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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

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

No. 19-md-2913-WHO

13 THIS DOCUMENT RELATES TO:
14 *The School Board of Broward County, Florida*
v. JUUL Labs, Inc., et al.

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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1 **I. INTRODUCTION**

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

9 2. JUUL products are rampant in the nation's schools, with the percentage of 12th
10 graders who reported consuming nicotine almost doubling between 2017 and 2018. In 2019,
11 more than five million middle and high school students reported current use of e-cigarettes,
12 including more than one in every four high schoolers. Consistent with this national trend, youth
13 in The School Board of Broward County, Florida ("Broward Schools" or "Plaintiff") are using e-
14 cigarettes at high rates – rates which continue to climb. While the percentage of youth in
15 Broward County who have tried or currently use cigarettes is at an all-time low, the percentage
16 of youth in the county who have tried or currently use e-cigarettes has increased dramatically
17 during the same period, from 4.5% to 22.6% and from 1.6% to 12.5%, respectively. The
18 Surgeon General has warned that this new "epidemic of youth e-cigarette use" could condemn a
19 generation to "a lifetime of nicotine addiction and associated health risks." The swift rise in a
20 new generation of nicotine addicts has overwhelmed parents, schools, and the medical
21 community (including county public health departments) on the front lines dealing with this
22 crisis, drawing governmental intervention at nearly every level – but it's too little, too late.

23 3. This public health crisis is no accident. What had been lauded as progress in
24 curbing cigarette use, JUUL Labs Inc.'s ("JLI") co-founders Adam Bowen and James Monsees
25 viewed as opportunity. Seizing on the decline in cigarette consumption and the lax regulatory
26 environment for e-cigarettes, Bowen, Monsees, and investors in their company sought to
27 introduce nicotine to a whole new generation, with JLI as the dominant supplier. To achieve that
28 common purpose, they knew they would need to create and market a product that would make

1 nicotine cool again, without any of the stigma associated with cigarettes. With help from their
2 early investors and board members, who include Nicolas Pritzker, Huyoung Huh, and Riaz
3 Valani (together, the “Management Defendants”), they succeeded in hooking millions of youth,
4 and, of course, earning billions of dollars in profits.

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

15 5. Three tactics were central to decades of cigarette industry market dominance:
16 product design to maximize addiction; mass deception; and targeting of youth. JLI and its co-
17 conspirators adopted and mastered them all. *First*, JLI and Bowen designed JUUL products to
18 create and sustain addiction, not break it. JLI and Bowen were the first to design an e-cigarette
19 that could compete with combustible cigarettes on the speed and strength of nicotine delivery.
20 Indeed, JUUL products use nicotine formulas and delivery methods much stronger than
21 combustible cigarettes, confirming that what JLI and Bowen designed was a starter product
22 designed for youth, not a cessation or cigarette replacement product. JLI and Bowen also
23 innovated by making an e-cigarette that was smooth and easy to inhale, practically eliminating
24 the harsh “throat hit,” which otherwise deters nicotine consumption, especially among nicotine
25 “learners,” as R.J. Reynolds’ chemist Claude Teague called new addicts, primarily young people.

26 6. *Second*, JLI and the Management Defendants, just like cigarette companies before
27 them, targeted kids as their customer base. One of JLI’s “key needs” was the need to “own the
28 ‘cool kid’ equity.” JUUL products were designed to appear slick and high-tech like a cool

1 gadget, including video-game-like features like “party mode.” JLI offered kid-friendly flavors
2 like mango and cool mint, and partnered with Altria to create and preserve the market for mint-
3 flavored products – all because Defendants knew that flavors get young people hooked. Under
4 the guise of youth smoking prevention, JLI sent representatives directly to schools to study
5 teenager e-cigarette preferences.

6 7. *Third*, JLI, the Management Defendants (defined below) and Altria engaged in a
7 campaign of deceit, through sophisticated mass media and social media communications,
8 advertisements, and otherwise, about the purpose and dangers of JUUL products. JUUL
9 products’ packaging and advertising grossly understates the nicotine content in its products.
10 Advertising campaigns featured JUUL paired with food and coffee, positioning JUUL as part of
11 a healthy meal, a normal part of a daily routine, and as safe as caffeine. In partnership with
12 Altria, JLI adopted a “Make the Switch” campaign to mislead the public into thinking that JLI
13 products were benign smoking cessation devices, even though JUUL was never designed to
14 break addictions. JLI, the Management Defendants, and Altria also concealed the results of
15 studies that revealed that JUUL products were far more powerfully addictive than was disclosed.
16 JLI’s deceptive marketing scheme was carried out across the country through broad distribution
17 channels: veteran cigarette industry wholesalers, distributors and retailers ensured that JUUL
18 products would become widely available to a new market of nicotine-newcomers, especially
19 youth. JLI and the Management Defendants joined with these veteran cigarette industry
20 marketers to secure premium shelf space for vivid displays at convenience stores and gas stations
21 that would lure e-cigarette users, particularly young people, who would become long-term
22 customers. These marketing efforts have been resounding successes. When JUUL products were
23 climbing in sales, most youth – and their parents – believed that e-cigarettes did not contain
24 nicotine at all.

25 8. JLI and the Management Defendants reached their intended demographic through
26 a diabolical pairing of notorious cigarette company advertising techniques (long banned for
27 cigarettes because they cause young people to start smoking) with cutting-edge viral marketing
28 campaigns and social media. They hired young models and advertised using bright, “fun”

1 themes, including on media long barred to the cigarette industry, such as billboards, on
2 children's websites such as "Nick Junior" and Cartoon Network, and on websites providing
3 games and educational tools to students in middle school and high school. JLI and the
4 Management Defendants also employed young social media "influencers" and celebrities
5 popular with teenagers. When the public, regulators, and Congress caught onto JLI's relentless
6 focus on children, JLI and the Management Defendants simply lied, even though they knew well
7 that they had purposefully targeted youth in their marketing and those efforts had been
8 breathtakingly successful.

