Director of Scientific Affairs at JLI.³⁰² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁰³

271. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁹⁹ INREJUUL_00278889.

³⁰⁰ See INREJUUL_00173252 ([REDACTED]).

³⁰¹ *Id.*

³⁰² Juul Labs, Inc., *JUUL Labs Presents Findings at the Global Forum on Nicotine 2018*, Cision PR Newswire (June 15, 2018), <https://www.prnewswire.com/news-releases/juul-labs-presents-findings-at-the-global-forum-on-nicotine-2018-300666743.html>.

³⁰³ INREJUUL_0034128.

b. Vaping360

272. Vaping360 is a website dedicated to news regarding the e-cigarette industry. The website boasts “40 million smokers and vaping enthusiasts reached since 2015.” This entity has a big social media presence and huge publication strategy.

273. Vaping360’s main message misleads the public about the health impacts of consuming e-cigarettes. Vaping360 has published various articles, including “10 Lies and Myths About Juuling Exposed.”³⁰⁵ This article, published in May 9, 2018, claimed, among other things, that JUUL was not as dangerous as smoking; JUUL did not cause cancer or “popcorn lung”; JUUL was not popular among teenagers, nor did JLI sell kid-friendly flavors or flavors aimed to entice young people; and the nicotine in JUUL is “a relatively mild drug, [and] may cause dependence.”³⁰⁶

274. Vaping360 regularly published articles praising, promoting, or downplaying the risks of JUUL, including, among others: “These Scientists Want to Kill Smokers’ Hope (For Vaping)”; “UK Scientists to WHO: Your Vape Report Is Junk”; “One Free Pack JUUL Coupon Codes 2019”; and an article disparaging anti-smoking advocacy group Truth Initiative by claiming that “Truth Initiative Promo Encourages Risky Teen Behavior.”³⁰⁷

275. One of the main writers at Vaping360 is Jim McDonald who aggressively attacks any negative science as fake news. For example, McDonald frequently posts on social media platforms,

³⁰⁴ *Id.*

³⁰⁵ Jim McDonald, *10 Lies and Myths About Juuling Exposed*, Vaping 360 (May 9, 2018), <https://vaping360.com/lifestyle/juuling/>.

³⁰⁶ *Id.*

³⁰⁷ Jim McDonald, *Truth Initiative Promo Encourages Risky Teen Behavior*, Vaping 360 (Jan. 9, 2020), <https://vaping360.com/vape-news/87705/truth-initiative-promo-encourages-risky-teen-behavior/>.

1 including on Facebook and Twitter, but also comments on others posts extensively disputing negative
 2 news about consuming e-cigarettes.³⁰⁸

3 276. Vaping360 has taken funding from e-cigarette manufacturers, and in return coordinates
 4 with e-cigarette manufacturers to promote their products, while publishing favorable content.
 5

6 [REDACTED]

7 [REDACTED]

8 277. [REDACTED]

9 [REDACTED]

10 [REDACTED]³⁰⁹ [REDACTED]

11 [REDACTED]³¹⁰ [REDACTED]

12 [REDACTED]³¹¹

13 278. [REDACTED]

14 [REDACTED]

15 [REDACTED]³¹²

16
 17 279. In 2018, McDonald continued to write articles specifically praising JLI, such as
 18 “Coming Soon: A JUUL to Help You Quit JUULing” and “10 Lies and Myths About JUULing
 19 Exposed.”³¹³ As of 2020, Vaping360 continues to offer discounts for JUUL products.³¹⁴
 20
 21

22 ³⁰⁸ Jim McDonald, *Mass. Senate Passes Worst Vaping Law in the Countr*, Vaping 360 (Nov. 21, 2019),
 23 <https://vaping360.com/vape-news/86852/mass-senate-passes-worst-vaping-law-in-the-country/>; Jim
 24 McDonald, *Meet the Rich Moms Who Want to Ban Vaping*, Vaping 360 (Oct. 8, 2018),
 25 <https://vaping360.com/vape-news/71696/meet-the-rich-moms-who-want-to-ban-vaping/>.

26 ³⁰⁹ INREJUUL_00143870.

27 ³¹⁰ *Id.*

28 ³¹¹ *Id.*

³¹² INREJUUL_00139196.

³¹³ Jim McDonald, *Coming Soon: A JUUL to Help You Quit Juuling*, Vaping 360 (Sept. 7, 2018),
<https://vaping360.com/vape-news/70262/coming-soon-a-juul-to-help-you-quit-juuling/>.

³¹⁴ [One FREE Pack] JUUL Coupon Codes 2019, Vaping 360 (Aug. 24, 2018)
<https://vaping360.com/vape-coupons/juul-coupon-promo-code/>.

c. Foundation for a Smoke-Free World

280. The Foundation was founded in 2017, and presents itself as a public health organization, purportedly “advancing global progress in smoking cessation and harm reduction.”³¹⁵ It is funded entirely by Philip Morris International, which in 2017 announced a \$1 billion commitment to fund the Foundation.³¹⁶ The Foundation’s 2018 Form 990 lists only one donor: PMI Global Services, Inc., or Philip Morris International, with a contribution of \$80 million.³¹⁷

281. The Foundation is headed by Derek Yach, a noted advocate and promoter of e-cigarettes and consuming e-cigarettes.³¹⁸

282. In 2018, the Foundation announced that it would support Centers of Excellence to conduct tobacco control research.³¹⁹ This tactic is a well-known tool of the cigarette industry, which has a history of funding “research” centers to promote industry-friendly views, such as the Center for Indoor Air Research, which promulgated industry-funded studies that sowed doubt about the addictiveness of nicotine, claimed that indoor air quality was unaffected by cigarette smoke and downplayed the harms of cigarettes broadly. Institutes such as the Center for Indoor Air Research were forced to dissolve as part of the Master Settlement Agreement in 1998.

³¹⁵ Foundation for a Smoke-Free World (2020), <https://www.smokefreeworld.org/>.

³¹⁶ David Meyer, *Philip Morris Pledges Almost \$1 Billion to Anti-Smoking Fight*, FORTUNE (Sept. 13, 2017), <https://www.webcitation.org/6tjyBv4dA>.

³¹⁷ Return of Private Foundation, Foundation for a Smoke-Free World (2018), https://web.archive.org/web/20190828104138/https://www.smokefreeworld.org/sites/default/files/uploads/documents/fsfw_2018_form_990-pf_public_inspection.pdf.

³¹⁸ *Derek Yach: Anti-smoking advocates should embrace e-cigarettes*, NATIONAL POST (Aug. 26, 2015), <https://nationalpost.com/opinion/derek-yach-anti-smoking-advocates-should-embrace-e-cigarettes>.

³¹⁹ Support Global Research, Foundation for a Smoke-Free World (May 31, 2018), <https://web.archive.org/web/20180531105105/https://www.smokefreeworld.org/our-areas-focus/support-global-research>.

283. A 2017 report in The Verge detailed the e-cigarette industry's apparently coordinated efforts to use biased research to downplay the risks of consuming e-cigarettes.³²⁰ For example, e-cigarette manufacturers routinely conduct studies focusing on the "good news" about e-cigarettes, *i.e.* they release less harmful aerosolized chemicals than combustible cigarettes, or that their aerosol lingers for less time indoors than combustible cigarettes.³²¹ Industry-funded authors then regularly cite to each other's studies in their own research.³²² On information and belief, JLI and Altria, among others in the e-cigarette industry, funnel their industry-funded studies to friendly pro-industry groups knowing that those entities will misrepresent the results as evidence that e-cigarettes are safe, or not harmful.

d. Vapor Technology Association

284. The Vapor Technology Association (VTA) bills itself as a trade association and advocates for the e-cigarette industry. It was founded in January 2016, with the banner tagline on its website reading "VAPE IS HOPE."³²³

285. In 2018, JLI, SMOK, VMR, Turning Point Brands, and Joyetech were all featured as "Platinum Members," a level of membership that required a \$100,000 annual contribution. Thus, JLI

³²⁰ Liza Gross, *Vaping companies are using the same old tricks as Big Tobacco*, THE VERGE (Nov. 16, 2017), <https://www.theverge.com/2017/11/16/16658358/vape-lobby-vaping-health-risks-nicotine-big-tobacco-marketing>.

³²¹ See, e.g., J. Margham, et al., *Chemical Composition of Aerosol from an E-Cigarette: A Quantitative Comparison with Cigarette Smoke*, 29 CHEM. RES. TOXICOL. 1662 (2016); Tanvir Walele et al., *Evaluation of the safety profile of an electronic vapour product used for two years by smokers in a real-life setting*, 92 REG. TOXICOL. PHARMACOL. 226 (2018); D. Martuzevicius, et al., *Characterization of the Spatial and Temporal Dispersion Differences Between Exhaled E-Cigarette Mist and Cigarette Smoke*, 21 NICOTINE & TOBACCO RES. 1371 (2019).

³²² See, e.g., Gene Gillman et al., *Determining the impact of flavored e-liquids on aldehyde production during Vaping*, 112 REG. TOXICOL. PHARMACOL. 1 (2020); Colin Mendelsohn & Alex Wodak, *Legalising Vaping in Australia*, The McKell Institute (March 2019), <https://pdfs.semanticscholar.org/3e13/8e46419913a29f8fc9ddad52ec771f73fa76.pdf>; Violeta Kaunelienė et al., *Impact of Using a Tobacco Heating System (THS) on Indoor Air Quality in a Nightclub*, 19 AEROSOL AND AIR QUAL. RES. 1961 (2019); Maya Mitova et al., *Human chemical signature: Investigation on the influence of human presence and selected activities on concentrations of airborne constituents*, 257 ENV'TL POLLUTION 1 (2020).

³²³ Vape is Hope, Vapor Technology Association (Feb. 25, 2016), <https://web.archive.org/web/20160225154600/http://www.vaportechnology.org:80/>.

1 paid VTA \$100,000 in 2018 to become a Platinum Member, and in return, VTA offered JLI a board
 2 seat; invitations to lobbying strategy meetings; access to the FDA, other federal agencies, and members
 3 of Congress; and conference participation.³²⁴

4 286. The VTA, like other lobbying and trade association groups in the industry, advocates
 5 for less regulation of e-cigarettes, and testifies in opposition to flavor bans.³²⁵

7 **e. Retailer Lobbying**

8 287. Retailers have also taken to creating subsidiaries or wholly owned companies whose
 9 purpose is to produce quasi-journalistic content to promote consuming e-cigarettes, discredit health
 10 initiatives, and suggest that consuming e-cigarettes has no harmful health impacts. The best example of
 11 this is the website SoupWire, which publishes articles and editorials that promote consuming e-
 12 cigarettes and criticizes studies that look at the negative impacts of consuming e-cigarettes.³²⁶ For
 13 example, when JLI donated \$7.5 million towards a study on the impacts of consuming e-cigarettes on
 14 teens, a SoupWire report concluded that the study will likely find “nothing Earth-shattering.”³²⁷

16 **6. Altria Falsely Stated That It Intended to Lend Its Expertise in “Underage Prevention” Issues to JLI.**

17 288. Altria’s announcement that it intended to invest in JLI came less than two months after
 18 it told the FDA that Altria “believe[s] that pod-based products significantly contribute to the rise in
 19 youth use of e-vapor products” and that it accordingly would be removing its own pod-based products
 20 from the market.³²⁸ Altria made the same representations to its investors.³²⁹

22 289. Although Altria claimed its investment in JLI had an altruistic motive—“When you add
 23 to JUUL’s already substantial capabilities, our underage tobacco prevention expertise and ability to
 24

25 ³²⁴ Some of Our Members, Vapor Technology Association (Nov. 28, 2018),
<https://web.archive.org/web/20181128162940/https://vaportechnology.org/membership/>.

26 ³²⁵ Vapor Technology Association, <https://vaportechnology.org/>.

27 ³²⁶ Soupwire – The Truth About Vaping, <https://soupwire.com/>.

28 ³²⁷ Jeff Hawkins, *JUUL Donates \$7.5 Million to Teen Vaping Study*, Soupwire – The Truth About Vaping (July 2, 2019), <https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-study/>.

³²⁸ Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, 2 (October 25, 2018).

³²⁹ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript, (October 25, 2018).

1 directly connect with adult smokers, we see a compelling future with long-term benefits for both adult
 2 tobacco consumers and our shareholders,” Altria recently confirmed that JLI has not even availed itself
 3 of that experience.³³⁰ In Altria’s October 2019 letter to Senator Dick Durbin, Altria CEO Howard
 4 Willard acknowledged that while Altria “offered to JUUL services relating to underage prevention
 5 efforts,” to date “JUUL has not accepted Altria’s offers of assistance in addressing underage vaping
 6 relating issues.”³³¹ Willard has stated that the deal would allow Altria to “work[] with JUUL to
 7 accelerate its mission.”³³² but as Altria knew, as reflected in its letter to the FDA just two months prior,
 8 that mission involved had resulted in usage throughout the youth market. Altria’s admission that pod-
 9 based products contributed to underage use show that Altria knew its investment in JLI would
 10 “strengthen[] its financial profile and enhance[] future growth prospects” specifically because JLI
 11 dominated the youth market for e-cigarettes.³³³

12
 13
 14 290. Altria recognized JLI’s market share dominance in the e-cigarette market as the path to
 15 Altria’s continued viability and profitability. In a January 31, 2019 earnings call, Altria explained that
 16 “[w]hen you add to JUUL’s already substantial capabilities, our underage tobacco prevention expertise
 17 and ability to directly connect with adult smokers, we see a compelling future with long-term benefits
 18 for both adult tobacco consumers and our shareholders. We are excited about JUUL’s domestic growth
 19 and international prospects and their potential impact on our investment.”³³⁴ JUUL’s growth was, as
 20 Altria well knew, due to the product’s viral popularity among teens. Willard briefly acknowledged the
 21

22 ³³⁰ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period
 23 ending December 31, 2018, (Jan. 31, 2019).

24 ³³¹ Letter from Howard A. Willard III to Senator Richard J. Durbin (October 14, 2019) (emphasis
 added).

25 ³³² Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive
 26 Growth, BUSINESS WIRE (Dec. 20, 2018, 7:00 AM EST),
<https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

27 ³³³ *Id.*

28 ³³⁴ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the period
 ending December 31, 2018 (Jan. 31, 2019), <https://www.fool.com/earnings/call-transcripts/2019/02/01/altria-group-mo-q4-2018-earnings-conference-call-t.aspx>.

1 youth e-cigarette use crisis, stating, “Briefly touching on the regulatory environment, the FDA and
 2 many others are concerned about an epidemic of youth e-vapor usage. We share those concerns. This is
 3 an issue that we and others in the industry must continue to address aggressively and promptly.”³³⁵

4 291. Altria’s representations that it intended to help JUUL curb the prevalence of underage
 5 use was false and misleading. As discussed below, Altria coordinated with JUUL to capture and
 6 maintain the youth market.

7
 8 **E. Defendants Targeted the Youth Market.**

9 292. Having created a product, like combustible cigarettes, that sought to get users addicted
 10 to nicotine, and while taking steps to ensure that users and regulators did not appreciate the true
 11 nicotine content or potential harm from using JUULs, to successfully sink their high-tech nicotine
 12 hook into American consumers, JLI, Bowen, and Monsees needed investors willing to adopt the tactics
 13 of the cigarette industry as their own. They found those investors in Pritzker, Huh, and Valani.

14
 15 293. Under the leadership of the Management Defendants, JLI marketed nicotine to kids. JLI
 16 and the Management Defendants deployed a sophisticated viral marketing campaign that strategically
 17 laced social media with false and misleading messages to ensure their uptake and distribution among
 18 young consumers. JLI and the Management Defendants’ campaign was wildly successful—burying
 19 their hook into kids and initiating a public health crisis.

20
 21 **1. JLI Emulated the Marketing of Cigarette Companies.**

22 294. As Defendants know, nearly 9 out of 10 smokers start smoking by age 18, and more
 23 than 80% of underage smokers choose brands from among the top three most heavily advertised.³³⁶

24
 25
 26
 27 ³³⁵ *Id.*

28 ³³⁶ U.S. Dep’t Health & Human Servs., *Preventing Tobacco Use Among Youths, Surgeon General Fact Sheet*, <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html>.

1 The overwhelming consensus from public health authorities, independent studies, and credible expert
 2 witnesses is that “marketing is a substantial contributing factor to youth smoking initiation.”³³⁷

3 295. Struggling to define their own identities, teenagers are particularly vulnerable to image-
 4 heavy advertisements that psychologically cue them on the “right” way to look and behave amongst
 5 peers.³³⁸ Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent
 6 tobacco product initiation.³³⁹

7
 8 296. For decades, cigarette companies spun smoking as a signifier of adulthood. This turned
 9 smoking into a way for teenagers to project independence and enhance their image among their
 10 peers.³⁴⁰

11 297. Youth marketing was critical to the success of cigarette companies. In the 1950s, Philip
 12 Morris—now JUUL’s corporate affiliate—intentionally marketed cigarettes to young people as a pool
 13 from which to “replace smokers” to ensure the economic future of the cigarette industry.³⁴¹

14 298. Philip Morris’s documents set out their youth strategy, explaining: “Today’s teenager is
 15 tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke
 16 while still in their teens”.³⁴²

17
 18 299. It wasn’t just Philip Morris. The strategy of hooking kids was an open secret in the
 19 cigarette industry.³⁴³

20
 21 ³³⁷ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006) (J. Kessler).

22 ³³⁸ *Id.* at 578.

23 ³³⁹ *Id.* at 570, 590.

24 ³⁴⁰ *Id.* at 1072.

25 ³⁴¹ *United States v. Philip Morris*, No. 99-2496 (D.D.C. Aug. 17, 2006), ECF No. 5750 at 972
 26 (Amended Final Opinion).

27 ³⁴² *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),
 28 <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

³⁴³ C.A. Tucker, *Marketing Plans Presentation to RJRI B of D* at 2, U.C.S.F. Truth Tobacco Industry Documents (Sept. 30, 1974),
<https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=ypmw0091> (RJ Reynolds executive explaining that the “young adult . . . market . . . represent[s] tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.”).

300. As detailed below, JLI and the Management Defendants sought to emulate this approach. Indeed, Monsees admitted to using historical cigarette ads to inform JLI's own advertising campaign.³⁴⁴

301. The emulation is obvious. A side-by-side comparison of JUUL advertisements with historical cigarette advertisements reveals the appropriated pattern of focusing on imagery related to attractiveness, stylishness, sex appeal, fun, "belonging," relaxation, and sensory pleasure, including taste.³⁴⁵



³⁴⁴ Matthew Perone & Richard Lardner, *Juul exec: Never intended electronic cigarette for teens*, AP News (July 26, 2019), <https://apnews.com/4b615e5fc9a042498c619d674ed0dc33>; Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees> (last visited Apr. 3, 2020).

³⁴⁵ See Appendix A, Ads 9-50.



302. JLI and the Management Defendants deployed this same strategy, but adapted it to modern advertising tactics.

2. The Management Defendants Intentionally Marketed JUUL to Young People.

303. The risk that children would use a new e-cigarette product was well known and well publicized in the months leading up to the launch of the JUUL e-cigarette. For example, in April 2015, the CDC published the results from its 2014 National Youth Tobacco Survey.³⁴⁶ The CDC found that “[i]n 2014, e-cigarettes were the most commonly used tobacco product among middle (3.9%) and high (13.4%) school students.”³⁴⁷ Moreover, “[b]etween 2011 and 2014, statistically significant increases were observed among these students for current use of both e-cigarettes and hookahs ($p < 0.05$), while decreases were observed for current use of more traditional products, such as cigarettes and cigars, resulting in no change in overall tobacco use.”³⁴⁸ The CDC blamed e-cigarette marketing, the use of “a

³⁴⁶ Centers for Disease Control and Prevention, *Tobacco Use Among Middle and High School Students — United States, 2011–2014*, Morbidity and Mortality Weekly Report (MMWR) 64(14):381–385 (Apr. 17, 2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm>.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

1 mixture of ‘sex, free samples, [and] flavors’—the same things that were originally found to be
 2 problematic with cigarette ads.’³⁴⁹

3 304. Seeking to enter this nascent youth market for e-cigarettes, JLI intentionally targeted
 4 youth from its inception. In March 2015, Management Defendants supervised the advertising
 5 campaigns that would accompany the launch of JUUL.
 6

7 305. Consistent with Monsees’ position that he has no “qualms” with marketing to people
 8 that were not yet addicted to nicotine,³⁵⁰ [REDACTED]

9 [REDACTED]

10 [REDACTED]³⁵¹

11 306. [REDACTED]

12 [REDACTED]

13 [REDACTED]³⁵² [REDACTED]

14 [REDACTED]

15 [REDACTED]³⁵³ Put differently, their target consumer was an adolescent.

16 307. JLI professedly wanted kids to think JUUL was cool. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]³⁵⁴ [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 ³⁴⁹ Jacob Kastrenakes, *More teens are vaping instead of smoking*, THE VERGE (Apr. 16, 2015),
 23 <https://www.theverge.com/2015/4/16/8429639/teen-ecigarette-use-triples-vaping-beats-smoking>.

24 ³⁵⁰ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*, Inc.,
 25 [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)
 26 [marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html) (last visited Apr. 4, 2020).

27 ³⁵¹ INREJUUL_00441209.

28 ³⁵² INREJUUL_00057298-INREJUUL_00057487.

³⁵³ INREJUUL_00057298-INREJUUL_00057487.

³⁵⁴ INREJUUL_00057289.

³⁵⁵ [REDACTED] ³⁵⁶ [REDACTED]

[REDACTED]

[REDACTED]

³⁵⁷ [REDACTED]

[REDACTED]

³⁵⁹ [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED] ³⁶⁰ [REDACTED]

[REDACTED]

[REDACTED] ³⁶¹ [REDACTED]

[REDACTED] ³⁶² ,

[REDACTED] ³⁶³ , [REDACTED] ³⁶⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ³⁶⁵ .

³⁵⁵ INREJUUL_00057293.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ INREJUUL 00441325-INREJUUL_00441326.

³⁶⁰ JLI00218598.

³⁶¹ JLI00206206.

³⁶² JLI00222528.

³⁶³ JLI00461564.

³⁶⁴ JLI00235965.

³⁶⁵ JLI00514343 ([REDACTED])

1 309. JLI identified [REDACTED]

2 [REDACTED]

3 [REDACTED]³⁶⁶

4 310. With this goal in mind, [REDACTED]

5 [REDACTED]³⁶⁷

6 [REDACTED]³⁶⁸

7 [REDACTED]

8 311. In short order, the phrase “it’s cool to JUUL” became an anthem among kids while

9 youth e-cigarette use skyrocketed.

10 **3. JLI Advertising Exploited Young People’s Psychological Vulnerabilities.**

11 312. Informed by decades of tobacco marketing, JLI ran a consistent, simple message: JUUL

12 is used by young, popular, attractive, and stylish people.

13 313. This was not the only marketing scheme JLI could have adopted. JLI had other options.

14 In 2014, JLI engaged a Calgary-based advertising agency, Cult Collective, to complete a “diagnostic”

15 evaluation of the JUUL brand and to make recommendations regarding the best advertising strategy to

16 market the JUUL e-cigarette.

17 314. In keeping with typical e-cigarette marketing, which messaged to existing smokers

18 looking to quit, Cult Collective recommended that JUUL position its e-cigarette technology as the

19 focus of its advertisements. Cult Collective presented JUUL with exemplar advertisements that used

20 images of a boom box and a joy stick, juxtaposed against the JUUL e-cigarette, with the tag line:

21 “Everything changes. JUUL the evolution of smoking.”

22

23

24

25

26

27 ³⁶⁶ INREJUUL_00161703-INREJUUL_00161715.

28 ³⁶⁷ *Id.*

³⁶⁸ INREJUUL_00277080-INREJUUL_00277104.



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

316. JLI rejected this approach.

317. Instead, in June of 2015, JLI launched the “Vaporized” advertising campaign.³⁶⁹ The express mission [REDACTED]³⁷⁰

318. Applying the template for preying on teens established by the cigarette industry, the Vaporized campaign used stylish models, bold colors, and highlighted themes of sexual attractiveness, thinness, independence, rebelliousness and being “cool.”³⁷¹

319. The targeting of young consumers was evident in the design and implementation of the Vaporized campaign, which featured models in their 20s whose “poses were often evocative of behaviors more characteristic of underage teen than mature adults.”³⁷²

³⁶⁹ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

³⁷⁰ INREJUUL_00057291-INREJUUL_00057295.

³⁷¹ See Appendix A, Advertisement 1 (example of targeting of young people).

³⁷² *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K. Jackler, Professor, Stanford University),



<https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

320. In the months leading up to the launch of JUUL e-cigarettes, [REDACTED]

[REDACTED]³⁷³ [REDACTED]

[REDACTED]³⁷⁴ [REDACTED]

[REDACTED]³⁷⁵ The Management Defendants knew that the ads targeted youth, but “Juul’s board of directors signed off on the company’s launch plans[.]”³⁷⁶ In addition, “Monsees, who was CEO at the time, personally reviewed images from the billboard photo shoot while it was in session.”³⁷⁷ A senior manager later told the New York Times that “he and others in the company were well aware” that the marketing campaign “could appeal to” teenagers.³⁷⁸

321. As part of the Vaporized campaign, JLI advertised on a 12-panel display over Times Square.³⁷⁹ Billboard advertising of cigarettes has for years been unlawful under the Master Settlement Agreement.

³⁷³ INREJUUL_00371285.

³⁷⁴ INREJUUL_00371314.

³⁷⁵ INREJUUL_00174387.

³⁷⁶ 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 Company (Nov. 19, 2018), <https://www.fastcompany.com/90262821/how-juul-founded-on-a-life-saving-mission-became-the-most-embattled-startup-of-2018>.

³⁷⁷ *Id.*

³⁷⁸ 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>.

³⁷⁹ See Appendix A, image 14; see also <https://inrejuul.myportfolio.com> (also available at http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php) (last visited April 3, 2020) (additional images and videos).



322. [REDACTED]

[REDACTED] 380

323. In fact, JLI's Vaporized campaign was so effective that it gained national attention on an October 15, 2015 episode of Late Night with Stephen Colbert, who ridiculed the notion that the young, dancing models were consistent with a target market of adult smokers. As Colbert joked after viewing the close-up video of young models dancing in place, "[y]eah! There is something about vaping that just makes me want to dance in a way that doesn't require much lung strength. . . . And it's not just ads featuring hip young triangles that appeal to the youths. . . . There is no reason to worry about the long-term effects of vaping, because e-cigarettes are so new that their long-term effects are still unknown."³⁸¹

³⁸⁰ INREJUUL_00093933-INREJUUL_00093934.

³⁸¹ *The Late Show With Stephen Colbert: Vaping is So Hot Right Now*, YouTube (Oct. 7, 2015), https://www.youtube.com/watch?v=PMtGca_7leM.

324. The Vaporized campaign was not limited to the Times Square billboards however. The ads were also placed in nationally-distributed magazines, and the videos were displayed on screens at the top of point-of-sale JUUL kiosks provided by JUUL to retailers across the country.

325. To the extent that the Vaporized advertisements disclosed that JUUL contained nicotine, the warnings were in small print against low-contrast backgrounds, making them easy to overlook. By way of comparison, cigarette advertisements, are required to display a health warning in high contrast black and white, covering 20% of the image.

326. Likewise, JLI's social media ads did not disclose any health risks of using JUUL until May of 2018, when they were required to warn of addiction. But even then, JUUL placed these warnings in areas that were only viewable if the social media user clicked on the "full version" of the JLI post, which is not how teens typically engage with social media advertising.³⁸² Notably, on Twitter, a social media platform that is geared towards reading text, and on Facebook, where some users do read text, JLI typically did not include the disclaimer in its advertisements at all.³⁸³

4. JLI Pushed the Vaporized Campaign Into Youth Targeted Channels.

a. JLI Placed Its Vaporized Ads on Youth Oriented Websites and Media.

327. JLI engaged programmatic media buyers to place advertisements on websites attractive to children, adolescents in middle school and high school, and underage college students. These advertisements, which included the images of models from the Vaporized campaign, began appearing on websites as early as June 2015. The chosen websites included: nickjr.com (the website for a children's television network run by Nickelodeon Group); the Cartoon Network's website at cartoonnetwork.com; allfreekids crafts.com; hellokids.com; and kidsgameheroes.com.

328. A picture of the homepage of nickjr.com is below

³⁸² See Appendix A, Advertisement 3.

³⁸³ See Appendix A, Advertisement 65; *see also* Juul Image Galleries (2015-2018) SRITA Collection, <https://inrejuul.myportfolio.com/twitter-1> (last visited Apr. 3, 2020).



329. JLI also purchased banner advertisements on websites providing games targeted to younger girls,³⁸⁴ educational websites for middle school and high school students,³⁸⁵ and other teen-targeted websites.³⁸⁶

330. JLI knew what it was doing. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁸⁷ Nevertheless, JLI continued to push its campaign on websites with young demographics.

331. JLI promoted the Vaporized campaign on Facebook, Instagram, and Twitter.

332. JLI could have employed age-gating on its social media accounts to prevent underage consumers from viewing its Vaporized advertisements, but chose not to do so.

³⁸⁴ The sites included dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com.

³⁸⁵ E.g., coolmath-games.com. JUUL also purchased advertisements on basic-mathematics.com, coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, and purplemath.com.

³⁸⁶ E.g., teen.com, seventeen.com, justjaredjr.com, and hireteen.com. JUUL purchased advertisements on websites for high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

³⁸⁷ INREJUUL_00082179-INREJUUL_00082185.

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

334. JLI promoted Vaporized through Vice Magazine, which bills itself as the “#1 youth media brand” in the world.³⁸⁸



335. By 2016, an estimated 20.5 million U.S. middle and high school students were exposed to advertisements for e-cigarettes, including JUUL.³⁸⁹

b. JLI Used Influencers and Affiliates to Amplify Its Message to a Teenage Audience.

336. JLI used [REDACTED]

[REDACTED]³⁹⁰ Influencers are prized sources of brand promotion on social media networks.

³⁸⁸ 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>.

³⁸⁹ Kristy Marynak et al., *Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016*, CDC: Morbidity and Mortality Weekly Report (Mar. 16, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6710a3.htm>.

³⁹⁰ See INREJUUL 00091138 ([REDACTED])

1 337. Like its Vaporized campaign, [REDACTED]

2 [REDACTED]

3 ³⁹¹ In keeping with this strategy, JLI targeted influencers that were young and popular with

4 adolescents. One influencer JLI targeted was Tavi Gevinson, who was nineteen years old in the

5 summer of 2015. The year before, Rolling Stone magazine described Gevinson as “possibly the most

6 influential 18-year-old in America.”³⁹²

7

8 338. JLI contracted with Grit to enlist influencers by sending them free JUUL e-cigarettes.

9 Documents obtained pursuant to a Congressional investigation show that in July 2015, JLI’s contract

10 with Grit was for services that included “Influencer Relations,” in which Grit agreed to provide two

11 “Social Buzzmakers” for six events within a four-week period, with each Social Buzzmaker having a

12 minimum of 30,000 followers and be active on at least two social media channels, such as Instagram,

13 Twitter, or Facebook. The contract provided that JLI would determine or approve the timing of the

14 Buzzmakers’ posts. In addition, JLI engaged Grit to “develop influencer engagement efforts to

15 establish a network of creatives to leverage as loyalists for Juul/Pax brand activations.”³⁹³

16

17 339. Grit provided free JUULs to Luka Sabbat, known as the “the Internet’s Coolest

18 Teenager,”³⁹⁴ who was 17 years old during the summer of 2015.

19 340. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 ³⁹⁵ [REDACTED]

23 ³⁹¹ INREJUUL_00057293.

24 ³⁹² Alex Morris, *Tavi Gevinson: A Power Teen’s New Direction*, Rolling Stone (Aug. 14, 2014),

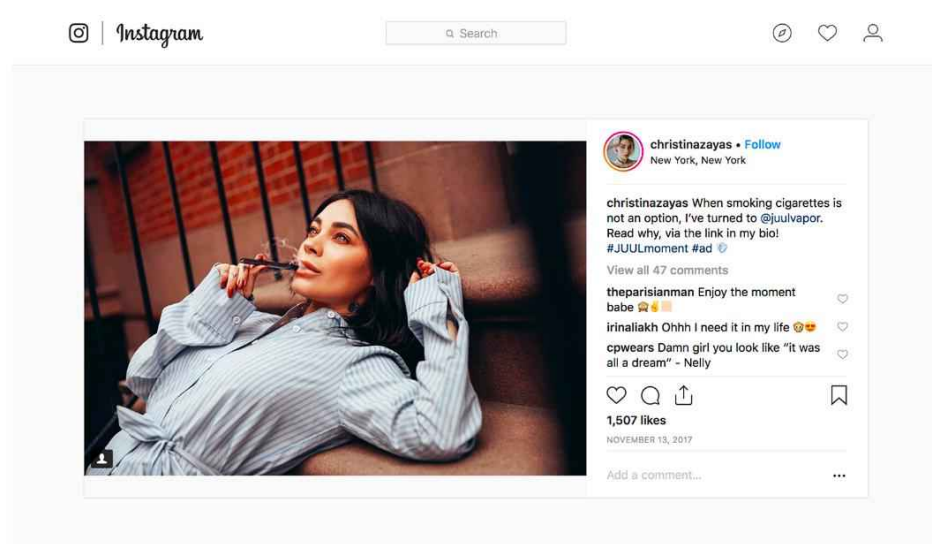
25 <https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

26 ³⁹³ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, Forbes (July 25, 2019),

27 <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>. See JLI-HOR-00042050-052 at 050.

28 ³⁹⁴ 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>.

341. JLI paid these social media influencers to post photos of themselves with JUUL devices and to use the hashtags that it was cultivating.³⁹⁶ 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.



342. JLI encouraged its distributors, wholesalers, and other resellers—either explicitly or implicitly—to hire affiliates and influencers to promote JLI’s brand and 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.

343. For example, one YouTube user Donnysmokes (Donny Karle, age twenty-one) created a JUUL promotional video in 2017 that garnered roughly 52,000 views, many of which were from users under the age of eighteen.³⁹⁷ Since that time, Karle has made a series of videos, including videos titled “How to hide your JUUL from your parents” and “How to HIDE & HIT Your JUUL at

³⁹⁵ See, INREJUUL 00091141 [REDACTED].

³⁹⁷ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K. Jackler, Professor, Stanford University).
<https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

SCHOOL WITHOUT Getting CAUGHT.”³⁹⁸ Karle has admitted to earning approximately \$1200 a month from unspecified sources simply from posting videos of himself consuming e-cigarettes, especially of JUUL products online.³⁹⁹



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

344. 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 teenagers filming themselves discussing the hundreds of thousands of views their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge content.⁴⁰⁰

345. JLI knowingly sought and accepted the benefits of viral marketing and user-generated content. For example, JLI was aware of Karle’s videos and his young followers. A sales representative

³⁹⁸ *Id.*

³⁹⁹ 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.

⁴⁰⁰ Nate420, JUUL Challenge (Apr. 22, 2018), https://youtu.be/gnM8hqW_2oo (last visited Mar. 30, 2020).

1 at JLI sent Karle a direct message on Twitter stating, “Thanks for the Juul plugs. There ya go. An
2 actual JUUL employee thanking you.”⁴⁰¹

3 346. JLI also recruited “affiliates” to help its viral marketing campaign. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 [REDACTED]⁴⁰² JLI’s affiliates promoted JUUL on social media platforms including
8 YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed to disclose that they were
9 being paid to promote JUUL products.

10 347. JLI’s “affiliate program” recruited those who authored favorable reviews of its products
11 by providing such reviewers with a 20% discount of purchases of JUUL products.⁴⁰³ It even recruited
12 JUUL users to act as part of their marketing team by asking users to “refer a friend and get a
13 discount.”⁴⁰⁴
14

15 348. As with much of the marketing strategy for JUUL, the practices described above are
16 prohibited by the Master Settlement Agreement.

17 **c. JLI Used Viral Marketing Techniques Known to Reach Young People.**

18 349. JLI deployed “viral marketing” techniques to great success. Viral marketing is defined
19 as “marketing techniques that seek to exploit pre-existing social networks to produce exponential
20 increases in brand awareness, through processes similar to the spread of an epidemic.”⁴⁰⁵ Viral
21 marketing effectively converts customers into salespeople, who, by sharing their use of a product (on
22

23 ⁴⁰¹ Karle000009-011 at 009 (undated Twitter direct messages exchange).

24 ⁴⁰² INREJUUL_00113437-INREJUUL_00113441.

25 ⁴⁰³ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight*
26 *and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Robert K
27 Jackler, Professor, Stanford University),
28 <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

⁴⁰⁴ *Id.* at 9.

⁴⁰⁵ N. Deepa et al., *Viral Marketing as an On-Line Marketing Medium*, IOSR J. of Bus. & Mgmt. 18,
(last visited Apr. 3, 2020); P. R. Datta et al., *Viral Marketing: New Form of Word-of-Mouth Through*
Internet, 3 The Bus. Rev. 69 (2005).

social media or otherwise), repeat a company's representations and endorse the product within their network. The success of viral marketing depends on peer-to-peer transmission. Hence, a successful viral marketing campaign looks like a series of unrelated, grassroots communications, when in fact they are the result of carefully orchestrated corporate advertising campaigns.

350. [REDACTED]

[REDACTED]⁴⁰⁶

351. Social media platforms are the most effective way to launch viral marketing campaigns among young people. As of May 2018, among teenagers, 95% reported use of a smart phone, 85% use YouTube, 72% use Instagram, and 45% reported being online "constantly."⁴⁰⁷

352. 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—e.g., post a selfie in your favorite place to use JUUL. 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 product (e.g. a picture of a friend using a JUUL e-cigarette).⁴⁰⁸

⁴⁰⁶ INREJUUL_00349529-560 at 541.

⁴⁰⁷ Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018: Appendix A: Detailed Tables*, Pew Research Center (May 31, 2018),

<https://www.pewresearch.org/internet/2018/05/31/teens-technology-appendix-a-detailed-tables/>.

⁴⁰⁸ *The Rise in the Use of Juul Among Young People: The Power of Design and Social Media Marketing*, Campaign for Tobacco Free Kids,

https://www.tobaccofreekids.org/assets/images/content/JUUL_Presentation.pdf.



353. Within a few months of the JLI's commercial release in June 2015, a former JLI executive reportedly told the New York Times that JLI "quickly realized that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social media."⁴⁰⁹

354. To drive consumer participation in its ad campaign, JLI peppered its advertising and social media posts with hashtags, including those referencing JLI and consuming e-cigarettes (e.g., #juul, #juulvapor, #switchtojuul, #vaporized, #juulnation, #juullife, #juulmoment); and trending topics unrelated to JUUL, as well as topics #mothersday, #goldenglobes, #nyc, etc. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰⁹ 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>.

⁴¹⁰ INREJUUL_00093294.

1 355. JLI's hashtags attracted an enormous community of youthful posts on a wide array of
2 subjects. According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and
3 numerous Instagram hashtags contain the JUUL brand name.⁴¹¹

4 356. Just as JLI intended, JUUL users began taking photos of themselves using JUUL
5 devices and putting them on social media with the hashtag #juul. They were creating JUUL content
6 that looked and felt like real JUUL ads: featuring young people having fun and using JUUL. The
7 flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of thousands of
8 user-generated posts. JLI could have stepped in and attempted to stop the use of its trademark in posts
9 directed to underage audiences, including the use of all the hashtags that contain the word "JUUL." It
10 could have sought to shut down infringing accounts such as @doit4juul and @JUULgirls. It did not do
11 so.
12

13 **5. JLI Targeted Youth Retail Locations.**

14 357. Studies show that tobacco use is associated with exposure to retail advertising and
15 relative ease of in-store access to tobacco products. Some studies have shown that youth who were
16 frequently exposed to point of sale tobacco marketing were twice as likely to try or initiate smoking
17 than those who were not as frequently exposed.
18

19 358. For years, JLI made it difficult for smoke shops and other age-restricted stores to carry
20 its products, instead directing its product to gas stations and convenience stores, which historically
21 make the most underage sales. JLI knows that nicotine-naïve young people frequent gas stations and
22 convenience stores rather than smoke shops. By distributing in those kinds of stores, JUUL increased
23 the likelihood that these people would purchase its product.
24

25 359. JLI marketed its products extensively in convenience stores, employing video and
26 product displays with bright colors and young adults using and displaying the JUUL device. The retail
27

1 marketing worked and, by late 2017, JUUL became the most popular e-cigarette sold in convenience
2 stores according to Nielsen data.⁴¹²

3 360. Like all in-store cigarette advertising, JLI's point-of-sale materials played a major role
4 in driving youth addiction. JLI actively encouraged youth to seek out these laxly regulated retail
5 locations, sending marketing e-mails to hundreds of thousands of customers, referring them to the
6 JUUL store locator and offering discounts. And JLI actively encouraged its retailers to leniently
7 regulate sales to youth by providing profit margins that far exceeded any other tobacco product being
8 sold.
9

10 361. Before JUUL's launch in 2015, JLI and Cult Collective developed packaging and in-
11 store displays that looked similar to iPhone packaging, which JLI knew would resonate with young
12 people and further JLI's campaign to be the "the iPhone of e-cigarettes."
13

14 362. [REDACTED]
15 [REDACTED]
16 [REDACTED]⁴¹³
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27
28 ⁴¹² Laura Bach, *JUUL and Youth: Rising E-Cigarette Popularity*, Campaign for Tobacco-Free Kids
(July 6, 2018), <https://www.tobaccofreekids.org/assets/factsheets/0394.pdf>.

⁴¹³ INREJUUL_00370796-INREJUUL_00370806, 805.

6. JLI Hosted Parties to Create a Youthful Brand and Gave Away Free Products to Get New Consumers Hooked.

363. JLI also sponsored at least twenty-five live social events for its products in California, Florida, New York, and Nevada. The invitations to JUUL's events did not indicate that the JUUL was intended for cigarette smokers, contained nicotine, or was addictive.⁴¹⁴ Instead, the invitations traded on PAX Lab, Inc.'s (PAX) reputation as a manufacturer of marijuana vaporizers and promised attendees "free #JUUL starter kit[s]," live music, or slumber parties.⁴¹⁵ Photographs from these events indicate that they drew a youthful crowd. Product promotion through sponsored events was a long-standing practice for cigarette companies, but is now prohibited.



⁴¹⁴ See Appendix A, Advertisements 78-81.