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

21 10. There is no doubt about it – JLI, the Management Defendants, Altria, and their
22 co-Defendants have created this youth public health crisis. At the heart of this disastrous
23 epidemic are the concerted efforts of JLI, its co-conspirators, and all those in JUUL's supply and
24 distribution chain to continuously expand their market share and profits by preying upon a
25 vulnerable young population and deceiving the public about the true nature of the products they
26 were selling. Nicotine is not benign like coffee, contrary to what many JUUL users believe. Nor
27 is the aerosol as harmless as puffing air. Worse, the flavors in JUUL products are themselves
28 toxic and dangerous, and have never been adequately tested to ensure they are safe for

1 inhalation. According to the most recent scientific literature, JUUL products cause acute and
2 chronic pulmonary injuries, cardiovascular conditions, and seizures. Yet JUUL products and
3 advertising contain no health risk warnings at all. And a generation of kids is now hooked,
4 ensuring long-term survival of the nicotine industry because, today just as in the 1950s, 90% of
5 smokers start as children.

6 **II. JURISDICTION AND VENUE**

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

13 12. The Court has personal jurisdiction over Defendants because they do business in
14 this District and have sufficient minimum contacts with the District. Defendants intentionally
15 avail themselves of the markets in this State through the promotion, marketing, and sale of the
16 products at issue in this lawsuit in California, and by retaining the profits and proceeds from
17 these activities, to render the exercise of jurisdiction by this Court permissible under California
18 law and the U.S. Constitution. The Court also has personal jurisdiction over JLI, the
19 Management Defendants, and Altria under 18 U.S.C. §1965, because at least one of these
20 Defendants has sufficient minimum contacts with this District.

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

25 **III. PARTIES**

26 **Plaintiff**

27 14. Plaintiff The School Board of Broward County, Florida, is a school district
28 located in Broward County, Florida. It is the second largest school district in the state of Florida

1 and the sixth largest in the United States. During the 2016-2017 school year, Broward Schools
 2 served 271,517 students enrolled in 327 schools and education centers district wide. Plaintiff's
 3 offices are located at 600 SE Third Avenue, Fort Lauderdale, Florida.

4 **JUUL Labs, Inc.**

5 15. JUUL Labs, Inc. Defendant JUUL Labs, Inc. ("JLI") is a Delaware corporation,
 6 having its principal place of business in San Francisco, California. Ploom, Inc., a predecessor
 7 company to JLI, was incorporated in Delaware on March 12, 2007. In 2015, Ploom, Inc. changed
 8 its name to PAX Labs, Inc. In April 2017, PAX Labs, Inc. changed its name to JUUL Labs, Inc.,
 9 and formed a new subsidiary corporation with its old name, PAX Labs, Inc. That new subsidiary,
 10 PAX Labs, Inc. ("PAX"), was incorporated in Delaware on April 21, 2017 and has its principal
 11 place of business in San Francisco, California.

12 16. JUUL, designs, manufactures, sells, markets, advertises, promotes, and distributes
 13 JUUL e-cigarettes devices, JUUL pods, and accessories (collectively "JUUL" or "JUUL
 14 products"). Prior to the formation of separate entities PAX Labs, Inc. and JLI in or around April
 15 2017, JUUL designed, manufactured, sold, marketed, advertised, promoted, and distributed
 16 JUUL under the name PAX Labs, Inc.

17 17. Together with its predecessors, JUUL Labs, Inc is referred to herein as "JLI."

18 **Altria Defendants**

19 18. Defendant Altria Group Inc. (together with its wholly owned subsidiaries and
 20 their predecessors, "Altria" or the "Altria Defendants") is a Virginia corporation, having its
 21 principal place of business in Richmond, Virginia. Altria is one of the world's largest producers
 22 and marketers of tobacco products, manufacturing and selling combustible cigarettes for more
 23 than a century.

24 19. On December 20, 2018, Altria purchased a 35% stake in JLI.

25 20. Altria and JLI executed a Services Agreement that provides that Altria, through
 26 its subsidiaries, Philip Morris, Altria Client Services LLC, and Altria Group Distribution
 27 Company, would assist JLI in the selling, marketing, promoting, and distributing of JUUL,
 28 among other things.

21. Defendant Altria Client Services LLC (“Altria Client Services” or “ACS”) is a Virginia limited liability company with its principal place of business in Richmond, Virginia. Altria Client Services provides Altria Group, Inc. and its companies with services in many areas including digital marketing, packaging design & innovation, product development, and safety, health, and environmental affairs. Pursuant to Altria’s Relationship Agreement with JLI, Altria Client Services assists JLI in the sale, marketing, promotion, and distribution of JUUL products.¹ Such services include database support, direct marketing support, and premarket product application support.² On September 25, 2019, the former Senior Vice President and Chief Growth Officer of Altria Client Services, K.C. Crosthwaite, became the new chief executive officer of JLI.

22. Defendant Altria Group Distribution Company (“AGDC”) is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Richmond, Virginia. Altria Group Distribution Company provides sales, distribution, and consumer engagement services to Altria’s tobacco companies. Altria Group Distribution Company performs services under the Relationship Agreement to assist JLI in the sale, marketing, promotion and distribution of JLI. Such services include JUUL-distribution support, the removal by Altria Group Distribution Company of Nu Mark LLC (“Nu Mark”) products (such as Green Smoke or MarkTen) and fixtures in retail stores and replacing them with JUUL products and fixtures, and sales support services.

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

¹ Altria Group, Inc., *Relationship Agreement by and among JUUL Labs, Inc., Altria Group, Inc., and Altria Enterprises LLC* (“Relationship Agreement”) (Form 8-K), Ex. 2.2 (Dec. 20, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000119312518353970/d660871dex22.htm>.

² *Id.*

24. Collectively, Altria Group, Inc. and its subsidiaries named above are referred to collectively 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 Technologies, Inc. In 2007, he invested in JLI.³ He has been on the Board of Directors of JLI since at least June 2014.⁴ At least from October 2015 to August 2016, he was on the Executive Committee in the

³ 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>.

⁴ INREJUUL_00371187.

1 Board of Directors. As of November 2017, he controlled two Board seats (the second of which
2 was occupied by Hoyoung Huh, discussed next).⁵

3 28. Defendant Hoyoung Huh lives and works in the Silicon Valley area, California.
4 He holds an M.D. from Cornell University and a Ph.D. in Genetics/Cell Biology from
5 Cornell/Memorial Sloan-Kettering. He has been CEO or a Board member of numerous
6 biotechnology businesses, including Geron Corporation. Huh has been on the Board of Directors
7 of JLI since at least June 2015. At least from October 2015 to August 2016, he was on the
8 Executive Committee in the Board of Directors. As of November 2017, he served as Pritzker's
9 second seat on the JLI Board.⁶

10 29. Defendant Riaz Valani lives near San Jose, California and is a general partner at
11 Global Asset Capital, a San Francisco-based private equity investment firm. He has been on the
12 Board of Directors of JLI since at least May 2011.⁷ At least from October 2015 to August 2016,
13 he was on the Executive Committee in the Board of Directors. As of November 2017, he
14 controlled two JLI Board seats, the second of which was occupied by Zach Frankel.⁸

15 30. Defendants Monsees, Bowen, Pritzker, Huh, and Valani are referred to
16 collectively as the "Management Defendants."

17 31. Defendants JLI, the Altria Defendants, Monsees, Bowen, Pritzker, Huh, and
18 Valani are referred to collectively as the "RICO Defendants."

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23 _____
24 ⁵ INREJUUL_00327603.

25 ⁶ *Id.*

26 ⁷ Ploom, Inc., Notice of Exempt Offering of Securities (Form D) (May 5, 2011),
27 https://www.sec.gov/Archives/edgar/data/1520049/000152004911000001/xslFormDX01/primary_doc.xml.

28 ⁸ INREJUUL_00327603.

1 **IV. GENERAL FACTUAL ALLEGATIONS**

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

5 32. JLI’s co-founder James Monsees has described the cigarette as “the most
 6 successful consumer product of all time . . . an amazing product.”⁹ This statement, which ignores
 7 the fact that cigarettes have caused more deaths than any other human invention, contained a
 8 kernel of truth. When U.S. smoking rates peaked in the mid-1960s, 42% of adults smoked
 9 cigarettes. Cigarettes were everywhere; people smoked on airplanes, in movie theatres, at the
 10 office, and at sports games. Movie stars and sports heroes smoked. Cigarette advertising
 11 wallpapered American life, glamorizing smoking as sophisticated, cool, and the thing to do.

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

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

18 35. Citing “some problems” inherent in the cigarette, Monsees and JLI co-founder
 19 Adam Bowen set out to “deliver[] solutions that refresh the magic and luxury of the tobacco
 20 category.”¹⁰ Monsees saw “a huge opportunity for products that speak directly to those
 21 consumers who aren’t perfectly aligned with traditional tobacco products.”¹¹ Successfully
 22 capitalizing on this opportunity would mean not only billions of dollars in short-term revenue but
 23 lucrative acquisition by a cigarette industry power player.

24 ⁹ Kathleen Chaykowski, *Billionaires-to-be: Cigarette Breakers—James Monsees and Adam*
 25 *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.

26 ¹⁰ Josh Mings, *Ploom Model Two Slays Smoking With Slick Design and Heated Tobacco Pods*,
 27 *SOLID SMACK* (Apr. 23, 2014), www.solidsmack.com/design/ploom-modeltwo-slick-design-tobacco-pods/.

28 ¹¹ *Id.*

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

5 37. When it became clear that Bowen and Monsees could not themselves achieve
6 their vision of growing the number of nicotine-addicted e-cigarette users to ensure a base of
7 customers for life, the Management Defendants planned a fundamental shift in roles to allow
8 Pritzker, Huh, and Valani to direct and take control of JLI and use it to commit the Defendants'
9 unlawful acts.

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

14 39. Prior to the installation of Tyler Goldman as JLI's new CEO in August 2016,
15 Defendants Pritzker, Huh, and Valani used their newly formed Executive Committee to expand
16 the number of addicted e-cigarette users through fraudulent advertising and representations to the
17 public, and specifically to minors. They cleaned house at JLI by "dismiss[ing] other senior
18 leaders and effectively tak[ing] over the company."¹² Once their leadership was secure,
19 defendants Huh, Pritzker, and Valani pressed for even "more aggressive rollout and
20 [marketing]."¹³

21 40. But the Management Defendants knew that their desire to create a massive new
22 market for JUUL on their own would be aided if they could convert Altria, an experienced
23 cigarette company with a history of marketing to youth and covering it up, into an ally. They
24 turned to Altria in the Spring of 2017. While Defendants JLI, Bowen, Monsees, Huh, and Valani
25 are relative newcomers to the tobacco industry, Altria has been manufacturing and selling

26 ¹² Julie Creswell & Sheila Kaplan, *How Juul Hooked a Generation on Nicotine*, N.Y. Times
27 (Nov. 23, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

28 ¹³ INREJUUL_00278359.