⁴¹⁵ *Id.*



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364. At these live social events, JLI gave attendees free JUUL “Starter Kits,” which contain a JUUL device and 4 JUUL pods of various flavors. JLI gave away samples at music events without age restrictions, including Outside Lands in San Francisco’s Golden Gate Park, and other events aimed at a youthful audience, such as the annual Cinespia “Movies All Night Slumber Party” in Los Angeles. These events, in addition to providing youthful crowds for handing out samples, were opportunities for JLI to cultivate its brand image as youthful, hip, and trendy—but had nothing to do with smoking

cessation. For example, on August 7, 2015, JLI tweeted, “Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!”⁴¹⁶

365. Giving away free samples is prohibited conduct for a cigarette company under the Master Settlement Agreement.

366. As part of the Vaporized campaign, JLI also emulated trendy pop-up restaurants and stores by using a shipping container “pop-up JUUL bar” at festivals and events in the Los Angeles and New York City metro areas. The firm BeCore designed and created the container for JLI, and managed it as a mobile JUUL product sampling lounge.⁴¹⁷



Juul's container bar

418

367. JLI also held sampling events in stores. [REDACTED]

[REDACTED]⁴¹⁹ Documents obtained by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff these

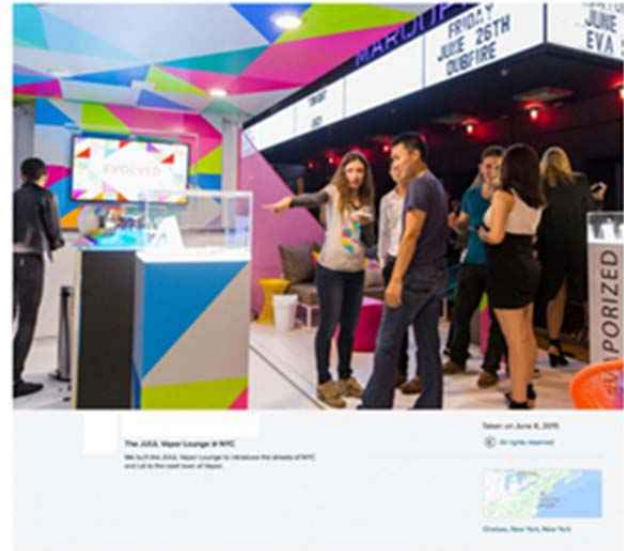
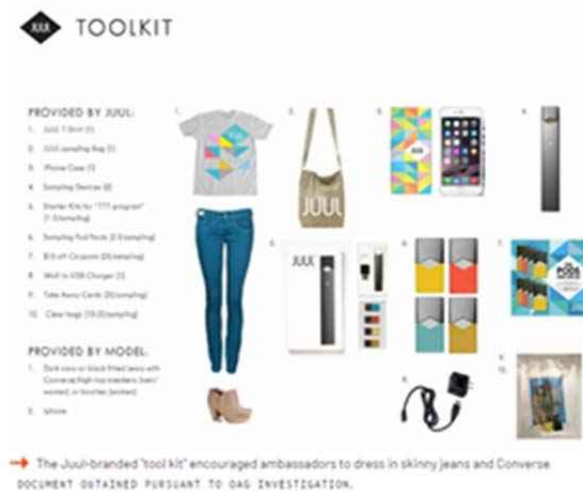
⁴¹⁶ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg.

⁴¹⁷ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴¹⁸ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

⁴¹⁹ INREJUUL_00160394.

events and required a dress code that included skinny jeans, high-top sneakers or booties, and an iPhone in a JUUL-branded case.⁴²⁰



368. JLI also 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]

[REDACTED]

369. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events,⁴²² it continued to reach out to new users by offering samples,

⁴²⁰ Jake Offenhartz, *Juul Hooked Teens Through Sick Parties and Hip Ambassadors*, NY AG Says, Gothamist (Nov. 19, 2019 2:02 PM), <https://gothamist.com/news/juul-hooked-teens-through-sick-parties-and-hip-ambassadors-ny-ag-says>; Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, Forbes (Nov. 16, 2018 2:38 PM), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

⁴²¹ INREJUUL_00158794-803 at 794.

⁴²² See Nik Davis (@bigbabynik), Twitter (Nov. 17, 2017 1:11 PM), <https://twitter.com/JLIvapor/status/931630885887266816>; Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic*, Testimony for the House Subcommittee on Economic and Consumer Policy (Jul. 24, 2019),

1 sometimes at \$1 “demo events.” Like so many of JLI’s initiatives, promotions of this kind are
 2 prohibited for cigarette companies by the Master Settlement Agreement.

3 370. The effect—and purpose—of JLI’s Vaporized giveaways was to flood major cities with
 4 products that would hook thousands of new users, and to generate buzz for the brand among urban
 5 trendsetters who would then spread JLI’s message to their friends via word of mouth and social media.
 6

7 371. According to BeCore, one of the firms responsible for designing and implementing
 8 JLI’s live events, JLI distributed the nicotine-equivalent of approximately 500,000 packs of cigarettes
 9 at all twenty-five events.⁴²³ And this was just to get people started.

10 **7. The Management Defendants’ Direction and Participation in the Youth Marketing**
 11 **Schemes**

12 **a. The Management Defendants, and in particular Bowen, Monsees, Pritzker,**
 13 **Huh, and Valani, oversaw the youth marketing scheme.**

14 372. The Management Defendants were well aware that JUUL branding was oriented toward
 15 teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine. The
 16 Management Defendants directed and approved JUUL branding to be oriented toward teenagers. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]⁴²⁴, [REDACTED]

20 [REDACTED].

21 373. After launch, executives and directors discussed whether to rein in the advertising to
 22 teenagers. [REDACTED]
 23

24
 25 <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

26 ⁴²³ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
 Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019),

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

28 ⁴²⁴ *Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcomm. on Econ. & Consumer Policy of the Comm. on Oversight & Reform, H.R., 116th Cong. 70* (2019) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.).

1 [REDACTED]⁴²⁵ [REDACTED]
2 [REDACTED]
3 [REDACTED]⁴²⁶ [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]⁴²⁷ [REDACTED]
9 [REDACTED]
10 [REDACTED]⁴²⁸ [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]⁴²⁹ [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]⁴³⁰

19 374. But some company leaders, including Huh, opposed any actions to curb youth sales.
20 Youth sales were a large potential source of revenue.⁴³¹ As one manager explained, perhaps “people
21 internally had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people had no problem with
22
23

24 _____
25 ⁴²⁵ JLI00206239.

26 ⁴²⁶ JLI00214617.

27 ⁴²⁷ *Id.*

28 ⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019),
<https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

500 percent year-over-year growth.”⁴³² And company leaders understood that teenagers who were hooked on nicotine were the most likely segment to become lifelong addicts and thus were the most profitable customers to target.⁴³³

375. In October 2015, JLI leadership resolved the debate in favor of selling to teens. [REDACTED]

[REDACTED]

[REDACTED] ⁴³⁴

376. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁴³⁵ [REDACTED]

[REDACTED]

[REDACTED] ⁴³⁶ [REDACTED]

[REDACTED] ⁴³⁷ Pax Labs modified the age verification system so that 92% of users were able to pass the age gate.⁴³⁸ By changing the age verification process so that users were more likely to pass—[REDACTED]—Pax Labs deliberately chose to continue selling to underage purchasers.

377. [REDACTED]

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 7 (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴³⁵ INREJUUL_00276445.

⁴³⁶ Native attachment to INREJUUL_00078494.

⁴³⁷ JLI00068428.

⁴³⁸ Kate Horowitz’s LinkedIn profile, <https://www.linkedin.com/in/k8horowitz> (last visited Apr. 22, 2020) (stating that while serving as an Ecommerce Product Manager at PAX Labs, Inc. from July 2015 to May 2016, she “increased success rate of age verification by 25%, up from 74% to 92%”).

1 [REDACTED]
 2 [REDACTED]⁴³⁹ But JLI did not run this campaign then and in
 3 fact did not begin focusing its advertising on switching from combustible cigarettes until 2018.⁴⁴⁰
 4

5 378. By March 2016, however, JLI employees internally recognized that JLI's efforts to
 6 market to children were too obvious. [REDACTED]
 7 [REDACTED]
 8 [REDACTED]⁴⁴¹ [REDACTED]
 9 [REDACTED]⁴⁴²
 10 [REDACTED]
 11 [REDACTED]⁴⁴³ [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]⁴⁴⁴ [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]⁴⁴⁵ Around this time, Pax Labs reoriented its JUUL advertising from the explicitly
 18 youth-oriented Vaporized campaign to a more subtle approach to appeal to the young. The
 19 advertising's key themes continued to include pleasure/relaxation, socialization/romance, and
 20
 21
 22
 23

24 ⁴³⁹ JLI00214617.

25 ⁴⁴⁰ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
 26 Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 16.

27 ⁴⁴¹ INREJUUL_00178377.

28 ⁴⁴² INREJUUL_00061469.

⁴⁴³ INREJUUL_00178379.

⁴⁴⁴ INREJUUL_00178384.

⁴⁴⁵ INREJUUL_00061274.

1 flavors⁴⁴⁶—all of which still appealed to teenagers, as was made clear in the previous litigation against
 2 the cigarette industry.

3 379. The Management Defendants continued to direct and approve misleading marketing
 4 campaigns long after launch. For example, JLI deceptively marketed mint to youth, through flavor-
 5 driven advertising, hashtag campaigns, and ads cross-promoting mango and mint. Through their
 6 positions on the JLI Board of Directors, the Management Defendants were directly responsible for this
 7 marketing, as they had “final say” over all of JLI’s marketing activities.⁴⁴⁷ In other words, JLI and the
 8 Management Defendants controlled the messaging around JUUL products.

10 380. Notably, none of JLI’s early advertisements, including those of the “Vaporized”
 11 campaign and others targeted to youths, disclosed that JUUL contains high amounts of nicotine;
 12 indeed, many of those advertisements did not advertise JUUL’s nicotine content whatsoever.

14 381. Likewise, none of JLI’s advertisements, including those of the “Vaporized” campaign
 15 and others targeted to youths, disclosed the health risks from consuming JUUL products.

16 382. JLI and the Management Defendants knew of course that JUUL contained an ultra-high
 17 concentration of nicotine, and that ultra-high concentration of nicotine was designed to addict. They
 18 also knew that e-cigarette products, including JUUL, would expose users to increased health risks,
 19 including risks to their lungs and cardiovascular system. Despite that knowledge, JLI and the
 20 Management Defendants took affirmative actions, the natural consequence of which was the approval
 21 and transmission of these false and misleading advertisements that did not include a disclosure of
 22 JUUL’s high nicotine content and concentration, nor any health risks at all.

25 _____
 26 ⁴⁴⁶ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
 27 Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
 28 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 9.

⁴⁴⁷ *Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcomm. on
 Econ. & Consumer Policy of the Comm. on Oversight & Reform, H.R. 116th Cong. 70* (2019)
 (statement of James Monsees, CPO, JLI Labs).

b. Pritzker, Huh, and Valani Were Able to Direct and Participate in the Youth Marketing Because They Seized Control of the JLI Board of Directors.

383. Although Defendants Bowen and Monsees were the visionaries behind JLI and the most hands-on in its early stages, by the time JLI was pushing its marketing campaigns in early-to mid-2015, JLI (through the individuals running the company), Bowen, Monsees, Pritzker, Huh, and Valani were each intimately involved in the planning and execution of activities.

384. For example, [REDACTED]

⁴⁴⁸ [REDACTED]

385. But the Management Defendants at this point were taking actions that went beyond the regular and legitimate business operations of JLI. At the same time [REDACTED]

⁴⁴⁹ [REDACTED]

386. And at the same time the Management Defendants had approved the early JLI marketing campaigns that were intentionally targeting youth, the Management Defendants were planning a fundamental shift in roles to allow Defendants Pritzker, Huh, and Valani to take charge of the instrumentalities of JLI, including its employees and resources.

387. Specifically, in October 2015, Monsees stepped down from his role as Chief Executive Officer of JLI (to become Chief Product Officer) and, in his stead, Pritzker, Huh, and Valani formed an Executive Committee of the JLI Board of Directors that would take charge of fraudulently marketing JUUL products, including to youth. The Management Defendants, and in particular Huh, wanted to

⁴⁴⁸ INREJUUL_00056077 [Confidential].

⁴⁴⁹ *Id.*

1 continue their fraudulent marketing, knowing that these ads were also targeted to youth, “argu[ing] that
 2 the company couldn’t be blamed for youth nicotine addiction[.]”⁴⁵⁰

3 388. JLI’s organizational charts later reflected the executive committee in the place of a
 4 CEO. [REDACTED]

5 [REDACTED]⁴⁵¹.

6
 7 389. [REDACTED]

8 [REDACTED]⁴⁵².

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

21 390. [REDACTED]

22 [REDACTED]

23 [REDACTED]⁴⁵³.

26 ⁴⁵⁰ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019),
 27 <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

28 ⁴⁵¹ See INREJUUL_00016456 ([REDACTED]).

⁴⁵² INREJUUL_00278332 ([REDACTED]); INREJUUL_00061420 ([REDACTED]).

⁴⁵³ See INREJUUL_00278406 *et seq.* ([REDACTED]); INREJUUL_00278410 *et seq.* ([REDACTED]).

1 [REDACTED]⁴⁵⁴ [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]⁴⁵⁵

6 Additionally, [REDACTED]

7 [REDACTED]⁴⁵⁶ [REDACTED]

8 [REDACTED]

9 391. Similarly, [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]⁴⁵⁷

13 392. Over the next year, until the installation of a new CEO in August 2016, Defendants
 14 Pritzker, Huh, and Valani used their newly formed Executive Committee to expand the number of
 15 addicted e-cigarette users through fraudulent advertising and representations to the public. They
 16 cleaned house at JLI by “dismiss[ing] other senior leaders and effectively tak[ing] over the
 17 company.”⁴⁵⁸ [REDACTED]

18 [REDACTED]⁴⁵⁹ Despite any potential internal misgivings about their fraudulent conduct, notably, none
 19 of Management Defendants terminated their relationship with JLI during this time period.

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 21
 22
 23
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 25 ⁴⁵⁴ See INREJUUL_00278404 *et seq.* ([REDACTED]); INREJUUL_00278402 *et seq.* ([REDACTED]).

26 ⁴⁵⁵ INREJUUL_00278405 ([REDACTED]).

27 ⁴⁵⁶ *Id.*

28 ⁴⁵⁷ INREJUUL_00061856.

⁴⁵⁸ 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>.

⁴⁵⁹ INREJUUL_00278359.

8. JLI and the Management Defendants Knew Their Efforts Were Wildly Successful in Building a Youth Market and Took Coordinated Action to Ensure That Youth Could Purchase JUUL Products.

a. JLI's Strategy Worked.

393. The Management Defendants knew that the JUUL marketing campaigns they directed and approved were successful in targeting youth. As Reuters has reported, “the first signs that JUUL had a strong appeal to young people came almost immediately after the sleek device went on sale in 2015 Employees started fielding calls from teenagers asking where they could buy more JUULs, along with the cartridge-like disposable ‘pods’ that contain the liquid nicotine.”⁴⁶⁰ A former senior manager told the New York Times that “[s]ome people bought more JLI kits on the company’s website than they could individually use—sometimes 10 or more devices.” He added that “[f]irst, they just knew it was being bought for resale,” but later “when they saw the social media, in fall and winter of 2015, they suspected it was teens.”⁴⁶¹ Adam Bowen admitted that “he was aware early on of the risks e-cigarettes posed to teenagers[.]”⁴⁶² [REDACTED]

[REDACTED]⁴⁶³ It was common knowledge within JLI that JUULs were being sold to children.

394. After the Vaporized campaign, retail stores began selling out of JUUL products, and JLI had a difficult time trying to meet demand coming from its online ordering platform.

⁴⁶⁰ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

⁴⁶¹ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

⁴⁶² *Id.*

⁴⁶³ INREJUUL_00339938 (emphasis added).

395. Furthermore, it was obvious to those outside the company that JLI was selling JUUL products to children. In June 2015, reporting on the “Vaporized” campaign that accompanied the JUUL launch, AdAge reported that John Schachter, director of state communications for Campaign for Tobacco-Free Kids, “expressed concern about the JUUL campaign because of the youth of the men and women depicted in the campaign, especially when adjoined with the design” and added that there had been “obvious trends that appeal to adolescents in e-cigarette campaigns[.]”⁴⁶⁴ Robert Jackler, a Stanford physician who investigated JLI’s launch campaign, concluded that “JLI’s launch campaign was patently youth-oriented.”⁴⁶⁵ JLI’s commercials’ attempts to appeal to teenagers were so obvious that, by October 2015, Stephen Colbert ran a satirical segment on it that noted, among other things: “And it’s not just ads featuring hip young triangles that appeal to the youths; so do vape flavors like cotton candy, gummi bear, and skittles.”⁴⁶⁶

396. Moreover, the Management Defendants knew that kids were marketing JLI products on social media, and some even sought to take advantage of that to build the JLI brand. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁶⁷ [REDACTED]

[REDACTED]⁴⁶⁸

⁴⁶⁴ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

⁴⁶⁵ Erin Brodwin, *See how Juul turned teens into influencers and threw buzzy parties to fuel its rise as Silicon Valley’s favorite e-cig company*, Bus. Insider (Nov 26, 2018), <https://www.businessinsider.com/stanford-juul-ads-photos-teens-e-cig-vaping-2018-11>.

⁴⁶⁶ *The Late Show with Stephen Colbert: Vaping is So Hot Right Now*, YOUTUBE (Oct. 7, 2015), https://www.youtube.com/watch?v=PMtGca_7leM. The “triangles” ad was a JUUL ad; the listed flavors were not, but JUUL also had flavors that appealed to children.

⁴⁶⁷ JLI00382271.

⁴⁶⁸ *Id.*

b. JLI Closely Tracked Its Progress in Reaching Young Customers through Social Media and Online Marketing.

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

398. As early as 1953, Philip Morris was gathering survey data on the smoking habits of “a cross section of men and women 15 years of age and over.”⁴⁶⁹ Commenting on these data, George Weissman, then-Vice President of Philip Morris, observed that “we have our greatest strength in the 15-24 age group.”⁴⁷⁰

399. Traditional approaches to youth tracking (*e.g.*, interviews conducted face-to-face or over the telephone) were limited, however, in that they often failed to capture data from certain subsets of the target market. As a Philip Morris employee noted in a June 12, 1970 memorandum, Marlboro smokers were “among the types of young people our survey misses of necessity (on campus college students, those in the military and those under 18 years of age).”⁴⁷¹

400. However, modern technology has removed many of the hurdles that made youth tracking difficult in decades past. With e-mail, social media and online forums, JLI can track, and has consistently tracked and monitored its target youth market, including those below the minimum legal age to purchase or use JUUL products.

401. Using the tools available to it, JLI would have known that its viral marketing program was a resounding success, and in particular with young people.

⁴⁶⁹ Philip Morris Vice President for Research and Development, *Why One Smokes*, First Draft, 1969, Autumn (Minnesota Trial).

⁴⁷⁰ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 581 (D.D.C. 2006).

⁴⁷¹ *Id.*

402. 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.⁴⁷² Its growth on Instagram was likely even more rapid.

403. 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.⁴⁷³ Despite JLI's apparently minimal advertising spend in 2017, the study found a significant increase in JUUL-related tweets in 2017.⁴⁷⁴

404. On Instagram, the study found seven JUUL-related accounts, including DoIt4JUUL and JUUL.girls, which accounted for 4,230 total JUUL-related posts and had more than 270,000 followers.⁴⁷⁵

405. In addition to JUUL's explosive growth on individual social media platforms, the study found JUUL products being marketed across platforms in an apparently coordinated fashion, including smaller targeted campaigns and affiliate marketing, all of which caused the authors to question whether JLI was paying for positive reviews and JUUL-related social media content.

406. 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.⁴⁷⁶

407. Similarly, an account named @JUULnation was established on Instagram and posted tips on how to conceal JUUL devices in school supplies. The account also ridiculed efforts to combat

⁴⁷² See Brittany Emelle, et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, (May 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

⁴⁷³ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, TOBACCO CONTROL (May 31, 2018), <https://tobaccocontrol.bmj.com/content/28/2/146.full>.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ Laura Kelly, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, The Wash. Times (June 4, 2018), <https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/>.

JUUL use in schools, promoted videos of JUUL influencers, and promoted videos like the “JUUL Challenge,” in which users inhale as much JUUL nicotine vapor as possible in a fixed period of time. JLI repeatedly used the hashtag “#JUULnation” on posts on its own Instagram account, for example when advertising its “Cool Mint” JUULpods, [REDACTED], or party mode.⁴⁷⁷

408. A separate study of e-cigarette advertising on mobile devices, where young people spend most of their day consuming media, found that 74% of total advertising impressions were for JUUL products.⁴⁷⁸

409. A 2019 study found that as much as half of JUUL’s Twitter followers were aged thirteen to seventeen.⁴⁷⁹

410. A 2019 study characterizing JUUL-related Instagram posts between March and May 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram accounts, more than half were related to youth or youth lifestyle.⁴⁸⁰

411. Some Twitter users have reported what appear to be JUUL bots.⁴⁸¹ Other Twitter users appear to either be bot accounts or native advertisers, in that they have a small number of followers, follow few other users, and post exclusively about JUUL content.⁴⁸²

412. By April 2018, searching “JUUL” on YouTube yielded 137,000 videos with forty-three videos having over 100,000 views.⁴⁸³ Of these, a huge number were plainly related to underage use,

⁴⁷⁷ JLI00682401-484 at 428, 444, 451; see also Stanford University, *Research into the Impact of Tobacco Advertising*,

http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_11.jpg; Stanford University, *Research into the Impact of Tobacco Advertising*,

http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_12.jpg.

⁴⁷⁸ See Brittany Emelle et al., *Mobile Marketing of Electronic Cigarettes in the U.S.*, Truth Initiative (May 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

⁴⁷⁹ Steven Reinberg, *Study: Half of Juul's Twitter followers are teens, young adults*, HealthDay News, (May 20, 2019) https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/.

⁴⁸⁰ Lauren Czaplicki et al., *Characterising JUUL-related posts on Instagram*, Truth Initiative (Aug. 1, 2019), <https://tobaccocontrol.bmj.com/content/early/2019/07/30/tobaccocontrol-2018-054824>.

⁴⁸¹ One example of what appear to be JUUL bots in action on Twitter is available at: <https://twitter.com/search?q=juul%20bot&src=typd> (last visited Apr. 4, 2020).

⁴⁸² Hennrythejuul (@hennrythejuul), Twitter (Mar. 4, 2020, 9:35 am) <https://twitter.com/hennrythejuul>.

including: 1,730 videos on “hiding JUUL in school,” 789 on “JUUL in school bathroom,” 992 on “hiding JUUL at home,” and 241 on “hiding JUUL in Sharpie.”⁴⁸⁴

413. In 2018, JLI was internally collecting hundreds of social media posts—directed at JLI—informing it of JUUL’s wild popularity with young people and in many cases requesting that JLI do something to stop it.⁴⁸⁵

9. JLI Coordinated with Veratad Technologies To Expand Youth Access to JUUL Products.

414. At the same time JLI and the Management Defendants were taking coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base through unlawful marketing and distribution activities, they were coordinating with an outside entity—Veratad Technologies LLC—to get JUULs into the hands of the largest number of consumers possible.

415. JLI’s website, including its online store, was pivotal to these efforts. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁴⁸⁶

⁴⁸³ Divya Ramamurthi et al., *JUUL and Other Stealth Vaporizers: Hiding the Habit from Parents and Teachers, Tobacco Control* 2019, Stanford Univ. (Sept. 15, 2018), <https://www.ncbi.nlm.nih.gov/pubmed/30219794>.

⁴⁸⁴ *Id.*

⁴⁸⁵ Complaint at 60, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

⁴⁸⁶ INREJUUL_00329660.

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13 416. JLI coordinated with Veratad to provide age verification services for its website from
14 2015 to 2018. Veratad has also provided age verification services to other e-cigarette sellers, including
15 Lorillard⁴⁸⁷ [REDACTED].⁴⁸⁸ Consistent with the claim on Veratad's website that "*You can create your*
16 *own verification rules,*" the company encouraged sellers like JLI to set the desired compliance level for
17 age verification. As a member of a major e-cigarette trade organization, Veratad also offered insight
18 into what competitors were doing, and offered to "guide your setup to follow industry best
19 practices for age verification."
20

21 417. Though it is illegal to sell and ship e-cigarettes to minors under both state and federal
22 law, JLI and Veratad designed and implemented an age verification system designed to maximize the
23 number of prospective purchasers who "pass" the process rather than to minimize the number of
24 underage sales.⁴⁸⁹ As a result of these intentionally permissive age verification practices, JLI and
25

26 ⁴⁸⁷ Staff of Sen. Richard Durbin et al., 113th Cong., *Gateway to Addiction?* (Apr. 14, 2014),
27 <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

28 ⁴⁸⁸ INREJUUL_00174362.

⁴⁸⁹ Complaint at 165, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),
<https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

1 Veratad used online payment systems and the US mails to ship tens of millions of dollars of JUULpods
2 to unverified customers, many of whom were minors.

3 418. From June 2015 through the end of 2018, the age verification process on JLI's website
4 typically prompted prospective purchasers to submit their name, address, and date of birth, which JLI
5 forwarded to Veratad. Veratad then attempted to match all or some limited part of the consumer's
6 information to a person of the minimum legal sales age in its database. If Veratad was able to locate a
7 sufficient match of the prospective purchaser to a person of the minimum legal sales age in its
8 database, then it would return a "pass" result to JLI. If Veratad was unable to make such a match,
9 Veratad returned a "fail" result to JLI.
10

11 419. If Veratad returned a "fail" result to JLI, rather than decline the prospective purchaser,
12 JLI would prompt the person to enter an "alternate" address. If Veratad still could not find a match
13 based on this alternate address, JLI would prompt the consumer to enter the last four digits of his or her
14 social security number.
15

16 420. If Veratad, supplied with the last four digits of a consumer's social security number,
17 still could not match the consumer to a person of the minimum legal sales age in its database, JLI
18 would prompt the consumer to upload an image or photograph of his or her driver's license or another
19 governmental identification document. A JLI employee would then conduct a personal review of the
20 image and decide whether the consumer was of the minimum legal sales age.
21

22 421. Crucially, Veratad's age verification system was purposefully flexible, so JLI and
23 Veratad could work together to decide just how closely a prospective purchaser's personal information
24 had to match records in Veratad's database in order to "pass" the age verification process. JLI and
25 Veratad could also set, or modify, the applicable minimum legal sales age to be used for verification.
26
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422. By the fall of 2015, JLI and Veratad knew that bulk purchases were being made for resale on JLI's website by minors and for resale to minors.⁴⁹⁰ For example, [REDACTED]

[REDACTED]⁴⁹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁹² [REDACTED]

[REDACTED]

[REDACTED]⁴⁹³

[REDACTED]⁴⁹⁴

423. Veratad also knew or should have known that JUUL products were being widely used by minors. Veratad also knew that some underage users were able to purchase JUUL through JLI's website using the age verification parameters that were in place. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁹⁵ [REDACTED]

[REDACTED]

[REDACTED]⁴⁹⁶

⁴⁹⁰ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'? The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, NY Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

⁴⁹¹ INREJUUL_00300253-258 at 257.

⁴⁹² *Id.* at 256.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.* at 253.

⁴⁹⁵ INREJUUL_00209176-180 at 176.

⁴⁹⁶ *Id.*

1 424. Nevertheless, [REDACTED]

2 [REDACTED]⁴⁹⁷ JLI repeatedly sought, and Veratad repeatedly
 3 recommended and directed, changes to the age verification process so that more prospective JUUL
 4 purchasers would “pass.” Both did so in an effort to increase direct sales of JLI’s e-cigarettes without
 5 regard to whether it’s less stringent age verification process would permit more underage consumers to
 6 purchase them.
 7

8 425. Between June 2015 and August 2017 (and perhaps even through early 2018), JLI and
 9 Veratad tailored the age verification system to “pass” prospective purchasers even if certain portions of
 10 the purchaser’s personal information—*e.g.*, the purchaser’s street address or date of birth—did not
 11 match the information corresponding to a person of the minimum legal sales age in Veratad’s
 12 database.⁴⁹⁸
 13

14 426. Similarly, between June 2015 and August 2017, JLI and Veratad tailored the system to
 15 “pass” a prospective purchaser under certain circumstances even when the prospective purchaser’s
 16 year of birth did not match the information corresponding to a person of the minimum legal sales age
 17 in Veratad’s database.
 18

19 427. JLI and Veratad sought to increase “pass” rates by modifying the age verification
 20 system to allow users multiple opportunities to change their personal information if a match was not
 21 initially found in an appropriate government database. A Veratad Performance Report from August 5,
 22 2017 shows that, for 1,963 consumers Veratad recorded 3,794 transactions—an average of 1.93
 23

24 ⁴⁹⁷ INREJUUL_00276489-INREJUUL_00276490.

25 ⁴⁹⁸ Complaint at 43, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),
 26 <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>. A January 29, 2018 email
 27 exchange between Tom Canfarotta, Director of Strategic Accounts & Client Quality Services at
 28 Veratad, and Annie Kennedy, JUUL’s Compliance Manager, reveals this to have been the case. Kennedy asked Canfarotta why a particular customer had “passed via the address step (public record check)...but we’ve since learned that is not a correct address—so we’re curious as to how it passed.” In response, Canfarotta wrote, “Your current rule set does not require a full address match.” He went on to explain that approval of the customer was not an anomaly or a mistake; instead, Veratad’s age verification system was working exactly the way it was designed.

1 attempts per consumer.⁴⁹⁹ Only 966 consumers—less than half—passed age verification on the first
 2 attempt.⁵⁰⁰ By allowing consumers to alter their personal information and attempt age verification up
 3 to three times, JLI was able to increase its database match pass rate from 49.2% to 61.2%.⁵⁰¹

4 428. [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]⁵⁰²

9 429. [REDACTED]
 10 [REDACTED]
 11 [REDACTED]

12 430. [REDACTED]
 13 [REDACTED]
 14 [REDACTED]⁵⁰³ Customer service representatives

15 would go so far as to alter identifying information for them; a Slack chat among customer service
 16 representatives confirmed that representatives were authorized to “adjust the street address, apartment
 17 number, or zip code” associated with shipment.⁵⁰⁴

18 431. The age verification procedures designed by JLI and Veratad have allowed hundreds of
 19 thousands of e-cigarette products to be sold and/or delivered to fictitious individuals at fictitious
 20 addresses.⁵⁰⁵ Many of these improper sales may have been made to underage purchasers or to resellers
 21 who sold the products to underage consumers on the grey market.⁵⁰⁶
 22
 23

24 ⁴⁹⁹ *Id.*

25 ⁵⁰⁰ *Id.*

26 ⁵⁰¹ *Id.*

⁵⁰² INREJUUL_00184119.

⁵⁰³ INREJUUL_00215324-INREJUUL_00215325.

27 ⁵⁰⁴ Complaint at 168, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18, 2019),
<https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

28 ⁵⁰⁵ *Id.* at 138.

⁵⁰⁶ *Id.*

432. By divorcing the address from the other customer data in the age verification process, JLI and Veratad allowed consumers to request that tobacco products be sent to locations other than their permanent legal residences.⁵⁰⁷ For example, JLI sent thousands of orders to commercial high rises and office parks.⁵⁰⁸ It is unlikely these orders would have been approved had JLI and Veratad required that addresses provided by users match information in an appropriate government database and followed the requirement that the shipping address and billing address be the same.⁵⁰⁹

433. The failure of the JLI/Veratad age verification procedure was intentional.⁵¹⁰ And despite

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵¹¹ [REDACTED]

[REDACTED].⁵¹² Similarly, a JLI spokesperson told a reporter at a New York newspaper, *ANMY*, that JLI uses “industry-leading ID match and age verification technology to ensure that customers” are over twenty-one years of age and that the “information is verified against multiple databases.”⁵¹³

⁵⁰⁷ *Id.* at 146

⁵⁰⁸ *Id.* at 147.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* at 173.

⁵¹¹ INREJUUL00178123-24. INREJUUL00178123-24 [REDACTED]

[REDACTED]

⁵¹² INREJUUL_00264882-84.

⁵¹³ Alison Fox, ‘Juul’ e-cigarettes require stronger FDA regulation, *Schmuer Says*, *AMNY*, (Oct. 15, 2017), <https://www.amny.com/news/juul-e-cigarettes-fda-regulation-1-14485385/>.

1 434. In August 2017, JLI responded to public scrutiny by publicly stating that it would
2 increase the purchase age on its website to 21+ by August 23, 2017. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

Sunday Savings

1 message

JUUL <hello@juulvapor.com>
 Reply-To: JUUL <hello@juulvapor.com>
 To:

Sun, Aug 20, 2017 at 7:48 PM

Experience the easiest way to enjoy JUUL and save 15% on each and every purchase.

JUUL

**Save 15%
Today**

SAVE NOW

Try Auto-Ship for free shipping and 15% savings
on each and every JUUL order.

**Save Money**

Enjoy 15% savings on JUULpods.

**Free Delivery**

JUULpods delivered to your door every month.

**Cancel Anytime**

No contracts. No stress.



mango



cool mint



virginia tobacco



fruit medley



creamy sweets

**5 Great
Flavors To
Choose From**
SHOP JUULPODS >

Changes to JUUL Minimum Age Policy

Starting this Wednesday 8/23/17, the minimum age to purchase products on JUULvapor.com will be 21+.
 Existing age-verified Auto-Ship subscribers will not be impacted by this change.

Need Help?

Contact JUUL Support
 Live support is available everyday, 9am-10pm PT.

JUULVAPOR



JUUL

607 Anderson St. #17

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435. Further underscoring their common purpose of growing the e-cigarette market, even if that meant selling to youth, JLI and Veratad did not require that the year of birth and last four digits of the social security number match exactly the information corresponding to a person of the minimum legal sales age in Veratad's database until August 2018.

436. [REDACTED]

437. Despite JLI's knowledge that it had been coordinating with Veratad to ensure minors could purchase JUUL products online, JLI continued to make false and fraudulent statements about the strength of its age verification system. For example, on June 5, 2018, JLI tweeted about its relationship with Veratad, claiming that "We've partnered with Veratad Technologies to complete a public records search, only reporting back whether or not you are 21 years of age or older."⁵¹⁴ In addition, on November 13, 2018, JLI and the Managements Defendants caused a post to appear on JLI's website stating that JLI was "Restricting Flavors to Adults 21+ On Our Secure Website" and that JLI's age-verification system was "an already industry-leading online sales system that is restricted to 21+ and utilizes third party verification."⁵¹⁵ A video accompanying this message stated "At JUUL labs we're committed to leading the industry in online age verification security to ensure that our products don't end up in the hands of underage users" and included an image of a computer with a chain wrapped around it and locked in place.⁵¹⁶ These statements were fraudulent because JLI and the Management Defendants were and had been coordinating with Veratad to ensure that their age verification system did not actually prevent youth from purchasing JUUL products.

⁵¹⁴ JUUL Labs, Inc. (@JUULvapor), Twitter (June 5, 2018), <https://twitter.com/juulvapor/status/1004055352692752386>.

⁵¹⁵ *JUUL Labs Action Plan* ("November 2018 Action Plan"), JUUL Labs, Inc. (Nov. 12, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (last visited Apr. 30, 2020).

⁵¹⁶ *Id.*

1 438. Not only did JLI and Veratad's efforts result in more sales to minors, it also allowed JLI
2 to build a marketing email list that included minors—a data set that would prove highly valuable to
3 Altria.

4 439. In the summer of 2017, JLI engaged a company called Tower Data to determine the
5 ages of the persons associated with email addresses on its email marketing list. According to this
6 analysis, approximately 269,000 email addresses on JLI's email marketing list were not associated
7 with a record of an individual who had "passed" JLI's age verification process.⁵¹⁷ Additionally,
8 approximately 40,000 email addresses on JLI's email marketing list were associated with records of
9 individuals who had "failed" JLI's own age verification process.⁵¹⁸ Tower Data informed JLI that 83%
10 of the approximately 420,000 email addresses on JLI's marketing list could not be matched with the
11 record of an individual at least eighteen years of age.⁵¹⁹

12 440. Despite knowing that their marketing list included minors, JLI continued to use that
13 marketing list to sell JUUL products, and then shared that list with Altria to use for its marketing
14 purposes.

15 441. JLI and the Management Defendants knew, however, that it was not enough to
16 disseminate advertisements and marketing materials that promote JLI to youth or to open online sales
17 to youth, while omitting mention of JUUL's nicotine content and manipulated potency. To truly
18 expand the nicotine market, they needed to deceive those purchasing a JUUL device and JUULpods as
19 to how much nicotine they were actually consuming. And, through Defendants Pritzker, Huh, and
20 Valani's control of JLI's Board of Directors, they did just that.

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25 ⁵¹⁷ Complaint at 121, *Commonwealth of Massachusetts v. Juul, et al.*, No. 20-00402 (Super. Ct. of
26 Mass. Feb. 12, 2020) <https://www.mass.gov/doc/juul-complaint/download>; Janice Tan, *E-cigarette*
27 *firm JUUL sued for using programmatic buying to target adolescents*, Marketing (Feb. 14, 2020),
28 [https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-](https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents)
[to-target-adolescents](https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents).

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

1 **10. JLI Engaged in a Sham “Youth Prevention” Campaign.**

2 442. By April 2017, JLI had determined that the publicity around its marketing to children
3 was a problem. [REDACTED]

4 [REDACTED]

5 [REDACTED]⁵²⁰ [REDACTED]

6 [REDACTED]⁵²¹ While ostensibly aimed at reducing youth sales, JLI’s youth prevention program
7 actually served to increase, not reduce, sales to children.

8 443. [REDACTED]

9 [REDACTED].⁵²² JLI paid schools for access to their students during school time, in summer school, and
10 during a Saturday School Program that was billed as “an alternative to ‘traditional discipline’ for
11 children caught using e-cigarettes in school.”⁵²³ JLI created the curriculum for these programs, and,
12 like the “Think Don’t Smoke” campaign by Philip Morris, which “insidiously encourage[d] kids to use
13 tobacco and become addicted Philip Morris customers[,]”⁵²⁴ JLI’s programs were shams intended to
14 encourage youth e-cigarette use, not curb it. According to testimony before Congress, during at least
15 one presentation, “[n]o parents or teachers were in the room, and JUUL’s messaging was that the
16 product was ‘totally safe.’ The presenter even demonstrated to the kids how to use a JUUL.”⁵²⁵
17 Furthermore, JLI “provided the children snacks” and “collect[ed] student information from the
18 sessions.”⁵²⁶

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24 ⁵²⁰ INREJUUL_00264878; see also INREJUUL_00265042 ([REDACTED]).

25 ⁵²¹ See, e.g., INREJUUL_00211242.

26 ⁵²² INREJUUL_00173409.

27 ⁵²³ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

28 ⁵²⁴ William V. Corr, *American Legacy Foundation Study Shows Philip Morris 'Think Don't Smoke' Youth Anti-Smoking Campaign is a Sham*, Campaign for Tobacco Free Kids (May 29, 2002),
https://www.tobaccofreekids.org/press-releases/id_0499.

⁵²⁵ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

⁵²⁶ *Id.*

444. The problems with JLI's youth prevention programs were widespread. According to outside analyses, "the JUUL Curriculum is not portraying the harmful details of their product, similar to how past tobacco industry curricula left out details of the health risks of cigarette use."⁵²⁷ Although it is well-known that teaching children to deconstruct ads is one of the most effective prevention techniques, JLI programs entirely omitted this skill, and JLI's curriculum barely mentioned JUUL products as among the potentially harmful products to avoid.⁵²⁸ As one expert pointed out, "we know, more from anecdotal research, that [teens] may consider [JUULs] to be a vaping device, but they don't call it that. So when you say to a young person, 'Vapes or e-cigarettes are harmful,' they say, 'Oh I know, but I'm using a JUUL.'"⁵²⁹

445. Internal emails confirm both that JLI employees knew about the similarities of JLI's "youth prevention program" to the earlier pretextual antismoking campaigns by the cigarette industry and that JLI management at the highest levels was personally involved in these efforts. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵³⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁵³², [REDACTED]

[REDACTED]

⁵²⁷ Victoria Albert, *Juul Prevention Program Didn't School Kids on Dangers, Expert Says: SMOKE AND MIRRORS. JUUL—which made up 68 percent of the e-cigarette market as of mid-June—seems to have taken a page from the playbook of Big Tobacco*, The Daily Beast (Oct. 19, 2018), <https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says>.

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ INREJUUL_00197608.

⁵³¹ INREJUUL_00197607.

⁵³² INREJUUL_00196624.

⁵³³ [REDACTED] The paper concluded that “the Philip Morris campaign had a counterproductive influence.”⁵³⁴

446. JLI also bought access to teenagers at programs outside of school. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁵³⁵ Similarly, [REDACTED]

[REDACTED].⁵³⁶ [REDACTED]

[REDACTED]. JLI paid nearly 70% of the cost of hiring eight teachers, eight instructional aides, and three other support personnel for the program.⁵³⁸

447. [REDACTED]

[REDACTED].⁵³⁹ [REDACTED]

[REDACTED]⁵⁴⁰ Eventually, JLI ended this version of the youth prevention program, but the damage had been done: following the playbook of the tobacco industry, JLI had hooked more kids on nicotine.

⁵³³ INREJUUL_00265202.

⁵³⁴ Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 Am. J. Public Health 901 (2002).

⁵³⁵ JLI-HOR-00002181–00002182.

⁵³⁶ INREJUUL_00194247; Invoice to JUUL Labs from The Freedom & Democracy Schools, Inc. for \$134,000, (June 21, 2018), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00003711.pdf>.

⁵³⁷ INREJUUL_0019428.

⁵³⁸ The Freedom & Democracy Schools, Inc., *Proposal to JUUL Labs for Funding the Healthy Life Adventures Summer Pilot* (June 9, 2018), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00002789_Redacted.pdf.

⁵³⁹ INREJUUL_00194646.

⁵⁴⁰ INREJUUL_00194646.

1 448. The Board was intimately involved in these “youth prevention” activities. For example,

2 [REDACTED]

3 [REDACTED]⁵⁴¹

4 **11. The FDA Warned JLI and Others That Their Conduct is Unlawful.**

5 449. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice that
6 their practices of marketing to minors needed to stop. It issued a series of warnings letters and
7 enforcement actions:
8

9 450. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the
10 popularity of its products among youth and demanding that JLI produce documents regarding its
11 marketing practices.⁵⁴²

12 451. In April 2018, the FDA conducted an undercover enforcement effort, which resulted in
13 fifty-six warning letters issued to online retailers, and six civil money complaints to retail
14 establishments, all of which were related to the illegal sale of e-cigarettes to minors.⁵⁴³ Manufacturers
15 such as JLI were also sent letters requesting documents regarding their marketing and sales methods.⁵⁴⁴
16

17 452. In May 2018, the FDA again issued more warning letters to manufacturers, distributors,
18 and retailers of e-liquids for labeling and advertising violations; these labels and advertisements
19 targeted children and resembled children’s food items such as candy or cookies.⁵⁴⁵
20

21 453. In September 2018, the FDA engaged in several other regulatory enforcement actions,
22 issuing over 1300 warning letters and civil money complaints to e-cigarette and e-liquid retailers and
23 distributors.⁵⁴⁶

24 ⁵⁴¹ JLI00151300.

25 ⁵⁴² Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid*
26 *Rouag, at JUUL Labs, Inc.*, U.S. FDA (Apr. 24, 2018),
<https://www.fda.gov/media/112339/download>.

27 ⁵⁴³ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
Products on the Market Without Premarket Authorization, U.S. FDA (Jan. 2020),
<https://www.fda.gov/media/133880/download>.

28 ⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

1 454. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette manufacturers
 2 putting them on notice that their products were being used by youth at disturbing rates.⁵⁴⁷ The FDA
 3 additionally requested manufacturers to enhance their compliance monitoring mechanisms, implement
 4 stricter age verification methods, and limit quantities and volume of e-cigarette products that could be
 5 purchased at a time.⁵⁴⁸

7 455. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than a
 8 thousand documents relating to JLI's sales and marketing practices.⁵⁴⁹ Since then, the FDA, the
 9 Federal Trade Commission, multiple state attorneys general and the U.S. House of Representatives
 10 Committee on Oversight and Reform have all commenced investigations into JLI's role in the youth e-
 11 cigarette epidemic and whether JLI's marketing practices purposefully targeted youth.

13 456. Siddharth Breja, who was senior vice president for global finance at JLI, "claims that
 14 after the F.D.A. raided Juul headquarters in October 2018, seeking internal documents, Mr. Burns
 15 instructed Mr. Breja and other executives not to put anything relating to regulatory or safety issues in
 16 writing, so that the F.D.A. could not get them in the future."⁵⁵⁰

21 ⁵⁴⁶ *Id.*

22 ⁵⁴⁷ *Letter from US FDA to Kevin Burns*, U.S. FDA (Sept. 12, 2018),
<https://www.fda.gov/media/119669/download>.

23 ⁵⁴⁸ Press Release, *FDA takes new steps to address epidemic of youth e-cigarette use, including a*
 24 *historic action against more than 1,300 retailers and 5 major manufacturers for their roles*
 25 *perpetuating youth access*, US FDA (Sept. 11, 2018), [https://www.fda.gov/news-events/press-](https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more)
[announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-](https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more)
[action-against-more](https://www.fda.gov/news-events/press-announcements/fda-takes-new-steps-address-epidemic-youth-e-cigarette-use-including-historic-action-against-more).

26 ⁵⁴⁹ Laurie McGinley, *FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of Headquarters*,
 27 *Wash. Post* (Oct. 2, 2018), [https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/)
[cigarette-documents-surprise-inspection-headquarters/](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/).

28 ⁵⁵⁰ 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-](https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html)
[contaminated.html](https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html).

1 **12. In Response to Regulatory Scrutiny, Defendants Misled the Public, Regulators,**
2 **and Congress that JLI Did Not Target Youth.**

3 457. To shield their youth-driven success from scrutiny, Altria, JLI, and the Management
4 Defendants' had a long-running strategy to feign ignorance over JLI and the Management Defendants'
5 youth marketing efforts and youth access to JLI's products. They were well aware that JLI's conduct in
6 targeting underage users was reprehensible and unlawful, and that if it became widely known that this
7 was how JLI obtained its massive market share, there would be a public outcry and calls for stricter
8 regulation or a ban on JLI's products. Given the increasing public and regulatory scrutiny of JLI's
9 market share and marketing tactics, a dis-information campaign was urgently needed to protect
10 Defendants' bottom line. For this reason, JLI, the Management Defendants, and Altria all hid JLI's
11 conduct by vociferously denying that JLI had marketed to and targeted youth and instead falsely
12 claimed that JLI engaged in youth prevention. Defendants continued to make these statements while
13 and after actively and successfully trying to market to and recruit youth non-smokers. These false
14 statements were designed to protect JLI's market share, and Altria's investment, by concealing JLI's
15 misconduct.
16

17 458. For example, after eleven senators sent a letter to JLI questioning its marketing
18 approach and kid-friendly e-cigarette flavors like Fruit Medley, Creme Brulee and Mango, JLI visited
19 Capitol Hill and told Senators that it never intended its products to appeal to kids and did not realize
20 youth were using its products, according to a staffer for Senator Richard Durbin (D-Ill.). JLI's
21 statements to Congress—which parallel similar protests of innocence by tobacco company
22 executives—were false.
23

24 459. JLI also engaged in wire fraud when it made public statements seeking to disavow the
25 notion that it had targeted and sought to addict teens:
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- 1 • “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);⁵⁵¹
- 2 • “We market our products responsibly, following strict guidelines to have material
3 directly **exclusively toward adult smokers and never to youth audiences.**” (JLI
4 Social Media Post, March 14, 2018);⁵⁵²
- 5 • “Our company’s mission is to eliminate cigarettes and **help the more than one billion
6 smokers worldwide switch to a better alternative,**” said JUUL Labs Chief Executive
7 Officer Kevin Burns. “We are already seeing success in our efforts to enable adult
8 smokers to transition away from cigarettes and believe our products have the potential
9 over the long-term to contribute meaningfully to public health in the U.S. and around
10 the world. At the same time, we are committed to deterring young people, as well as
11 adults who do not currently smoke, from using our products. **We cannot be more
12 emphatic on this point: No young person or non-nicotine user should ever try
13 JUUL.**” (JLI Press Release, April 25, 2018);⁵⁵³
- 14 • “Our objective is to provide the 38 million American adult smokers with **meaningful
15 alternatives to cigarettes while also ensuring that individuals who are not already
16 smokers, particularly young people, are not attracted to nicotine products such as
17 JUUL,**” said JUUL Labs Chief Administrative Officer Ashley Gould, who heads the
18 company’s regulatory, scientific and youth education and prevention programs. “We
19 want to be a leader in seeking solutions, and are actively engaged with, and listening
20 to, community leaders, educators and lawmakers on how best to effectively keep
young people away from JUUL.” (JLI Press Release, April 25, 2018);⁵⁵⁴
- “Of course, we understand that **parents and lawmakers are concerned about
underage use of JUUL. As are we.** We can’t restate this enough. As an independent
company that is not big tobacco, we are driven by our mission and commitment to adult
smokers.” (JLI CEO Kevin Burns Letter to JUUL Community on Reddit, July 18,
2018);⁵⁵⁵
- “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,

⁵⁵¹ 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) (emphasis added).

⁵⁵² Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stanford
Research Into the Impact of Tobacco Advertising 15 (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf (citing a
JUUL social media post from March 14, 2018) (emphasis added).

⁵⁵³ 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 (emphasis added).

⁵⁵⁴ *Id* (emphasis added).

⁵⁵⁵ *A Letter to the JUUL Community from CEO Kevin Burns*, Reddit (July 18, 2018),
https://www.reddit.com/r/juul/comments/8zvlbh/a_letter_to_the_juul_community_from_ceo_kevin/
(emphasis added).

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 how we’ve gained 70% of the market share. . . . Our ecommerce platform utilizes unique ID match and age verification technology to make sure minors are not able to access and purchase our products online.” (Statement from Matt David, JLI Chief Communications Officer, July 24, 2018);⁵⁵⁶

- “**We did not create JUUL to undermine years of effective tobacco control, and we do not want to see a new generation of smokers.** . . . We want to be part of the solution to end combustible smoking, not part of a problem to attract youth, never smokers, or former smokers to nicotine products. . . . We adhere to strict guidelines to ensure that our marketing is directed towards existing adult smokers.” (JLI’s website as of July 26, 2018);⁵⁵⁷
- “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. . . . **Our intent was never to have youth use JUUL products.**” (JLI Website, November 12, 2018);⁵⁵⁸
- “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018);⁵⁵⁹
- “Any underage consumers using this product are absolutely a negative for our business. We don’t want them. **We will never market to them. We never have.**” (James Monsees, quoted in *Forbes*, November 16, 2018);⁵⁶⁰
- “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

⁵⁵⁶ *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/> (emphasis added).

⁵⁵⁷ *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) (emphasis added).

⁵⁵⁸ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of Ken Burns, former CEO of JUUL) (emphasis added).

⁵⁵⁹ *Id.* (emphasis added).

⁵⁶⁰ Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, *Forbes* (Nov. 16, 2018 2:38 PM), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9> (emphasis added) (statement of James Monsees).

of what the challenges they're going through." (CNBC Interview of JLI CEO, July 13, 2019);⁵⁶¹

- "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);⁵⁶²
- 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 New York Times, August 27, 2019);⁵⁶³
- Adam Bowen, one of the company's co-founders, said he was aware early on of the risks e-cigarettes posed to teenagers, and the **company had tried to make JUUL "as adult-oriented as possible."** (Adam Bowen's Statement to the New York Times, August 27, 2019);⁵⁶⁴
- **"We have never marketed to youth and we never will."** (JLI Statement to Los Angeles Times, September 24, 2019);⁵⁶⁵
- "I have long believed in a future where adult smokers overwhelmingly choose alternative products like JUUL. **That has been this company's mission since it was founded,** and it has taken great strides in that direction." (JLI's CEO K.C. Crosthwaite, September 25, 2019);⁵⁶⁶
- "As scientists, product designers and engineers, we believe that vaping can have a positive impact when used by adult smokers, and can have a negative impact when used by nonsmokers. **Our goal is to maximize the positive and reduce the negative.**" (JLI Website, March 6, 2020);⁵⁶⁷ and
- **"JUUL was designed with adult smokers in mind."** (JLI Website, last visited March 29, 2020).⁵⁶⁸

⁵⁶¹ Angelica LaVito, *As JLI 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> (emphasis added).

⁵⁶² *Our Actions to Combat Underage Use*, JUUL Labs, Inc. (Aug. 29, 2019), <https://newsroom.juul.com/our-actions-to-combat-underage-use/> (JUUL statement in response to lawsuits) (emphasis added).

⁵⁶³ 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> (emphasis added).

⁵⁶⁴ *Id* (emphasis added).

⁵⁶⁵ Michael Hiltzik, *Column: Studies show how JLI 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) (emphasis added).

⁵⁶⁶ *Juul Labs Names New Leadership, Outlines Changes to Policy and Marketing Efforts*, JUUL Labs, Inc. (Sept. 25, 2019), <https://newsroom.juul.com/juul-labs-names-new-leadership-outlines-changes-to-policy-and-marketing-efforts/> (emphasis added) (statement by K.C. Crosthwaite).

⁵⁶⁷ *Our Mission*, JUUL LABS, INC. (2019), <https://www.juul.com/mission-values> (last visited Apr. 4, 2020) (emphasis added).

⁵⁶⁸ JUUL Labs, Inc., <https://www.juul.com/> (last visited Mar. 29, 2020) (emphasis added).

460. As the JLI Board of Directors had “final say” over all of JLI’s marketing efforts, these statements regarding JLI’s marketing efforts can be imputed to the Management Defendants, who were therefore directly responsible for the messaging over the marketing of JUUL products.

461. Altria also engaged in wire fraud when it made public statements seeking to disavow the notion that JLI had targeted and sought to addict teens:

- “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).⁵⁶⁹

462. However, JLI, the Management Defendants, and Altria realized that attempting to shift public opinion through fraudulent statements was not enough to achieve their goal of staving off regulation. To accomplish this goal, they would also need to deceive the FDA and Congress. And so they set out to do just that through statements and testimony by JLI representatives. These include, but are not limited to, the following:

Statements by JLI to the FDA:

- “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).⁵⁷⁰
- “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).⁵⁷¹

Statements by Altria to the FDA:

- “[W]e do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.” (Letter from Altria CEO to FDA Commissioner Scott Gottlieb, October 25, 2018).⁵⁷²

⁵⁶⁹ Altria Group, Inc., *Altria Makes \$12.8 Billion Minority Investment to Accelerate Harm Reduction and Drive Growth* (“Altria Minority Investment”) (Form 8-K), Ex. 99.1 (Dec. 20, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex991.htm> (emphasis added).

⁵⁷⁰ Letter from JUUL’s Counsel at Sidley Austin to Dr. Matthew Holman, FDA at 2 (June 15, 2018) (emphasis added).

⁵⁷¹ *Id.* at 3 (emphasis added).

⁵⁷² Letter from Altria CEO Howard Willard to Dr. Scott Gottlieb, FDA at 2 (Oct. 25, 2018) (emphasis added).

- “We believe e-vapor products present an important opportunity to **adult smokers to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb, 10/25/18)⁵⁷³

Statements by JLI to Congress:

- “**We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use JLI products.** . . . That is a serious problem. Our company has no higher priority than combatting underage use.” (Testimony of James Monsees, July 25, 2019).⁵⁷⁴
- “Our product is **intended to help smokers stop smoking combustible cigarettes.**” (Ashley Gould, JLI Chief Administrative Officer, Testimony before House Committee on Oversight and Reform, July 25, 2019).⁵⁷⁵

Statements by Altria to Congress:

- “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).⁵⁷⁶

463. Each of the foregoing statements constitutes an act of wire fraud. JLI, Monsees, and Altria made these statements, knowing they would be transmitted via wire, with the intent to deceive the public, the FDA, and Congress as to Defendants’ true intentions of hooking underage users.

464. Their disinformation scheme was successful. While certain groups such as the American Medical Association were calling for a “sweeping ban on vaping products,”⁵⁷⁷ no such ban

⁵⁷³ *Id.* At 1 (emphasis added).

⁵⁷⁴ *Examining JUUL’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 1 (2019), <https://docs.house.gov/meetings/GO/GO05/20190725/109846/HHRG-116-GO05-Wstate-MonseesJ-20190725.pdf> (emphasis added) (statement of James Monsees, Co-Founder, JUUL Labs, Inc.).

⁵⁷⁵ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019) (statement of Ashley Gould, Chief Administrative Officer, JUUL Labs, Inc.), <https://www.c-span.org/video/?462992-1/hearing-cigarettes-teen-usage-day-2&start=6431> at 01:53:25 (emphasis added).

⁵⁷⁶ Letter from Howard A. Willard III, Altria to Senator Richard J. Durbin, 6 (October 14, 2019) (emphasis added).

⁵⁷⁷ Karen Zraick, A.M.A. Urges Ban on Vaping Products as JLI is Sued by More States, N.Y. TIMES (Nov. 19, 2019), <https://www.nytimes.com/2019/11/19/health/juul-lawsuit-ny-california.html>.

has been implemented to date. Accordingly, JLI's highly addictive products remain on the market and available to underage users.

F. Altria Provided Services to JLI to Expand JUUL Sales and Maintain JUUL's Position as the Dominant E-Cigarette.

1. Before Altria's Investment in JLI, Altria and JLI Exchanged Market Information Pertaining to Key Decisions.

465. [REDACTED], JLI and Avail Vapor ("Avail"), a chain of more than 100 high-end vape stores,⁵⁷⁸ [REDACTED].⁵⁷⁹

466. On November 2, 2017, Altria announced that it had acquired a minority interest in Avail.⁵⁸⁰ 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.⁵⁸¹

467. On November 21, 2017—three weeks after Altria announced its investment in Avail—JLI and Avail entered into a distribution agreement, which has been renewed twice—once in November 19, 2018 and again on January 8, 2019.⁵⁸²

468. Through its investment in Avail, Altria had access to sales data for JUUL products long before the companies exchanged diligence in connection with Altria's investment in JLI. Although JLI

⁵⁷⁸ *About Us*, Avail Vapor, <https://www.availvapor.com/about-us> (last visited Apr. 4, 2020).

⁵⁷⁹ INREJUUL_00066273.

⁵⁸⁰ Rich Duprey, *Is Altria Trying to Corner the E-Cig Market?*, THE 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>.

⁵⁸¹ Remarks by Marty Barrington, Altria Group, Inc.'s (Altria) Chairman, CEO and President, and other members of ALTRIA's senior management team, 2017 Consumer Analyst Group of New York (CAGNY) Conference (2017), <http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-06673f29b6b0&iid=4087349>.

⁵⁸² *Examining Juul's Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 28 (2019) (Responses of JUUL Labs, Inc. to Questions for the Record).

1 represented to Congress that “[JLI’s] data [from Avail] was not available to Altria,”⁵⁸³ statements in
 2 Altria’s October 2019 letter to Congress suggest otherwise.

3 469. In that letter, Altria admitted that it possessed JUUL sales data that corresponds to the
 4 very same time period in which JLI began selling its products at Avail stores, starting in late 2017.⁵⁸⁴
 5 That sales data showed that JLI was dominating the e-cigarette market during this time period.⁵⁸⁵ By
 6 November 2017, JLI had sold one million units of its blockbuster product, boasting 621% growth in
 7 year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.⁵⁸⁶ Sales of Altria’s own e-
 8 cigarettes, on the other hand, trailed behind both the JUUL and British American Tobacco’s Vuse.
 9 Altria sought to grow JLI’s market dominance and young customer base. JLI, in the regulatory
 10 crosshairs, needed Altria’s experience and its influence in Washington.

11 470. Altria recognized that JLI had, against the backdrop of steadily declining cigarette sales,
 12 created the right product to addict a new generation to nicotine. JLI faced existential threats, however,
 13 from regulatory and congressional scrutiny, and public outrage over the growing youth e-cigarette
 14 epidemic.

15 471. JLI, Altria, and the Management Defendants thus began to coordinate their activities in
 16 2017 through Avail Vapor. This back-channel, and the information it provided Altria, allowed Altria to
 17 take actions to benefit itself, JLI, and the Management Defendants without drawing the scrutiny of the
 18 public and regulators that they knew would inevitably follow a formal announcement of a partnership
 19 between JLI and Altria.
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25 ⁵⁸³ *Id.*

26 ⁵⁸⁴ Letter from Howard A. Willard III, Altria to Senator Richard J. Durbin, 6 (October 14, 2019)
 (emphasis added).

27 ⁵⁸⁵ *Id.*

28 ⁵⁸⁶ 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>.

2. **JLI, the Management Defendants and Altria Coordinated to Market JUUL in Highly-Visible Retail Locations.**

472. JLI, the Management Defendants, and Altria's coordination continued in other ways throughout 2018 as they prepared for Altria's equity investment in JLI.

473. A key aspect of this early coordination was Altria's acquisition of shelf-space that it would later provide to JLI to sustain the exponential growth of underage users of JUUL products. By acquiring shelf space, Altria took steps to ensure that JUUL products would be placed in premium shelf space next to Marlboro brand cigarettes, the best-selling cigarette overall and by far the most popular brand among youth.⁵⁸⁷

474. Altria's investment was not for its own e-cigarette products. Altria spent approximately \$100 million in 2018 to secure shelf-space at retailers for e-cigarette products—purportedly for the MarkTen e-cigarette that Altria stopped manufacturing in 2018, and its pod-based MarkTen Elite, which it launched on a small scale in only 25,000 stores.⁵⁸⁸ By comparison, the 2014 launch of the original MarkTen resulted in product placement in 60,000 stores in the first month in the western United States alone.⁵⁸⁹ Yet Altria's payments for shelf space were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.”⁵⁹⁰

475. In reality, Altria spent approximately \$100 million on shelf-space in furtherance of expanding the e-cigarette market, including JLI's massive, ill-gotten market share. It has since been

⁵⁸⁷ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General*, Centers for Disease Control & Prevention 161, 164 (2012), <https://www.ncbi.nlm.nih.gov/books/NBK99237/>.

⁵⁸⁸ 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>.

⁵⁸⁹ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, CONVENIENCE STORE NEWS (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

⁵⁹⁰ Jennifer Maloney & John McKinnon, *Altria-JLI 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>.

1 reported that Altria “pulled its e-cigarettes off the market” not out of concern for the epidemic of youth
 2 nicotine addiction JUUL created, but because a non-compete was a “part of its deal with J[LI].”⁵⁹¹

3 476. When Altria later announced its \$12.8 billion investment in JLI, part of the agreement
 4 between the two companies was that Altria would provide JLI with this premium shelf space.⁵⁹²

5 477. Altria’s purchase of shelf space in 2018 and its subsequent provision of that space to
 6 JLI shows how Altria, JLI, and the Management Defendants were coordinating even before Altria
 7 announced its investment in JLI. Altria’s actions ensured that, even after public and regulatory scrutiny
 8 forced JLI to stop its youth-oriented advertising, JUUL products would still be placed where kids are
 9 most likely to see them—next to Marlboros, the most iconic, popular brand of cigarettes among
 10 underage users—in a location they are most likely to buy them—retail establishments.⁵⁹³

11
 12
 13 **3. Altria Contributes to the Success of JLI’s and the Management Defendants’
 Scheme Through a Range of Coordinated Activities.**

14 478. While JLI and Altria remain separate corporate entities in name, following its equity
 15 investment in JLI, Altria and JLI forged even greater significant, systemic links, *i.e.*, shared leadership,
 16 contractual relationships, financial ties, and continuing coordination of activities.

17 479. In 2019, two key Altria executives became JLI’s CEO and head of regulatory affairs,
 18 respectively.

19 480. K.C. Crosthwaite, who was president of Altria Client Services when the company
 20 carried out a study that would later be used by Altria to shield JUUL’s Mint pods from federal
 21 regulation, is now JLI’s CEO. Before joining JLI, Crosthwaite was Altria’s chief growth officer.
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27 ⁵⁹¹ *Id.*

28 ⁵⁹² *Id.*

⁵⁹³ 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>.

1 481. Joe Murillo, who launched the MarkTen line at Altria and more recently headed
 2 regulatory affairs for Altria, is now JLI's chief regulatory officer.⁵⁹⁴ A 24-year career Altria executive,
 3 Murillo previously ran Altria's e-cigarette business, Nu Mark, "before Altria pulled its e-cigarettes off
 4 the market as part of its deal with J[UUL]."⁵⁹⁵

5 482. In addition to its effective takeover of JUUL, Altria provides services to JLI in
 6 furtherance of their common goal of expanding the number of nicotine-addicted e-cigarette users, in
 7 the areas of "direct marketing; sales, distribution and fixture services; and regulatory affairs."⁵⁹⁶ These
 8 services include, among other things:
 9

10 "Piloting a distribution program to provide long haul freight, warehouse storage and last
 11 mile freight services;"

12 "Making available [Altria's] previously contracted shelf space with certain retailers,"
 13 thus allowing JUUL products to receive prominent placement alongside a top-rated
 14 brand of combustible cigarettes, Marlboro, favored by youth;

15 "Executing direct mail and email campaigns and related activities. . . .";

16 "Leveraging Altria's field sales force to . . . provide services such as limited initiative
 17 selling, hanging signs, light product merchandising, and surveys of a subset of the retail
 18 stores that Altria calls upon;" and

19 "Providing regulatory affairs consulting and related services to [JUUL] as it prepares its
 20 PMTA application."⁵⁹⁷

21 483. Altria also worked with JLI to cross-market JUUL and Marlboro cigarettes. For
 22 example, Altria offered coupons for JUUL starter kits inside packs of Marlboro cigarettes.⁵⁹⁸
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25 ⁵⁹⁴ Jennifer Maloney, *JLI Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019),
 26 <https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306>.

27 ⁵⁹⁵ *Id.*

28 ⁵⁹⁶ Letter from Howard Willard III, Altria Senator Durbin, et. al., at 11 (Oct. 14, 2019).

⁵⁹⁷ *Id.* at 13.

⁵⁹⁸ *Points for us!*, Reddit (Sept. 16, 2019), (depicting an image of a Marlboro carton with a JUUL starter kit coupon inside).



484. Altria’s investment in JLI was not only a financial contribution; rather, it was an important aspect of JLI, Altria, and the Management Defendants’ plan to continue growing the user base, stave off regulation, and keep JLI’s most potent and popular products on the market and available to kids and the public at large. Altria is and was working to actively help expand sales of JLI’s products. Altria’s investment brings legal and regulatory benefits to JLI, by helping with patent infringement battles and consumer health claims and helping to navigate the regulatory waters and FDA pressure.

485. Altria also brings lobbying muscle to the table, which has played an important role in JLI, Altria, and the Management Defendants’ scheme of staving off regulation by preventing new federal or state legislation targeting JUUL or the e-cigarette category more broadly. Altria “has a potent lobbying network in Washington [D.C.] and around the country.”⁵⁹⁹ Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and JLI begins.”⁶⁰⁰ While an Altria spokesman has denied that there was any contractual services agreement for lobbying between JLI and Altria, he

⁵⁹⁹ Shelia Kaplan, *In Washington, JLI 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-states-ecigarettes.html>.

⁶⁰⁰ *Id.*

1 admitted that he did not know what informal advice and conversations Altria has had with JLI about
 2 lobbying efforts. Since JLI, the Management Defendants, and Altria joined forces, JLI's spending on
 3 lobbying has risen significantly. JLI spent \$4.28 million on lobbying in 2019, compared to \$1.64
 4 million in 2018.⁶⁰¹

5
 6 486. In addition, Altria's arrangement with JLI greatly expands JLI's retail footprint. While
 7 JUUL products have typically been sold in 90,000 U.S. retail outlets, Altria reaches 230,000 U.S.
 8 outlets. Altria also brings its logistics and distribution experience (although, after increasing public
 9 scrutiny, Altria announced on January 30, 2020 that it would limit its support to regulatory efforts
 10 beginning in March 2020⁶⁰²). And importantly, as noted above, Altria gives JLI access to shelf space
 11 that it had obtained under fraudulent pretenses. This is not just any shelf space; it is space near Altria's
 12 blockbuster Marlboro cigarettes, and other premium products and retail displays. The arrangement
 13 allows JLI's tobacco and menthol-based products to receive prominent placement alongside a top-rated
 14 brand of combustible cigarettes.
 15

16 487. Altria decided to make a significant investment in JLI to further its efforts to maintain
 17 and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing
 18 customer base, which ultimately benefits Altria by ensuring a new generation of customers for its
 19 products. In fact, when announcing its investment, Altria explained that its investment in JLI
 20 "enhances future growth prospects" and committed to applying "its logistics and distribution
 21 experience to help JLI expand its reach and efficiency."⁶⁰³ Altria has helped JLI maintain and expand
 22 its market share—a market share that, based on Altria's own October 25, 2018 letter to the FDA, it
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24 ⁶⁰¹ *Client Profile: JUUL Labs*, Center for Responsive Politics, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920> (last visited Apr. 4, 2020).

25 ⁶⁰² Nathan Bomey, *Marlboro maker Altria distances itself from vaping giant JLI amid legal scrutiny*,
 26 USA Today (Jan. 31, 2020), <https://www.usatoday.com/story/money/2020/01/31/juul-altria-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/>.

27 ⁶⁰³ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BusinessWire (Dec. 20, 2018),
 28 <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

believes was gained by employing marketing and advertising practices that contributed to youth e-cigarette use.

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

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

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

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

1. Defendants' Scheme Caused Youth to be Misled into Believing that JUUL was Safe and Healthy.

491. In 2016, the National Institute on Drug Abuse issued findings regarding "Teens and Cigarettes," reporting that 66% of teens believed that e-cigarettes contained only flavoring, rather than nicotine.⁶⁰⁴

492. Two years later, despite the ongoing efforts of public health advocates, a 2018 study of JUUL users between the ages of fifteen and twenty-four revealed that 63% remained unaware that JUUL products contain nicotine.⁶⁰⁵ Further, the study found that respondents using e-cigarettes were less likely to report that e-cigarettes were harmful to their health, that people can get addicted to e-cigarettes, or that smoke from others' e-cigarettes was harmful.⁶⁰⁶

⁶⁰⁴ *Teens and E-cigarettes*, Nat'l Inst. on Drug Abuse, <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/teens-e-cigarettes> (last visited May 5, 2020).

⁶⁰⁵ Jeffrey G. Willett et al. *Recognition, Use and Perceptions of Juul Among Youth and Young Adults*, 28 TOBACCO CONTROL 054273 (2019).

⁶⁰⁶ *Id.*

493. Similarly, in 2018, a literature review of seventy-two articles published in the *International Journal of Environmental Research and Public Health* found that e-cigarettes were perceived by adults and youth as being healthier, safer, less addictive, safer for one's social environment, and safer to use during pregnancy than combustible cigarettes.⁶⁰⁷ Further, researchers found that specific flavors (including dessert and fruit flavors) were perceived to be less harmful than tobacco flavors among adult and youth e-cigarette users.⁶⁰⁸ In addition, researchers found that youth e-cigarette users perceived e-cigarettes as safe to use and fashionable.⁶⁰⁹

494. In 2019, a study published in *Pediatrics* found that 40% of participants reported using nicotine-free e-cigarette products, when in fact the products they were using contained significant levels of nicotine.⁶¹⁰

495. In 2019, a study published in the *British Medical Journal Open* systematically reviewed all peer-reviewed scientific literature published on e-cigarette perceptions through March 2018 which included fifty-one articles.⁶¹¹ Researchers found consistent evidence showing that flavors attract both youth and young adults to use e-cigarettes.⁶¹² In addition, among this same group, fruit and dessert flavors decrease the perception that e-cigarettes are harmful, while increasing the willingness to try e-cigarettes.⁶¹³

⁶⁰⁷ *Id.*

⁶⁰⁸ Kim A. G. J. Romijnders et al., *Perceptions and Reasons Regarding E-Cigarette Use Among Users and Non-Users: A Narrative Literature Review*, 15 INT'L J. OF ENVTL. RESEARCH & PUBLIC HEALTH 1190 (2018), <https://doi.org/10.3390/ijerph15061190>.

⁶⁰⁹ *Id.*

⁶¹⁰ Rachel Boykan et al., *Self-Reported Use of Tobacco, E-Cigarettes, and Marijuana versus Urinary Biomarkers*, 143 PEDIATRICS (2019), <https://doi.org/10.1542/peds.2018-3531>.

⁶¹¹ Clare Meernik, et al, *Impact of Non-Menthol Flavours in E-Cigarettes on Perceptions and Use: An Updated Systematic Review*, *BMJ Open*, 9:e031598 (2019), <https://bmjopen.bmj.com/content/9/10/e031598>.

⁶¹² *Id.*

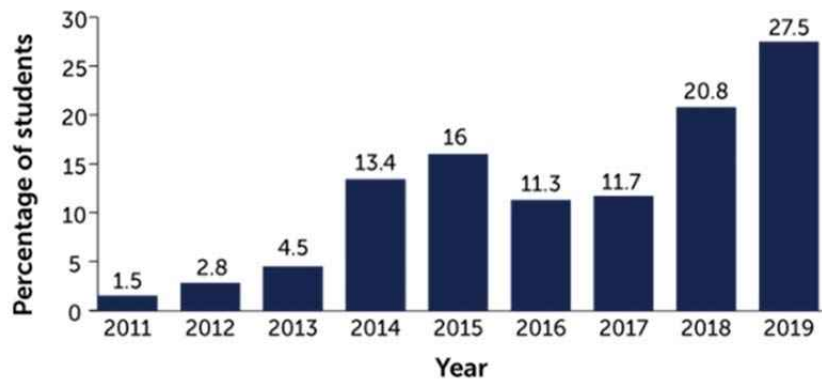
⁶¹³ *Id.*

2. Use of JUUL by Minors Has Skyrocketed.

496. 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.”⁶¹⁴

497. The percentage of 12th grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%.⁶¹⁵ This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”

498. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly,⁶¹⁶ and one in five 12th graders reported used an e-cigarette containing nicotine in the last 30 days.⁶¹⁷ As of late 2019, 5 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.⁶¹⁸



⁶¹⁴ *National Adolescent Drug Trends in 2018*, Univ. of Mich. Inst. for Social Research (Dec. 17, 2018), <http://monitoringthefuture.org/pressreleases/18drugpr.pdf>.

⁶¹⁵ News Release, *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>.

⁶¹⁶ 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>.

⁶¹⁷ *Id.*

⁶¹⁸ National Youth Tobacco Survey, U.S. FDA (2019); Karen Cullen et al., *e-Cigarette Use Among Youth in the United States*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

1 499. The Secretary of the U.S. Department of Health and Human Services declared that
 2 “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette
 3 use [is rising].”⁶¹⁹ Then FDA Commissioner Dr. Gottlieb described the increase in e-cigarette
 4 consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for an “epidemic”
 5 of nicotine use among teenagers.⁶²⁰ The rapid—indeed infectious—adoption of e-cigarettes “reverse[s]
 6 years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.”⁶²¹ CDC
 7 Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the
 8 past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk
 9 for nicotine addiction.”⁶²² Then-Commissioner Gottlieb identified the two primary forces driving the
 10 epidemic as “youth appeal and youth access to flavored tobacco products.”⁶²³

11
 12 500. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome
 13 Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a
 14 lifetime of nicotine addiction and associated health risks.”⁶²⁴ The Surgeon General’s 2018 Advisory
 15 states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular
 16 concern for young people, because it could make it easier for them to initiate the use of
 17
 18
 19

20 ⁶¹⁹ 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*
 22 *of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9,
 2019), [https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-](https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit)
 23 [unhealthy-habit](https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit).

24 ⁶²⁰ News Release, *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of*
 25 *E-Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply*
 26 *Rising Use Among Kids*, U.S. FDA (Sept. 18, 2018), [https://www.fda.gov/NewsEvents/Newsroom/](https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm)
 27 [PressAnnouncements/ucm620788.htm](https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm).

28 ⁶²¹ *Id.*

⁶²² 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>.

⁶²³ *Id.*

⁶²⁴ Jerome Adams, *Surgeon General’s Advisory on E-cigarette Use Among Youth* at 1, CDC (Dec.
 2018), [https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf)
 use-among-youth-2018.pdf.

1 nicotine . . . and also could make it easier to progress to regular e-cigarette use and nicotine
2 dependence.”⁶²⁵

3 501. Kids are consuming so much nicotine that they are experiencing symptoms of nicotine
4 toxicity, including headaches, nausea, sweating, and dizziness, and they have even coined a term for it:
5 “nic sick.” As one high school student explained to *CBS News*, it “kinda seems like a really bad flu,
6 like, just out of nowhere. Your face goes pale, you start throwing up and stuff, and you just feel
7 horrible.”⁶²⁶

8
9 502. The JUUL youth addiction epidemic spread rapidly across high schools in the United
10 States. JUUL surged in popularity, largely through social media networks, and created patterns of
11 youth usage, illegal youth transactions, and addiction, that are consistent with this account from Reddit
12 in 2017:

13
14 Between classes the big bathroom in my school averages 20-25 kids, and 5-10 JUULs.
15 Kids usually will give you a dollar for a JUUL rip if you don’t know them, if you want
16 to buy a pod for 5\$ you just head into the bathroom after lunch. We call the kids in there
17 between every class begging for rips ‘JUUL fiends.’ Pod boys are the freshman that say
18 ‘can I put my pod in ur juul?’ and are in there every block. I myself spent about 180\$ on
19 mango pods and bought out a store, and sold these pods for 10\$ a pod, making myself
20 an absolutely massive profit in literally 9 days. Given because I’m 18 with a car and
21 that’s the tobacco age around here, I always get offers to get pod runs or juuls for kids.
22 people even understand the best system to get a head rush in your 2 minutes between
23 classes, is all the juuls at once. So someone yells “GIVE ME ALL THE JUULS” and 3-
24 7 are passed around, two hits each. This saves us all juice, and gives you a massive head
25 rush. Kids also scratch logos and words onto their juuls to make i[t] their own, every
26 day you can find the pod covers in my student parking lot. I know this sounds
27 exaggerated, but with a school with 1400 kids near the city and JUULs being perceived
28 as popular, it’s truly fascinating what can happen.”⁶²⁷

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

26 ⁶²⁵ *Id.* a 2.

27 ⁶²⁶ *High school students say about 20% of their peers are vaping, some as young as 8th grade*, CBS
28 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/>.

⁶²⁷ *What’s Juul in School*, https://www.reddit.com/r/juul/comments/61is7i/whats_juul_in_school/ (last visited Apr. 4, 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.”⁶²⁸
- b. “Same thing at my school. JUUL fiend is a term too.”⁶²⁹
- c. “Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are.”⁶³⁰
- 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.”⁶³¹
- e. “[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now.”⁶³²
- 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?’”⁶³³
- g. “It’s the same at my school and just about every other school in Colorado.”⁶³⁴
- h. “2 months into this school year, my high school made a newspaper article about the ‘JUUL epidemic.’”⁶³⁵
- 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.”⁶³⁶
- 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, etc. It’s actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping.”⁶³⁷

⁶²⁸ *Id.*

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ *Id.*

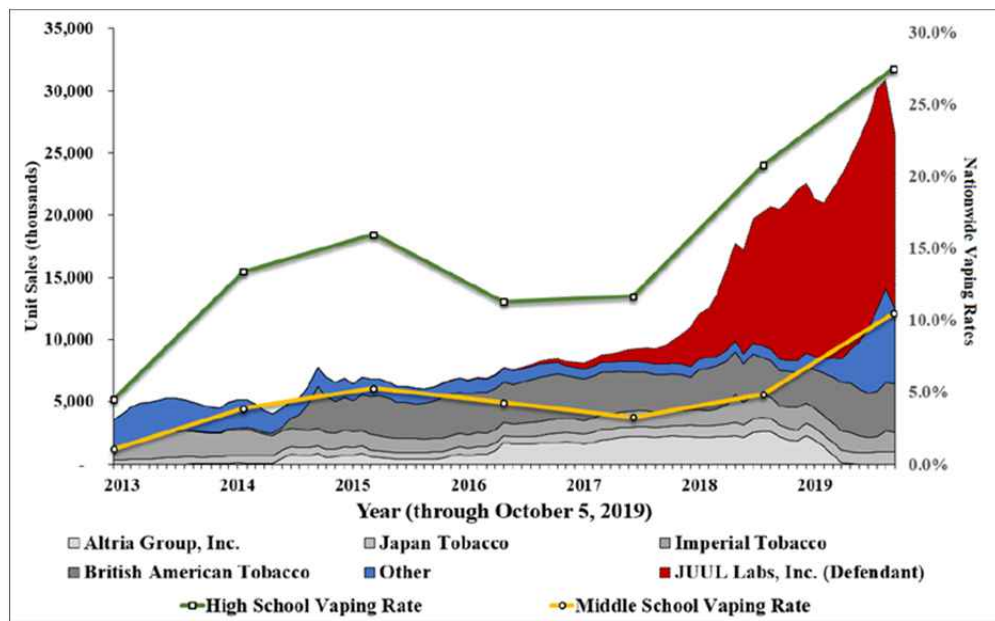
⁶³⁵ *Id.* (citing *Juuls Now Rule the School as Students Frenzy Over E-cig* (Oct. 5, 2016), <https://imgur.com/a/BKewp>).

⁶³⁶ *Id.*

⁶³⁷ *Id.*

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.”⁶³⁸

503. The following graph illustrates JLI’s responsibility for the nationwide youth e-cigarette epidemic. While the rest of the e-cigarette industry stagnated from 2017 through 2018, JLI experienced meteoric growth. Through that same timeframe, youth e-cigarette rates nearly doubled from more than 11% in 2017 to more than 20% in 2018. Through October 5, 2019 (the last date for which data was available), rates of youth e-cigarette use continued to increase, tracking the growth of JUUL.



639

504. The unique features of the JUUL e-cigarette—high nicotine delivery, low harshness, and easy-to-conceal design—have caused patterns of addiction with no historical precedent. It is not

⁶³⁸ *Id.* (emphasis added).

⁶³⁹ The area graph depicts e-cigarette unit sale volumes in retail outlets tracked by Nielsen by manufacturer and month from 2013 through October 5, 2019; the line graph depicts national high school and middle school e-cigarette past-30-day usage rates as percentages from 2013 through 2019, with each data point representing a year. See Nielsen: Tobacco All Channel Data; National Youth Tobacco Survey (2019); see also Complaint at 2 (Figure 1), *Commonwealth of Penn. v. Juul Labs, Inc.*, (Ct. Common Pleas, Feb. 10, 2020).

1 uncommon for fifteen-year-old students, even those who live at home with their parents, to consume
2 two or more JUUL pods a day.

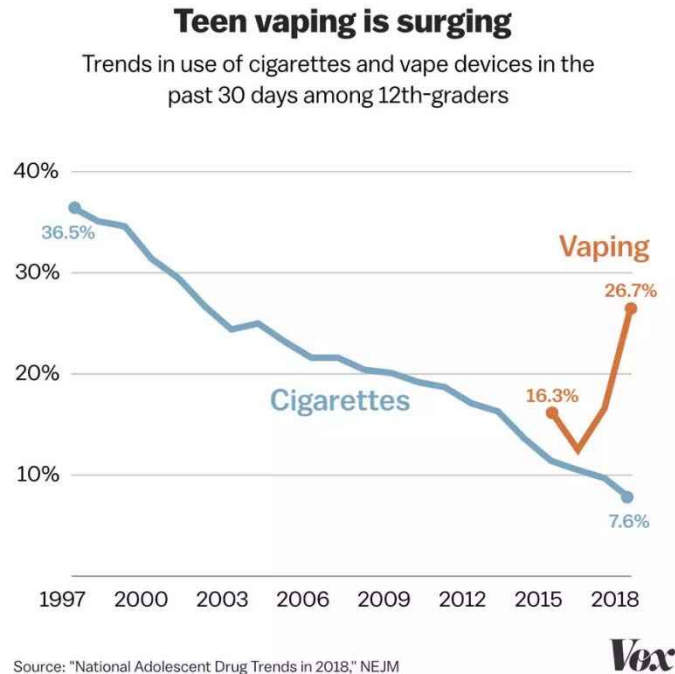
3 505. The downwards trend in youth smoking that public health departments and school anti-
4 tobacco programs worked so hard to create has completely reversed. In 2018, more than one in four
5 high school students in the United States reported using a tobacco product in the past thirty days, a
6 dramatic increase from just one year before.⁶⁴⁰ But there was no increase in the use of cigarettes,
7 cigars, or hookahs during that same time period.⁶⁴¹ There was only increased use in a single tobacco
8 product: e-cigarettes. While use of all other tobacco products continued to decrease as it had been for
9 decades, e-cigarette use increased 78% in just one year.⁶⁴² This drastic reversal caused the CDC to
10 describe youth e-cigarette use as an “epidemic.”⁶⁴³
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23 ⁶⁴⁰*Progress Erased: Youth Tobacco Use Increased During 2017-2018*, CDC (Feb. 11, 2019),
24 <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

24 ⁶⁴¹*Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, CDC (Feb. 2019),
25 <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

25 ⁶⁴² Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to
26 protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes,
27 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>.