1 “combustible” cigarettes for more than a century. And Defendant Pritzker, for his part, has been
 2 long familiar with the tobacco industry from his family’s ownership of chewing-tobacco giant,
 3 Conwood, before selling it to Reynolds American, Inc., a subsidiary of British American
 4 Tobacco. Notwithstanding their different histories, JLI and the Management Defendants, for
 5 their part, invited Altria into the fold as an ally with ample resources to further expand the
 6 market of nicotine-addicted e-cigarette users and to keep litigation and regulation at bay. While
 7 JLI, Monsees, and Bowen publicly claimed to be out to “disrupt” the industry, they and the other
 8 Management Defendants privately negotiated and ultimately relinquished a 35% ownership stake
 9 in the company to a cigarette giant.

10 41. Cigarette companies have long known that profitable growth requires a pipeline
 11 of “replacement” customers. Altria, after decades of tobacco litigation and regulation, had little
 12 ability to recruit new smokers in the ways that had driven Philip Morris’ success through most of
 13 the 1900s. In 2017, Altria’s combustible cigarette products were facing increasing regulatory
 14 pressures. In late July 2017, Altria’s stock value plummeted shortly after the FDA announced
 15 that it would reduce the amount of nicotine allowed in cigarettes with an eye toward reaching
 16 non-addictive levels.¹⁴ In late 2017, Altria, and other major cigarette companies, also finally
 17 complied with a consent decree from the 1990s tobacco litigation that required them to issue
 18 corrective advertising statements that highlighted the addictiveness and health impacts of
 19 smoking cigarettes.¹⁵

20 42. Due in large part to this litigation and regulation, cigarette use has been declining
 21 in the United States in the last decade, especially among youth.¹⁶ Altria estimates that the

22 _____
 23 ¹⁴ See Dan Caplinger, *Altria Group in 2017: The Year in Review*, The Motley Fool (Dec. 18, 2017), <https://www.fool.com/investing/2017/12/18/altria-group-in-2017-the-year-in-review.aspx>.

24 ¹⁵ Law360, *Tobacco Cos. Settle Long-Running Health Warning Dispute* (Apr. 25, 2018),
 25 <https://www.law360.com/articles/1037281/tobacco-cos-settle-long-running-health-warning-dispute>.

26 ¹⁶ *Current Cigarette Smoking Among Adults in the United States*, CDC,
 27 https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last
 28 visited May 7, 2020); *Youth and Tobacco Use*, CDC,
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last
 visited May 7, 2020).

cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023.¹⁷ Altria later adjusted the estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking to 21.¹⁸

43. Altria had undertaken its own efforts at marketing an e-cigarette product. Altria had launched the MarkTen product nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for the market leader at that time, blu e-cigarettes.¹⁹ Of the \$88.1 million spent on e-cigarette advertising in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35 million.²⁰

44. Altria was clear in its intent to dominate the e-cigarette market as it has the combustible cigarette market: "We are the market leader today and we will continue to be," then-CEO Marty Barrington told investors at the time of MarkTen's launch.²¹ The original MarkTen was a "cigalike," designed to mimic the look and feel of a combustible cigarette.

45. Altria had also been acquiring small companies in the e-cigarette industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in flavors including "Vanilla Dreams" and "Smooth Chocolate."²² In 2016, Altria acquired a

¹⁷ *Altria's Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019), <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

¹⁸ *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/>.

¹⁹ Jennifer Cantrell *et al.*, *Rapid increase in e-cigarette advertising spending as Altria's MarkTen enters the marketplace*, 25 Tobacco Control e125 (10) (2015), <http://dx.doi.org/10.1136/tobaccocontrol-2015-052532>.

²⁰ *Id.*

²¹ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

²² 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 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>.

1 product called Cync, from Vape Forward.²³ Cync is a small e-cigarette device that uses prefilled
2 pods in a variety of flavors, similar to the JUUL.

3 46. In February 2017, Altria told investors at the 2017 Consumer Analyst Group of
4 New York Conference that over the past year, “Nu Mark LLC (Nu Mark) made excellent
5 progress toward its long-term aspiration of becoming a leader in e-vapor.”²⁴ In his remarks,
6 Altria’s current CEO, Howard A. Willard III, said, “Nu Mark, our e-vapor company, had a very
7 strong year. It made excellent progress toward establishing MarkTen as a leading brand in the
8 category, continued to improve its supply chain, and took the necessary steps to comply with the
9 deeming regulations.” He noted, however, that the estimated “total 2016 e-vapor consumer
10 spending was roughly flat compared to the prior year at approximately \$2.5 billion.”²⁵ In 2017,
11 Altria’s MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI’s growing
12 market share of 40%.²⁶ Thus, despite its public statements to the contrary, Altria knew the
13 popularity of JUUL stood in the way of Altria becoming the dominant force in the e-cigarette
14 market.

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

21 ²³ Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), [http://media.corporate-](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf)
22 [ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf](http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf).

23 ²⁴ Remarks by Marty Barrington, Altria Group, Inc.’s (Altria) Chairman, CEO and President,
24 and other members of Altria’s senior management team 2017 Consumer Analyst Group of New
25 York (2017), [http://investor.altria.com/Cache/IRCache/1ac8e46a-7eb4-5df2-843d-](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)
26 [06673f29b6b0.PDF?O=PDF&T=&Y=&D=&FID=1ac8e46a-7eb4-5df2-843d-](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)
27 [06673f29b6b0&iid=4087349](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 ²⁵ *Id.*

²⁶ 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-](https://www.journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html)
sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.