27 ⁶⁴³ Jerome Adams, *Surgeon General’s Advisory on E-cigarette Use Among Youth*, CDC (Dec. 2018),
28 <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.



H. JLI Thrived Due to Extensive Efforts to Delay Meaningful Regulation of its Products.

1. E-Cigarette Manufacturers Successfully Blocked the Types of Regulations that Reduced Cigarette Sales, Creating the Perfect Opportunity for JLI.

506. One of the main reasons e-cigarettes like JUUL were so appealing from an investment and business development perspective is that, unlike combustible cigarettes, e-cigarettes were relatively unregulated. This regulatory void was not an accident; the cigarette industry, and then the e-cigarette industry, spent significant resources blocking, frustrating, and delaying government action. A 1996 article in the *Yale Law & Policy Review* detailed how cigarette companies vehemently opposed the FDA mid-1990s rules on tobacco products, using lawsuits, notice-and-comment, and arguments related to the FDA's jurisdiction to delay or undo any regulatory efforts.⁶⁴⁴

507. In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act ("TCA"). The TCA amended the Federal Food, Drug, and Cosmetic Act to allow the FDA to regulate tobacco products.

⁶⁴⁴ Melvin Davis, *Developments in Policy: The FDA's Tobacco Regulations* 15 *Yale L. & Policy Rev.* 399 (1996).

1 508. Although the TCA granted the FDA immediate authority to regulate combustible
2 cigarettes, it did not give the FDA explicit authority over all types of tobacco products—including
3 those that had not yet been invented or were not yet popular. To “deem” a product for regulation, the
4 FDA must issue a “deeming rule” that specifically designates a tobacco product, such as e-cigarettes,
5 as falling within the purview of the FDA’s authority under the TCA.
6

7 509. The TCA also mandated that all “new” tobacco products (*i.e.*, any product not on the
8 market as of February 15, 2007) undergo a premarket authorization process before they could be sold
9 in the United States.

10 510. Four years later, on April 25, 2014, the FDA finally issued a proposed rule deeming e-
11 cigarettes for regulation under the Tobacco Act (“2014 Proposed Rule”).
12

13 511. Once issued, the e-cigarette industry, together with its newfound allies, parent
14 companies, and investors—the cigarette industry and pro-e-cigarette lobbyists—set to work to dilute
15 the rule’s effectiveness. For example, in comments to the 2014 Proposed Rule, companies such as
16 Johnson Creek Enterprises (one of the first e-liquid manufacturers) stated that the “FDA [] blatantly
17 ignored evidence that our products improve people’s lives.”⁶⁴⁵

18 512. The *New York Times* reported that Altria was leading the effort to dilute, diminish, or
19 remove e-cigarette regulations. Notwithstanding Altria’s professed concern about flavors attracting
20 youth customers, Altria submitted comments in August 2014 in response to the proposed rule opposing
21 the regulation of flavors. Altria asserted that restrictions could result in more illicit sales, and that
22 adults also liked fruity and sweet e-cigarette flavors.⁶⁴⁶
23
24

25 ⁶⁴⁵ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*, N.Y.
26 Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

27 ⁶⁴⁶ Altria Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco Products to be
28 Subject to the Federal Food, Drug, and Cosmetic Act 47-48 (Aug. 8, 2014), <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/ALCS-NuMark-Comments-FDA-2014-N-0189.pdf>.

1 513. In 2015, Altria lobbied Capitol Hill with its own draft legislation to eliminate the new
 2 requirement that most e-cigarettes already on sale in the United States be evaluated retroactively to
 3 determine if they are “appropriate for the protection of public health.” In effect, Altria lobbied to
 4 “grandfather” all existing e-cigarette brands, including JUUL, into a lax regulatory regime. That
 5 proposed legislation was endorsed by R.J. Reynolds. Altria delivered its proposal, entitled *F.D.A.*
 6 *Deeming Clarification Act of 2015*, to Representative Tom Cole of Oklahoma, who introduced the bill
 7 two weeks later using Altria’s draft verbatim.⁶⁴⁷ Seventy other representatives signed on to Altria’s
 8 legislation.⁶⁴⁸

10 514. The e-cigarette industry, along with the intertwined cigarette industry, was able to
 11 leverage support among Members of Congress such as Representative Cole and Representative
 12 Sanford Bishop of Georgia, who advocated for cigarette industry interests and opposed retroactive
 13 evaluation of e-cigarette products. Both Cole and Bishop echoed a common cigarette and e-cigarette
 14 industry refrain, that any regulations proposed by the FDA would bankrupt small businesses, even
 15 though the overwhelming majority of e-cigarettes were manufactured and distributed by large cigarette
 16 companies.

18 515. Representatives Cole and Bishop received some of the largest cigarette industry
 19 contributions of any member of the U.S. House of Representatives, with Representative Bishop
 20 receiving \$13,000 from Altria, and Representative Cole \$10,000 from Altria in the 2015-2016 cycle.⁶⁴⁹

22 516. By thwarting and delaying regulation, or by ensuring what regulation did pass was laced
 23 with industry-friendly components, the e-cigarette industry, including Defendants, hobbled the FDA—
 24 and by extension—Congress’s efforts to regulate e-cigarettes. Simultaneously, the e-cigarette industry

26 ⁶⁴⁷ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*, N.Y.
 27 Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

28 ⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*; *Rep. Tom Cole - Oklahoma District 04, Contributors 2015-16*, OpenSecrets (2017),
<https://www.opensecrets.org/members-of-congress/contributors?cid=N00025726&cycle=2016>.

1 continued to market their products to youth, and it coordinated to sow doubt and confusion about the
2 addictiveness and health impacts of e-cigarettes.

3 517. Even after the FDA issued its final deeming rule in 2016, e-cigarette industry lobbying
4 continued to pay dividends to companies like JLI. In 2017, when Dr. Scott Gottlieb took over as the
5 FDA Commissioner, one of his first major acts was to grant e-cigarette companies a four-year
6 extension to comply with the deeming rule, even as data indicated sharp increases in teen e-cigarette
7 use.⁶⁵⁰ Gottlieb had previously served on the board of Kure, a chain of e-cigarette lounges in the
8 United States, though he fully divested before taking the helm at the FDA.⁶⁵¹

9 518. The four-year extension was celebrated by e-cigarette lobbyists. Greg Conley, president
10 of the American Vaping Association (“AVA”), stated that but for the extension, “over 99 percent of
11 vaper products available on the market today would be banned next year.”⁶⁵² Despite the minimal
12 research publicly available on the health effect of e-cigarettes, Ray Story, who had since become
13 commissioner of the Tobacco Vapor Electronic Cigarette Association, lauded the decision:
14 “Absolutely, it’s a good thing . . . [w]hen you look at harm reduction, it’s a no brainer.”⁶⁵³

15
16
17 **2. JLI, the Management Defendants, and Altria Defendants Successfully Shielded the**
18 **Popular Mint Flavor from Regulation.**

19 519. JLI, the Management Defendants, and Altria Defendants had a two-fold plan for staving
20 off regulation: (1) ensure the FDA allowed certain flavors, namely mint, to remain on the market; and
21 (2) stave off a total prohibition on JUUL that was being contemplated in light of JLI’s role in the youth
22

23
24 ⁶⁵⁰ Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal Inaction*,
N.Y. Times (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html>.

25 ⁶⁵¹ Zeke Faux et al., *Vaping Venture Poses Potential Conflict for Trump’s FDA Nominee*, Bloomberg,
26 (Apr. 19, 2017), <https://www.bloomberg.com/news/articles/2017-04-19/vaping-venture-poses-potential-conflict-for-trump-s-fda-nominee>.

27 ⁶⁵² Sheila Kaplan, *F.D.A. Delays Rules That Would Have Limited E-Cigarettes on Market*, N.Y. Times
28 (July 28, 2017), <https://www.nytimes.com/2017/07/28/health/electronic-cigarette-tobacco-nicotine-fda.html>.

⁶⁵³ *Id.*

1 e-cigarette epidemic. These schemes involved acts of mail and wire fraud, with the intent to deceive
 2 the FDA, Congress, and the public at large.

3 520. First, JLI, the Management Defendants, and Altria publicly defended mint flavoring as
 4 a substitute for menthol cigarette smokers, when in fact JLI's studies indicated that mint users are not
 5 former menthol smokers. Second, by fighting to keep mint as the last flavor on the market, the
 6 cigarette industry could continue to appeal to non-smokers, including youth. JLI and the Management
 7 Defendants coordinated with Altria to pursue a fraudulent scheme to convince the FDA into leaving
 8 the mint flavor on the market, sacrificing other flavors in the process.

10 521. On August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral study
 11 regarding the prevalence of use, perceptions of use, and intentions to use JUUL and other tobacco
 12 products among adolescents aged 13-17 years (the "Youth Prevalence Study").⁶⁵⁴

14 522. On November 5, 2018, JLI transmitted the results of the Youth Prevalence Study to the
 15 FDA and reported that a study of over 1,000 youth had found that only 1.5% of youth had ever used a
 16 JUUL, and that only 0.8% of youth had used a JUUL in the last 30 days. [REDACTED]

18 [REDACTED].⁶⁵⁵ Specifically, the study found that 47% of youth who
 19 reported use of a JUUL device in the last 30-days professed to using mango most often, with only
 20 about 12% reporting the same for mint.

22 523. JLI's study was a sham. JLI, the Management Defendants, and Altria knew their
 23 reported data was inconsistent [REDACTED]
 24 [REDACTED]. JLI's report featured responses to a carefully selected survey question—which *single*
 25 flavor youth used most often?—that obscured the widespread use of mint JUUL pods among youth.

27
 28 ⁶⁵⁴ Letter from Joanna Engelke, JUUL Labs, Inc., to David Portnoy, Ph.D., M.P.H., FDA Center for Tobacco Products (Nov. 5, 2018).

⁶⁵⁵ *Id.* at 3.

1 524. Ironically, just a few days after JLI submitted the misleading Youth Prevalence Study to
2 the FDA, the National Youth Tobacco Survey was released. Revealing the depths of the deception of
3 JLI's Youth Prevalence Study, which found that only 1.5% of youth were current users of e-cigarettes,
4 the National Youth Tobacco Survey found that 20.8% of high school student were current users (*i.e.*,
5 consumed e-cigarettes within the last 30 days).

6
7 525. The Youth Prevalence Study that JLI submitted to the FDA, either via U.S. mail or by
8 electronic transmission, was false and misleading. JLI, the Management Defendants, and Altria knew
9 as much. Indeed, they counted on it.

10 526. As the e-cigarette crisis grew, on September 25, 2018, then-FDA Commissioner Scott
11 Gottlieb sent letters to Altria, JLI and other e-cigarette manufacturers, requesting a "detailed plan,
12 including specific timeframes, to address and mitigate widespread use by minors."⁶⁵⁶

13
14 527. As evidenced by Altria's recent admission that negotiations with JLI were ongoing in
15 late 2017,⁶⁵⁷ Altria and JLI's responses to the FDA reflect a coordinated effort to mislead the FDA
16 with the intention that regulators, in reliance on their statements, allow JLI to continue marketing mint
17 JUUL pods.⁶⁵⁸

18 528. Defendants' plan centered on efforts to deceive the FDA that (1) mint was more akin to
19 Tobacco and Menthol than other flavors; and (2) kids did not prefer mint.

20
21 529. JLI took the first step in this coordinated effort to deceive the FDA. In response to then-
22 Commissioner Gottlieb's September 12, 2018 letter, JLI prepared an "Action Plan," which it presented
23 to the FDA at an October 16, 2018 meeting, and presented to the public on November 12, 2018. The
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25

26 ⁶⁵⁶ Letter from Scott Gottlieb, M.D. to JUUL Labs, Inc. (Sept. 12, 2018); Letter from Scott Gottlieb,
M.D. to Altria Group Inc. (Sept. 12, 2018).

27 ⁶⁵⁷ Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

28 ⁶⁵⁸ See *United States v. Jones*, 712 F.2d 1316, 1320-21 (9th Cir. 1983) [REDACTED]

substance of JLI's presentation to the FDA and its public-facing Action Plan were largely identical.⁶⁵⁹

[REDACTED]⁶⁶⁰ [REDACTED]

[REDACTED]⁶⁶¹

530. But this statement was not true. [REDACTED]

[REDACTED]⁶⁶² In JLI's Action Plan, then-

CEO Burns stated that only products that "mirror what is currently available for combustible cigarettes—tobacco and menthol-based products (menthol and mint pods)—will be sold to retail stores."⁶⁶³

531. In both JLI's October 2018 presentation to the FDA and JLI's Action Plan that was shared with the public, JLI and its CEO fraudulently characterized mint as a non-flavored cigarette product, akin to tobacco and menthol cigarettes, suggesting that it was a product for adult smokers. The image below was included in both the public-facing Action Plan and JLI's presentation to the FDA.

⁶⁵⁹ JUUL did not include in its Action Plan a proposal for Bluetooth or Wi-Fi equipped devices that was included in JLI's October presentation.

⁶⁶⁰ JUUL Labs, Inc. *FDA Presentation*, 2 ([REDACTED]); INREJUUL_00182989.

⁶⁶¹ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

⁶⁶² *Id.*

⁶⁶³ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.



532. JLI knew that non-smoking youth liked mint as much as any flavor.

533. [REDACTED]

[REDACTED] 664

Indeed, [REDACTED]

[REDACTED] 665 [REDACTED]

[REDACTED] 666

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

535. The characterization of mint as an adult tobacco product was also fraudulent because

JLI [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. As alleged in a

⁶⁶⁴ INREJUUL_00265069.

⁶⁶⁵ INREJUUL_00079307-INREJUUL_00079409, at 395.

⁶⁶⁶ *Id.*

1 Whistleblower Complaint, JLI's then-CEO told his employees: "You need to have an IQ of 5 to know
2 that when customers don't find mango they buy mint."⁶⁶⁷

3 536. On October 25, 2018, less than ten days after JLI presented its fraudulent, misleading
4 Action Plan to the FDA, Altria's CEO Howard Willard submitted a letter in response to the FDA's call
5 to combat the youth epidemic. Willard's letter was a clear indication of Altria's willingness to continue
6 the fraudulent scheme and deception of the FDA. While Willard's letter confirmed that Altria
7 understood that JLI's conduct and product was addicting many children to nicotine, this letter repeated
8 the misleading statement that mint was a "traditional tobacco flavor" despite Altria and JLI knowing it
9 was no such thing. Willard then claimed that the youth epidemic was caused, in part, by "flavors that
10 go beyond traditional tobacco flavors"—which, according to JLI and Altria, did not include mint—and
11 announced that Altria would discontinue all MarkTen flavors except for "traditional tobacco, menthol
12 and mint flavors." Willard asserted that these three flavors were essential for transitioning smokers.
13 But Willard, and Altria, knew this was not true.⁶⁶⁸

14 537. That same day—October 25, 2018—Altria continued its deception on an earnings call
15 with investors. Altria fraudulently described its decision to remove its pod-based products from the
16 market as one intended to address the dramatic increase in youth e-cigarette use, while it was only
17 weeks away from publicly announcing its 35% stake in JLI:
18
19

20 We recently met with Commissioner Gottlieb to discuss steps that could be taken to
21 address underage access and use. Consistent with our discussion with the FDA and
22 because we believe in the long-term promise of e-vapor products and harm reduction,
23 we're taking immediate action to address this complex situation.

24 First, Nu Mark will remove from the market MarkTen Elite and Apex by MarkTen pod-
25 based products until these products receive a market order from the FDA or the youth
26 issue is otherwise addressed. Second, for our remaining MarkTen and Green Smoke
cig-a-like products, Nu Mark will sell only tobacco, menthol and mint varieties. Nu
Mark will discontinue the sale of all other flavor variants of our cig-a-like products until

27 ⁶⁶⁷ Angelica LaVito, *Former JLI executive sues over retaliation, claims company knowingly sold*
28 *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>.

⁶⁶⁸ Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

1 these products receive a market order from the FDA or the youth issue is otherwise
 2 addressed. Although we don't believe we have a current issue with youth access or use
 3 of our e-vapor products, we are taking this action, because we don't want to risk
 contributing to the issue.

4 After removing Nu Mark's pod-based products and cig-a-like flavor variants,
 5 approximately 80% of Nu Mark's e-vapor volume in the third quarter of 2018 will
 remain on the market.⁶⁶⁹

6 538. Willard reiterated that "pod-based products and flavored products" were behind the
 7 increase in youth use of e-cigarettes:

8 I mean, I think the way we thought about this was that we believe e-vapor has a lot of
 9 opportunity to convert adult cigarette smokers in the short, medium and long-term, but
 10 clearly, this significant increase in youth usage of the products puts that at risk and we
 11 think rapid and significant action is necessary. And I think as we looked at the data that
 12 is available in some of the remarks from the FDA, I think we concluded that the driver
 of the recent increase we think is pod-based 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.⁶⁷⁰

13 539. Willard emphasized that Altria's withdrawal of its own pod-based products was
 14 intended to address youth use: "[W]e really feel like in light of this dramatic increase in youth usage,
 15 withdrawing those products until the PMTA is filed is one path forward." He later said: "And frankly,
 16 the actions we took were the actions that we thought we could take that would have the biggest impact
 17 on addressing the increased use of e-vapor products by youth . . . we wanted to make a significant
 18 contribution to addressing the issue."⁶⁷¹ As noted above, however, it has since been reported that Altria
 19 "pulled its e-cigarettes off the market" not out of concern for the epidemic of youth nicotine addiction
 20 that JLI created, but because a non-compete clause was a "part of its deal with J[LI]."⁶⁷²

21 540. Thus, while Altria publicly announced that it would pull its pod-based products to
 22 combat youth usage, and publicly seemed to support removal of youth-friendly flavors, its defense of
 23 mint as a tobacco-analog was actually part of the scheme to protect the profits associated with JLI's
 24

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 26 ⁶⁶⁹ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript MO earnings call for the
 27 period ending September 30, 2018 (Oct. 25, 2018).

28 ⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² *Id.*

1 mint JUUL pods, one of JLI's strongest products with the highest nicotine content and highest
2 popularity among non-smokers and youth.

3 541. In support of his arguments to the FDA that mint was a flavor for adult smokers,
4 Willard cited to a study that Altria had conducted and presented at a conference that JLI attended.⁶⁷³
5 But Willard did *not* disclose that Altria's "study" was merely a "quasi-experimental online survey" and
6 not a true scientific study.⁶⁷⁴ Notably, JLI's current CEO, K.C. Crosthwaite, was the President and
7 Chief Growth Officer of Altria Client Services, which conducted Altria's mint "study" in Spring 2017,
8 the same time that the Management Defendants and Altria began their "confidential negotiations."⁶⁷⁵
9 Willard did not disclose that this study was contradicted by the "youth prevention" data provided by
10 JLI during its acquisition due-diligence showing that mint was popular among teens.

11 542. Through these letters, Altria sought to prevent the FDA—which was actively
12 considering regulating flavors⁶⁷⁶—from banning JLI's mint JUULpods.

13 543. Acting in concert, JLI and Altria committed acts of mail or wire fraud when (1) JLI
14 transmitted its Action Plan to the FDA and the public; and (2) Altria transmitted Willard's letter to the
15 FDA.

16 544. At the heart of these acts of fraud was Defendants' characterization of mint as a tobacco
17 product that was targeted to adult smokers. This characterization was fraudulent because Defendants
18 knew kids prefer mint flavor and that JLI designed mint to be one of JLI's most potent products. Altria
19 supported this plan and helped execute it. Together, these actions by JLI and Altria ensured that mint
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21
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23 ⁶⁷³ Jessica Parker Zdinak, Ph.D., *E-vapor Product Appeal Among Tobacco Users and Non-users and*
24 *the Role of Flavor in Tobacco Harm Reduction*, 72nd Tobacco Science Research Conference (Sept.
25 18, 2018), [https://sciences.altria.com/library/-](https://sciences.altria.com/library/-/media/Project/Altria/Sciences/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.pdf)
26 [/media/Project/Altria/Sciences/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.](https://sciences.altria.com/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.pdf)
pdf.

⁶⁷⁴ *Id.*

⁶⁷⁵ Letter from Howard Willard III, Altria to Senator Durbin, et. al. (Oct. 14, 2019).

⁶⁷⁶ Alex Lardieri, *FDA Considers Ban on E-Cigarette Flavors Amid 'Epidemic' Use By Teens*, U.S.
28 News & World Report (Sept. 12, 2018), [https://www.usnews.com/news/health-care-](https://www.usnews.com/news/health-care-news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens)
news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens.

1 would remain available to youths for many months, furthering their efforts to maintain and expand the
 2 number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base.

3 545. The deceptive scheme worked—the FDA did not protest JLI and Altria’s plan. And on
 4 December 20, 2018, one month after JLI announced its Action Plan to keep selling mint, Altria made a
 5 \$12.8 billion equity investment in JLI.
 6

7 546. By February of 2019, the FDA became aware that it had been deceived by JLI and
 8 Altria. On February 6, 2019, then-FDA commissioner Gottlieb wrote JLI and Altria demanding in-
 9 person meetings, excoriating Altria for its “newly announced plans with JUUL [that] *contradict the*
 10 *commitments you made to the FDA*” in a prior meeting and Willard’s October 25, 2018 letter to the
 11 FDA.⁶⁷⁷ Gottlieb’s letter to JLI alleged that JLI’s conduct was “inconsistent with its previous
 12 representations to the FDA.”⁶⁷⁸
 13

14 547. The FDA demanded Altria be prepared to explain itself regarding its “plans to stop
 15 marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Then-Commissioner
 16 Gottlieb told Altria that “deeply concerning data” shows that “youth use of JUUL represents a
 17 significant proportion of overall use of e-cigarette products by children” and despite any alleged steps
 18 the companies had taken to address the issue he “ha[d] no reason to believe these youth patterns of use
 19 are abating in the near term, and they certainly do not appear to be reversing.”
 20

21 548. JLI and Altria met with Gottlieb in March 2019 in a meeting the then-Commissioner
 22 described as “difficult.”⁶⁷⁹ Gottlieb “did not come away with any evidence that public health concerns
 23 drove Altria’s decision to invest in JLI, and instead said it looked like a business decision. According
 24 to reporting by the *New York Times*, Gottlieb angrily criticized JLI’s lobbying of Congress and the
 25 White House, stating:
 26

26 ⁶⁷⁷ Letter from Scott Gottlieb, FDA to Howard Willard, Altria (Feb. 9, 2019).

27 ⁶⁷⁸ Letter from Scott Gottlieb, FDA to Kevin Burns, JUUL Labs, Inc. (Feb. 9, 2019).

28 ⁶⁷⁹ 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>.

1 We have taken your meetings, returned your calls and I had personally met with you
 2 more times than I met with any other regulated company, and yet you still tried to go
 3 around us to the Hill and White House and undermine our public health efforts. I was
 trying to curb the illegal use by kids of your product and you are fighting me on it.⁶⁸⁰

4 549. But just a week after the “difficult” meeting with JLI and Altria, Gottlieb posted a
 5 statement about the FDA’s new e-cigarette policy, proposing to ban all flavors *except* “tobacco-, mint-
 6 and menthol-flavored products.”⁶⁸¹ He cited the strong support of President Trump (whose
 7 administration JLI had aggressively lobbied⁶⁸²), and also cited “recent evidence indicat[ing] that mint-
 8 and menthol-flavored ENDS products are preferred more by adults than minors.”⁶⁸³ Just a few weeks
 9 later, Gottlieb resigned from his position as commissioner of the FDA.
 10

11 550. The scheme had succeeded in saving mint JUUL pods, as well as each Defendant’s
 12 bottom line. JLI’s sale of mint JUUL pods rose from one third of its sales in September 2018 to
 13 approximately two thirds in February 2019. JLI’s 2019 revenues were estimated to be between \$2.36
 14 billion and \$3.4 billion, and mint JUUL pods accounted for approximately 75% of JLI’s total 2019
 15 sales. And because mint remained on the market until JLI withdrew it in November 2019 in the face of
 16 growing scrutiny,⁶⁸⁴ thousands, if not millions, of underage JUUL users suffered the consequences.
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 19
 20

21 ⁶⁸⁰ Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. TIMES (Nov. 24,
 22 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

23 ⁶⁸¹ News Release, *Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies*
 24 *aimed at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes*
 25 *and cigars*, U.S. FDA (Mar. 13, 2019), [https://www.fda.gov/news-events/press-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)
 26 [announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access)
 27 [preventing-youth-access](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access).

28 ⁶⁸² Evan Sully & Ben Brody, *JLI Spent Record \$1.2 Million Lobbying as Regulators Stepped Up*,
 BLOOMBERG (Oct. 22, 2019) [https://www.bloomberg.com/news/articles/2019-10-22/juul-spent-](https://www.bloomberg.com/news/articles/2019-10-22/juul-spent-record-1-2-million-lobbying-as-regulators-stepped-up)
[record-1-2-million-lobbying-as-regulators-stepped-up](https://www.bloomberg.com/news/articles/2019-10-22/juul-spent-record-1-2-million-lobbying-as-regulators-stepped-up).

⁶⁸³ *Id.*

⁶⁸⁴ Ellen Huet, *JLI Pulls Mint-Flavor Vaping Products, but Menthol Remains*, Bloomberg (Nov. 7,
 2019), [https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products)
[vaping-products](https://www.bloomberg.com/news/articles/2019-11-07/juul-stops-selling-mint-flavored-vaping-products).

551. As former New York City Mayor Mike Bloomberg stated: “JUUL’s decision to keep mint- and menthol-flavored e-cigarettes on the shelves is a page right out of the tobacco industry’s playbook.”⁶⁸⁵

552. JLI continues to sell menthol-flavored products.⁶⁸⁶

3. In Response to the Public Health Crisis Created by JUUL, the FDA Belatedly Tried to Slow the Epidemic.

553. In 2017, the FDA announced that it would be taking steps to regulate e-cigarette devices such as JUUL. In late 2017, the FDA initiated its investigation of e-cigarette companies’ advertising and sales practices. But, as noted above, the FDA’s 2017 Compliance Policy issued a four-year extension for compliance with the 2016 deeming rule, apparently to “balance between regulation and encouraging development of innovative tobacco products that may be less harmful than cigarettes.”⁶⁸⁷ In March 2018, the 2017 Compliance Policy was challenged by the American Academy of Pediatrics, along with other public health organizations concerned that a compliance extension for the e-cigarette industry would allow more e-cigarette products into the market and continue to addict thousands of youth.⁶⁸⁸

554. In March 2019, the FDA drafted guidance that modified the 2017 Compliance Policy, but it did not go into full effect. However, on May 15, 2019, the lawsuit filed by the American Academy of Pediatrics was successful—the U.S. District Court for the District of Maryland vacated the 2017 Compliance Policy, and directed the FDA to “require that premarket authorization

⁶⁸⁵ *Id.*

⁶⁸⁶ Sheila Kaplan, *Juul Halts Sales of Mint, Its Top-Selling e-Cigarette Flavor*, N.Y. Times (Nov. 7, 2019), <https://www.nytimes.com/2019/11/07/health/vaping-juul-mint-flavors.html>.

⁶⁸⁷ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*, U.S. FDA (Jan. 2020), <https://www.fda.gov/media/133880/download>.

⁶⁸⁸ *Id.*

1 applications for all new deemed products” (“new” referred to any product launched after February 15,
2 2007 and thus would include JUUL) be submitted within ten months, by May 2020.⁶⁸⁹

3 555. In January 2020, the FDA issued: *Enforcement Priorities for Electronic Nicotine*
4 *Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket*
5 *Authorization: Guidance for Industry* (“2020 FDA Guidance”), directed at the e-cigarette industry,
6 which detailed the FDA’s plan to prioritize enforcement of regulations prohibiting the sale of flavored
7 e-cigarette products and prohibiting the targeting of youth and minors.⁶⁹⁰ The 2020 FDA Guidance
8 focused on flavored e-cigarettes that appeal to children, including fruit and mint: “[C]ompanies that do
9 not cease manufacture, distribution and sale of unauthorized flavored cartridge-based e-
10 cigarettes . . . within 30 days risk FDA enforcement actions.”⁶⁹¹

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12
13 **4. The Government’s Efforts to Address the JUUL Crisis Were Too Late and the**
14 **Damage Has Already Been Done.**

15 556. By the time the FDA acted, youth consumption of e-cigarettes had already reached an
16 all-time high, and the e-cigarette industry’s presence on social media became an unstoppable force.
17 The 2020 FDA Guidance acknowledges that two of the largest 2019 surveys of youth cigarette use
18 found that e-cigarette use had reached the highest levels ever recorded.⁶⁹² By December 2019, there
19 were over 2,500 reported cases of e-cigarette related hospitalization for lung injury, including over
20 fifty confirmed deaths.⁶⁹³ Despite the FDA’s efforts between 2017 and 2019, youth consumption of e-
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23 ⁶⁸⁹ *Id.*; *Am. Academy of Pediatrics v. FDA*, 379 F. Supp. 3d 461, 496 (D. Md. 2019).

24 ⁶⁹⁰ *Id.*

25 ⁶⁹¹ News Release, *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-*
26 *Cigarettes That Appeal to Children, Including Fruit and Mint*, U.S. FDA (Jan. 2, 2020),
27 [https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children)
28 [unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children](https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children).

⁶⁹² *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
Products on the Market Without Premarket Authorization, U.S. FDA (Jan. 2020),
<https://www.fda.gov/media/133880/download>.

⁶⁹³ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

1 cigarettes doubled among middle and high school students over the same period.⁶⁹⁴ In 2019, the total
 2 number of middle and high school students reporting current use of e-cigarettes surpassed five million
 3 for the first time in history.⁶⁹⁵

4 557. JLI's presence on social media has also persisted, even without further initiation by
 5 JLI—the hallmark of a successful viral marketing campaign. When the “#juul” hashtag was first used
 6 on social media, it was a series of thirteen tweets on Twitter. By the time JLI announced it would shut
 7 down its Instagram account, “#juul” had been featured in over 250,000 posts on Instagram. A study by
 8 Stanford University found that in the eight months after JLI ceased all promotional postings,
 9 community posting accelerated, to nearly half a million posts. Whereas before JLI exited Instagram,
 10 “#juul” appeared on average in 315 posts per day, that number tripled to 1084 posts per day after JLI
 11 shut down its Instagram account.⁶⁹⁶

12 558. The FDA's anti-e-cigarette campaign on social media was aimed at youth and middle
 13 and high school students. The campaign used the slogan “The Real Cost” to educate youth on social
 14 media platforms about the health impacts of e-cigarette consumption—the real cost of using e-
 15 cigarettes. A recent study from the University of California Berkeley found that since September 2018,
 16 when the FDA's social media campaign began, the hashtag “#TheRealCost” was used about fifty times
 17 per month on Instagram. By comparison, e-cigarette related hashtags were used as many as 10,000
 18 times more often. Despite the FDA's social media intervention, the number of e-cigarette related posts,
 19 and the median number of likes (a strong metric of viewer engagement) the posts received, increased
 20 three-fold and six-fold, respectively.⁶⁹⁷

21
 22
 23
 24 ⁶⁹⁴ *Id.*

25 ⁶⁹⁵ *Id.*

26 ⁶⁹⁶ Robert K. Jackler et al., *Rapid Growth of JUUL Hashtags After the Company Ceased Social Media*
Promotion, Stanford Research Into the Impact of Tobacco Advertising (July 22, 2019),
 27 http://tobacco.stanford.edu/tobacco_main/publications/Hashtag_JUUL_Project_7-22-19F.pdf.

28 ⁶⁹⁷ Julia Vassey, *#Vape: Measuring E-cigarette Influence on Instagram With Deep Learning and Text*
Analysis, 4 *Frontiers in Comm'n* 75 (2020),
<https://www.frontiersin.org/articles/10.3389/fcomm.2019.00075/full>.

1 559. In short, by the time the FDA reacted to the epidemic created by Defendants, millions
2 of youth were addicted to e-cigarettes and nicotine, and were sharing e-cigarette related posts on social
3 media on their own.

4 V. GOVERNMENT ENTITY FACTUAL ALLEGATIONS

5 A. E-cigarette Use in Schools

6 560. In addition to severe health consequences, widespread e-cigarette use, and particularly
7 JUUL use, has placed severe burdens on society and schools in particular. It is not an overstatement to
8 say that JUUL has changed the high school and even middle school experience of students across the
9 nation. As one e-cigarette shop manager told KOMO News, “It’s the new high school thing.
10 Everyone’s got the JUUL.”⁶⁹⁸

11 561. The JUUL youth addiction epidemic spread rapidly across high schools in the United
12 States. JUUL surged in popularity, largely through social media networks, and created patterns of
13 youth usage, illegal youth transactions, and addiction, that are consistent with the account from Reddit
14 that described widespread JUUL use discussed above.

15 562. E-cigarette use has completely changed school bathrooms—now known as “the Juul
16 room.”⁶⁹⁹ As one high school student explained, “it’s just a cloud.”⁷⁰⁰

17 563. As another high school student explained, “You can pull it out, you can have it
18 anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the bathroom,
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24 ⁶⁹⁸ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

25 ⁶⁹⁹ Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries*
26 *doctors, parents and schools*, Wash. Post (July 26, 2019),
27 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.

28 ⁷⁰⁰ 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>.

1 it's easy.”⁷⁰¹ He added that JLI “market[s] it as an alternative to cigarettes but really it’s a bunch of
 2 kids who have never picked up a pack and they’re starting their nicotine addiction there.”⁷⁰² Students
 3 at another high school stated that classmates had “set off the fire alarm four times last year from vaping
 4 in the bathrooms [at school],” adding that it is commonplace to see students using e-cigarettes in
 5 school bathrooms or in the parking lot.⁷⁰³

6
 7 564. An April 20, 2018 article in *The Wall Street Journal* described the problems parents and
 8 schools are facing with the meteoric rise of nicotine use by America’s youth:

9 At Northern High School in Dillsburg, Pa., Principal Steve Lehman’s locked safe,
 10 which once contained the occasional pack of confiscated cigarettes, is now filled with
 around 40 devices that look like flash drives.

11 The device is called a Juul and it is a type of e-cigarette that delivers a powerful dose of
 12 nicotine, derived from tobacco, in a patented salt solution that smokers say closely
 13 mimics the feeling of inhaling cigarettes. It has become a coveted teen status symbol
 14 and a growing problem in high schools and middle schools, spreading with a speed that
 has taken teachers, parents and school administrators by surprise.

15 * * *

16 After two decades of declining teen cigarette use, “JUULing” is exploding. The JUUL
 17 liquid’s 5% nicotine concentration is significantly higher than that of most other
 18 commercially available e-cigarettes. JUUL Labs Inc., maker of the device, says one
 19 liquid pod delivers nicotine comparable to that delivered by a pack of cigarettes, or 200
 puffs—important for adult smokers trying to switch to an e-cigarette. It is also part of
 what attracts teens to the product, which some experts say is potentially as addictive as
 cigarettes and has schools and parents scrambling to get a grip on the problem.⁷⁰⁴

20 565. This impact was only made worse by JLI intentionally targeting schools, as described
 21 above.

24 ⁷⁰¹ Alison Grande, ‘Juuling’: Vaping device that looks like USB drive popular with teens, KIRO 7
 25 (Dec. 8, 2017), <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605/>.

26 ⁷⁰² *Id.*

27 ⁷⁰³ Manisha Jha, ‘You need to stop vaping right now’: Students and faculty react to Washington vape
 28 ban, *The Daily, U. of Wash.* (Sept. 30, 2019), http://www.dailyuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html.

⁷⁰⁴ Anne Marie Chaker, *Schools and Parents Fight a Juul E-Cigarette Epidemic*, *Wall St. J.* (Apr. 4, 2018), <https://www.wsj.com/articles/schools-parents-fight-a-juul-e-cigarette-epidemic-1522677246>.

1 566. Such rampant e-cigarette use has effectively added another category to teachers' and
 2 school administrators' job descriptions; many now receive special training to respond to the various
 3 problems that youth e-cigarette use presents, both in and out of the classroom. A national survey of
 4 middle schools and high schools found that 44.4% of schools have had to implement policies to
 5 address JUUL use.⁷⁰⁵ Participants in the survey reported multiple barriers to enforcing these policies,
 6 including the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the
 7 addictive nature of the product.
 8

9 567. Across the United States, schools have had to divert resources and administrators have
 10 had to go to extreme lengths to respond to the ever-growing number of students using e-cigarettes on
 11 school grounds, including in restrooms. According to the *Truth Initiative*, more than 40% of all
 12 teachers and administrators reported responding to the JUUL crisis through camera surveillance near
 13 the school's restroom; almost half (46%) reported camera surveillance elsewhere in the school; and
 14 23% reported using assigned teachers for restroom surveillance.⁷⁰⁶ Some schools have responded by
 15 removing bathroom doors or even shutting bathrooms down, and schools have banned flash drives to
 16 avoid any confusion between flash drives and JUULs. Schools have also paid thousands of dollars to
 17 install special monitors to detect e-cigarette use, which they say is a small price to pay compared to the
 18 plumbing repairs otherwise spent as a result of students flushing e-cigarette paraphernalia down toilets.
 19 Other school districts have sought state grant money to create new positions for tobacco prevention
 20 supervisors, who get phone alerts when e-cigarette smoke is detected in bathrooms.
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 23

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 25 ⁷⁰⁵ Barbara A. Schillo, PhD et al., *JUUL in School: Teacher and Administrator Awareness and*
 26 *Policies of E-Cigarettes and JUUL in U.S. Middle and High Schools*, Truth Initiative Vol. 21(1)
 27 Health Promotion Practice 20-24 (Sept. 18, 2019),
[https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-](https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed)
[2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed](https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed).

28 ⁷⁰⁶ *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>.

568. Many schools have also shifted their disciplinary policies in order to effectively address the youth e-cigarette epidemic. Rather than immediately suspending students for a first offense, school districts have created anti-e-cigarette curricula which students are required to follow in sessions held outside of normal school hours, including on Saturdays. Teachers prepare lessons and study materials for these sessions with information on the marketing and health dangers of e-cigarettes—extra work which requires teachers to work atypical hours early in the mornings and on weekends. Some schools will increase their drug testing budget to include random nicotine tests for students before they join extracurricular activities. Under this drug-testing protocol, first offenders will undergo drug and alcohol educational programming; second and third offenders will be forced to sit out from extracurricular activities and attend substance abuse counseling.

569. A July 26, 2019 article in *The Washington Post* noted the measures some schools were taking to combat “JUULing” by students:

Many schools are at a loss for how to deal with Juuls and other e-cigarettes. Some educators report increases in the number of students being suspended after they’re caught with e-cigarettes.

Desperate school administrators have banned USB drives because they’re indistinguishable from Juuls. Others removed bathroom doors because teens were regularly gathering there to vape, and some have even started searching students.

Jonathon Bryant, chief administrator of Lincoln Charter School in North Carolina, estimated that three-quarters of suspensions in the just-completed academic year were related to vaping, and some students were suspended more than once.⁷⁰⁷

570. JUUL’s prevalence in schools is not a coincidence; JLI actively sought to enter school campuses. [REDACTED]

[REDACTED]⁷⁰⁸ [REDACTED]⁷⁰⁹

⁷⁰⁷ 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.

⁷⁰⁸ See, e.g., INREJUUL_00211242-243 at 242.

571. As discussed above, 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.”⁷¹⁰ 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.”⁷¹¹

572. 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.⁷¹² [REDACTED]⁷¹³ JLI also offered schools \$10,000 to talk to students on campus and gave the Police Activities League in Richmond, California, almost \$90,000 to provide JLI’s own e-cigarette education program, “Moving On,” to teenage students suspended for using cigarettes. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]⁷¹⁴

573. Community members testified before the Subcommittee as to the content of one of JLI’s presentations in school. During JLI’s presentation to students, “[n]o parents or teachers were in

⁷⁰⁹ INREJUUL_00173409.

⁷¹⁰ *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>.

⁷¹¹ *Id.*

⁷¹² See INREJUUL_00194247-251; see also JLI-HOR-00003711-712 (invoice to JLI from The Freedom & Democracy Schools, Inc. for \$134,000 dated June 21, 2018).

⁷¹³ INREJUUL_0019427-251 at 428.

⁷¹⁴ JLI-HOR-00002180-184 at 181-182.

1 the room, and JUUL’s messaging was that the product was ‘totally safe.’ The presenter even
 2 demonstrated to the kids how to use a JUUL.”⁷¹⁵

3 574. In 2018, a representative from JLI spoke at a high school during a presentation for ninth
 4 graders, stating that JUUL “was much safer than cigarettes,” that the “FDA would approve it any day,”
 5 that JUUL was “totally safe,” that JUUL was a “safer alternative than smoking cigarettes, and it would
 6 be better for the kid to use,” and that the “FDA was about to come out and say it [JUUL] was 99%
 7 safer than cigarettes . . . and that . . . would happen very soon[.]”⁷¹⁶ “The presenter even demonstrated
 8 to the kids how to use a JUUL.”⁷¹⁷

9 575. In the FDA’s September 9, 2019 Warning Letter, which discussed this presentation to
 10 ninth graders, the agency noted its “concern is amplified by the epidemic rate of increase in youth use
 11 of ENDS products, including JUUL’s products, and evidence that ENDS products contribute to youth
 12 use of, and addiction to, nicotine, to which youth are especially vulnerable.”⁷¹⁸

13 576. The FDA’s Center for Tobacco Products issued a separate letter to JUUL CEO Kevin
 14 Burns, requesting “documents and information from JUUL Labs, Inc. (JUUL) regarding JUUL’s
 15 marketing, advertising, promotional, and educational campaigns, as well as certain product
 16 development activity.”⁷¹⁹ The FDA also issued a news release on September 9, 2019, in which it
 17 chided JUUL for its role in the youth e-cigarette epidemic, noting “[s]ome of this youth use appears to
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23 ⁷¹⁵ Committee Staff, *Memorandum re: Supplemental Memo for Hearing on “Examining JUUL’s Role*
 24 *in the Youth Nicotine Epidemic: Parts 1 & II* (“Supplemental Memo for Hearing”) at 1,
 25 Subcommittee on Econ. & Consumer Policy (July 25, 2019),
 26 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

27 ⁷¹⁶ *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>.

28 ⁷¹⁷ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

⁷¹⁸ *Id.*

⁷¹⁹ Letter from Mitchell Zeller, Director, Center for Tobacco Products, to Kevin Burns, CEO of JUUL Labs, Inc. at 1 (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

1 have been a direct result of JUUL's **product design and promotional activities** and outreach efforts,"
 2 in particular, its outreach efforts to students.⁷²⁰

3 577. The Center for Tobacco Products letter requested documents and explanations on
 4 multiple topics, including, but not limited to:

5 Ms. Meredith Berkman, Co-founder, Parents Against Vaping e-cigarettes (PAVe),
 6 testified that, "In California, a retired school superintendent was offering schools in his
 7 state and in Massachusetts money if they would implement the anti-JUUL curriculum
 8 that...a man named Bruce Harder was offering on JUUL's behalf."

9 * * *

10 On July 25, 2019, in response to questions from Chairman Krishnamoorthi about
 11 JUUL's program to pay schools \$10,000 or more to use a JUUL "youth prevention"
 12 curriculum, Ms. Ashley Gould, Chief Administrative Officer, JUUL Labs, Inc.,
 13 testified: "That is not currently the case. We ended that program in the fall of 2018,"
 14 and that, "...there were six schools that received funding from JUUL to implement
 15 programming to prevent teen vaping..."

16 In addition, in response to questions from Chairman Krishnamoorthi about internal
 17 JUUL correspondence in 2018 about setting up a booth at a school health fair, Ms.
 18 Gould testified that JUUL ended its youth prevention program.⁷²¹

19 578. JLI also sponsored a "Saturday School Program" in which students caught using e-
 20 cigarettes in school were presented with JLI-sponsored curriculum and snacks, and JLI "established the
 21 right to collect student information from the sessions."⁷²² A JLI spokesman said the company is no
 22 longer funding such programs.

23 579. As mentioned above, the problems with JLI's youth prevention programs were
 24 widespread. According to outside analyses, "the JUUL Curriculum is not portraying the harmful
 25

26 ⁷²⁰ FDA warns JUUL Labs for marketing unauthorized modified risk tobacco products, including in
 27 outreach to youth, FDA (Sept. 9, 2019), [https://www.fda.gov/news-events/press-announcements/fda-](https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth)
 28 [warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth](https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth)
 (emphasis added) Letter from Center for Tobacco Products, to Kevin Burns, CEO of JUUL Labs, Inc.
 (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

⁷²¹ Letter from Mitchell Zeller, Director, Center for Tobacco Products, to Kevin Burns, CEO of JUUL
 Labs, Inc. at 2 (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

⁷²² Committee Staff, *Memorandum re: Supplemental Memo for Hearing on "Examining JUUL's Role
 in the Youth Nicotine Epidemic: Parts 1 & II"* ("Supplemental Memo for Hearing") at 2,
 Subcommittee on Econ. & Consumer Policy (July 25, 2019),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

1 details of their product, similar to how past tobacco industry curricula left out details of the health risks
 2 of cigarette use.”⁷²³ Although it is well-known that teaching children to deconstruct ads is one of the
 3 most effective prevention techniques, JLI programs entirely omitted this skill, and JLI’s curriculum
 4 barely mentioned JUUL products as among the potentially harmful products to avoid.⁷²⁴ As one expert
 5 pointed out, “we know, more from anecdotal research, that [teens] may consider [JUULs] to be a
 6 vaping device, but they don’t call it that. So when you say to a young person, ‘Vapes or e-cigarettes are
 7 harmful,’ they say, ‘Oh I know, but I’m using a JUUL.’”⁷²⁵

9 580. Internal emails confirm both that JLI employees knew about the similarities of JLI’s
 10 “youth prevention program” to the earlier pretextual [REDACTED]

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]⁷²⁷ [REDACTED]
 18 [REDACTED]
 19 [REDACTED]⁷²⁸ [REDACTED]
 20 [REDACTED]
 21 [REDACTED]

24 ⁷²³ Victoria Albert, *Juul Prevention Program Didn't School Kids on Dangers, Expert Says: SMOKE*
 25 *AND MIRRORS. JUUL—which made up 68 percent of the e-cigarette market as of mid-June—seems*
 26 *to have taken a page from the playbook of Big Tobacco*, The Daily Beast (Oct. 19, 2018),
<https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says>.

27 ⁷²⁴ *Id.*

⁷²⁵ *Id.*

⁷²⁶ INREJUUL_00197607-608 at 608.

⁷²⁷ *Id.* at 607.

⁷²⁸ INREJUUL_00196624-625.

1 [REDACTED]⁷²⁹ The paper concluded that “the Philip Morris’s [‘youth prevention’] campaign had
2 a counterproductive influence.”⁷³⁰

3 581. The Management Defendants were intimately involved in these “youth prevention”
4 activities. For example, [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 [REDACTED]⁷³¹

8 582. [REDACTED]
9 [REDACTED]⁷³² Eventually, JLI ended this version of its youth
10 prevention program, but the damage had been done: following the cigarette industry playbook, JLI had
11 hooked more youth on nicotine.

12 583. As the sales of JUUL continued to mushroom, it was readily apparent, and widely
13 reported, that the rapid growth in sales was due to the surging popularity of e-cigarette use among
14 teenagers. By March 2018, multiple national news outlets including *National Public Radio*, *USA*
15 *Today*, and *Business Insider* reported youth were using JUUL with alarming frequency, posting about
16 using JUUL in school restrooms on social media, and bragging about being able to use the device in
17 the classroom due to JUUL’s discreet design.

18 584. One of the priorities for JLI, Altria, and the Management Defendants was therefore to
19 control the messaging and narrative around youth e-cigarette use. Faced with an urgent, growing public
20 health crisis, national media attention, and the ire of the public, the FDA and members of Congress, the
21 Defendants realized that dis-information campaign was urgently needed to protect its bottom line. This
22 campaign was the “*Make the Switch*” campaign discussed above.
23
24

25
26 ⁷²⁹ INREJUUL_00265202.

27 ⁷³⁰ Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing*
28 *Campaigns*, 92 Am. J. Public Health 901 (2002),
<https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=nxhb0024>.

⁷³¹ JLI00151300.

⁷³² INREJUUL_00194646.

585. The “*Make the Switch*” campaign was a cover-up, and its goal was to convince the public, including schools and public health departments, that JUUL had never marketed to youth and was instead intended to be a smoking cessation device. This campaign was false. As mentioned above, one of JLI’s engineers admitted, “we’re not trying to design a cessation product at all . . . anything about health is not on our mind.”⁷³³ And as described elsewhere herein, JLI and the Management Defendants directly targeted underage nonsmokers. Indeed, JLI did not mention the term “adult” or “adult smoker” on its Twitter feed until July 5, 2017. JLI, the Management Defendants, and Altria were all 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, to the detriment of schools and public health departments.

586. As JUUL sales skyrocketed in 2017 and 2018 and schools quickly became overwhelmed by this public health crisis, everyone from tobacco industry giants to e-cigarette start-ups launched their own products to take advantage of the illicit youth e-cigarette market Defendants created, using the key elements of JUUL’s design: flavor pods, nicotine salts, and a tech-like appearance.

587. The cigarette industry, which already marketed e-cigarettes, launched “JUULalike” versions of their products in 2018, in flavors such as Mango Apricot and Green Apple, and with nicotine salt formulations and higher nicotine content than their earlier e-cigarettes.⁷³⁴

⁷³³ Kevin Roose, *Juul’s Convenient Smoke Screen*, N.Y. Times (Jan. 11, 2019), <https://www.nytimes.com/2019/01/11/technology/juul-cigarettes-marketing.html>.

⁷³⁴ 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>; *blu Launches myblu E-Vapor Device*, CStore Decisions (Feb. 21, 2018), <https://cstoredecisions.com/2018/02/21/blu-launches-myblu-e-vapor-device/>; 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>.

1 588. The launch of “JUULalike” products concerned Vince Willmore, Vice President of
 2 Communications for the Campaign for Tobacco-Free Kids. According to Willmore, “Juul is our
 3 biggest concern right as it is being widely used by kids across the country . . . [b]ut we are also
 4 concerned that the introduction of a growing number of Juul-like products could make the problem
 5 even worse.”⁷³⁵ Willmore was not the only one worried. Then FDA Commissioner Gottlieb expressed
 6 concern about products copying JUUL’s features, stating that such products “closely resemble a USB
 7 flash drive, have high levels of nicotine and emissions that are hard to see. These characteristics may
 8 facilitate youth use, by making the products more attractive to children and teens.”⁷³⁶

9
 10 589. Researchers from SRITA called it “a nicotine arms race,” writing that “JUUL’s success
 11 in the e-cigarette marketplace has spurred a variety of new pod-based products with exceptionally high
 12 nicotine.”⁷³⁷ “As of September 2018,” the researchers wrote, “there were at least 39 JUUL knock off
 13 devices on the market”—none of which were sold prior to the introduction of JUUL.⁷³⁸

14
 15 590. The rapid proliferation of e-cigarette products in JUUL’s wake and the speed with
 16 which the e-cigarette market evolves make it difficult to enact effective legislative and regulatory
 17 measures.

18 591. The Secretary of HHS recognized, “The United States has never seen an epidemic of
 19 substance use arise as quickly as our current epidemic of youth use of e-cigarettes.”⁷³⁹ FDA
 20

21 ⁷³⁵ Ben Tobin, *FDA targets e-cigarettes like Juul as teachers fear ‘epidemic’ use by students*, USA
 22 Today (Aug. 16, 2018), <https://www.usatoday.com/story/money/2018/08/16/juul-labs-back-school-teachers-e-cigarettes/917531002/>.

23 ⁷³⁶ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement
 24 actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-
 25 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.

26 ⁷³⁷ Robert K. Jackler & Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine product*
 27 *market*. 28 Tobacco Control 623-28 (2019), <https://tobaccocontrol.bmj.com/content/28/6/623>.

28 ⁷³⁸ *Id.*

⁷³⁹ U.S. Food & Drug Administration, *FDA finalizes enforcement policy on unauthorized flavored cartridge-based e-cigarettes that appeal to children, including fruit and mint* (“FDA News Release”),

Commissioner Stephen Hahn, M.D. added, “As we work to combat the troubling epidemic of youth e-cigarette use, the enforcement policy we’re issuing today confirms our commitment to dramatically limit children’s access to certain flavored e-cigarette products we know are so appealing to them—so-called cartridge-based products that are both easy to use and easily concealable.”⁷⁴⁰

592. Enterprising companies recognized loopholes in a policy aimed only at cartridge-based products and the opportunity to fill the demand for fruit-flavored nicotine created by JLI. Disposable e-cigarettes have become increasingly popular with youth due to the youth e-cigarette market Defendant JLI created. The use of disposable e-cigarettes is now “rampant” in schools, further intensifying this public health crisis.⁷⁴¹

593. For every company inspired by JLI to sell candy-flavored e-cigarette 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, a market created by JLI.

594. The rise in disposable products demonstrates why additional measures are necessary to halt the spread of youth e-cigarette use.⁷⁴²

B. Impact of the Youth E-Cigarette Crisis on Plaintiff Santa Cruz County

595. Plaintiff Santa Cruz County is home to approximately 276,000 residents.⁷⁴³ Santa Cruz County is located at the northern tip of Monterey Bay, approximately sixty-five miles south of San Francisco, and incorporates four cities, twenty-six towns, and numerous unincorporated areas. Santa Cruz County is also home to University of California, Santa Cruz, which has an enrollment of

FDA (Jan. 2, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

⁷⁴⁰ *Id.*

⁷⁴¹ 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>.

⁷⁴² *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.

⁷⁴³ *About Santa Cruz County*, County of Santa Cruz, <https://www.co.santa-cruz.ca.us/Visiting/AboutSantaCruzCounty.aspx> (last visited Mar. 18, 2020).

approximately 17,000 undergraduates.⁷⁴⁴ Nineteen percent of Plaintiff's residents are under the age of eighteen.⁷⁴⁵

596. Plaintiff has been significantly affected by the public health crisis caused by youth e-cigarette use. The *2017 Healthy Kids Survey* of secondary schools in Santa Cruz County reported that 6% of eleventh graders were current users of e-cigarettes.⁷⁴⁶ Just two years later, in 2019, this figure increased to 19%.⁷⁴⁷ According to the latest survey data, nearly one in three eleventh graders reported having tried e-cigarettes.⁷⁴⁸ These numbers are self-reported, and many public health officials think they likely underestimate the actual prevalence of youth e-cigarette use. At Santa Cruz High School, it is estimated anecdotally that as many as 50% of students are using e-cigarettes. Plaintiff has heard that students now refer to school bathrooms as the "JUUL lounge."

597. The rapid spread of e-cigarette use among youth is not limited to high school students. From 2017 to 2019, the number of seventh graders who reported current e-cigarette use increased by 233%, rising from 3% to 10% in just two years.⁷⁴⁹ Even students in the fourth and fifth grades have been caught using e-cigarettes in Plaintiff's schools. On the other end of the spectrum, many freshman students at the University of California, Santa Cruz start college with serious addictions to Defendants'

⁷⁴⁴ *About UCSC: Facts & Figures*, <https://www.ucsc.edu/about/facts-figures.html> (last visited Mar. 21, 2020).

⁷⁴⁵ *Quick Facts Santa Cruz County, California*, U.S. Census Bureau, <https://www.census.gov/quickfacts/santacruzcountycalifornia> (last visited Mar. 11, 2020).

⁷⁴⁶ WestEd, *Santa Cruz County Secondary 2015-2017 Main Report* (hereinafter "*2017 Healthy Kids Survey*") at 36, Cal. Healthy Kids Survey (Feb. 6, 2017), https://data.calschls.org/resources/Santa_Cruz_County_1517_Sec_CHKS.pdf.

⁷⁴⁷ WestEd, *Santa Cruz COE Secondary 2018-2019 Main Report* (hereinafter "*2019 Healthy Kids Survey*") at 42, Cal. Healthy Kids Survey (June 25, 2019), https://santacruzcoe.org/wp-content/uploads/2019/09/Santa_Cruz_County_Office_of_Education_1819_Sec_CHKS.pdf.

⁷⁴⁸ *Id.* at 43.

⁷⁴⁹ *Supra* note 585 at 3; *supra* note 586 at 42.

1 e-cigarettes. The Santa Cruz County Health Department recognizes that e-cigarettes are the “fastest-
2 growing nicotine threat in the U.S.”⁷⁵⁰

3 598. The increasing rates of youth e-cigarette use in Plaintiff’s community are consistent
4 with the rise in youth e-cigarette use throughout the state of California, which also happens to be the
5 birthplace of Defendant JLI. In 2017, over 17% of high school students in the state reported using e-
6 cigarettes within the past thirty days, compared to a rate of 13.2% nationally.⁷⁵¹ According to Governor
7 Gavin Newsom’s Executive Order N-18-19, “[V]aping devices are the most commonly used tobacco
8 product in California . . . [and] from 2016 to 2018, vaping among California high school students rose
9 27%.”⁷⁵² E-cigarette use is also much more common among youth than adults in California. While
10 17% of California high school students used e-cigarettes in 2017, only 3% of adults used these
11 products.⁷⁵³

12 599. In addition, survey results indicate that youth find it easier to access e-cigarettes than
13 combustible cigarettes. In 2019, 43% of ninth graders in Santa Cruz County reported believing that it
14 would be “very easy” to obtain e-cigarettes, while only 15% of these students felt the same way about
15 combustible cigarettes.⁷⁵⁴

16 600. Given the widespread use of e-cigarettes by children, one area of significant concern is
17 the lack of knowledge about the long-term health impact of these products. As a representative from
18 the Santa Cruz County Health Services Agency stated, “What we do know is that they’re not regulated.
19 They’re not a proven device even though they’re being marketed as such. So some preliminary studies
20 have shown that the vapors do contain cancer-causing chemicals that can be dangerous to life
21

22 ⁷⁵⁰ *Tobacco Use* at 7, Cty. of Santa Cruz Health Servs. Agency (2015),
23 [http://www.santacruzhealth.org/Portals/7/Pdfs/HSA%20Health%20Reports/2015/2015SCRZHealthR
24 eport17_19.pdf](http://www.santacruzhealth.org/Portals/7/Pdfs/HSA%20Health%20Reports/2015/2015SCRZHealthReport17_19.pdf).

25 ⁷⁵¹ *Tobacco use in California 2019*, Truth Initiative (June 28, 2019), [https://truthinitiative.org/research-
26 resources/smoking-region/tobacco-use-california-2019](https://truthinitiative.org/research-resources/smoking-region/tobacco-use-california-2019).

27 ⁷⁵² *Executive Order N-18-19*, Exec. Dep’t State of Cal. (Sept. 16, 2019), [https://www.gov.ca.gov/wp-
28 content/uploads/2019/09/9.16.19-EO-N-18-19.pdf](https://www.gov.ca.gov/wp-content/uploads/2019/09/9.16.19-EO-N-18-19.pdf).

⁷⁵³ *Id.*

⁷⁵⁴ *Supra* note 586 at 48.

standards.”⁷⁵⁵ An educator with Santa Cruz County Tobacco Education and Prevention Program echoed this sentiment: “This is a relatively new product, and we really don’t know yet what the long-term effects are going to be. We do know that these devices are attractive to youth.”⁷⁵⁶

601. Recognizing that youth e-cigarette use has become a public health crisis, Plaintiff has invested significant time and resources working to combat it.

602. For example, in the Public Health Division of the Santa Cruz County Health Services Agency, staff working on tobacco prevention and education must spend a significant portion of their time addressing youth e-cigarette use. Plaintiff’s employees have met with stakeholders, given presentations, and educated the community and local lawmakers about the dangers of youth e-cigarette use and potential steps to address it.

603. Over the last two years, Plaintiff’s Public Health staff gave over forty presentations to educate the public on the need to curtail youth e-cigarette use, reaching approximately 1,380 individuals, including parents, students, educators and administrators, and other members in Plaintiff’s community. Plaintiff has distributed pamphlets, posters, infographics, cessation materials, and handouts at local health fairs. In addition, Plaintiff spent substantial funds on a robust advertising campaign, including bus ads, billboards, and movie theater pre-show ads, to combat Defendants’ misinformation, to raise public awareness about the risks of youth e-cigarette use.

604. As a result of community support from youth, parents, teachers and healthcare professionals, in November 2018, the City of Santa Cruz became the first jurisdiction in Santa Cruz County to prohibit the sale of all flavored tobacco products.⁷⁵⁷ This ban included all tobacco products with any “characterizing flavor” other than tobacco, including flavored JUULpods. The ban was not

⁷⁵⁵ Phil Gomez, *Santa Cruz considers e-cigarette ban in public spaces*, KSBW8 (Mar. 24, 2014), <https://www.ksbw.com/article/santa-cruz-considers-e-cigarette-ban-in-public-spaces/1053817>.

⁷⁵⁶ Hugh McCormick, *New E-Cigarette Rules Worry Vape Shops*, GoodTimes (June 25, 2019), <http://goodtimes.sc/santa-cruz-news/e-cigarette-rules/>.

⁷⁵⁷ *Tobacco Education Coalition*, Santa Cruz Cty. Health Servs. Agency (2020), [http://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunityHealthEducation/TobaccoEducationCoalition\(TEC\).aspx](http://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunityHealthEducation/TobaccoEducationCoalition(TEC).aspx) (last visited Mar. 11, 2020).

limited to e-cigarettes, and also included “any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.”⁷⁵⁸ Due to the broad language adopted, the ban has the breadth and flexibility to cover products created to exploit loopholes in the federal restrictions, such as the Puff Krush, a nicotine-free flavor pod designed to be placed on top of a JUUL device to impart flavors like Cool Mint Ice, Mango, Kiwi Strawberry, and others.⁷⁵⁹



605. Due, in part, to the education provided by Plaintiff’s Public Health Division, in May 2019, Plaintiff’s Board of Supervisors also banned the sale of all flavored tobacco products, including flavored e-cigarette cartridges and liquids, throughout unincorporated areas of Santa Cruz County.⁷⁶⁰

606. Following the County’s example, the City of Capitola and City of Watsonville adopted similar bans. Plaintiff dedicated substantial time to educating community members on the nature of e-cigarette products, the health risks of use, the impact of advertising and social media, and the role of flavors in initiating youth e-cigarette use. As the chair of the Santa Cruz County Tobacco Education

⁷⁵⁸ *Ordinance No. 2018-19*, City Council of Santa Cruz (Nov. 27, 2018), <http://www.cityofsantacruz.com/home/showdocument?id=74092>.

⁷⁵⁹ See discussion *supra*, Section IV.H.; see also Blake Godwin, *HOW TO GET AROUND THE JUUL FLAVOR BAN*, Youtube.com (Oct. 5, 2019), <https://www.youtube.com/watch?v=8gkDIW8NoSQ>; see also *Puff Krush*, Puffsalt.com, <https://www.puffsalt.com/collections/puff-krush> (last visited Mar. 23, 2020).

⁷⁶⁰ *Tobacco Education Coalition*, *supra* note 596; see also Nicholas Ibarra, *Santa Cruz County to ban flavored tobacco, e-cigarettes*, Santa Cruz Sentinel (May 29, 2019), <https://www.santacruzsentinel.com/2019/05/29/santa-cruz-county-to-ban-flavored-tobacco-e-cigarettes/>.

1 Coalition put it at a Capitola City Council meeting in June 2019, kids “come for the flavors but get
2 trapped by the nicotine.”⁷⁶¹

3 607. At a Watsonville City Council meeting on the proposed bans in October 2019, students
4 from Watsonville and Pajaro Valley high schools demonstrated their support with signs reading
5 “Escape the Vape” and “JUUL Sucks” and spoke about the rapid spread of youth e-cigarette use in
6 their school classrooms and bathrooms, citing “how much the numbers have grown in the last few
7 months, weeks, and days.”⁷⁶² The Watsonville City Council unanimously approved comprehensive
8 measures restricting youth access to tobacco products, banning the sale of flavored tobacco products
9 and all electronic smoking products, including e-cigarettes. Additionally, Watsonville’s ban prohibits
10 pharmacies in the city from selling any tobacco products.⁷⁶³

11 608. Still, there is an overwhelming need for more resources to combat this epidemic created
12 by Defendants. For example, many youth and parents in Plaintiff’s community remain unaware of the
13 true nature, health risks, and addictiveness of e-cigarettes, having been deceived by Defendants’
14 marketing campaigns and misinformation. In Santa Cruz County, 27% of eleventh graders, 30% of
15 ninth graders, and 30% of seventh graders perceived the use of e-cigarette products as only posing a
16 “slight” risk to their health.⁷⁶⁴

17 609. The Santa Cruz County Office of Education⁷⁶⁵ runs the Tobacco Use Prevention and
18 Education Program (“TUPE”), which provides support, training, technical assistance, and information
19 to districts in the development and implementation of tobacco free policies and practices in schools.
20 Funding for TUPE is limited to what is allocated through competitive grants funded via Proposition 99,
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24 ⁷⁶¹ Jessica York, *Capitola joins movement in banning flavored tobacco sales*, Santa Cruz Sentinel
25 (June 28, 2019), <https://www.santacruzsentinel.com/2019/06/28/capitola-joins-movement-in-banning-flavored-tobacco-sales/>.

26 ⁷⁶² Tony Nuñez, *Watsonville bans sale of flavored tobacco, e-cigarettes and vapes*, The Pajaronian
27 (Oct. 11, 2019), <https://pajaronian.com/watsonville-bans-sale-of-flavored-tobacco-e-cigarettes-and-vapes/>.

28 ⁷⁶³ *Id.*

⁷⁶⁴ *Supra* note 586 at 47.

⁷⁶⁵ The Santa Cruz County Office of Education is a separate entity from Plaintiff Santa Cruz County.

1 and much of TUPE's work is focused on gathering data about what tobacco products youth are using
2 and what kinds of cessation services they need. Officials from California Region 5, which includes
3 Santa Cruz County, have quarterly meetings to connect and share resources related to the prevalence of
4 youth e-cigarette use. They use external resources such as the Stanford Tobacco Prevention Toolkit⁷⁶⁶
5 to educate teachers and other professionals; however, keeping up with the spread of youth e-cigarette
6 use in the County remains a constant challenge. In addition, the time that County Office of Education
7 staff now spend assisting schools in addressing widespread youth e-cigarette use leaves less time
8 available for work in areas such as restorative justice and early childhood development programs.

10 610. School districts in Plaintiff's community have been overwhelmed by the rapid
11 escalation in youth e-cigarette use that Defendants cultivated. School administrators have been
12 reaching out to Plaintiff's staff with increased frequency over the past few years seeking resources and
13 assistance with youth e-cigarette use, as well as with requests for assistance with grant funding.
14 Professionals focused on addressing youth e-cigarette use get numerous calls from concerned parents
15 and community members. Plaintiff's Public Health Division is actively working with Santa Cruz
16 County's schools and after-school programs to address this issue. Similarly, Santa Cruz County
17 Sheriff's Office and local police departments work with schools to educate students about the harms
18 and dangers of e-cigarette products.

20 611. Plaintiff has also taken measures to counter changing social norms around e-cigarettes
21 and vaping in public places. Smoking combustible cigarettes in public places has become increasingly
22 socially unacceptable as a result of years of sustained anti-smoking efforts by public health advocates,
23 but due to Defendants' actions and efforts to make e-cigarette use "cool" and widespread among youth
24 peer groups, e-cigarette use has become normalized in Plaintiff's community. This contributes to an
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28 ⁷⁶⁶ *Tobacco Prevention Toolkit*, Stan. Med. (2020),
<https://med.stanford.edu/tobaccopreventiontoolkit.html> (last visited Mar. 19, 2020).

1 increased exposure to second-hand smoke while contributing to a decreased perception of harm. It also
 2 threatens to undo years of hard-fought smoke-free air protections.

3 612. Not only have Defendants' e-cigarette products addicted a new generation to nicotine,
 4 Defendants are also creating a growing hazardous waste problem in Plaintiff's community.
 5 Defendants' e-cigarette products contain chemicals that can be toxic or fatal if ingested in their
 6 concentrated forms,⁷⁶⁷ as well as lithium-ion batteries,⁷⁶⁸ which cannot be safely disposed of in the
 7 normal stream of trash. Lithium-ion batteries can self-ignite or explode, causing serious injury and
 8 property damage if not properly handled or if exposed to water,⁷⁶⁹ and are considered presumptively
 9 hazardous because of their corrosive, ignitable, and reactive characteristics.⁷⁷⁰ Defendants' products
 10 also contain nicotine, which is an acutely hazardous waste.⁷⁷¹ Nicotine is a toxic substance which can
 11 be absorbed dermally and can be fatal to humans in high doses, and therefore nicotine-contaminated
 12 waste requires additional safe-handling procedures.⁷⁷² Transportation and disposal of hazardous waste
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 17 ⁷⁶⁷ See, e.g., *How do I dispose of a JUULpod?*, JUUL Labs, Inc., [https://support.juul.com/hc/en-](https://support.juul.com/hc/en-us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-)
 18 [us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-](https://support.juul.com/hc/en-us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-) (last visited Mar. 3, 2020) ("JUULpods
 19 should be recycled along with other e-waste."); American Acad. of Pediatrics, *Liquid Nicotine Used*
 20 *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),
 21 [https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-](https://www.healthychildren.org/english/safety-prevention/at-home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx)
 22 [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).

23 ⁷⁶⁸ See, e.g., JUUL Labs, Inc. (2020), [https://support.juul.com/hc/en-us/articles/360023319614-What-](https://support.juul.com/hc/en-us/articles/360023319614-What-kind-of-battery-is-in-the-device-)
 24 [kind-of-battery-is-in-the-device-](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
 25 battery. All portable electronics containing lithium-ion batteries present rare, but potentially serious
 26 safety hazards."); JUUL Labs, Inc. (2020), [https://support.juul.com/hc/en-us/articles/360023366194-](https://support.juul.com/hc/en-us/articles/360023366194-How-do-I-dispose-of-a-JUUL-device-)
 27 [How-do-I-dispose-of-a-JUUL-device-](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
 28 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.").

⁷⁶⁹ Alana Semuels, *When Your Amazon Purchase Explodes*, *The Atlantic* (Apr. 30, 2019),
[https://www.theatlantic.com/technology/archive/2019/04/lithium-ion-batteries-amazon-are-](https://www.theatlantic.com/technology/archive/2019/04/lithium-ion-batteries-amazon-are-exploding/587005/)
[exploding/587005/](https://www.theatlantic.com/technology/archive/2019/04/lithium-ion-batteries-amazon-are-exploding/587005/).

⁷⁷⁰ Cal. Code Regs. tit. 22 § 66261.126, Appendix X, item 420 (Lithium).

⁷⁷¹ Cal. Code Regs. tit. 22 §§ 66260.10 (defining acutely hazardous waste), 66261.33 (including
 "nicotine and salts" as acutely hazardous waste); see also 40 C.F.R. § 261.33 (defining nicotine,
 including nicotine residue, as hazardous waste).

⁷⁷² Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing
 for Nicotine, 84 Fed. Reg. 5816, 5822 (Feb. 22, 2019); 40 C.F.R. § 261.11.

1 is highly regulated in California.⁷⁷³ Even “empty” e-cigarette products like used JUULpods contain
 2 some trace amounts of nicotine. JLI contributed to the improper disposal of JUULpods by telling
 3 customers to throw JUULpods away in the “regular trash” until at least April 27, 2019.⁷⁷⁴ In addition,
 4 even “disposable” e-cigarettes, which have proliferated in the youth vaping market created by
 5 Defendants, should not be simply tossed in the trash, as they contain the same chemical residues and
 6 lithium batteries.

8 613. In response to the hazardous waste problem created by Defendants, Plaintiff has utilized
 9 existing partnerships with non-profit organizations such as O’Neill Sea Odyssey to educate youth
 10 about the negative environmental impact that disposing of e-cigarette products has on waterways and
 11 oceans. Plaintiff’s Department of Public Works has also received repeated calls from local schools
 12 asking for information about disposal of the e-cigarette products and components, such as flavor pods,
 13 that staff have found on the ground or have confiscated from students. In addition, e-cigarette products
 14 have been found in Santa Cruz County’s landfills and have been dropped off at hazardous waste
 15 disposal facilities in gallon-sized containers. Because these products are dangerous and can be covered
 16 with nicotine residue, Santa Cruz’s Household Hazardous Waste program is unable to safely dispose of
 17 these products themselves. Given the scope of the youth vaping crisis in Santa Cruz County, Plaintiff’s
 18 Department of Public Works must come up with methods to address the toxic electronic waste
 19 generated by e-cigarette devices and accessories.

22 614. Plaintiff has been taking important steps to combat the youth e-cigarette use epidemic,
 23 but it cannot fully address the existing widespread use of e-cigarette products and resulting nicotine
 24 addiction among youth. Because of the smoothness of nicotine salts contained in Defendants’ e-

25 ⁷⁷³ California Hazardous Waste Control Law, California Health & Safety Code § 25100 *et seq.*

26 ⁷⁷⁴ JUUL Labs, Inc. (@JUULvapor), Twitter (Jul. 16, 2018),
 27 <https://twitter.com/juulvapor/status/1018976775676792834?lang=en>; (“JUULpods can be thrown
 28 away in a regular trash receptacle”) *see also* JUULpod Basics, JUUL Labs, Inc (Apr. 27, 2019),
[https://web.archive.org/web/20190427023811/https://support.juul.com/home/learn/faqs/juulpod-](https://web.archive.org/web/20190427023811/https://support.juul.com/home/learn/faqs/juulpod-basics)
 basics (“How do I dispose of a JUULpod?” “JUULpods are closed systems and are not intended to be
 refilled. They can be thrown away in a regular trash can.”).

1 cigarette products as well as Defendants' discreet device designs, many youths use their e-cigarette
2 devices with high frequency throughout the day—with some kids taking a puff as often as every few
3 minutes. Unlike a combustible cigarette with its telltale emissions of smoke and distinct smell, the
4 JUUL device and "JUULalikes" allow kids to use e-cigarettes undetected behind closed doors and
5 even behind their teachers' backs in the classroom. One educator from the TUPE program described it
6 as a "constant battle." Frequent use makes it much more likely that nicotine addiction will develop,
7 particularly when coupled with the high nicotine content in JUULpods and copycat products. Youth
8 e-cigarette use has therefore resulted in a higher incidence of addiction than that caused by youth
9 smoking of combustible cigarettes. As discussed above, the levels of nicotine consumption can be so
10 high that teens sometimes are "nic sick," experiencing symptoms of nicotine toxicity. Plaintiff's Public
11 Health Division staff have also been told of kids waking up in the middle of the night with the urge to
12 use e-cigarettes because of the severity of their nicotine addiction.
13

14
15 615. With such frequent use, youth e-cigarette use has become a significant disciplinary
16 problem in schools. Plaintiff has received many requests for assistance from school officials who do
17 not know how best to respond. Plaintiff and local school administrators recognize that these students
18 are addicted to Defendants' products and cannot easily quit on their own. Therefore, simply
19 suspending students when they are caught using e-cigarettes does little to fix the problem. Plaintiff has
20 worked hard to help schools identify alternative methods of enforcement and promote interventions
21 that will change student behavior, including restorative justice approaches such as engaging in peer-to-
22 peer education, participating in a tobacco waste cleanup event, or establishing a campus cessation
23 group in person or online. Ultimately, however, hiring additional support staff, such as trained
24 addiction specialists, counselors, or social workers, and developing effective cessation methods
25 targeted to youth who use e-cigarettes are also necessary in order for disciplinary alternatives to be
26 effective. Without cessation support structures in place, many students will continue using e-cigarettes
27 and end up facing disciplinary actions again.
28

616. As the researchers conducting the national *Monitoring the Future* survey wrote in a letter to the *New England Journal of Medicine* in October 2019, current efforts are insufficient to address youth nicotine addiction from using e-cigarettes:

Current efforts by the vaping industry, government agencies, and schools have thus far proved insufficient to stop the rapid spread of nicotine vaping among adolescents. Of particular concern are the accompanying increases in the proportions of youth who are physically addicted to nicotine, an addiction that is 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.⁷⁷⁵

617. The lack of treatment options for Santa Cruz County youth who are addicted to nicotine is a very significant concern for Plaintiff, and something that cannot necessarily be addressed through efforts such as banning flavors or changing the legal purchasing age for tobacco. Such treatment options will be difficult to develop. The available FDA-approved tobacco cessation products were not intended for, and are not approved for, pediatric use. With additional resources, Plaintiff would support the development of additional, youth-appropriate cessation options that can meet the needs of Plaintiff's diverse community. Plaintiff would also support the development of youth e-cigarette-specific cessation resources to address the ways in which youth e-cigarette cessation may differ from adult e-cigarette cessation because youth and adults often use e-cigarette products for different reasons. Development of such resources is a crucial step to combat the youth e-cigarette epidemic. Relatedly, Plaintiff would also put more resources into medical screening, a critical component of identifying youth who are struggling with nicotine addiction and connecting them with resources.

618. Plaintiff also believes it is necessary to develop and implement a youth-focused education campaign about e-cigarette use and its dangers in order to combat Defendants' marketing and the social pressures that the youth e-cigarette use epidemic has created. Carrying out such a campaign effectively and countering Defendants' extensive marketing will require significant funding

⁷⁷⁵ 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>.

1 as well as staff time. With more resources, Plaintiff would also create additional positions for health
2 educators in schools to raise awareness among students about the risks of using e-cigarettes and
3 cessation services that are available. Approaches such as “just say no” are not effective in the face of
4 the current crisis of youth e-cigarette use because of the peer pressure that students face from not only
5 in-person interactions with their peers, but also on social media. Defendants have been adept at using
6 peer-to-peer messaging to promote their addictive products to kids through the use of social media
7 campaigns and paid influencers, and Defendant JLI’s viral marketing and hashtags such as
8 “#doit4juul” or “#di4j” have taken off among youth within Plaintiff’s community. In the words of one
9 tobacco prevention specialist in Santa Cruz County, “it’s 24/7.”
10

11 619. Peer-to-peer messaging is crucial because it is necessary to change the social norms
12 around e-cigarette use, just as previous efforts ultimately changed social norms around combustible
13 cigarette smoking. Because young people are often most willing to listen to other young people,
14 countering Defendants’ conduct will require training and supporting youth to educate their peers. At
15 the same time, kids are not always interested in in-person support groups, and developing a social
16 media campaign with high levels of youth participation could facilitate positive peer-to-peer messaging
17 and help change social norms.
18

19 620. To effectively combat the proliferation of Defendants’ products among youth, Plaintiff
20 also needs to continue and expand its educational and training efforts, including running media
21 campaigns to combat the misinformation spread by Defendants and working with elementary schools.
22 By the time students in Plaintiff’s community reach sixth and seventh grade, many of them are already
23 using e-cigarettes and becoming addicted. As a result, funding is also needed to support increased staff
24 capacity and personnel dedicated to youth e-cigarette use prevention and enforcement in Plaintiff’s
25 community, including health educators in every school from elementary school to college, as well as
26 purchase preventative tools such as cameras and vape detectors.
27
28

621. In addition, while the State of California spends substantial resources on tobacco prevention, the spread of youth e-cigarette use has outpaced available resources. In 2018, the state budgeted nearly \$328 million for tobacco prevention and cessation,⁷⁷⁶ but youth e-cigarette use continues to rise. Money available to support anti-smoking efforts has been declining as youth use of traditional cigarettes goes down, which means that little tobacco prevention funding is available to address youth e-cigarette use rates just as they are surging.

622. Fully addressing the harms to Plaintiff caused by Defendants' conduct will require a comprehensive approach. Without the resources to fund measures such as those described herein, Plaintiff will continue to be harmed by the ongoing consequences of Defendants' conduct.

C. No Federal Agency Action, Including by the FDA, Can Provide the Relief Plaintiffs Seek Here.

623. The injuries Plaintiffs have suffered and will continue to suffer cannot be addressed by agency or regulatory action. There are no rules the FDA could make or actions the agency could take that would provide Plaintiffs the relief they seek in this litigation.

624. Even if e-cigarettes were entirely banned today, millions of youth, including Plaintiff Santa Cruz County's residents, would remain addicted to nicotine.

625. Regulatory action would do nothing to compensate Plaintiff Santa Cruz County for the money and resources it has already expended addressing the impacts of the youth e-cigarette crisis and the resources it will need in the future.

626. Defendants' misconduct alleged herein is not a series of isolated incidents, but instead the result of a sophisticated youth marketing scheme and related cover-up scheme that has caused a continuing, substantial, and long-term burden on the People of California and the services provided by Plaintiff Santa Cruz County. The public nuisance created by Defendants and Plaintiffs' requested relief

⁷⁷⁶ Richard Franki, *California tops state tobacco prevention spending*, CHEST Physician (Jan. 4, 2018), <https://www.mdedge.com/chestphysician/article/155545/pulmonology/california-tops-state-tobacco-prevention-spending>.

1 in seeking abatement further compels Defendants to compensate Plaintiff Santa Cruz County for the
 2 substantial resources it will have to expend to address the youth e-cigarette crisis.

3 **VI. CAUSES OF ACTION**

4 **COUNT ONE — VIOLATIONS OF CALIFORNIA PUBLIC NUISANCE LAW**

5 627. Plaintiff the People of the State of California incorporates each preceding paragraph as
 6 though set forth fully herein.

7 628. Plaintiff brings this claim in the name of the People of the State of California under
 8 California public nuisance law as to all Defendants. Cal. Civ. Proc. Code § 731; Cal. Civ. Code §
 9 3494.
 10

11 629. Civil Code section 3479 provides that “[a]nything that is injurious to health ... or is
 12 indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with
 13 the comfortable enjoyment of life or property ... is a nuisance.”
 14

15 630. Civil Code section 3480 defines a “public nuisance” as “one which affects at the same
 16 time an entire community or neighborhood, or any considerable number of persons, although the extent
 17 of the annoyance or damage inflicted upon individuals may be unequal.”

18 631. Santa Cruz residents have a right to be free from conduct that injures their health. But,
 19 as recognized by Governor Gavin Newsom in his Executive Order N-18-19, Defendants, and each of
 20 them, by their affirmative acts and omissions, have substantially and unreasonably interfered with that
 21 right by creating, contributing to, and assisting in the creation of a public health crisis and youth
 22 epidemic—namely, youth use of e-cigarettes.
 23

24 632. Defendants have created, contributed to, and assisted in creating a public nuisance in
 25 the State of California, including in the County of Santa Cruz, by, among other actions, creating a
 26 devastating public health epidemic of nicotine usage among the youth of California and the County of
 27 Santa Cruz. Defendants specifically created, contributed to, and/or assisted, and/or were a substantial
 28 contributing fact in the creation of a public nuisance, i.e. the creation of the public health crisis of

1 youth e-cigarette use, by, *inter alia*, producing, promoting, distributing, and marketing, JUUL and
2 Markten products for use by minors—including teenagers and children—both statewide and in the
3 County of Santa Cruz and contributing to and assisting in the same. Defendants created, and continue
4 to create, contributed to, and continue to contribute to, and/or have assisted in creating, or continue to
5 assist in creating, a condition that is harmful to human health, harmful to the health of Californians,
6 including the health of residents of the County of Santa Cruz, indecent and offensive to the senses, and
7 obstructs the free use of property and resources so as to interfere with the comfortable enjoyment of
8 life in violation of Civil Code 3479 and 3480.

10 633. The public nuisance caused by Defendants’ conduct is a direct and proximate
11 contributing cause of the injuries and harms sustained by the County of Santa Cruz and its citizens.

13 634. The public nuisance caused by Defendants’ actions is substantial and unreasonable.
14 Defendants’ actions caused and continue to cause the public nuisance, and the harms of that public
15 nuisance outweigh any offsetting benefits. Defendants’ actions have no offsetting benefits. Any
16 purported offsetting benefits are significantly outweighed by the harm of the public health crisis they
17 created.