48. For those reasons and others, Altria began coordinating with JLI and the Management Defendants in the Spring of 2017. Before then, Altria and JLI were members of at least one industry group that shared information and coordinated public statements regarding the e-cigarette market,²⁷ and Ploom’s advisory committee included Altria’s former growth officer. In Altria’s words, the company followed “JUUL’s journey rather closely” from its early beginnings.²⁸

49. According to Howard Willard, Altria’s CEO, Altria first contacted JLI about a commercial relationship in early 2017, with “confidential discussions” beginning in the Spring of 2017.²⁹ JLI’s pitch deck to investors at the time boasted that “Viral Marketing Wins,” and that JUUL’s super potent nicotine formulation was “cornering” the consumables market *with the highest customer retention rate, i.e. addiction rate, of any e-cigarette*.³⁰

50. JLI and Altria’s “confidential discussions” occurred “over a period of approximately 18 months.”³¹ Pritzker and Valani, together with Burns, were the lead negotiators on the Altria deal. On July 30, 2018, in advance of a meeting between the lead negotiators from JLI and Altria, Pritzker emailed Howard Willard an opening term sheet for discussions, and made clear that an end to competition from Altria’s e-cigarette products was a key term of any deal. On August 1, 2018, the companies’ negotiators met at the Park Hyatt Hotel in Washington, D.C., to discuss terms. Pritzker, Valani, and Burns attended for JLI. Willard and Billy Gifford, Altria’s CFO, attended for Altria. By the Fall of 2017, JLI, the Management Defendants, and Altria had agreed to and had taken coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base.

²⁷ INREJUUL_00278740.

²⁸ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

²⁹ Altria’s October 14, 2019 letter to Senator Durbin, *et al.*, by Howard Willard III (2019).

³⁰ INREJUUL_00349529.

³¹ *Id.*

51. During the roughly 18-month negotiating period, it was JLI (through its executives and employees – including Tyler Goldman and his successors) and Altria (through its executives and employees) that primarily directed and conducted fraudulent acts designed to grow the market of youth nicotine-addicted e-cigarette users, although Bowen, Monsees, Pritzker, Huh, and Valani remained critical to the success of these efforts. Without their control of the JLI Board of Directors and prior fraudulent conduct, the close coordination between JLI and Altria, and Altria’s investment in JLI, would not have been possible.

52. In December 2018, Altria decided to take the next step in its coordination with JLI and the Management Defendants by making a \$12.8 billion equity investment in JLI, the largest equity investment in U. S. history. This arrangement was profitable for both companies, as well as Defendants Monsees, Bowen, Pritzker, Huh, and Valani. JLI employees received \$2 billion in bonuses, which, split among the Company’s 1,500 employees, was approximately \$1.3 million per employee,³² and Altria received millions of loyal teen customers. In deciding to make a huge investment in JUUL, Altria took into account that the e-cigarette industry would see significant year-over-year growth in the near term, and that “JUUL continu[es] to be a growth driver for the e-vapor category.”³³

53. In July 2018, JLI’s valuation was approximately \$15 billion.³⁴ But, in December 2018, Altria’s investment of \$12.8 billion for a 35% stake in the company reflected a valuation of approximately \$38 billion – more than two and a half times the valuation just five months earlier. Defendants Monsees, Bowen, Pritzker, Huh, and Valani thus saw the value of their investments in JLI skyrocket as a result of the Altria agreement, allowing them to cash out via a

³² 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>.

³³ Altria’s October 14, 2019 letter to Senator Durbin, *et al.*, by Howard Willard III (2019).

³⁴ Rachel Becker, *Why Is Juul Worth \$16 Billion? It’s More Like a Cigarette Than You Think*, THE VERGE (Jul. 3, 2018), <https://www.theverge.com/2018/7/3/17529442/juul-vapes-nicotine-electronic-cigarettes-addiction-funding>.

1 special dividend and bonus, as well as through stock sales that were not available to other of
2 JLI's minority shareholders.³⁵

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

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

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

25
26
27 ³⁵ Tiffany Kary, *JUUL Founders Sued for Self-Dealing Over Altria's \$12.8 Billion*, Bloomberg
28 (Jan. 13, 2020), <https://www.bloomberg.com/news/articles/2020-01-13/juul-founders-sued-for-self-dealing-over-altria-s-12-8-billion>.

57. JLI, the Management Defendants, and Altria worked together to implement their shared goal of growing a new market in the image of the combustible cigarette market through a multi-pronged strategy to: (1) create a highly addictive product that users would not associate with cigarettes and that would appeal to the lucrative youth market; (2) deceive the public, and especially young 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.³⁶

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

³⁶ 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).

1 related effects during smoking, and makes smoking the most reinforcing and dependence-
2 producing form of nicotine administration.”³⁷

3 60. Again, according to Dr. Benowitz, “The rapid rate of delivery of nicotine by
4 smoking ... results in high levels of nicotine in the central nervous system with little time for
5 development of tolerance. The result is a more intense pharmacologic action. The short time
6 interval between puffing and nicotine entering the brain also allows the smoker to titrate the dose
7 of nicotine to a desired pharmacologic effect [often subconsciously], further reinforcing drug
8 self-administration and facilitating the development of addiction.”³⁸

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

18 62. Kids are particularly vulnerable to nicotine addiction, as Defendants know well.
19 As described by the United States Surgeon General, “Tobacco use is a pediatric epidemic.”³⁹
20 Nine out of ten smokers begin by age 18 and 80% who begin as teens will smoke into
21 adulthood.⁴⁰

22 ³⁷ Neal L. Benowitz *et al.*, *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192
23 *Handb. Exp. Pharmacol.*, 29 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

24 ³⁸ *Id.*

25 ³⁹ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (“2012
26 *Surgeon General Report*”) at 539 (2012),
https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

27 ⁴⁰ U.S. Dep’t of Health & Human Servs., *Preventing Tobacco Use Among Youth and Adults, A*
28 *Report of the Surgeon General, Executive Summary*, at 1 (2012),
<https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

63. The above statements apply equally, if not more so, to e-cigarettes. Further, the Surgeon General has explained how the nicotine in e-cigarettes affects the developing brain and can addict kids more easily than adults: “Until about age 25, the brain is still growing. Each time a new memory is created, or a new skill is learned, stronger connections – or synapses – are built between brain cells. Young people’s brains build synapses faster than adult brains. Because addiction is a form of learning, adolescents can get addicted more easily than adults.”⁴¹ The effects of nicotine exposure on the brain 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.⁴² 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.”⁴³

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.⁴⁴

⁴¹ *Know The Risks: E-Cigarettes & Young People* (2019), <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

⁴² 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/>.