18 635. Defendants knew that their products are tobacco products and contain nicotine, that
19 nicotine is highly addictive, and that it is illegal to sell or furnish tobacco products to underage
20 individuals. Defendants also knew that that their products were harmful to underage consumers, knew
21 that their products specifically appealed to minors, and knew that their marketing was effective among
22 underage consumers. Even so, Defendants knowingly and actively marketed their products to youth.

24 636. By directly marketing to youth, by continuing these marketing practices after it was
25 evident that children were using JUUL products in large numbers, and by advertising, marketing, and
26 distributing JUUL products at sampling events without providing any nicotine warning, Defendant JLI
27 and the Management Defendants directly facilitated the spread of youth e-cigarette use and the public
28 nuisance affecting the County of Santa Cruz.

1 637. By investing billions of dollars in JLI and actively working to promote the sale and
2 spread of JUUL products with knowledge of JLI's practice of marketing its products to youth and
3 failure to control youth access to its products, Altria directly facilitated the spread of the youth
4 e-cigarette crisis and the public nuisance affecting the People of the State of California and the County
5 of Santa Cruz.

6 638. The public nuisance created, perpetuated, and maintained by Defendants can be abated
7 and further reoccurrence of such harm and inconvenience can be prevented. It is an ongoing public
8 health crisis.

9 639. Defendants' conduct has affected and interfered with and continues to affect and
10 interfere with the rights of a considerable number of young people and others in the County of Santa
11 Cruz, and throughout the State of California, including but not limited to youth and others in California
12 and the County of Santa Cruz who have become and continue to become addicted to nicotine due to
13 Defendants' products and marketing.

14 640. This addiction has caused, is causing, and will continue to cause physical, sometimes
15 fatal, harm, and mental harm, to those who are addicted and who use tobacco products.

16 641. Addicted individuals will require unknown amounts of medical and preventative care,
17 in the future. This is worsened by the lack of approved tobacco cessation products for underage
18 individuals.

19 642. Public schools throughout California, and in the County of Santa Cruz, are suffering
20 from increased absenteeism, classroom disruptions, suspensions, loss of class time for students,
21 increased nurse visits by students, diversions of and losses of critical funding to school districts, and
22 many other harms and expenses directly due to Defendants' actions.

23 643. County governments and Public Health Divisions throughout California, and in the
24 County of Santa Cruz, are required to spend increased time and resources combating the
25 misinformation spread by Defendants, educating their communities about the addictive nature and

1 harm caused by Defendants' products, supporting, advocating for, and enacting policies designed to
2 address the rise in youth e-cigarette use created by Defendants, and supporting and assisting schools
3 overwhelmed by youth e-cigarette use.

4 644. Defendants also created a public nuisance through the way in which they disposed of,
5 and encouraged consumers to dispose of, JUUL waste items, which includes JUUL devices, pods, and
6 chargers.
7

8 645. The consequences of Defendants' conduct are not in the public interest.

9 646. Defendants are liable under California Civil Code sections 3479, *et seq.* and Code of
10 Civil Procedure section 731 for creating a public nuisance.

11 647. Defendants must abate the public nuisance caused by their conduct in marketing,
12 furnishing and selling their products to underage persons in California, including in the County of
13 Santa Cruz. Plaintiff requests an order from the Court providing for abatement of Defendants' ongoing
14 and future violations of Civil Code sections 3479 and 3480. Accordingly, Plaintiff requests that the
15 court order Defendants to create a fund that will be used to remediate the public health crisis of youth
16 e-cigarette use that Defendants created. Plaintiff, through the County Counsel and associated counsel,
17 requests abatement of the public nuisance created by Defendants in the County of Santa Cruz pursuant
18 to Section 731 of the Code of Civil Procedure.
19

20 **COUNT TWO — VIOLATIONS OF CALIFORNIA PUBLIC NUISANCE LAW**

21 648. Plaintiff County of Santa Cruz re-alleges and incorporates by reference each of the
22 allegations contained in this Complaint as though fully alleged herein.
23

24 649. California Civil Code § 3479 provides that "[a]nything that is injurious to health...or is
25 indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with
26 the comfortable enjoyment of life or property...is a nuisance." "A public nuisance is one which affects
27 at the same time an entire community or neighborhood, or any considerable number of persons,
28

1 although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Cal. Civ.
2 Code § 3480.

3 650. California tort law is to the same effect. Any conduct which interferes with the interests
4 of the community or the comfort and convenience of the general public, including interference with the
5 public health, comfort, and convenience, is a public nuisance.

6 651. Plaintiff County of Santa Cruz has a right to be free from conduct that injures the public
7 health of its community.

8 652. Defendants have created, contributed to, and assisted in creating a public nuisance in
9 the County of Santa Cruz, by, among other actions, creating a devastating public health epidemic of
10 nicotine usage among the youth of the County of Santa Cruz. Defendants specifically created,
11 contributed to, and/or assisted, and/or were a substantial contributing fact in the creation of a public
12 nuisance, i.e. the creation of the public health crisis of youth e-cigarette use, by, inter alia, producing,
13 promoting, distributing, and marketing, JUUL and Markten products for use by minors—including
14 teenagers and children—in the County of Santa Cruz and contributing to and assisting in the same.
15 Defendants created, and continue to create, contributed to, and continue to contribute to, and/or have
16 assisted in creating, or continue to assist in creating, a condition that is harmful to human health,
17 harmful to the health of residents of the County of Santa Cruz, indecent and offensive to the senses,
18 and obstructs the free use of property and resources so as to interfere with the comfortable enjoyment
19 of life in violation of Civil Code 3479 and 3480.

20 653. The public nuisance caused by Defendants’ conduct is a direct and proximate
21 contributing cause of the injuries and harms sustained by the County of Santa Cruz and its citizens.

22 654. The public nuisance caused by Defendants’ actions is substantial and unreasonable.
23 Defendants’ actions caused and continue to cause the public nuisance, and the harms of that public
24 nuisance outweigh any offsetting benefits. Defendants’ actions have no offsetting benefits. Any
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1 purported offsetting benefits are significantly outweighed by the harm of the public health crisis they
2 created.

3 655. Defendants knew that their products are tobacco products and contain nicotine, that
4 nicotine is highly addictive, and that it is illegal to sell or furnish tobacco products to underage
5 individuals. Defendants also knew that that their products were harmful to underage consumers, knew
6 that their products specifically appealed to minors, and knew that their marketing was effective among
7 underage consumers. Even so, Defendants knowingly and actively marketed their products to youth.

8 656. By directly marketing to youth, by continuing these marketing practices after it was
9 evident that children were using JUUL products in large numbers, and by advertising, marketing, and
10 distributing JUUL products at sampling events without providing any nicotine warning, Defendant JLI
11 and the Management Defendants directly facilitated the spread of youth e-cigarette use and the public
12 nuisance affecting the County of Santa Cruz.
13
14

15 657. By investing billions of dollars in JLI and actively working to promote the sale and
16 spread of JUUL products with knowledge of JLI's practice of marketing its products to youth and
17 failure to control youth access to its products, Altria directly facilitated the spread of the youth
18 e-cigarette crisis and the public nuisance affecting the County of Santa Cruz.

19 658. The public nuisance created, perpetuated, and maintained by Defendants can be abated
20 and further reoccurrence of such harm and inconvenience can be prevented. It is an ongoing public
21 health crisis.
22

23 659. Defendants' conduct has affected and interfered with and continues to affect and
24 interfere with the rights of a considerable number of young people and others in the County of Santa
25 Cruz, including but not limited to youth in the County of Santa Cruz who have become and continue to
26 become addicted to nicotine due to Defendants' products and marketing.

27 660. This addiction has caused, is causing, and will continue to cause physical, sometimes
28 fatal, harm, and mental harm, to those who are addicted and who use tobacco products.

1 661. Addicted individuals will require unknown amounts of medical and preventative care,
2 in the future. This is worsened by the lack of approved tobacco cessation products for underage
3 individuals.

4 662. Public schools in the County of Santa Cruz are suffering from increased absenteeism,
5 classroom disruptions, suspensions, loss of class time for students, increased nurse visits by students,
6 diversions of and losses of critical funding to school districts, and many other harms and expenses
7 directly due to Defendants' actions.

8 663. Plaintiff County of Santa Cruz, including but not limited to its Public Health Division,
9 is required to spend increased time and resources combating the misinformation spread by Defendants,
10 educating the Santa Cruz County community about the addictive nature and harm caused by
11 Defendants' products, supporting, advocating for, and enacting policies designed to address the rise in
12 youth e-cigarette use created by Defendants, and supporting and assisting schools overwhelmed by
13 youth e-cigarette use.

14 664. Defendants also created a public nuisance through the way in which they disposed of,
15 and encouraged consumers to dispose of, JUUL waste items, which includes JUUL devices, pods, and
16 chargers.

17 665. By causing information to be published on JLI's website and social media accounts
18 telling users to throw JUULpods away in the "regular trash" until at least April 27, 2019, Defendants
19 caused hazardous waste to be spread throughout Plaintiff's property, including in Plaintiff's landfills.

20 666. This hazardous waste has damaged Plaintiff's property. It also poses a health risk to
21 Plaintiff's employees and citizens.

22 667. The consequences of Defendants' conduct are not in the public interest.

23 668. Defendants are liable under California Civil Code sections 3479, et seq. and Code of
24 Civil Procedure section 731 for creating a public nuisance.

669. Defendants must abate the public nuisance caused by their conduct in marketing, furnishing and selling their products to underage persons in the County of Santa Cruz. Plaintiff requests an order from the Court providing for abatement of Defendants' ongoing and future violations of Civil Code sections 3479 and 3480. Accordingly, Plaintiff requests that the court order Defendants to create a fund that will be used to remediate the public health crisis of youth vaping that Defendants created. Plaintiff, through the County Counsel and associated counsel, requests abatement of the public nuisance created by Defendants in the County of Santa Cruz pursuant to Section 731 of the Code of Civil Procedure.

COUNT THREE — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO"), 18 U.S.C. § 1961(C)

670. Plaintiff County of Santa Cruz re-alleges and incorporates by reference each of the allegations contained in this Complaint as though fully alleged herein.

671. This claim is brought by Plaintiff against Defendants JLI, Monsees, Bowen, Pritzker, Huh, Valani, and Altria (the "RICO 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. For ease of reference, Defendants JLI, Monsees, Bowen, Pritzker, Huh, and Valani are referred to below as the "Early Enterprise Defendants."

672. At all relevant times, each RICO 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."

673. Plaintiff is a "person," as that term is defined in 18 U.S.C. § 1961(3), and has standing to sue as they were and are injured in their business and/or property as a result of the RICO Defendants' wrongful conduct described herein.

674. Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or

1 participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of
 2 racketeering activity" 18 U.S.C. § 1962(c).

3 675. Section 1962(d) makes it unlawful for "any person to conspire to violate" Section
 4 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

5 676. Each RICO Defendant conducted the affairs of an enterprise through a pattern of
 6 racketeering activity and conspired to do so, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

7 677. Plaintiff demands the applicable relief set forth in the Prayer for Relief below.

8
 9 **A. Description of the Nicotine Market Expansion Enterprise**

10 678. RICO defines an enterprise as "any individual, partnership, corporation, association, or
 11 other legal entity, and any union or group of individuals associated in fact although not a legal entity."
 12 18 U.S.C. § 1961(4).

13 679. Under 18 U.S.C. § 1961(4) a RICO "enterprise" may be an association-in-fact that,
 14 although it has no formal legal structure, has (i) a common purpose, (ii) relationships among those
 15 associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise's purpose. *See*
 16 *Boyle v. United States*, 556 U.S. 938, 946 (2009).

17 680. The RICO Defendants formed an association-in-fact enterprise—the Nicotine Market
 18 Expansion Enterprise. The Nicotine Market Expansion Enterprise exists separately from the otherwise
 19 legitimate business operations of JLI, Altria, or the investment companies with which Defendants
 20 Pritzker, Huh, and Valani are affiliated. Rather, the Enterprise is an ongoing and continuing business
 21 organization consisting of "persons" within the meaning of 18 U.S.C. § 1961(3) that created and
 22 maintained systematic links for a more nefarious common purpose: maintaining and expanding the
 23 number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base,
 24 including by maintaining and expanding JLI's massive, and ill-gotten, share of the e-cigarette market.

25 681. The Early Enterprise Defendants and non-defendant Veratad Technologies LLC
 26 ("Veratad") formed the Nicotine Market Expansion Enterprise by at least 2015, when the Early
 27
 28

1 Enterprise Defendants prepared to launch the JUUL e-cigarette and capture and grow a market of
2 nicotine-addicted users, including youth, that would serve as customers for life.

3 682. As tobacco companies have long known, profitable growth requires a pipeline of
4 “replacement smokers” or vapers. For that reason and others, Defendant Altria joined the Nicotine
5 Market Expansion Enterprise in the Spring of 2017. The Early Enterprise Defendants, for their part,
6 eagerly invited Altria into the fold—they needed allies and resources to further their Enterprise, and,
7 despite their public statements to the contrary, sought to be a part of the tobacco industry.

8 683. When Altria joined the Nicotine Market Expansion Enterprise, it shared the Early
9 Enterprise Defendants’ common purpose: maintaining and expanding the number of nicotine-addicted
10 e-vapor users in order to ensure a steady and growing customer base. Among Altria’s motivations for
11 pursuing this common purpose was access to JLI’s customer base that would serve as Altria’s pipeline
12 of “replacement smokers” or vapers.

13 684. The Nicotine Market Expansion Enterprise involved a growing membership and
14 changed its shape to fit its current needs, adding members when necessary and eliminating them when
15 they became obsolete. From 2015 through 2017, the Enterprise consisted of the Early Enterprise
16 Defendants and non-defendant Veratad. In the Spring of 2017, Defendant Altria joined the Nicotine
17 Market Expansion Enterprise. Non-defendant member Veratad would leave the Enterprise sometime in
18 2018 when it stopped coordinating with Defendant JLI. Each Early Enterprise Defendant is liable for
19 the predicate acts of the enterprise committed no later than its formation in 2015, and Defendant Altria
20 is liable for the predicate acts of the enterprise committed no later than when it joined the Enterprise in
21 Spring 2017.

22 685. As described above, the Early Enterprise Defendants established an ongoing
23 relationship through, among other connections, Defendants’ Priztker, Huh, and Valani’s investment in
24 JLI; Defendants’ Bowen, Monsees, Pritzker, Huh, and Valani’s control of the JLI Board of Directors;
25 the Early Enterprise Defendants’ assumption of “final say” on all marketing for JLI products, including
26
27
28

1 fraudulent advertising; and the Early Enterprise Defendants' coordination on ensuring broad access to
2 JLI products, including underage access, with non-defendant Enterprise member Veratad. And the
3 Early Enterprise Defendants and Altria established an ongoing relationship through, among other
4 connections, Altria's equity investment in JLI, the many informal and formal agreements between
5 these two Defendants and their coordinated activities in furtherance of the common purpose of the
6 Nicotine Market Expansion Enterprise, and the overlap between JLI executives and leadership and
7 Altria.

8
9 686. The RICO Defendants formed the Nicotine Market Expansion Enterprise in order to
10 engage in a collaborative scheme to defraud. As described above, the Nicotine Market Expansion
11 Enterprise Defendants shared and acted on a common purpose of maintaining and expanding the
12 number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base,
13 including by maintaining and expanding JLI's massive, and ill-gotten, share of the e-cigarette market.
14

15 687. The Nicotine Market Expansion Enterprise has been in existence for almost five years
16 and continues to operate to this day. As described above, it has had sufficient longevity to pursue the
17 Nicotine Market Expansion Enterprise's common purpose.

18 **B. Conduct of the Nicotine Market Expansion Enterprise**

19 688. "[T]o conduct or participate, directly or indirectly, in the conduct" of an enterprise, "one
20 must participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507
21 U.S. 170, 185 (1993).
22

23 689. As described above, each RICO Defendant participated in the operation or management
24 of the Nicotine Market Expansion Enterprise. Illustrative but non-exhaustive examples include the
25 following:

26 **Early Leadership**

27 690. As described in Sections IV.A, IV.B, and IV.C, Defendants Bowen and Monsees were
28 the visionaries behind the Enterprise and would lead it in its early days.

1 **Fraudulent Marketing Scheme**

2 691. As described in Sections IV.E.3, IV.E.4, and IV.E.7.a, JLI, and Defendants Bowen,
3 Monsees, Pritzker, Huh, and Valani (through their “final say” on all of JLI’s marketing efforts) caused
4 false and misleading advertisements that omitted references to JUUL’s nicotine content and potency to
5 be transmitted via the mail and wires, including the Vaporized campaign.
6

7 **Youth Access Scheme**

8 692. As described in Section IV.E.9, Defendant JLI (through its employees) coordinated with
9 non-defendant member Veratad on behalf of the other Early Enterprise Defendants to expand youth
10 access to JUUL products.

11 693. As described in Section IV.E.9, Veratad was a key player in the Nicotine Market
12 Expansion Enterprise. And while each member of the Enterprise was not involved in every scheme
13 (Veratad, for example, did not transmit the advertisements or packaging containing misrepresentations
14 regarding JLI’s nicotine content), each worked in furtherance of the same common purpose and was
15 aware of the other members’ participation in the Enterprise. Moreover, each scheme was integral to the
16 Enterprise’s success in maintaining and expanding the number of nicotine-addicted e-cigarette users in
17 order to ensure a steady and growing customer base. Veratad shared this common purpose, and its
18 motivation for doing so was to maintain a lucrative client – one of several clients who relied on
19 Veratad for intentionally ineffective age verification services. Veratad knew that JUUL products were
20 being purchased online by youth and that youth were able to “pass” age verification, yet coordinated
21 with JLI to reduce the requirements for purchasers to “pass” age verification.
22

23 **Coopting JLI’s Board of Directors**

24 694. As described in Section IV.E.7.b, Defendants Pritzker, Huh, and Valani took control of
25 the JLI Board of Directors in October 2015, so they could use the Board as an instrumentality to
26 effectuate fraudulent schemes in furtherance of the Nicotine Market Expansion Enterprise’s common
27
28

1 purpose. In doing so, leadership of the Enterprise transitioned from Bowen and Monsees to Pritzker,
2 Huh, and Valani.

3 **Coordinating Activities of JLI and Altria**

4 695. By August 2016, Defendants Pritzker, Huh, and Valani had ceded executive leadership
5 at JLI to a new CEO, Tyler Goldman. Thus, when these parties started to coordinate with Altria, it was
6 JLI (through its executives and employees—including Tyler Goldman and his successors) and Altria
7 (through its executives and employees) that primarily directed the affairs of the Enterprise, although
8 Defendants Bowen, Monsees, Pritzker, Huh, and Valani remained critical to the success of the
9 Enterprise's common purpose. Without their control of the JLI Board of Directors and prior fraudulent
10 conduct, the close coordination between JLI and Altria, and Altria's investment in JLI, would not have
11 been possible.
12

13 696. As described in Sections IV.A and IV.F, the Early Enterprise Defendants and Altria
14 began to actively coordinate their activities in 2017 and each took actions that would further the
15 Enterprise's common purpose of maintaining and expanding the number of nicotine-addicted e-
16 cigarette users in order to ensure a steady and growing customer base, including by maintaining and
17 expanding JLI's massive, and ill-gotten, share of the e-cigarette market. For example, as alleged above:
18

19 697. As early as 2017, the Early Enterprise Defendants and Altria shared data and strategy to
20 support their common purpose, through a conduit, Avail Vapor.
21

22 698. By 2018, Altria was taking actions to ensure JLI's products had access to prime shelf
23 space in retail locations.

24 699. By 2018, Altria was distributing and marketing JLI's products to its wider base of
25 retailers.

26 700. In December 2018, Altria decided to cash in on its role in the Nicotine Market
27 Expansion Enterprise by making a \$12.8 billion equity investment in JLI, the largest equity investment
28 in United States history. This investment would give Altria three seats on the JLI Board of Directors,

1 and thus allow it to assert greater control over both JLI and the Nicotine Market Expansion Enterprise,
2 which used the instrumentalities of JLI to effectuate many of its fraudulent schemes.

3 **Nicotine Content Misrepresentation Scheme**

4 701. As described in Section IV.D, the Early Enterprise Defendants and Altria caused
5 thousands, if not millions, of JUUL pod packages to be distributed to consumers with false and
6 misleading information regarding the JUUL pods' nicotine content. The Early Enterprise Defendants
7 also caused the same false and misleading information to be distributed via JLI's website.
8

9 **Flavor Preservation Scheme**

10 702. As described in Sections IV.C.6 and IV.H.2, the RICO Defendants worked in concert to
11 defraud the public and regulators in order to prevent regulation and public outrage that would have
12 impeded their plan to maintain and expand the number of nicotine-addicted e-cigarette users in order to
13 ensure a steady and growing customer base. Specifically, they worked to ensure the FDA allowed
14 certain flavors, namely mint, to remain on the market.
15

16 **Cover-up Scheme**

17 703. The RICO Defendants were not only concerned with protecting flavors, however. In
18 light of growing public scrutiny of JLI's role in the youth e-cigarette crisis, these defendants continued
19 their scheme to prevent a complete ban on JLI's product due to regulatory action or public outcry.
20

21 704. As described in Sections IV.D.2 and IV.E.12, JLI maintained its website pages that
22 provided false information about the addictive potential of its products and denied that JLI marketed to
23 youth, and Defendants Bowen, Monsees, Pritzker, Huh, and Valani provided direct input as to the
24 content of the JLI website and had "final say" over JLI's marketing messaging.

25 705. As described in paragraphs Sections IV.D.4 and IV.E.12, JLI, and Defendants Bowen,
26 Monsees, Pritzker, Huh, and Valani (through their "final say" on all of JLI's marketing efforts) caused
27 false and misleading advertising to be distributed over television and the internet in order to give the
28 impression that JLI's product was a smoking cessation device and that JLI never marketed to youth.

1 Defendant Altria continued this scheme by transmitting the fraudulent “Make the Switch”
2 advertisements in packs of its combustible cigarettes.

3 706. As described in Section IV.E.12, beginning in October 2018, both Altria and JLI were
4 transmitting false and misleading communications to the public and the government in an attempt to
5 stave off regulation and public outcry.
6

7 707. And no later than December 2018, Altria began providing even more services to the
8 Nicotine Market Expansion Enterprise, as described in Section IV.F.3.

9 708. The pattern of racketeering activity by the RICO Defendants, described below, provides
10 further support that each RICO Defendant conducted or participated in the conduct of the Nicotine
11 Market Expansion Enterprise.
12

13 **C. Pattern of Racketeering Activity**

14 709. To carry out, or attempt to carry out, the objectives of the Nicotine Market Expansion
15 Enterprise, the RICO Defendants, each of whom is a person associated-in-fact with the Enterprise, did
16 knowingly conduct or participate in, directly or indirectly, the affairs of the Enterprise through a
17 pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), 1962(c), and
18 employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and 18
19 U.S.C. § 1343 (wire fraud).
20

21 710. Specifically, the RICO Defendants have committed, conspired to commit, and/or aided
22 and abetted in the commission of, at least two predicate acts of racketeering activity (i.e., violations of
23 18 U.S.C. §§ 1341, 1343), within the past ten years.

24 711. The multiple acts of racketeering activity which the RICO Defendants committed, or
25 aided or abetted in the commission of, were related to each other, pose a threat of continued
26 racketeering activity, and therefore constitute a “pattern of racketeering activity.”
27

28 712. The racketeering activity was made possible by the Enterprise’s regular use of the
facilities, services, and employees of the members of the Enterprise.

1 713. The RICO Defendants participated in the Nicotine Market Expansion Enterprise by
2 using mail, telephone, and the internet to transmit mailings and wires in interstate or foreign
3 commerce.

4 714. The RICO Defendants used, directed the use of, and/or caused to be used, thousands of
5 interstate mail and wire communications in service of the Enterprise's objectives through common
6 misrepresentations, concealments, and material omissions.

7 715. In devising and executing the objectives of the Nicotine Market Expansion Enterprise,
8 the RICO Defendants devised and knowingly carried out material schemes and/or artifices to defraud
9 the public and regulators by (1) transmitting advertisements that fraudulently and deceptively omitted
10 any reference to JUUL's nicotine content or potency (or any meaningful reference, where one was
11 made); (2) causing false and misleading statements regarding the nicotine content of JUUL pods to be
12 posted on the JLI website; (3) causing thousands, if not millions, of JUUL pod packages containing
13 false and misleading statements regarding the nicotine content of JUUL pods to be transmitted via U.S.
14 mail; (4) representing to consumers and the public-at-large that JUUL was created and designed as a
15 smoking cessation device, and by misrepresenting the nicotine content and addictive potential of its
16 products; (5) making fraudulent statements to the FDA to convince the FDA to allow certain flavors,
17 namely mint, to remain on the market; and (6) making fraudulent statements to the public (including
18 through advertising), the FDA, and Congress to stave off a total prohibition on JUUL e-cigarettes that
19 was being contemplated in light of JLI's role in the youth e-cigarette epidemic.
20

21 716. For the purpose of furthering the Enterprise's common purpose of maintaining and
22 expanding the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing
23 customer base, including by preserving and increasing JLI's market share, even at the expense of
24 exposing and addicting children to nicotine, the RICO Defendants committed these racketeering acts,
25 which number in the thousands, intentionally and knowingly with the specific intent to advance the
26 Enterprise's objectives.
27
28

717. The RICO Defendants' predicate acts of racketeering, 18 U.S.C. § 1961(1), include, but are not limited to:

- A. Mail Fraud: the Nicotine Market Expansion 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, regulators, and Congress; and
- B. Wire Fraud: the Nicotine Market Expansion 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, regulators, and Congress.

718. The Nicotine Market Expansion Enterprise falsely and misleadingly used the mails and wires in violation of 18 U.S.C. §§ 1341, 1343. Illustrative and non-exhaustive examples include the following:

From	To	Date	Description
<i>Fraudulent Statements Omitting Reference to JUUL's Nicotine Content (see Sections IV.E.3, IV.E.4, and IV.E.7.a)</i>			
All Early Enterprise Defendants	Public (via television, internet, and mail)	2015	"Vaporized" Campaign, and other Advertising campaigns transmitted via the mails and wires which omitted any reference to JUUL's nicotine content.
JLI	Members of the public on JLI's email distribution list	June 2015 to April 7, 2016	171 promotional emails were sent to members of the public with no mention of JUUL nicotine content. For example, on July 11, 2015, JLI knowingly caused an email to be sent via the wires in interstate commerce from JUUL's email address to people who had signed up from JUUL emails, including youth. This email advertised JUUL's promotion events and said "Music, Art, & JUUL. What could be better? Stop by and be gifted a free starter kit." This email did not mention that JUUL contained nicotine nor that JUUL or the free starter kits were only for adults.

From	To	Date	Description
<i>Fraudulent Statements Omitting Reference to JUUL's Nicotine Content (see Sections IV.E.3, IV.E.4, and IV.E.7.a)</i>			
JLI	Public (via internet – Twitter)	June 2015 to October 6, 2017	JLI's Twitter feed, @JUULvapor, and its 2,691 tweets, did not contain a nicotine warning. For example, on August 7, 2015, JLI knowingly caused a tweet to be posted on JLI's Twitter Feed, @JUULvapor, advertising the Cinespia "Movies All Night Slumber Party" and captioned it "Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!" This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine.
JLI	Public (via internet – Twitter)	July 28, 2017	JLI knowingly caused a tweet to be posted on JLI's Twitter Feed, @JUULvapor, showing an image of a Mango JUULpod next to mangos, and captioned "#ICYMI: Mango is now in Auto-ship! Get the #JUULpod flavor you love delivered & save 15%. Sign up today." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine. On information and belief, due to the Early Enterprise Defendant's coordination with Veratad, mango JUULpods were actually shipped to youth.

From	To	Date	Description
<i>Fraudulent Statements Omitting Reference to JUUL's Nicotine Content (see Sections IV.E.3, IV.E.4, and IV.E.7.a)</i>			
JLI	Public (via internet – Twitter)	August 4, 2017	JLI knowingly caused a tweet to be posted on JLI's Twitter Feed, @JUULvapor, promoting Mint JUULpods with an image stating "Beat The August Heat with Cool Mint" and "Crisp peppermint flavor with a pleasant aftertaste," captioned "A new month means you can stock up on as many as 15 #JUULpod packs. Shop now." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine. On information and belief, due to the Early Enterprise Defendant's coordination with Veratad, mint JUULpods were actually shipped to youth.
JLI	Public (via internet – Twitter)	August 28, 2017	JLI knowingly caused a tweet to be posted on JLI's Twitter Feed, @JUULvapor, comparing JUULpods to dessert with an image and stating "Do you brulee? RT if you enjoy dessert without a spoon with our Crème Brulee #JUULpods." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This tweet did not mention that JUUL contained nicotine. On information and belief, due to the Early Enterprise Defendant's coordination with Veratad, Crème Brulee JUULpods were actually shipped to youth.

From	To	Date	Description
<i>Fraudulent Statements that the Coordination with Veratad was Designed to Reduce Youth Access (see Section IV.E.9)</i>			
JLI	Public (via internet – email to a member of the press)	October 15, 2017	JLI knowingly caused a JLI spokeswoman to send an email to a newspaper in New York, ANMY, stating that JLI uses “industry-leading ID match and age verification technology to ensure that customers” are over 21 and that the “information is verified against multiple databases.” This email was delivered via the wires in interstate commerce to a member of the press. The Early Enterprise Defendants intended this statement to be published to members of the public and it was in fact published to members of the public. This statement was false and fraudulent in furtherance of the Enterprise because the Early Enterprise Defendants were coordinating with Veratad to ensure that their age verification system did not actual prevent youth from purchasing JUUL.
JLI	Public ([REDACTED])	[REDACTED]	[REDACTED] This email was delivered via the wires in interstate commerce to a member of the press. The Early Enterprise Defendants intended this statement to be published to members of the public. This statement was false and fraudulent in

From	To	Date	Description
<i>Fraudulent Statements that the Coordination with Veratad was Designed to Reduce Youth Access (see Section IV.E.9)</i>			
			furtherance of the Enterprise because the Early Enterprise Defendants were coordinating with Veratad to ensure that their age verification system did not actual prevent youth from purchasing JUUL.
JLI	Public (via internet – Twitter)	June 5, 2018	JLI knowingly caused a tweet to be posted on JLI's Twitter Feed, @JUULvapor, stating "We've partnered with Veratad Technologies to complete a public records search, only reporting back whether or not you are 21 years of age or older." This tweet was delivered via the wires in interstate commerce to members of the public, including followers of JLI's Twitter Feed, which included youth. This statement was fraudulent because the Early Enterprise Defendants were coordinating with Veratad to ensure that their age verification system did not actual prevent youth from purchasing JUUL.
All Early Enterprise Defendants	Public (via JLI's website)	November 13, 2018	JLI was "Restricting Flavors to Adults 21+ On Our Secure Website" and that JLI's age-verification system was "an already industry-leading online sales system that is restricted to 21+ and utilizes third party verification." A video accompanying this message stated "At JUUL labs we're committed to leading the industry in online age verification security to ensure that our products don't end up in the hands of underage users" and included an image of a computer with a chain wrapped around it and locked in place. This message was posted using

From	To	Date	Description
<i>Fraudulent Statements that the Coordination with Veratad was Designed to Reduce Youth Access (see Section IV.E.9)</i>			
			the wires in interstate commerce on JLI's website and was directed to and seen by the public. These statements were fraudulent because the Early Enterprise Defendants were and had been coordinating with Veratad to ensure that their age verification system did not actual prevent youth from purchasing JUUL
From	To	Date	Description
<i>Fraudulent Statements that JUUL is a Cessation Device (see Section IV.D.4)</i>			
JLI	Public (via internet – Twitter)	July 5, 2017	The @JUULvapor Twitter account published a tweet stating “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.”
All Early Enterprise Defendants	Public (via internet – JLI Website)	April 25, 2018 (or earlier) to Present	“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 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.”
Kevin Burns (former JLI CEO)	Public (via internet – JLI Website)	November 13, 2018	“To paraphrase Commissioner Gottlieb, we want to be the offramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.”
All Early Enterprise Defendants	Public (via internet – JLI Website)	September 19, 2019	“JUUL Labs, which exists to help adult smokers switch off of combustible cigarettes.”
Howard Willard (Altria CEO)	Public (via internet – Altria website)	December 20, 2018	“We are taking significant action to prepare for a

From	To	Date	Description
<i>Fraudulent Statements that JUUL is a Cessation Device (see Section IV.D.4)</i>			
			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.”
Howard Willard	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	“We believe e-vapor products present an important opportunity to adult smokers to switch from combustible cigarettes.”

From	To	Date	Description
<i>Fraudulent Statements Regarding Nicotine Content in JUUL pods (see Section IV.D)</i>			
All Early Enterprise Defendants	Public (via internet – JLI website)	July 2, 2019 (or earlier) to Present	“Each 5% JUUL pod is roughly equivalent to one pack of cigarettes in nicotine delivery.”
All Early Enterprise Defendants	Public (via internet – JLI website)	April 21, 2017	“JUUL pod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of manufacture which is approximately equivalent to 1 pack of cigarettes or 200 puffs.”
All RICO Defendants	Public (via U.S. mail distribution of JUUL pod packaging)	2015 to Present	JUUL pod packages (1) claiming a 5% nicotine strength; (2) stating that a JUUL pod is “approximately equivalent to about 1 pack of cigarettes.”

From	To	Date	Description
<i>Fraudulent Statements to Prevent Regulation of Mint Flavor (see Sections IV.C.6 and IV.H.2)</i>			
JLI	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA) November 12, 2018 (Public)	JLI’s Action Plan that fraudulently characterizes mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult

From	To	Date	Description
<i>Fraudulent Statements to Prevent Regulation of Mint Flavor (see Sections IV.C.6 and IV.H.2)</i>			
			smokers.
Howard Willard (Altria CEO)	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	Letter from H. Willard to FDA fraudulently representing mint as a non-flavored tobacco and menthol product, suggesting that it was a product for adult smokers.
JLI	FDA (via U.S. mail or electronic transmission)	November 5, 2018	Fraudulent youth prevalence study transmitted by JLI to the FDA.

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
All Early Enterprise Defendants	Public (via Television)	January 2019	\$10 million “Make the Switch” advertising campaign for the purpose of deceiving the public and regulators that JLI was only targeting adult smokers with its advertising and product and that JUUL was a cessation product.
Altria	Public (via inserts in combustible cigarette packs)	December 2018 - Present	“Make the Switch” advertising campaign for the purpose of deceiving smokers that JUUL was a cessation product.
Ashely Gould, JLI Chief Administrative Officer	Public (via interview with CNBC, later posted on internet)	December 14, 2017	“It’s a really, really important issue. We don’t want kids using our products.”
JLI	Public (via internet -social media)	March 14, 2018	“We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences.”
Kevin Burns (then-CEO of JLI)	FDA (via U.S. mail or electronic transmission); Public (via internet – JLI website)	October 16, 2018 (FDA) November 12, 2018 (Public)	JLI’s Action Plan that fraudulently states: “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. . . . Our intent was never to

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			have youth use JUUL products.”
Kevin Burns	Public (via interview with CNBC – later posted on internet)	July 13, 2019	“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.”
All Early Enterprise Defendants	Public (via internet - JLI website)	August 29, 2019	“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.”
James Monsees	Public (via statement to New York Times – later posted on internet)	August 27, 2019	Monsees said selling JUUL products to youth was “antithetical to the company’s mission.”
JLI	Public (via statement to Los Angeles Times – later posted on internet)	September 24, 2019	“We have never marketed to youth and we never will.”
JLI (via counsel)	FDA (via U.S. mail or electronic transmission to Dr. Matthew Holman)	June 15, 2018	Letter from JLI's Counsel at Sidley Austin to Dr. Matthew Holman, FDA, stating: “JUUL was not designed for youth, nor has any marketing or research effort since the product’s inception been targeted to youth.” and “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.”
James Monsees	Congress (via U.S. mail or electronic transmission of written testimony)	July 25, 2019	Written Testimony of J. Monsees provided to Congress, stating “We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use JLI products. . . . That is a serious problem. Our

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			company has no higher priority than combatting underage use.”
Howard Willard	FDA (via U.S. mail or electronic transmission of letter to Commissioner Gottlieb)	October 25, 2018	“[W]e do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.”
Howard Willard	Congress (via U.S. mail or electronic transmission of letter to Senator Durbin)	October 14, 2019	“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.”
All Early Enterprise Defendants	Public ([REDACTED])	[REDACTED]	[REDACTED]
Kevin Burns, then-CEO of JLI	Public (via JLI’s website)	April 25, 2018	“Our company’s mission is to eliminate cigarettes and help the more than one billion smokers worldwide switch to a better alternative 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

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			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.”
Ashely Gould, JLI Chief Administrative Officer	Public (via JLI’s website)	April 25, 2018	“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 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	Public (via JLI’s website)	July 24, 2018	“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 how we’ve gained 70% of the market share. . . . Our ecommerce platform utilizes unique ID match

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			and age verification technology to make sure minors are not able to access and purchase our products online.”
JLI	Public (via JLI’s website)	July 26, 2018	“We did not create JUUL to undermine years of effective tobacco control, and we do not want to see a new generation of smokers. . . . We want to be part of the solution to end combustible smoking, not part of a problem to attract youth, never smokers, or former smokers to nicotine products. . . . We adhere to strict guidelines to ensure that our marketing is directed towards existing adult smokers.”
Adam Bowen	Public (via statement to New York Times – later posted on internet)	August 27, 2018	Bowen said he was aware early on of the risks e-cigarettes posed to teenagers, and the company had tried to make the gadgets “as adult-oriented as possible,” purposely choosing not to use cartoon characters or candy names for its flavors.
James Monsees	Public (via statement to <i>Forbes</i> , later published on internet)	November 16, 2018	“Any underage consumers using this product are absolutely a negative for our business. We don’t want them. We will never market to them. We never have.”
Altria	Public (via internet)	December 20, 2018	Statement published in Altria news release stating: “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	Public (via Earnings Call)	January 31, 2019	“Through JUUL, we have found a unique opportunity to not only participate

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			meaningfully in the e-vapor category but to also support and even accelerate transition to noncombustible alternative products by adult smokers.”
K.C. Crosthwaite, JLI’s CEO	Public (via JLI’s website)	September 25, 2019	“I have long believed in a future where adult smokers overwhelmingly choose alternative products like JUUL. That has been this company’s mission since it was founded, and it has taken great strides in that direction.”
JLI	Public (via JLI’s website)	March 29, 2020	“JUUL was designed with adult smokers in mind.”

719. The mail and wire transmissions described herein were made in furtherance of the RICO Defendants’ schemes and common course of conduct, thereby increasing or maintaining JLI’s market share, resulting in corresponding high profits for each RICO Defendant.

720. As described above, the Nicotine Market Expansion Enterprise had a scheme to defraud the public and regulators in order to continue selling nicotine products to youth, and to protect their market share, by denying that JLI marketed to youth and claiming that JUUL was actually created and designed as a smoking cessation device or mitigated risk product.

721. The RICO Defendants used these mail and wire transmissions in furtherance of this scheme by transmitting deliberately false and misleading statements to the public and to government regulators.

722. The RICO Defendants had a specific intent to defraud regulators and the public. For example, as alleged above, the members of the Nicotine Market Expansion Enterprise made repeated and unequivocal statements through the wires and mails that they were not marketing to children and that their product was designed for adult smokers. As even the evidence pre-discovery shows, this is not true. The authors of these fraudulent statements are high level executives at JLI and Altria and who would reasonably be expected to have knowledge of their company’s internal research, public

1 positions, and long-term strategies. Because these high level executives made statements inconsistent
2 with the internal knowledge and practice of the corporations, it would be absurd to believe that these
3 highly ranked representatives and agents of these corporations had no knowledge that their public
4 statements were false and fraudulent. Similarly, the RICO Defendants caused to be transmitted through
5 the wires and mails false and misleading statements regarding the nicotine content in JUUL pods
6 which JLI's own internal data, and Altria's own pharmacokinetic studies, showed were false.
7 Moreover, each of the Early Enterprise Defendants had "final say" over all marketing statements by
8 JLI and thus caused such statements to be made, notwithstanding that they knew they were false for the
9 reasons detailed above.
10

11 723. The RICO Defendants intended for the public and regulators to rely on these false
12 transmissions and this scheme was therefore reasonably calculated to deceive persons of ordinary
13 prudence and comprehension.
14

15 724. Both the public and government regulators did rely on the Nicotine Market Expansion
16 Enterprise's mail and wire fraud. For example, the regulators, including the FDA, relied on the
17 Nicotine Market Expansion Enterprise's statements that mint was not an appealing flavor for
18 nonsmokers in allowing mint JUUL pods to remain on the market and relied on the Nicotine Market
19 Expansion Enterprise's statements that it did not market to youth in allowing the RICO Defendants to
20 continue marketing and selling JUUL. Congress likewise relied on the Enterprise's statements in not
21 bringing legislation to recall or ban e-cigarettes, despite the calls of members of both parties to do just
22 that. And the public relied on statements (or absence thereof) that were transmitted by the RICO
23 Defendants regarding the nicotine content in and potency of JUUL pods in deciding to purchase JUUL
24 products and relied on statements denying JLI's past youth marketing in not creating a public outcry
25 forcing these products to be removed from the market.
26

27 725. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire
28 facilities have been deliberately hidden and cannot be alleged without access to the RICO Defendants'

1 books and records. However, Plaintiff has described the types of predicate acts of mail and/or wire
2 fraud, including the specific types of fraudulent statements upon which, through the mail and wires, the
3 Nicotine Market Expansion Enterprise engaged in fraudulent activity in furtherance of its overlapping
4 schemes.

5
6 726. These were not isolated incidents, instead, the RICO Defendants engaged in a pattern of
7 racketeering activity by committing thousands of predicate acts in a five-year period in the form of
8 mail and wire fraud. That each RICO Defendant participated in a variety of schemes involving
9 thousands of predicate acts of mail and wire fraud establishes that such fraudulent acts are part of the
10 Enterprise's regular way of doing business. Moreover, Plaintiff expects to uncover even more
11 coordinated, predicate acts of fraud as discovery in this case continues.

12
13 **D. Plaintiff Has Been Damaged by the Nicotine Market Expansion Enterprise Defendants' RICO Violations**

14 727. Plaintiff has been injured by the Nicotine Market Expansion Enterprise Defendants'
15 conduct, and such injury would not have occurred but for the predicate acts of those defendants which
16 also constitute the acts taken by the RICO Defendants in furtherance of their conspiracy pursuant to
17 Section 1962(d). By working to preserve and expand the market of underage JUUL customers,
18 fraudulently denying JLI's youth-focused marketing, and deceiving regulators and the public in order
19 to allow JUUL products and mint-flavored JUULpods to remain on the market, the Nicotine Market
20 Expansion Enterprise caused the expansion of an illicit e-cigarette market for youth in Plaintiff's
21 community and caused a large number of youth in Plaintiff's community to become addicted to
22 nicotine, thus forcing Plaintiff to expend time, money, and resources to address the epidemic
23 Defendants created through their conduct. Indeed, the Nicotine Market Expansion Enterprise
24 Defendants intentionally sought to reach into schools and deceive public health officials in order to
25 continue growing JLI's youth customer base. The repeated fraudulent misstatements by the Nicotine
26
27
28

1 Market Expansion Enterprise Defendants denying that JLI marketed to youth have served to preserve
2 JUUL's market share—a market share that is based upon children purchasing JLI's tobacco products.

3 728. Plaintiff was a direct victim of Defendants' misconduct. The Nicotine Market
4 Expansion Enterprise Defendants displayed a wanton disregard for public health and safety by
5 intentionally addicting youth, including youth in Plaintiff's community, to nicotine and then attempting
6 to cover up their scheme in order to maintain and expand JUUL's market share. Defendants actively
7 concealed that they marketed to youth in order to avoid public condemnation and to keep their
8 products on the market and continue youth sales. This forced Plaintiff to shoulder the responsibility for
9 this youth e-cigarette crisis created by Defendants' misconduct. The harm from the illicit youth e-
10 cigarette market created by Defendants required Plaintiff to expend its limited financial and other
11 resources to mitigate the health crisis of youth e-cigarette use. The expansion of this youth e-cigarette
12 market was the goal of the Nicotine Market Expansion Enterprise and is critical to its success.
13 Therefore, the harm suffered by Plaintiff because it must address and mitigate the youth e-cigarette
14 crisis was directly foreseeable and, in fact, an intentional result of Defendants' misconduct.

17 729. The creation and maintenance of this youth e-cigarette market directly harms Plaintiff
18 by imposing costs on its business and property. Plaintiff's injuries were not solely the result of routine
19 government expenses. Instead, as a result of Defendants' misconduct, Plaintiff has been and will be
20 forced to go far beyond what a governmental entity might ordinarily be expected to pay to enforce the
21 laws and to promote the general welfare in order to combat the youth e-cigarette crisis. This includes
22 providing new programs and new services as a direct result and in direct response to Defendants'
23 misconduct. As a result of the conduct of the Nicotine Market Expansion Enterprise Defendants,
24 Plaintiff has incurred and will incur costs that far exceed the norm.

26 730. There are no intervening acts or parties that could interrupt the causal chain between the
27 Defendants' mail and wire fraud and Plaintiff's injuries. Defendants, in furtherance of the Nicotine
28 Market Expansion Enterprise's common purpose, made false and misleading statements directly to the

1 public, including Plaintiff, its employees, and its students. And in the case of fraud on third parties
2 (i.e., FDA and Congress), causation is not defeated merely because the RICO Defendants deceived a
3 third party into not taking action where the FDA's and Congress's failure to regulate directly allowed
4 youth in Plaintiff's community to purchase products that should not have been on the market and/or
5 that should not have been marketed to minors.

6
7 731. As to predicate acts occurring prior to May 8, 2016, Plaintiff did not discover, and could
8 not have been aware despite the exercise of reasonable diligence, until shortly before the initiation of
9 the instant litigation that Defendants transmitted fraudulent statements via the mails and wires
10 regarding the topics described above including, inter alia, the true nicotine content in and delivered by
11 JUUL products, such information the Defendants concealed and failed to truthfully disclose.

12
13 732. The Nicotine Market Expansion Enterprise's violations of 18 U.S.C. § 1962(c) have
14 directly and proximately caused injuries and damages to Plaintiff, its community, and the public, and
15 Plaintiff is entitled to bring this action for three times its actual damages, as well as for
16 injunctive/equitable relief, costs, and reasonable attorneys' fees and costs pursuant to 18 U.S.C. §
17 1964(c).

18 **COUNT FOUR — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT**
19 **ORGANIZATIONS ACT ("RICO"), 18 U.S.C. § 1962(D)**

20 733. Plaintiff County of Santa Cruz re-alleges and incorporates by reference each of the
21 allegations contained in this Complaint as though fully alleged herein.

22 734. The RICO Defendants have not undertaken the practices described herein in isolation,
23 but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the members of
24 the Nicotine Market Expansion Enterprise agreed to conspire and conspired to violate 18 U.S.C.
25 § 1962(c), as described herein. The conspiracy is coterminous with the time period in which the
26 Nicotine Expansion Market Enterprise has existed, beginning in 2015 and continuing to this day (with
27 Defendant Altria joining the conspiracy in Spring 2017). The RICO Defendants' agreement is
28

1 evidenced by their predicate acts and direct participation in the control and operation of the Enterprise
2 in furtherance of a common purpose, as detailed above in relation to the RICO Defendants' substantive
3 violation of Section 1962(c). The acts in furtherance of the conspiracy attributable to the RICO
4 Defendants include each of the predicate acts underlying the Nicotine Market Expansion Enterprise's
5 violation of Section 1962(c), as described above. Various other persons, firms, and corporations,
6 including third-party entities and individuals not named as defendants in this Amended Complaint,
7 have participated as co-conspirators with the members of the Nicotine Market Expansion Enterprise in
8 these offenses and have performed acts in furtherance of the conspiracy to increase or maintain
9 revenue, maintain or increase market share, and/or minimize losses for the Defendants and their named
10 and unnamed co-conspirators throughout the illegal scheme and common course of conduct.

12 735. Plaintiff has been injured by the Nicotine Market Expansion Enterprise Defendants'
13 conduct, and such injury would not have occurred but for the predicate acts of those defendants which
14 also constitute the acts taken by the RICO Defendants in furtherance of their conspiracy pursuant to
15 Section 1962(d). The combined effect of the RICO Defendants' acts of mail and wire fraud in
16 furtherance of their conspiracy, including working to preserve and expand the market of underage
17 JUUL customers, fraudulently denying JLI's youth-focused marketing, and deceiving regulators and
18 the public in order to allow JUUL products and mint-flavored JUUL pods to remain on the market, was
19 to cause e caused the expansion of an illicit e-cigarette market for youth in Plaintiff's community and
20 cause a large number of youth in Plaintiff's community to become addicted to nicotine, thus forcing
21 Plaintiff to expend time, money, and resources to address the epidemic Defendants created through
22 their conduct. Indeed, the Nicotine Market Expansion Enterprise Defendants intentionally sought to
23 reach into schools and deceive public health officials in order to continue growing JLI's youth
24 customer base. The repeated fraudulent misstatements by the Nicotine Market Expansion Enterprise
25 Defendants denying that JLI marketed to youth have served to preserve JUUL's market share—a
26 market share that is based upon children purchasing JLI's tobacco products. The harm to Plaintiff
27
28

1 would not have occurred absent the RICO Defendants' conspiracy to engage in a pattern of
2 racketeering activity through a RICO Enterprise, the common purpose of which was maintaining and
3 expanding the number of nicotine-addicted e-cigarette users, and youth in particular, in order to ensure
4 a steady and growing customer base, including by preserving and growing JLI's ill-gotten market
5 share.
6

7 736. Plaintiff was a direct victim of Defendants' misconduct. The Nicotine Market
8 Expansion Enterprise Defendants' acts in furtherance of their RICO conspiracy displayed a wanton
9 disregard for public health and safety by intentionally addicting youth, including youth in Plaintiff's
10 community, to nicotine and then attempting to cover up their scheme in order to maintain and expand
11 JUUL's market share. Defendants actively concealed that they marketed to youth in order to avoid
12 public condemnation and to keep their products on the market and continue youth sales. This forced
13 Plaintiff to shoulder the responsibility for this youth e-cigarette crisis created by Defendants'
14 misconduct. The harm from the illicit youth e-cigarette market created by Defendants required Plaintiff
15 to expend its limited financial and other resources to mitigate the health crisis of youth e-cigarette. The
16 expansion of this youth e-cigarette market was the goal of the Nicotine Market Expansion Enterprise
17 and is critical to its success. Therefore, the harm suffered by Plaintiff because it must address and
18 mitigate the youth e-cigarette crisis was directly foreseeable and, in fact, an intentional result of
19 Defendants' misconduct.
20
21

22 737. The creation and maintenance of this youth e-cigarette market, and Defendants actions
23 in furtherance of their RICO conspiracy, directly harms Plaintiff by imposing costs on its business and
24 property. Plaintiff's injuries were not solely the result of routine government expenses. Instead, as a
25 result of Defendants' misconduct, Plaintiff has been and will be forced to go far beyond what a
26 governmental entity might ordinarily be expected to pay to enforce the laws and to promote the general
27 welfare in order to combat the youth e-cigarette crisis. This includes providing new programs and new
28 services as a direct result and in direct response to Defendants' misconduct. As a result of the conduct

1 of the Nicotine Market Expansion Enterprise Defendants, Plaintiff has incurred and will incur costs
2 that far exceed the norm.

3 738. There are no intervening acts or parties that could interrupt the causal chain between the
4 RICO Defendants' mail and wire fraud acts in furtherance of their RICO conspiracy and Plaintiff's
5 injuries. The RICO Defendants, in furtherance of their conspiracy to form the Nicotine Market
6 Expansion Enterprise and advance its common purpose, made false and misleading statements directly
7 to the public, including Plaintiff, its employees, and its students. And in the case of fraud on third
8 parties (i.e., FDA and Congress), causation is not defeated merely because the RICO Defendants
9 deceived a third party into not taking action where the FDA's and Congress's failure to regulate
10 directly allowed youth in Plaintiff's community to purchase products that should not have been on the
11 market and/or that should not have been marketed to minors.
12

13 739. As to predicate acts undertaken in furtherance of the conspiracy which occurred prior to
14 May 8, 2016, Plaintiff did not discover, and could not have been aware despite the exercise of
15 reasonable diligence, until shortly before the initiation of the instant litigation that the RICO
16 Defendants transmitted fraudulent statements via the mails and wires regarding the topics described
17 above including, inter alia, the true nicotine content in and delivered by JUUL products, such
18 information the RICO Defendants concealed and failed to truthfully disclose.
19

20 740. The Nicotine Market Expansion Enterprise's violations of 18 U.S.C. § 1962(d) have
21 directly and proximately caused injuries and damages to Plaintiff, its community, and the public, and
22 Plaintiff is entitled to bring this action for three times its actual damages, as well as for
23 injunctive/equitable relief, costs, and reasonable attorneys' fees and costs pursuant to 18 U.S.C. §
24 1964(c).
25

26 **COUNT FIVE — PUNITIVE DAMAGES**

27 741. Plaintiff County of Santa Cruz re-alleges and incorporates by reference each of the
28 allegations contained in this Complaint as though fully alleged herein.

1 742. Through the egregious misconduct described above—including fraudulently advertising
2 potent nicotine products to youth and deceiving the public and regulators regarding their purported
3 efforts to address youth vaping and market JUUL products to adult cigarette smokers—Defendants
4 committed oppression, fraud, and malice. Defendants’ conduct in creating the youth vaping crisis is
5 oppressive because Defendants’ actions are despicable, were carried out in conscious disregard of
6 Santa Cruz County’s rights, and subjected Plaintiff to cruel and unjust hardship. Defendants’ conduct
7 is fraudulent because Defendants made intentional misrepresentations and concealed material facts
8 with the intention of depriving Plaintiff of property or legal rights or otherwise causing injury.
9 Defendants’ actions constitute malice because the despicable conduct was carried on by Defendants
10 with a willful and conscious disregard of the rights or safety of others.

11
12 743. Defendant JLI and the Management Defendants deliberately marketed JLI’s nicotine
13 delivery devices and products to young non-smokers, including by distributing free samples and
14 “JUUL starter kits” in locations frequented by youth and events and festivals attended predominantly
15 by youth. In addition, Defendant JLI and the Management Defendants deliberately sought to generate,
16 and did generate, viral marketing to promote sales among youth by utilizing social media platforms
17 used predominantly by young people. Defendant Altria represented to the FDA that products and
18 practices like Defendant JLI and the Management Defendants’ were contributing to the youth vaping
19 crisis and that Altria’s “action plan” for addressing youth vaping included voluntarily removing its
20 pod-based products from the market—but then, less than two months later, Altria invested \$12.8
21 billion in JLI. Defendants Altria, JLI, and the Management Defendants have worked, and continue to
22 work, to maintain and increase the sales of JUUL products despite public concern about the rise of
23 youth vaping, including by fraudulently representing Mint JUULpods as a “tobacco or menthol-based
24 product” despite their knowledge that mint flavor is popular with youth. Defendants JLI, the
25 Management Defendants, and Altria fraudulently asserted, and continue to assert, that JUUL products
26 were never marketed to youth and are instead marketed to adult smokers only, while knowing that
27
28

1 JLI's enormous growth did not detract from sales in other tobacco product categories and was instead
2 based primarily on new customers—a new generation of youth addicted to nicotine.

3 744. Pursuant to Civil Code § 3294 and common law, Santa Cruz County is entitled to
4 punitive damages by way of example and to punish Defendants for their gross misconduct.
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment as follows:

8 745. Entering an Order that the conduct alleged herein constitutes a public nuisance under
9 California law;

10 746. Entering an Order that Defendants are jointly and severally liable;

11 747. Entering an Order requiring Defendants to abate the public nuisance described herein
12 and to deter and/or prevent the resumption of such nuisance;

13 748. Enjoining Defendants from engaging in further actions causing or contributing to the
14 public nuisance as described herein;
15

16 749. Awarding equitable relief to fund prevention education and addiction treatment;

17 750. Awarding actual and compensatory damages;

18 751. Awarding punitive damages;

19 752. Awarding statutory damages in the maximum amount permitted by law;

20 753. Awarding reasonable attorneys' fees and costs of suit;

21 754. Awarding pre-judgment and post-judgment interest; and
22

23 755. Such other and further relief as the Court deems just and proper under the
24 circumstances.

25 **JURY TRIAL DEMANDED**

26 Plaintiff hereby demands a trial by jury.
27
28

1 DATED this 8th day of May, 2020.

2 COUNTY OF SANTA CRUZ

KELLER ROHRBACK L.L.P.

3 By /s/ Jordan Sheinbaum

By /s/ Dean Kawamoto

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Attorneys for Plaintiffs

Appendix A – Advertisements

Advertisement 1



Advertisement 2



Advertisement 3



JUUL
June 30, 2015 · 

...

"A stunning addition to the world of electronic cigarettes" - #OakIron
Read reviews by [WIRED](#), [TechCrunch](#), [The Verge](#) and more:



[JUULVAPOR.COM](https://www.JUULvapor.com)
Introducing JUUL - Smoking Evolved
Check it out: <https://www.JUULvapor.com>

 4

1 Share

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Write a comment...



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Advertisement 4



JUUL
December 6, 2017 · ⚙️

...

With the flavors of vanilla cake, silky custard and of course creme brulée this JUULpod is the perfect evening treat. <http://bit.ly/2BCBZqS>



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

 20

13 Comments

 Like

 Comment

 Share

Advertisement 5



JUUL  @JUULvapor · 10 Dec 2015

...

What are your favorite foods to pair with our pod flavors? Get some inspiration from our featured... [instagram.com/p/_layD7H9QS/](https://www.instagram.com/p/_layD7H9QS/)





 2



Advertisement 6

Click to View Larger Image



JUUL juulvapor • Follow

juulvapor #TBT to summer beach days with #JUUL - share your #JUULmoment with us...

WARNING: This product contains nicotine. Nicotine is an addictive chemical. #JUULinhand #JUULvapor #juulhandcheck

Load more comments

sean_graves1 @mitchell.robertson @buggy155 @theperero @rickyg14 give a follow

juulvapor @nina_priacini Hi Nina, You can purchase our products on JUUL.com or at a retailer near you - just check the store locator on our site.

leannharris376 @bsh.vr569

891 likes

OCTOBER 26, 2017

Add a comment...

Advertisement 7

 **christinazayas**
New York, New York



1,509 likes

christinazayas When smoking cigarettes is not an option, I've turned to @juulvapor. Read why, via the link in my bio! #JUULmoment #ad

View all 46 comments

NOVEMBER 13, 2017

Advertisement 8

TOP POSTS
#juulmoment

**maggiescenna** · [Follow](#)
Fontainebleau Miami Beach







233 likes

maggiescenna sponsored by [@juulvapor](#)
#juulmoment

[View all 9 comments](#)

asap_kevina Lmao 

monicadelareyes Lovely post 🥰 

OCTOBER 28, 2017

Advertisement 9 (reduced smell)

No Stink Attached

1 message

JUUL <hello@juulvapor.com>
Reply-To: JUUL <hello@juulvapor.com>
To:

Wed, Feb 22, 2017 at 7:00 PM

JUUL



Gone are the days of smelling like an ashtray.
JUUL is discreet with minimal odor.
Your friends will thank you.

Advertisement 10 (reduced smell)

KEEP KISSABLE

An illustration of a man in a suit and a woman in a dress embracing. In the foreground, there is a pack of Old Gold cigarettes. The text "NOT A COUGH IN A CARLOAD" is written around the pack.

... WITH
OLD GOLDS

OLD GOLDS were created to give you THROAT-EASE... as well as a more delightful tasting cigarette. But the makers also considered your breath, your lips, your teeth, as well as your THROAT.

They created a pure-tobacco cigarette ... free of *coriander* and other greasy artificial flavorings* that burn into clinging, staining, breath-tainting vapors.

To avoid unpleasant aftermaths, smoke pure-tobacco OLD GOLDS. Their clean, sun-ripened, natural-flavored tobaccos will be like honey to your THROAT. And they leave no objectionable odors either on your breath or clothing, or in the room.

HERE'S THE PROOF®

Open up a pack of OLD GOLDS and smell the tobacco. Do the same with any other cigarette. Judge for yourself which has the natural, pleasant, oil-tobacco aroma. It's a favor to your family and friends, as well as to yourself, to smoke NATURAL-FLAVORED, pure-tobacco OLD GOLDS.

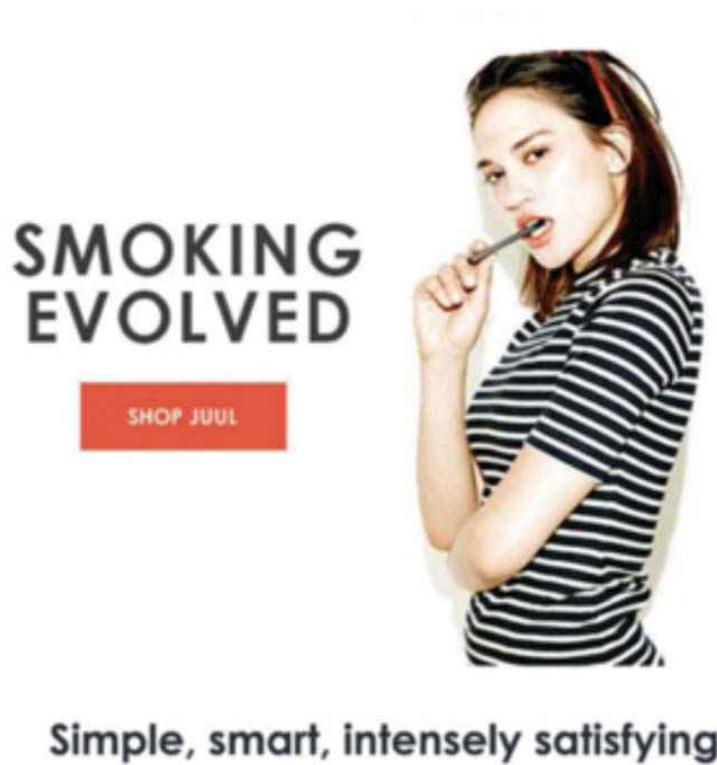
© F. Lorillard Co., Inc.

*"ARTIFICIAL FLAVORS" TO TAINT THE BREATH . . . OR SCRATCH THE THROAT

Advertisement 11 (Graphic with technology claim)



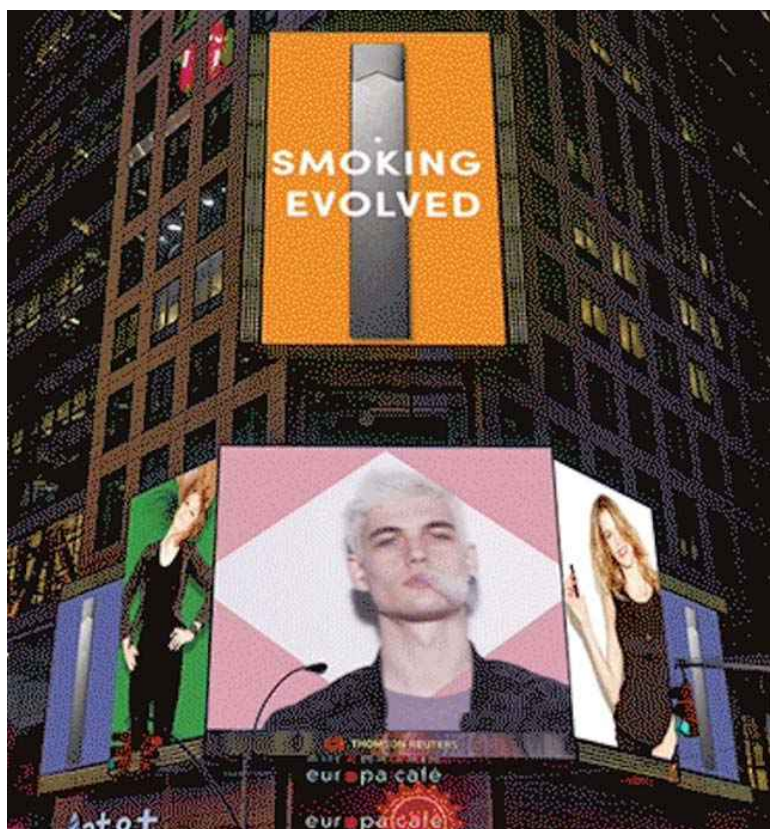
Advertisement 12 (Graphic with technology claim)



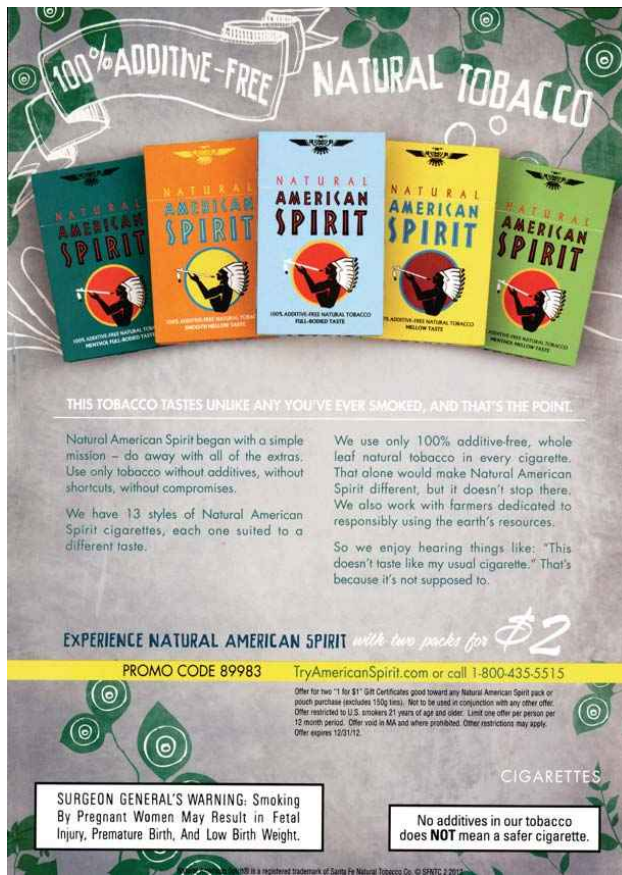
Advertisement 13 (Billboard with smoke)



Advertisement 14 (Billboard with vapor)



Advertisement 15 (Colors)



100% ADDITIVE-FREE NATURAL TOBACCO

THIS TOBACCO TASTES UNLIKE ANY YOU'VE EVER SMOKED, AND THAT'S THE POINT.

Natural American Spirit began with a simple mission – do away with all of the extras. Use only tobacco without additives, without shortcuts, without compromises.

We have 13 styles of Natural American Spirit cigarettes, each one suited to a different taste.

We use only 100% additive-free, whole leaf natural tobacco in every cigarette. That alone would make Natural American Spirit different, but it doesn't stop there. We also work with farmers dedicated to responsibly using the earth's resources.

So we enjoy hearing things like: "This doesn't taste like my usual cigarette." That's because it's not supposed to.

EXPERIENCE NATURAL AMERICAN SPIRIT with two packs for \$2

PROMO CODE 89983 TryAmericanSpirit.com or call 1-800-435-5515

Offer for two "1 for \$1" Gift Certificates good toward any Natural American Spirit pack or pouch purchase (excludes 100g tins). Not to be used in conjunction with any other offer. Offer restricted to U.S. smokers 21 years of age and older. Limit one offer per person per 12 month period. Offer void in MA and where prohibited. Other restrictions may apply. Offer expires 12/31/12.

CIGARETTES

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

No additives in our tobacco does **NOT mean a safer cigarette.**

NAS is a registered trademark of Santa Fe Natural Tobacco Co. © SPNTO 2012

Advertisement 16 (Colors)



JUUL **STARTER KIT**

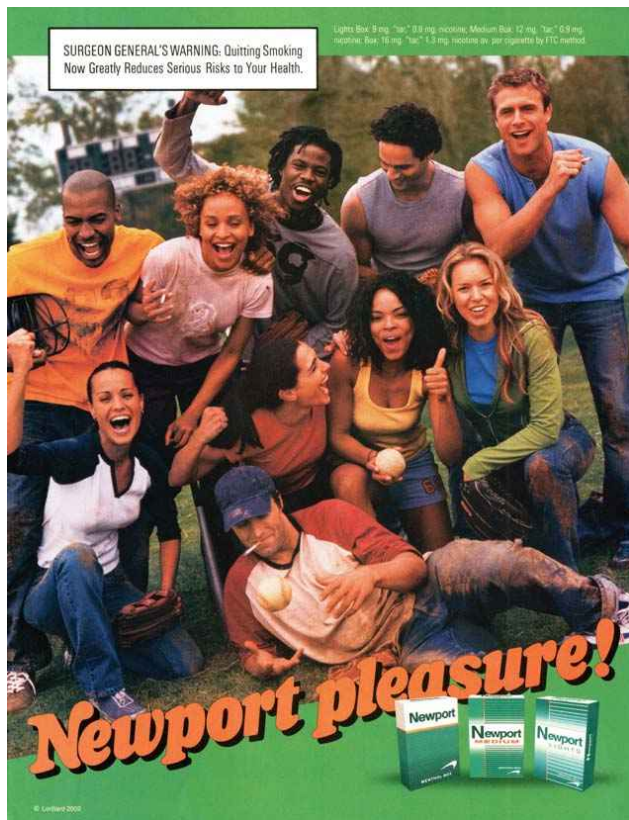
Advertisement 17



Advertisement 18



Advertisement 19



Advertisement 20



Advertisement 21 (Food)



**More Vegetables
Less Meat**

EAT more vegetables—less meat. You'll feel better, and help the Government, besides.

Here are two you can't beat—new string beans, perfectly cooked in butter, and new creamed onions. You don't need meat.

How the cooking brings out their flavor! Cooking helps everything. Just try Lucky Strike Cigarette—it's toasted.

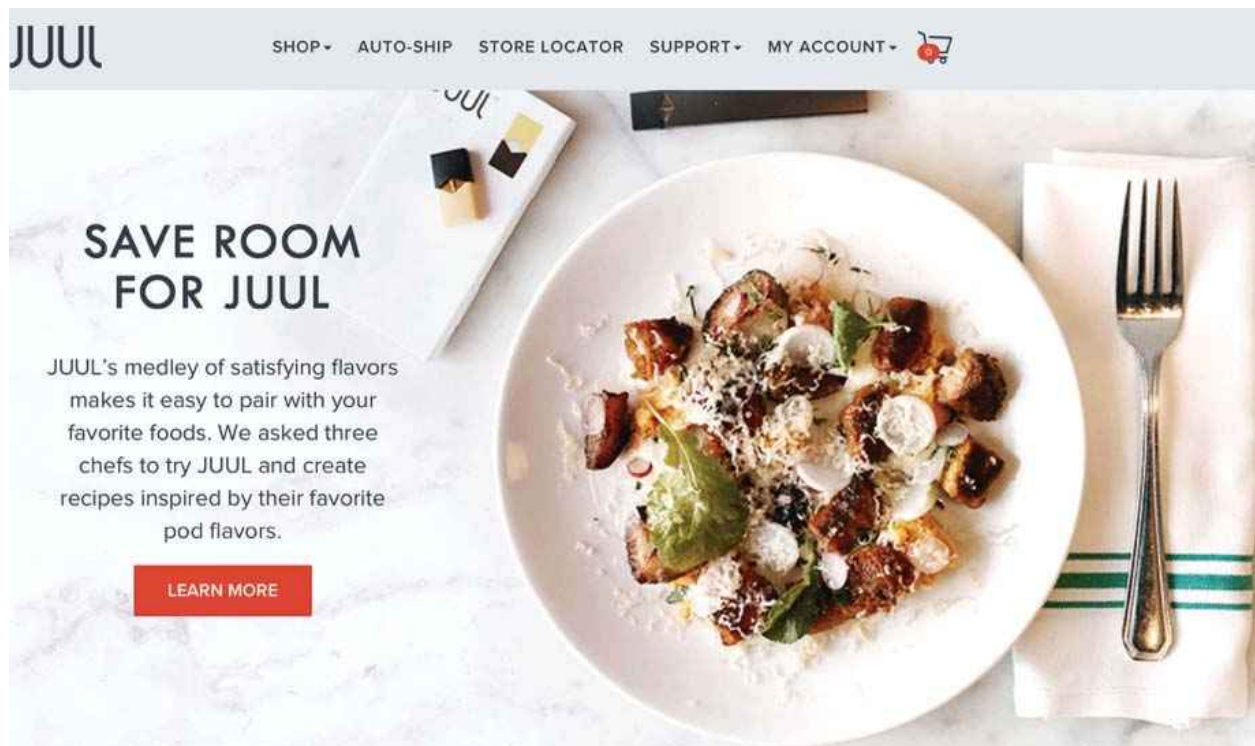
**LUCKY STRIKE
CIGARETTE**

Save the tin-ball from Lucky Strike Cigarettes and give it to the Red Cross.

**It's
toasted**

© Guaranteed by
The American Tobacco Co.
INCORPORATED

Advertisement 22 (Food)



JUUL

SHOP ▾ AUTO-SHIP STORE LOCATOR SUPPORT ▾ MY ACCOUNT ▾ 

**SAVE ROOM
FOR JUUL**

JUUL's medley of satisfying flavors makes it easy to pair with your favorite foods. We asked three chefs to try JUUL and create recipes inspired by their favorite pod flavors.

[LEARN MORE](#)

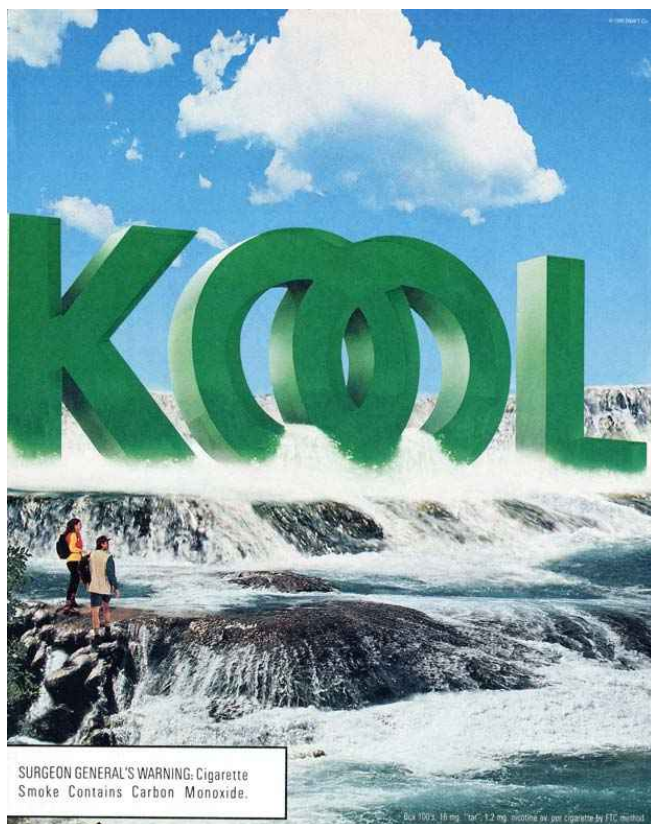
Advertisement 23 (Food and relaxation)



Advertisement 24 (Food and relaxation)



Advertisement 25 (Food and relaxation)



Advertisement 26 (Food and relaxation)



Advertisement 27 (Reduced Smell)



KEEP KISSABLE

WITH
OLD GOLDS
[CELLOPHANE WRAPPED]

No other cigarette offers you these purity and quality features:

- 1 OLD GOLD contains no greasy artificial flavorings to stain the teeth, taint the breath, or scratch the throat.
- 2 OLD GOLD is a Nature-flavored cigarette; made exclusively of sun-ripened tobaccos.
- 3 OLD GOLD tobaccos are freed of impurities by heat-treating and other processes.
- 4 OLD GOLDS are packed in CELLOPHANE wrapping...air-tight, germ-proof...guaranteeing their freshness and purity...no matter where you buy them.

NOT A COUGH IN A CARLOAD

O.G.s ARE LIKE HONEY TO YOUR THROAT

CELLOPHANE WRAPPED

NO "ARTIFICIAL FLAVORS" TO TAINT THE BREATH...OR SCRATCH THE THROAT

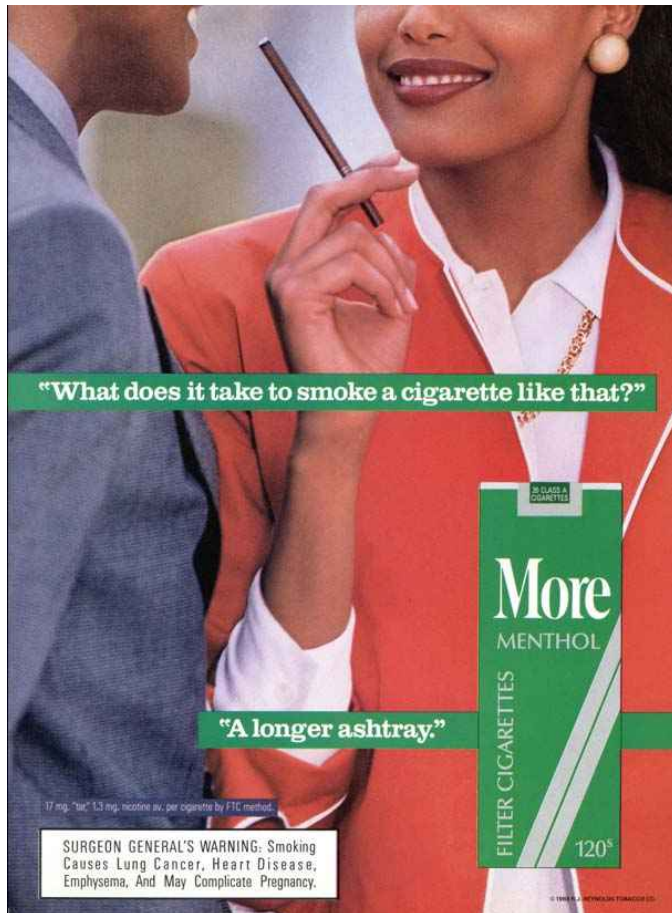
Advertisement 28 (Reduced Smell)



Say Goodbye
To Smelling Like
An Ashtray

JUUL • @JUULvapor • 31 Aug 2017
Not only is #JUUL portable but #JUULvapor leaves less lingering odor. Try it today:
//bit.ly/2uz719K

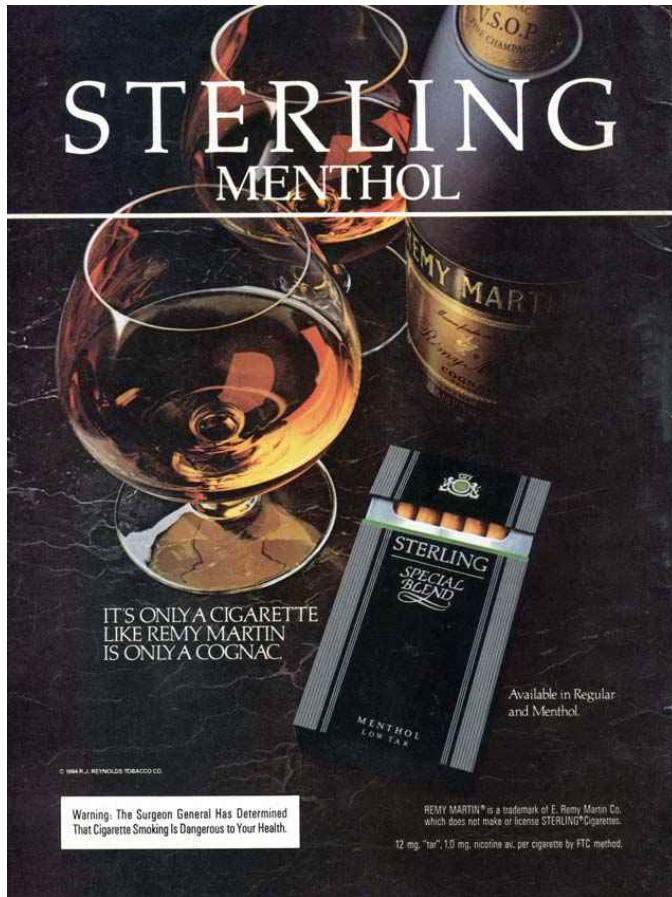
Advertisement 29 (Style & Romance)



Advertisement 30 (Style & Romance)



Advertisement 31 (Food & Relaxation)



Advertisement 32 (Food & Relaxation)



Advertisement 33 (Relaxation after work)



Advertisement 34 (Relaxation after work)



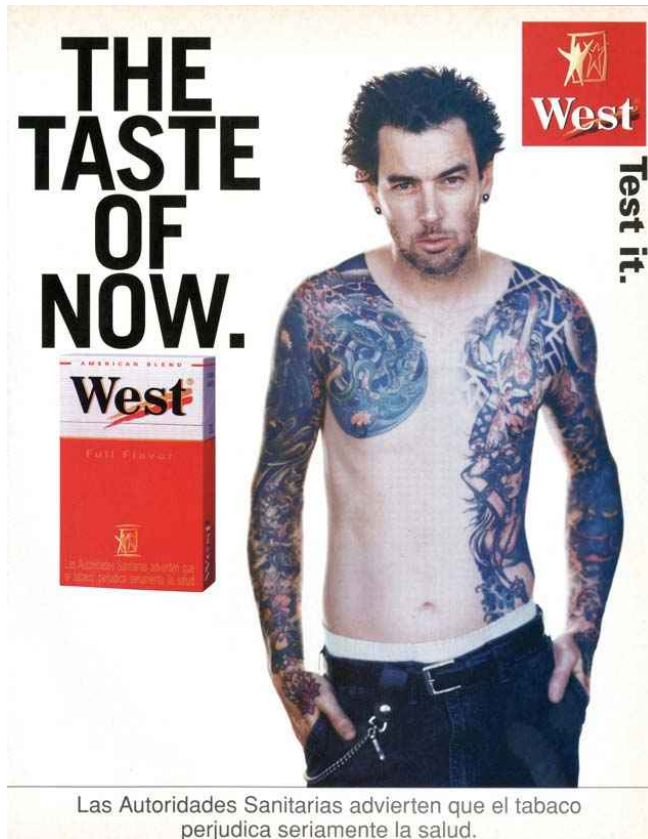
Advertisement 35 (Style & Romance)



Advertisement 36 (Style & Romance)



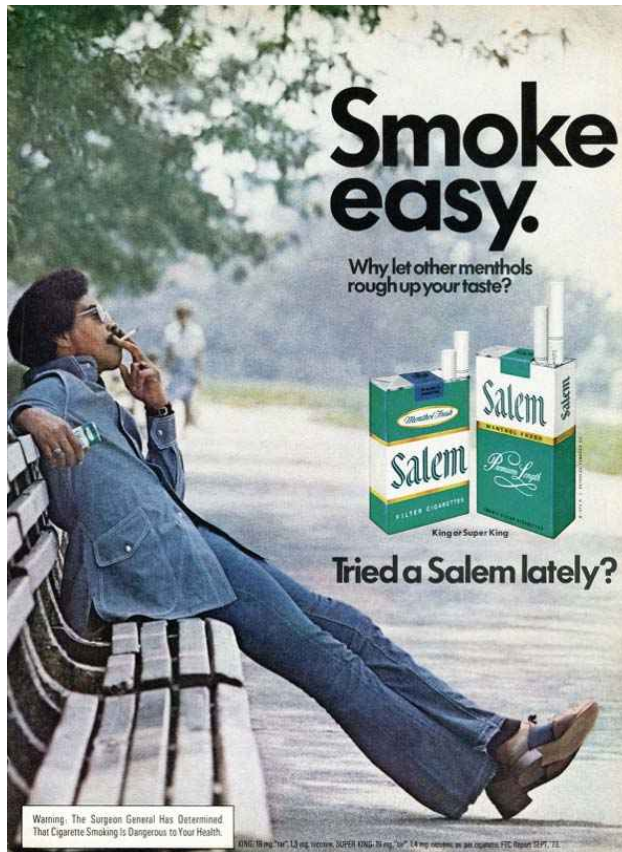
Advertisement 37 (Rebellion)



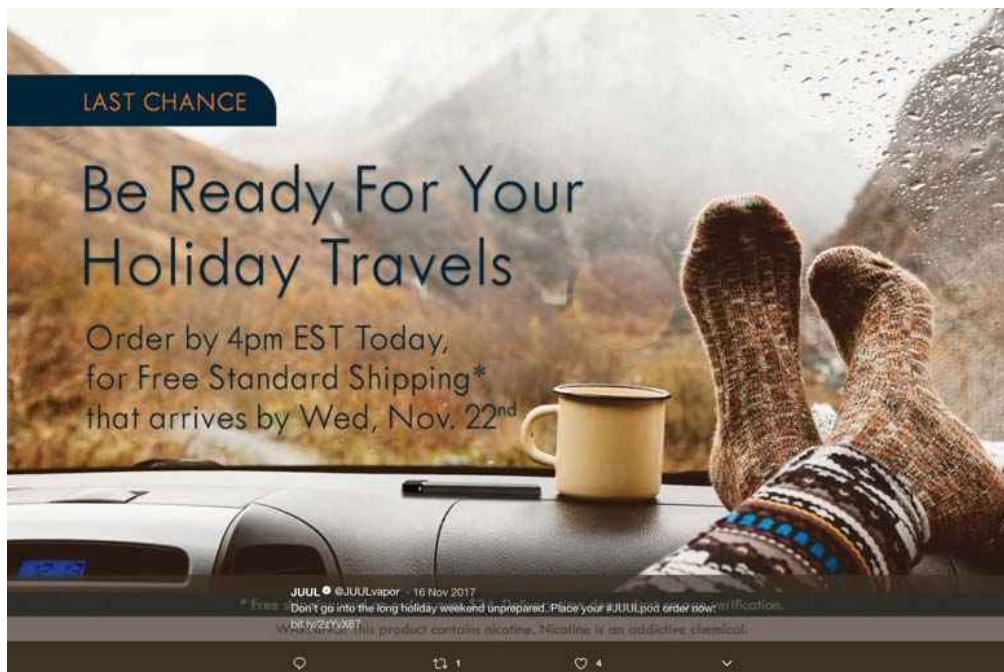
Advertisement 38 (Rebellion)



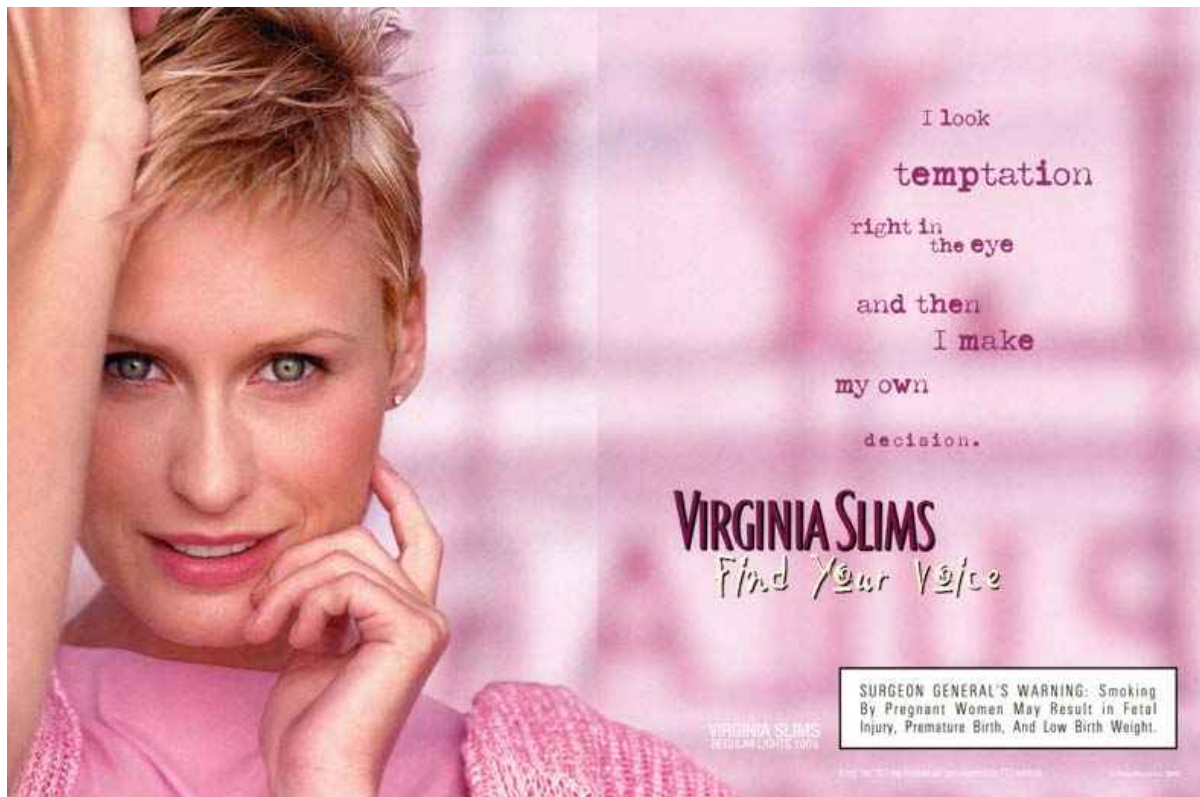
Advertisement 39 (Relaxation)



Advertisement 40 (Relaxation)



Advertisement 41



Advertisement 42



Advertisement 43 (Harm reduction through technology)

The cigarette that takes
the *FEAR* out of smoking!