⁴³ 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/>.

⁴⁴ 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.

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 2016.⁴⁵ By 2014, teen smoking also hit a record low.⁴⁶ In June 2014, the Centers for Disease Control and Prevention (“CDC”) reported that “in achieving a teen smoking rate of 15.7 percent, the United States has met its national Healthy People 2020 objective of reducing adolescent cigarette use to 16 percent or less.”

67. The United States Surgeon General reported in 2014 that: “We are at a historic moment in our fight to end the epidemic of tobacco use that continues to kill more of our citizens than any other preventable cause. The good news is that we know which strategies work best. By applying these strategies more fully and more aggressively, we can move closer to our goal of making the next generation tobacco-free.”⁴⁷

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

⁴⁵ Centers for Disease Control and Prevention, U.S. Dep’t of Health and Human Servs, *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 Product Use Among Adults – United States, 2017*, 67 MORBIDITY & MORTALITY WKLY. REP. 1225 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf>; 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.

⁴⁶ Press Release, Centers for Disease Control and Prevention, *Cigarette smoking among U.S. high school students at lowest level in 22 years* (June 12, 2014), <https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>.

⁴⁷ 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>.

1 **2. Following the Cigarette Industry Playbook, Defendants Sought**
 2 **to Market a Product that Would Create and Sustain Nicotine**
 3 **Addiction, but Without the Stigma Associated with Cigarettes.**

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

9 70. In doing so, JLI followed the cigarette industry's playbook. Monsees admitted
 10 that when creating JLI, he and Bowen carefully studied the marketing strategies, advertisements,
 11 and product design revealed in cigarette industry documents that were uncovered through
 12 litigation and made public under the November 1998 Master Settlement Agreement between the
 13 state Attorneys General of 46 states, five U.S. territories, the District of Columbia and the four
 14 largest cigarette manufacturers in the United States. "[Cigarette industry documents] became a
 15 very intriguing space for us to investigate because we had so much information that you
 16 wouldn't normally be able to get in most industries. And we were able to catch up, right, to a
 17 huge, huge industry in no time. And then we started building prototypes."⁴⁸

18 71. In a thesis presentation Bowen and Monsees gave in 2004, Monsees candidly
 19 admitted, "The cigarette is actually a carefully engineered product for nicotine delivery and
 20 addiction."⁴⁹ JLI researched how cigarette companies engineered their products and chemically
 21 manipulated nicotine to maximize delivery: "We started looking at patent literature. We are
 22 pretty fluent in 'Patentese.' And we were able to deduce what had happened historically in the
 23 tobacco industry."⁵⁰ With access to the trove of documents made public to curb youth smoking
 24 and aid research to support tobacco control efforts, JLI was able to review literature on

25 ⁴⁸ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground,
 26 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

27 ⁴⁹ Jordan Crook, *This is the Stanford Thesis Presentation That Launched Juul*, Tech Crunch
 28 (Feb. 27, 2019), <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

⁵⁰ *Id.*

1 manipulating nicotine pH to maximize its delivery in a youth-friendly vapor with minimal
2 “throat hit.”

3 72. Through studying industry documents, JLI learned that the cigarette industry had
4 tried for years to figure out ways to create and sustain addiction by delivering more nicotine in a
5 way that would be easy to ingest – without the nausea, cough, or other aversive side effects that
6 many new smokers experienced. In the 1970s, R.J. Reynolds scientists eventually found a
7 solution: Combine the high-pH nicotine with a low-pH acid. The result was a neutralized
8 compound referred to as nicotine salt. In a 1973 RJR memorandum titled “Cigarette concept to
9 assure RJR a larger segment of the youth market,” RJR highlighted that this chemical
10 manipulation of the nicotine content was expected to give its cigarettes an “additional nicotine
11 ‘kick’” that would be more appealing and addictive. A young RJ Reynolds chemist, Thomas
12 Perfetti (“Perfetti”), synthesized 30 different nicotine salt combinations, tested the salts’ ability
13 to dissolve into a liquid, and heated them in pursuit of the “maximum release of nicotine.”⁵¹
14 Perfetti published his results in a 1979 memo stamped “CONFIDENTIAL,” which was found
15 among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry
16 research like this, and assistance from Perfetti himself, JLI developed a cartridge-based e-
17 cigarette using nicotine salts. As described in herein, JLI’s use of nicotine salts, pioneered by
18 major combustible tobacco companies, was a critical tool for addicting non-smokers, including
19 youth.

20 73. JLI also engaged former cigarette industry researchers to consult on the design of
21 their product. As Monsees noted in an interview with WIRED magazine: “The people who
22 understood the science and were listed on previous patents from tobacco companies aren’t at
23 those companies anymore. If you go to Altria’s R&D facility, it’s empty.”⁵² The WIRED article
24

25 ⁵¹ Thomas A. Perfetti, *Smoking Satisfaction and Tar/Nicotine Control* (Dec. 7, 1978),
26 [https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecd221/nicotine-salts-](https://ca-times.brightspotcdn.com/3a/12/a5ec27874843a56e26b4ecd221/nicotine-salts-investigation.pdf)
investigation.pdf.

27 ⁵² David Pierce, *This Might Just Be the First Great E-Cig*, WIRED (Apr. 21, 2015),
28 www.wired.com/2015/04/pax-juul-ecig/.

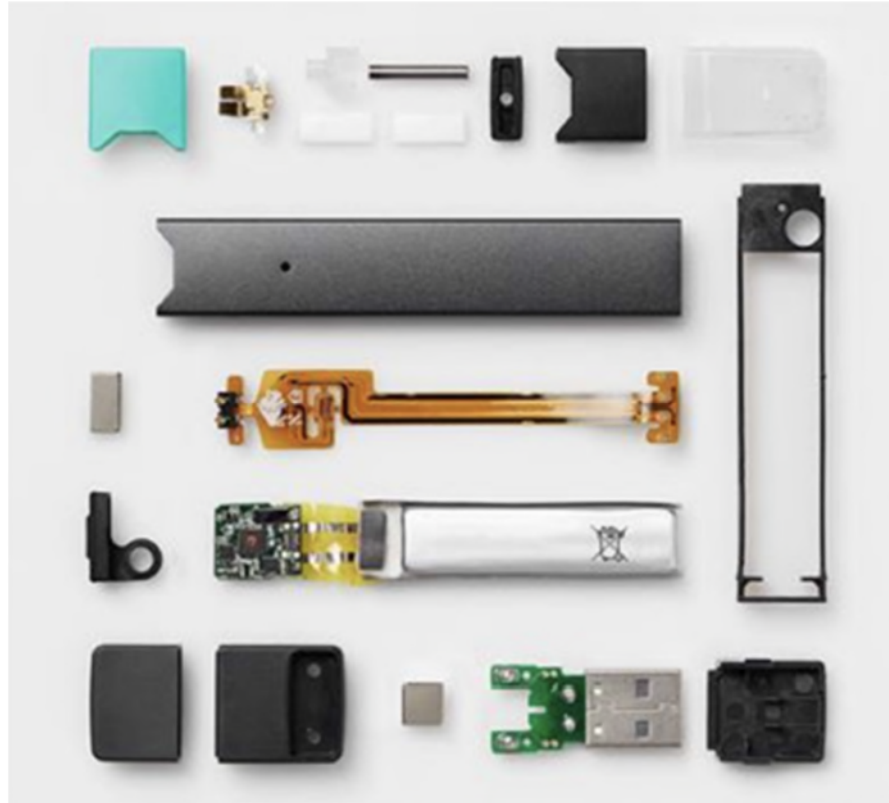
1 stated that “[s]ome of those people are now on [PAX Lab, Inc.’s] team of advisers, helping
2 develop J[UUL].”⁵³

3 74. One of the keys to JLI’s success was its ability to fuse addiction and technology.
4 The JUUL e-cigarette system is comprised of three parts: (1) the JUUL e-cigarette device; (2) the
5 JUUL pod (with e-liquid); and (3) the Universal Serial Bus [USB] charger (collectively referred
6 to herein as “JUUL”). The JUUL e-cigarette device is a thin, sleek rectangular e-cigarette device
7 consisting of an aluminum shell, a battery, a magnet (for the USB-charger), a circuit board, an
8 LED light, and a pressure sensor. JLI manufactures and distributes JUUL pods that contain liquid
9 that includes nicotine, flavoring and other additives. Each JUUL pod is a plastic enclosure
10 containing 0.7 milliliters of JLI’s patented nicotine liquid and a coil heater. When a sensor in the
11 JUUL e-cigarette detects the movement of air caused by suction on the JUUL pod, the battery in
12 the JUUL e-cigarette device activates the heating element, which in turn converts the nicotine
13 solution in the JUUL pod into a vapor consisting of nicotine, benzoic acid, glycerin, and
14 propylene glycol along with myriad chemical flavorings and other chemicals, many of which are
15 recognized as toxic.⁵⁴

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27 ⁵³ *Id.*

28 ⁵⁴ See JUUL Labs, Inc., *JUULpods Ingredients*, <https://www.juul.com/learn/pods> (last visited May 7, 2020).



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:

Figure 1



76. JLI attempted to distinguish JUUL products from the death and disease associated with cigarettes by deliberately providing a false assurance of safety. For example, on May 8, 2018, a document titled “Letter from the CEO” appeared on JUUL’s website. The document stated: “[JUUL]’s simple and convenient system incorporates temperature regulation to heat nicotine liquid and deliver smokers the satisfaction that they want without the combustion and the harm associated with it.”⁵⁵

77. JLI even took this message to ninth graders: in 2018, a representative from JLI spoke at a high school during a presentation for ninth graders, stating that JUUL “was much safer than cigarettes,” that the JUUL was “totally safe,” that the JUUL was a “safer alternative than smoking cigarettes,” and that the “FDA was about to come out and say it [JUUL] was 99% safer than cigarettes . . . and that. . . would happen very soon.”⁵⁶

⁵⁵ Letter from U.S. Food & 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>.

⁵⁶ *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.”⁵⁷ 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.”⁵⁸ The deck claimed that “PAX Labs’ new delivery system is faster, *safer*, more effective and less intrusive than[,]” among other options, “[s]moking[.]”⁵⁹ 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.”⁶⁰

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.⁶¹

⁵⁷ INREJUUL_00441986 (emphasis added).

⁵⁸ JLI00373324.

⁵⁹ JLI00373328 (emphasis added).

⁶⁰ 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>.