Only one cigarette...
PHILIP MORRIS... is made
with "Di-GL"... the great
scientific discovery that
protects you from certain
harsh irritants found in
every other leading cigarette
* * *

No other cigarette...
with or without filters...
can remove all these irritants

"The exclusive, modern ingredient 'Di-GL' for gentle
smoking that has always been used in Philip Morris."

Other important refining steps
add greatly to the mildness... aroma...
richness and rare smoking pleasure
of Philip Morris!

All the rich flavor and aroma are yours... without the
need for taste-debasing gadgets or filters. Only
Philip Morris offers you this record of safety. For your
pleasure... for your protection... try a carton!

CALL FOR **PHILIP MORRIS**
America's Finest Cigarette... Make It Yours!

A vintage-style advertisement for Philip Morris cigarettes. It features a woman with dark hair and red lipstick, wearing a pearl necklace and a pink top, holding a lit cigarette. To her left are two packs of Philip Morris cigarettes, labeled 'KING SIZE' and 'REGULAR'. The background is a light, textured beige. The text is arranged in a formal, serif font, with the word 'FEAR' in a large, stylized, italicized font. A small, rectangular box contains text about 'Di-GL' technology. At the bottom, there is a call to action to 'CALL FOR PHILIP MORRIS' and a small tagline.

Advertisement 44 (Harm reduction through technology)

JUUL SMOKING EVOLVED

STARTER KITS
\$49.99

BUILT TO SATISFY

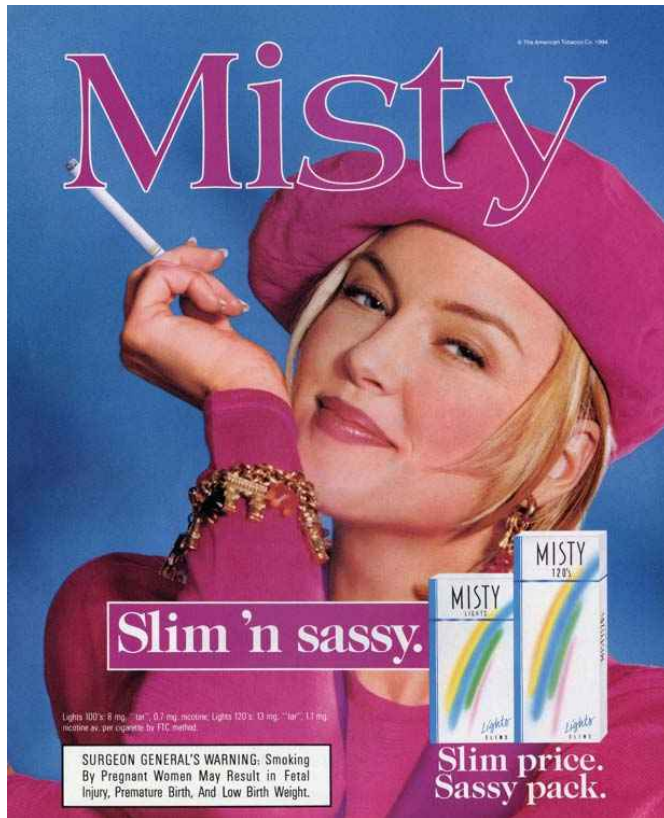
The right nicotine strength and vapor
quality to provide a powerful and
smooth experience. Controlled power
and temperature allow for a smooth
delivery system. Liquid-to-wick cartridge
system ensures thick, consistent,
flavorful vapor.

NOW AVAILABLE ONLINE & IN-STORE
FREE SHIPPING ONLINE FOR DOMESTIC ORDERS + \$25

WWW.VAPORSHARK.COM

A modern advertisement for JUUL e-cigarettes. It features a woman with long, wavy blonde hair, wearing a black sleeveless top, holding a black JUUL device in her right hand. To her right is a white box for the JUUL starter kit. The background is a vibrant, textured purple and pink. The text is in a clean, sans-serif font. The JUUL logo is prominently displayed at the top left. The price of the starter kit is listed as \$49.99. A section titled 'BUILT TO SATISFY' describes the product's features. At the bottom, it states that the product is available online and in-store, with free shipping for domestic orders over \$25, and provides the website URL. The overall aesthetic is sleek and contemporary.

Advertisement 45 (Style & Beauty)



Advertisement 46 (Style & Beauty)



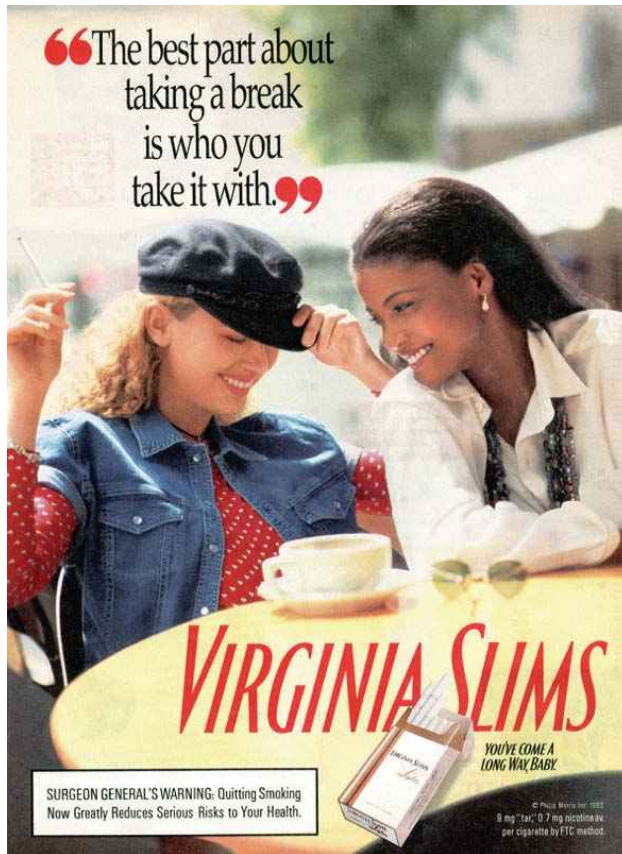
Advertisement 47 (Style & Beauty)



Advertisement 48 (Style & Beauty)



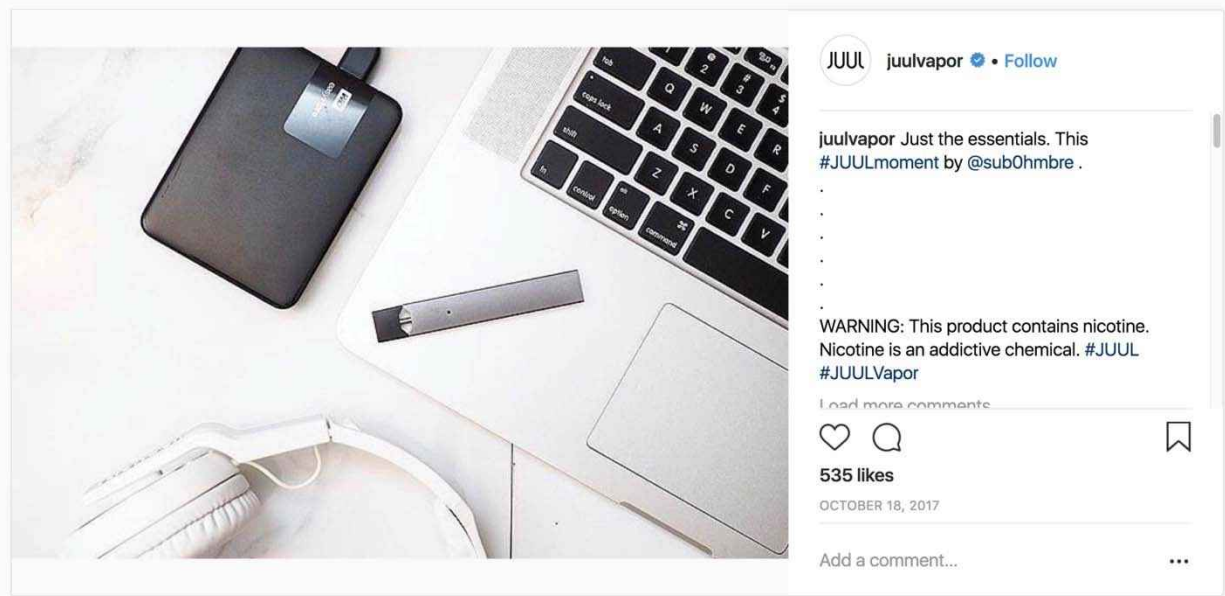
Advertisement 49 (Belonging)



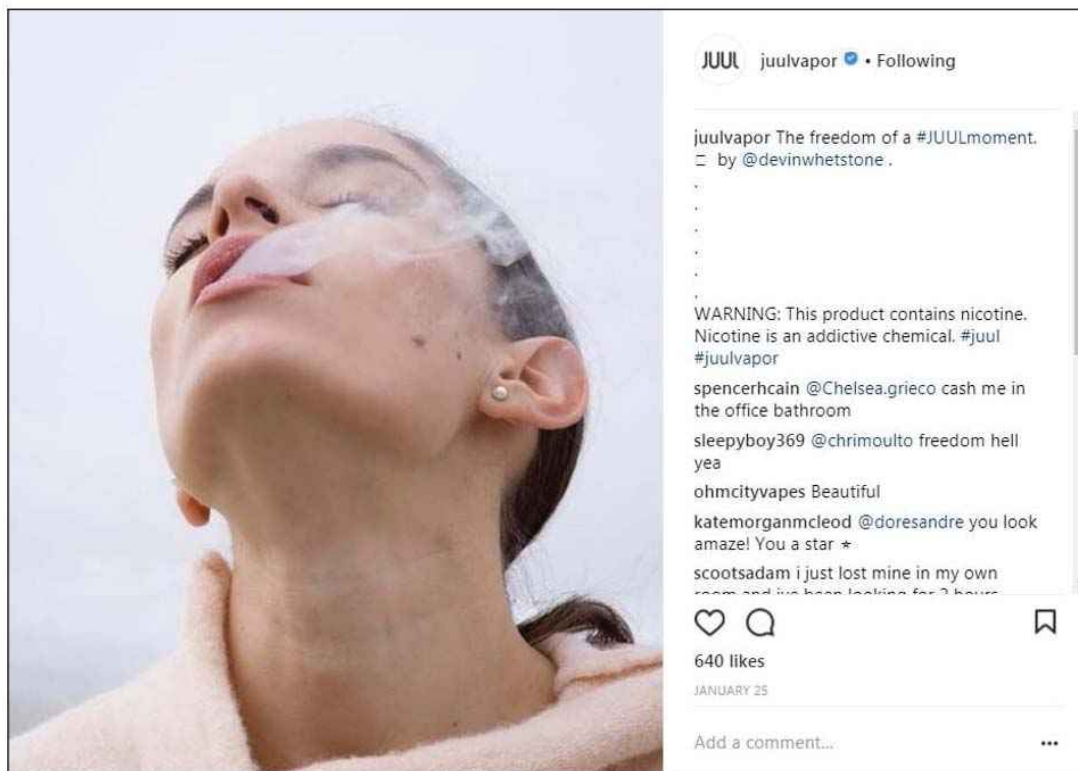
Advertisement 50 (Belonging)



Advertisement 51



Advertisement 52



Advertisement 53

JUUL  @JUULvapor · 8 Jun 2016
 JUUL A satisfying morning brought to you by @_jacobfischer



  5 12

Advertisement 54



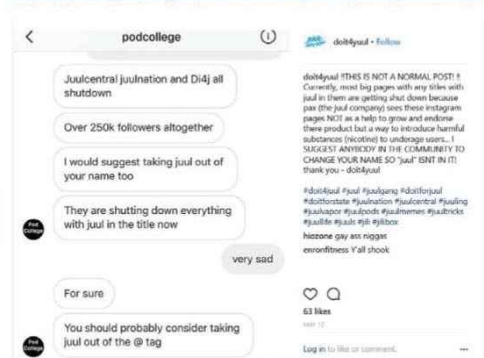
<https://www.instagram.com/p/BaaUZ1OFbOI/>



https://www.instagram.com/p/BYbB907I_VZ/?taken-by=juulcentral



https://www.instagram.com/p/Bb9_zcAAmsP/?taken-by=juulnation



Advertisement 55



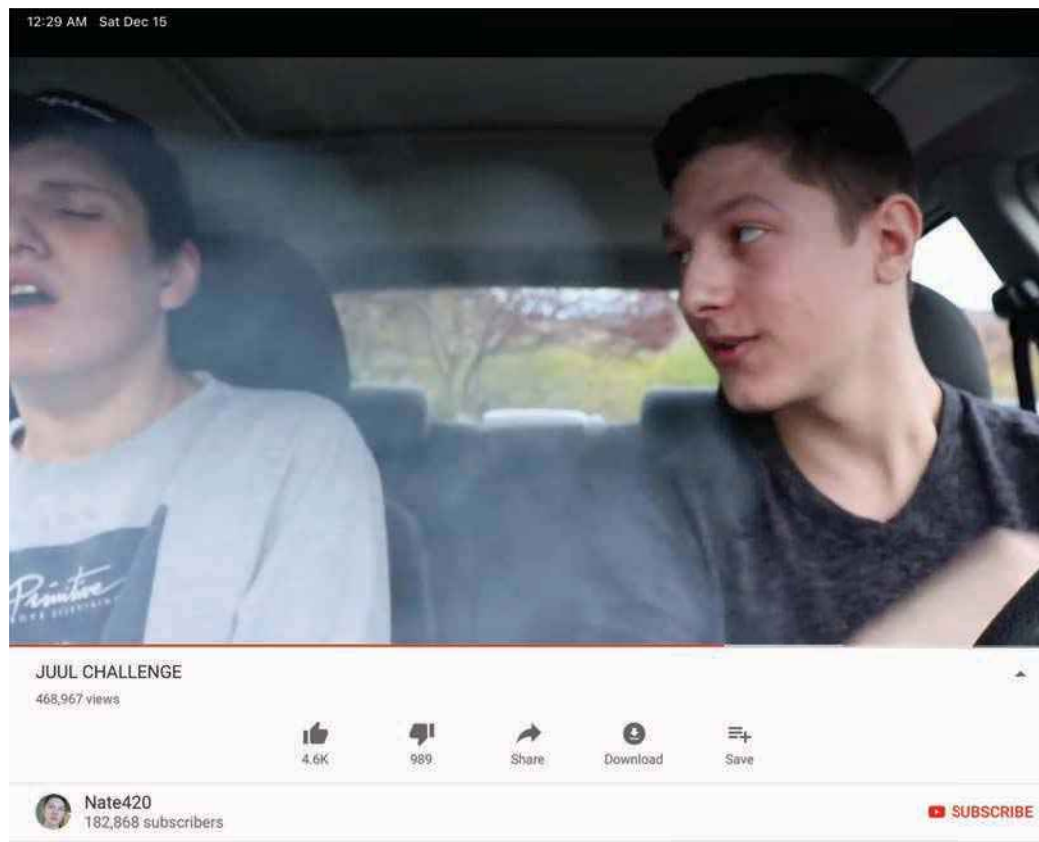
Advertisement 54



Advertisement 55



Advertisement 56



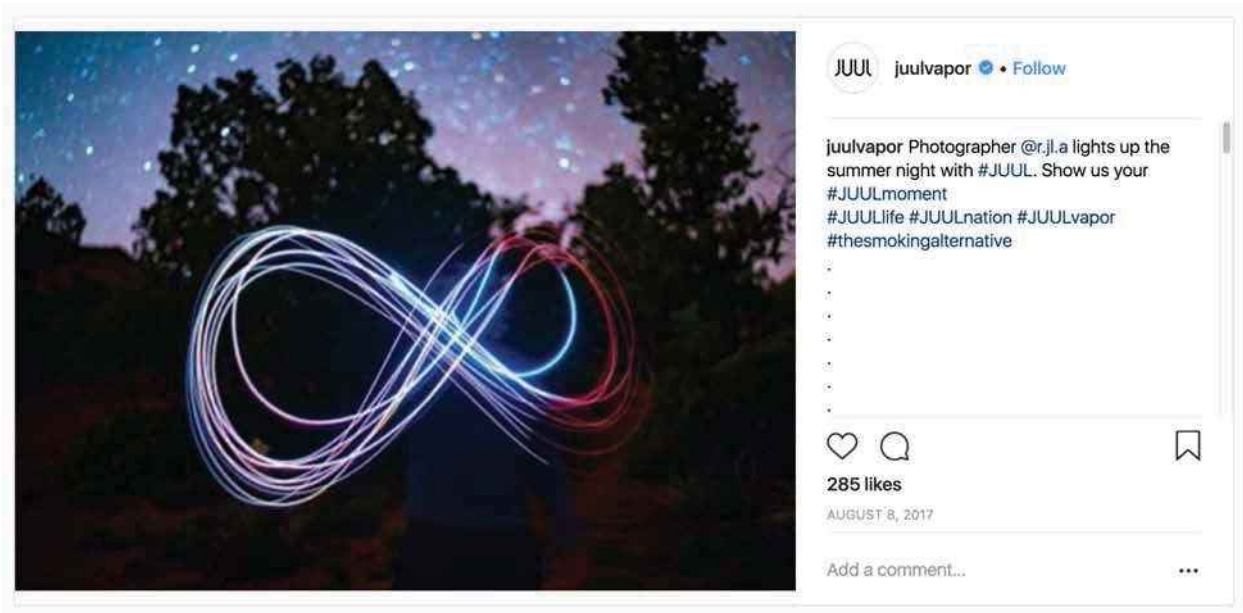
Advertisement 57



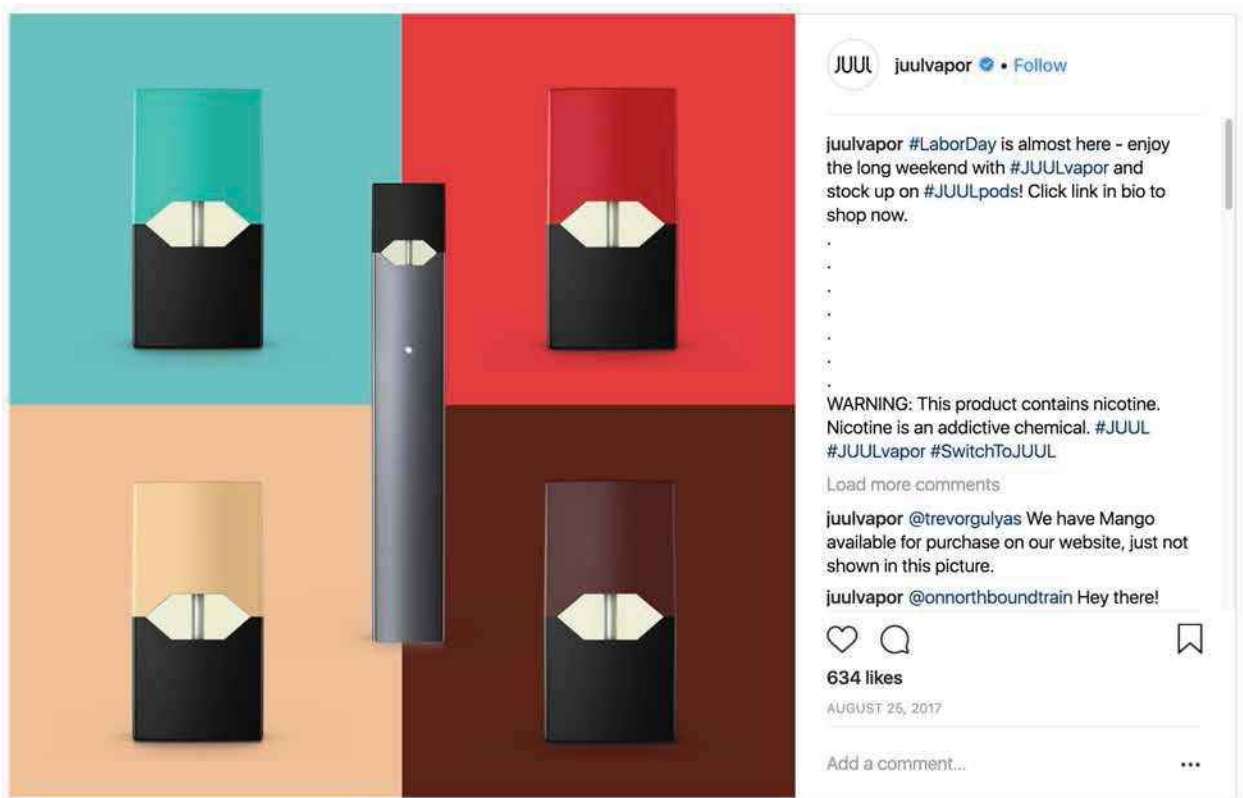
Advertisement 58



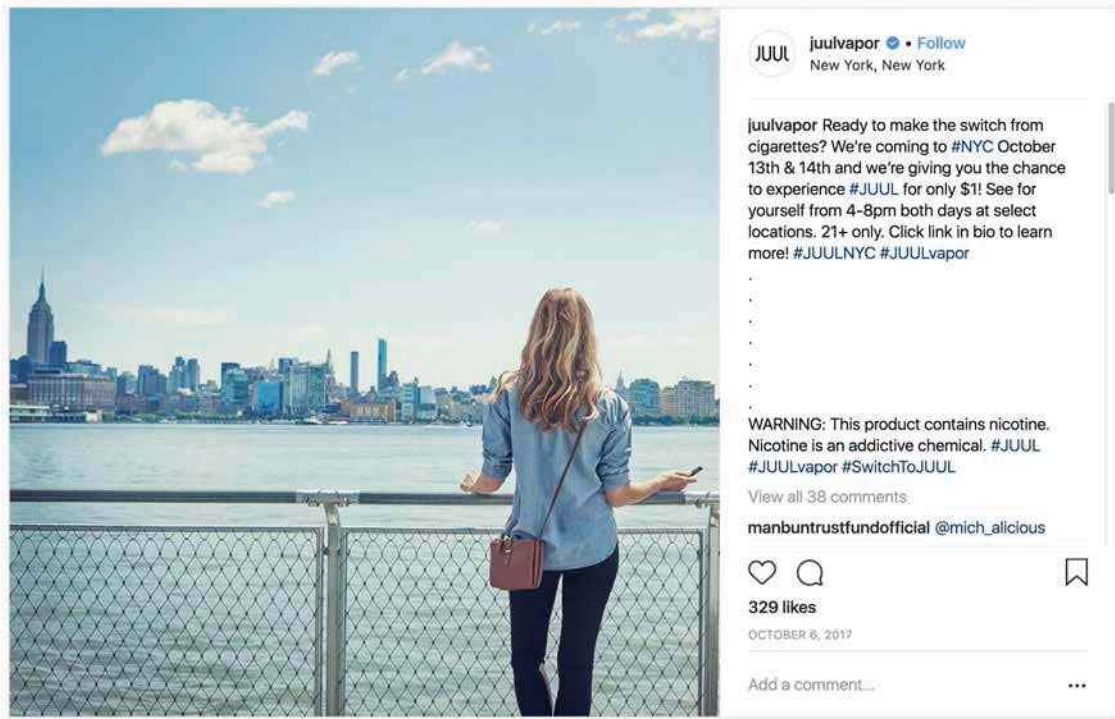
Advertisement 59



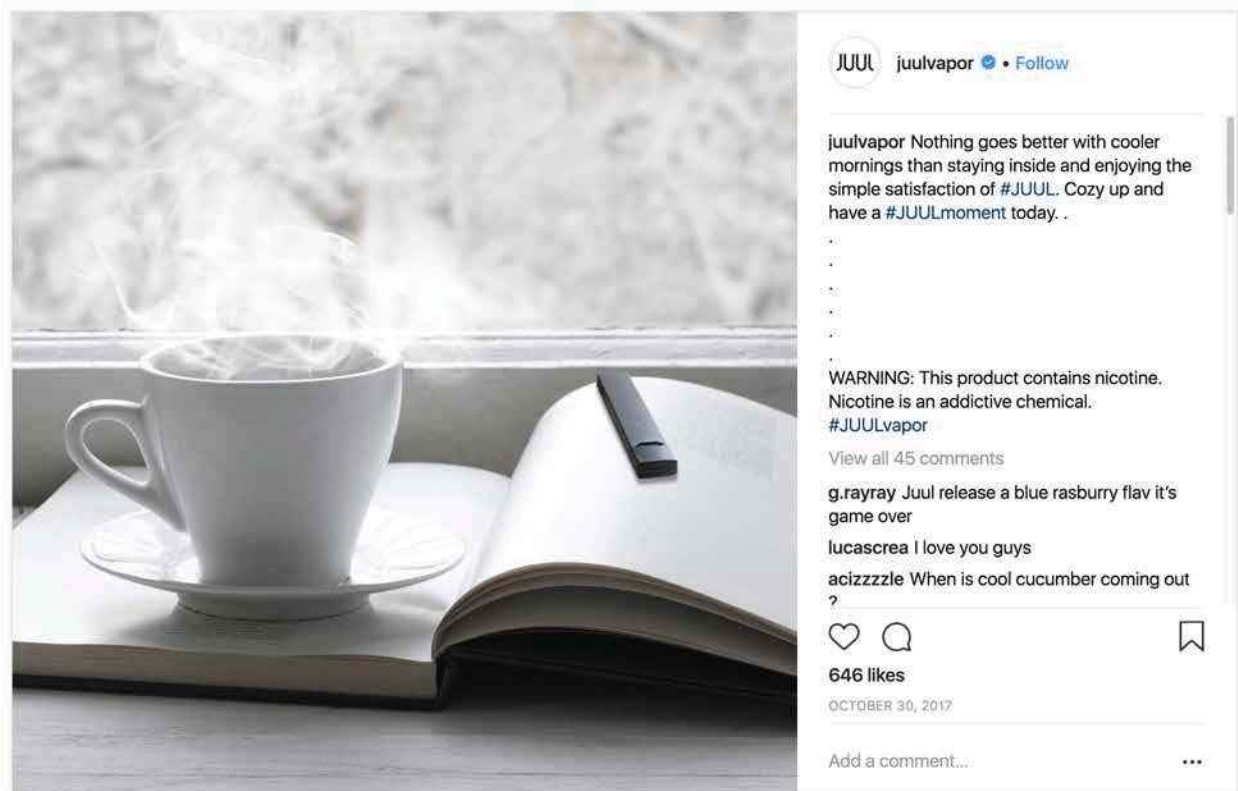
Advertisement 60



Advertisement 61



Advertisement 62



Advertisement 63

JUUL
September 18, 2017 · 🌐

Back to Basics: Our JUUL Basic Kits (Device + USB Charger) have re-stocked so shop now: <http://bit.ly/2fg5sk4>



THE
DEVICE KIT
IS HERE

JUUL Device + USB Charger
+ 1 Year Limited Warranty
JUST \$34.99

17 20 Comments 2 Shares

Like Comment Share

Advertisement 64

JUUL
October 4, 2017 · 🌐

Customize a plan that fits your lifestyle and get select JUULpod flavors delivered to you every month. Join Auto-ship today and save %15
<http://bit.ly/2xbenGt>



JOIN AUTO-SHIP

Get your favorite JUULpods delivered to your door each month & save 15%

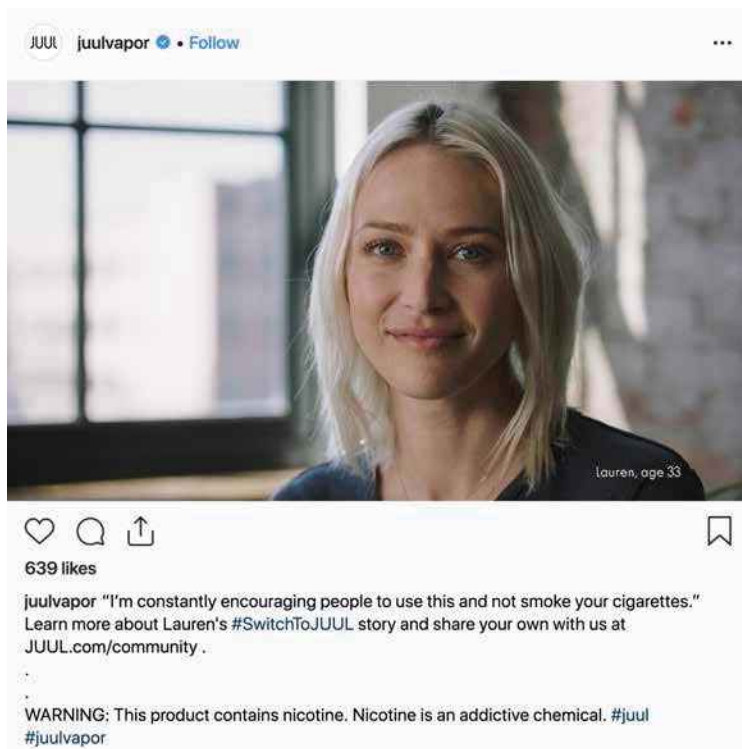
3 11 Comments

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Advertisement 66



Advertisement 67



Advertisement 68

JUUL @JUULvapor · 28 Jul 2017
#ICYMI: Mango is now in Auto-ship! Get the #JUULpod flavor you love delivered & save 15%. Sign up today: bit.ly/2su3cXJ



19

Advertisement 69

 **JUUL**
June 3, 2015 · 

"For me, they've found the balance -- it gives me the hit I need, with none of the fiddly drawbacks I associate with e-cigs."

Thanks to Aaron Souppouris at Engadget for the review. Read more through the link:



JUULVAPOR.COM
Introducing JUUL - Smoking Evolved
Check it out: <https://www.JUULvapor.com>

 11 4 Comments

 Like  Comment  Share

Advertisement 70

 **JUUL**
June 30, 2015 · 

"A stunning addition to the world of electronic cigarettes" - #OaknIron

Read reviews by WIRED, TechCrunch, The Verge and more:



JUULVAPOR.COM
Introducing JUUL - Smoking Evolved
Check it out: <https://www.JUULvapor.com>

 4 1 Share

 Like  Comment  Share

 Write a comment...    

Press Enter to post.

Advertisement 71



January 19, 2017 · 🌐

Introducing our newest flavor, Mango!

Available February 1st online and in select authorized retail locations for a limited time.

Pre-sale begins today at <https://www.juulvapor.com/shop-pods/>



74 Comments · 6 Shares

👍 Like

💬 Comment

➦ Share

Advertisement 72



December 6, 2017 · 🌐

With the flavors of vanilla cake, silky custard and of course creme brulée this JUULpod is the perfect evening treat. <http://bit.ly/2BCBZqS>



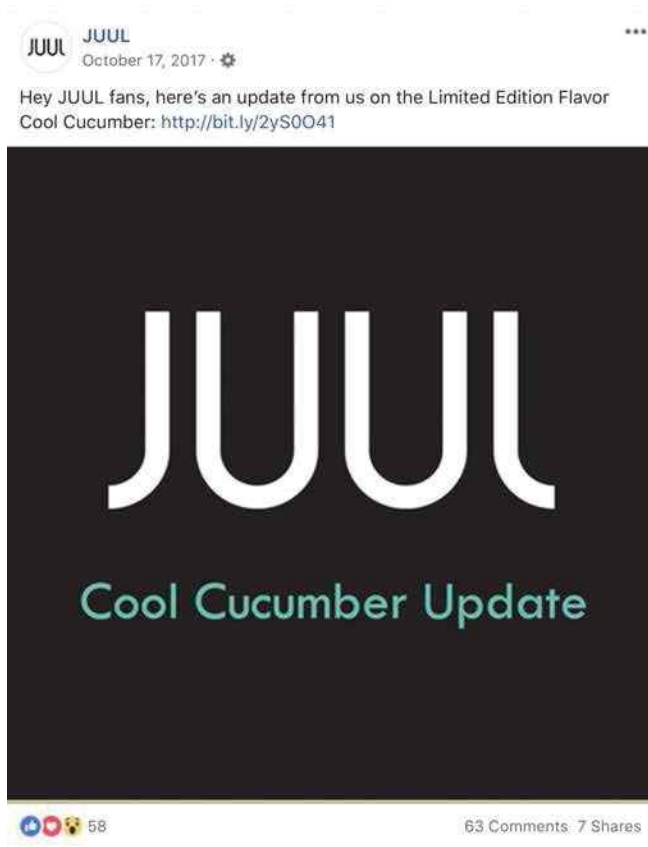
13 Comments

👍 Like

💬 Comment

➦ Share

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Advertisement 74



Advertisement 75

JUUL
March 19 · 🌐

Go for the gold. Limited Edition Blush Gold arrives this week at select retailers nationwide. Use our store locator to contact locations near you for availability. <http://bit.ly/2polMRt>



83 119 Comments 11 Shares

Like Comment Share

Advertisement 76

JUUL
January 4, 2016 · San Francisco, CA · 🌐

Read up on what our featured chefs created to pair with our pod flavors in this article by [Por Homme](#). Read up, try them out, enjoy!



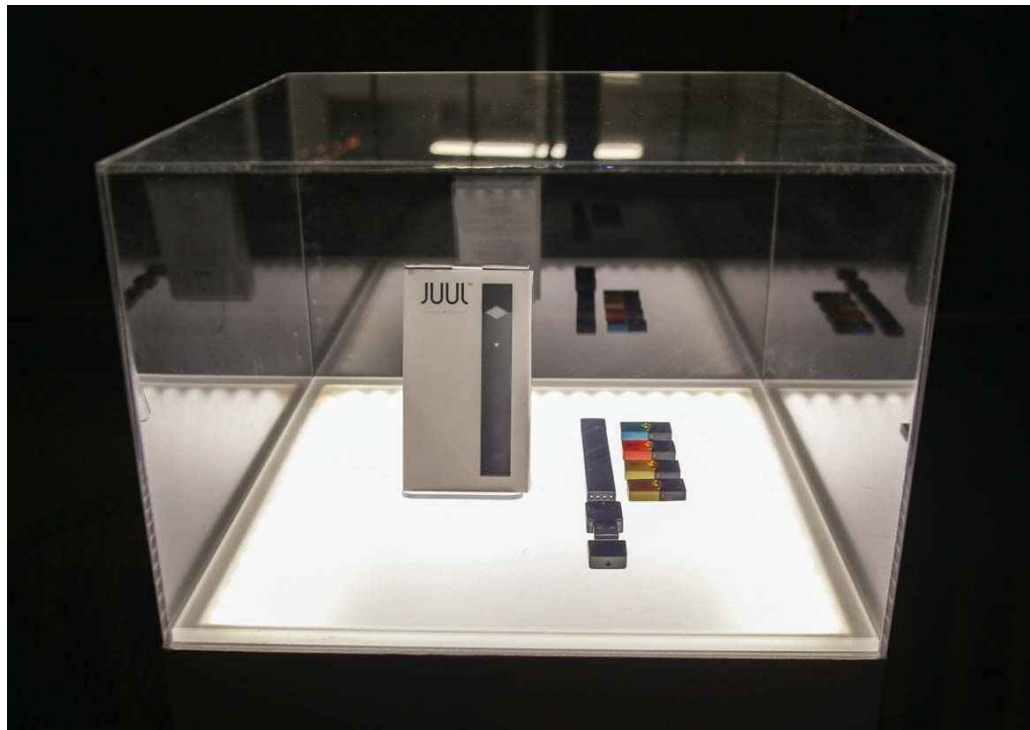
PORHOMME.COM

JUUL's 'Save Room' Campaign Yields 3 Special JUUL Recipes

JUUL's 'Save Room' campaign features three chefs and three delicious

5 6 Comments

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Advertisement 78



Advertisement 79



Advertisement 80

COACD INVITES YOU TO
 \ THE **JUUL** PRODUCT LAUNCH PARTY /
 FROM THE MAKERS OF PAX

MUSIC BY
 CHAPMAN / illuminati AMS / May Kwok
 + Special Guest Performance

THURSDAY JUNE 4TH

coacd • Follow

danocastilostudio 0 hey imao 🙌 cc @nejika

coacd @travisdeluca would love to see u 🙌👍

!

coacd @kircherabdul in town Wed/thurs.

coacd @mynamesdiana get ur ID ready 🙌

juulvapor #JUUL #JUULvapor 🙌🙌
 @coacd

petergiangbang Cool!! I'll be back in time from Nicaragua! Put me on the list :) hope your well !!

coacd @petergiangbang yes sir ! 🙌

👍 51 likes
🗒

JUNE 1, 2015

Add a comment...

Advertisement 81

CINESPIA PRESENTS
SLUMBER PARTY
MOVIES ALL NIGHT
FEATURING
"CAN'T HARDLY WAIT"
"SCREAM" AT MIDNIGHT
"CRUEL INTENTIONS"
SATURDAY AUGUST 15
HOLLYWOOD FOREVER

JUUL
August 11 · @juul

Hello Los Angeles. We have tickets for you to the sold-out Movies All Night Slumber Party hosted by Cinespia this weekend. All you have to do is:

- 1) Follow our Twitter <https://twitter.com/JUULvapor> and Instagram <https://instagram.com/juulvapor/>
- 2) Make a public post tagging #JUULallnight along with our account and our favorites will get a pair of tickets 🍷 — at Hollywood Forever.

Like · Comment · Share

2 people like this.

Write a comment...
Press Enter to post.

@ · 11 Aug 2015

@JUULvapor giving away 2 tickets to SOLD OUT Cinespia got me like...#JUULallnight 🍷🍷🍷

@ · 12 Aug 2015

Let's slumber under the stars this Saturday! #JUULallnight