⁶¹ Dick Durbin *et al.*, *Durbin & Senators to JUUL: You are More Interested in Profits Than Public Health*, Durbin Newsroom (Apr. 8, 2019),

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

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

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

10 83. JLI and the Management Defendants also recognized that their business goal –
 11 becoming part of the cigarette industry – was unlikely to endear them to the consumers that they
 12 needed to purchase their products. Years of anti-smoking campaigns have successfully
 13 stigmatized cigarette smoking. When Monsees and Bowen presented their thesis and product
 14 design to their classmates, they included a clip from a South Park episode showing the characters
 15 assembled at the Museum of Tolerance and shaming a smoker.⁶²

16 84. Monsees and Bowen needed to shape social norms such that the public attitude
 17 towards e-cigarettes would allow people to use their product without the stigma and self-
 18 consciousness smokers experienced. Monsees and Bowen saw a market opportunity in a
 19 generation of non-smoking young people brought up on anti-smoking norms. In Monsees'
 20 words, they wanted to redesign the cigarette “to meet the needs of people who want to enjoy
 21 tobacco but don't self-identify with – or don't necessarily want to be associated with –
 22 cigarettes.”⁶³

23 [https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-](https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health)
 24 [more-interested-in-profits-than-public-health.](https://www.durbin.senate.gov/newsroom/press-releases/durbin-and-senators-to-juul-you-are-more-interested-in-profits-than-public-health)

25 ⁶² Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground,
<https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

26 ⁶³ *Id.*; see also, INREJUUL_00064696 (May 28, 2015) (Slides describing JUUL's market
 27 overview and positioning as a “tech lifestyle product with a nicotine experience that satisfies,
 28 JUUL will appeal to regular ecig users and wealthy, tech savvy smokers – a significant portion
 of the market.”).

1 85. Part of this approach was consistently portraying JUUL as an enemy of the
 2 cigarette industry, with a publicly announced goal of eliminating the cigarette. In an interview,
 3 Bowen asserted that he and Monsees spent a lot of time talking about “the kind of typical
 4 thoughts of evil Big Tobacco companies like coming down and squashing you.”⁶⁴ The “Mission
 5 Statement” on JLI’s homepage proclaims:

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

8 We envision a world where fewer adults use cigarettes, and where adults who
 9 smoke cigarettes have the tools to reduce or eliminate their consumption entirely,
 should they so desire.⁶⁵

10 86. In fact, JLI’s Chief Administrative Officer has publicly stated that the goal behind
 11 JLI is “eliminating cigarettes.”⁶⁶

12 87. This public message of eliminating cigarettes and challenging tobacco companies
 13 stands in direct contrast with JLI’s actual business and investment strategy, which involved
 14 replicating in JUUL’s new market the tobacco companies’ historical success in the youth market
 15 for cigarettes. From the beginning, Bowen and Monsees actively sought the investment and
 16 assistance of major cigarette companies. Bowen and Monsees’ initial foray into the e-cigarette
 17 business, Ploom, launched its e-cigarette as the ModelOne in 2010, using pods of loose-leaf
 18 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand devices. By then a
 19 company with a dozen employees, Ploom was faltering, in need of money, technological
 20 expertise, and marketing savvy.⁶⁷

22 ⁶⁴ Alison Keeley, *Vice Made Nice? A high-tech alternative to cigarettes*, Stanford Magazine
 23 (2012), <https://stanfordmag.org/contents/vice-made-nice>.

24 ⁶⁵ *Our Mission*, JUUL Labs, Inc. (2020), <https://www.juul.com/mission-values> (last visited
 May 7, 2020).

25 ⁶⁶ Ashley Gould, *JUUL Labs is committed to eliminating cigarettes*, Cal Matters (March 18,
 26 2019), <https://calmatters.org/commentary/e-cigarette/>.

27 ⁶⁷ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
 28 Inc., [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-
 company-marketing-dilemma.html](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html).

1 88. Help came from Japan Tobacco International (“Japan Tobacco”), a division of
 2 Japan Tobacco Inc., the fourth-largest tobacco company in the world. In December 2011, Japan
 3 Tobacco and Ploom entered into a strategic agreement, which gave Japan Tobacco a minority
 4 stake in Ploom and made it a strategic partner. In a statement regarding the agreement, Monsees
 5 said, “We are very pleased to partner with [Japan Tobacco] as their deep expertise, global
 6 distribution networks and capital resources will enable us to enter our next phase of growth and
 7 capitalize on global expansion opportunities.”⁶⁸ As Bowen explained in an interview, “We were
 8 still doing a lot of our own internal product development, but now we had access to floors of
 9 scientists at [Japan Tobacco].”⁶⁹

10 89. According to internal documents, JLI (then known as Pax) entered into a
 11 “strategic partnership” with Japan Tobacco after it “evaluated all major tobacco industry
 12 companies.”⁷⁰ When JLI was getting ready to launch JUUL, its business plan called for a
 13 “massive distribution for JUUL,” to “be distributed by the four largest US tobacco
 14 distributors.”⁷¹ In addition, in 2015, JLI counted among its advisors Charles Blixt, the former
 15 general counsel of Reynolds American, Inc., Chris Skillin, former director of corporate business
 16 development at Altria Group, Bryan Stockdale, the former SVP/President & CEO of R.J.
 17 Reynolds / American Snuff Company, and Chris Coggins, a toxicologist at R.J. Reynolds for 20
 18 years.⁷²

19 90. JLI and the Management Defendants even retained the Investment Bank Stifel to
 20 help JLI “establish strong international partnerships with leading tobacco companies (“LT”) to
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22 ⁶⁸ *Innovative P’ship for Ploom and Japan Tobacco Int’l JTI to Take Minority Share in Ploom*,
 23 Japan Tobacco Int’l (Dec. 8, 2011), <https://www.jti.com/sites/default/files/press-releases/documents/2011/innovative-partnership-for-ploom-and-japan-tobacco-international.pdf>.

24 ⁶⁹ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
 25 INC. MAGAZINE (2014), <https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html>.

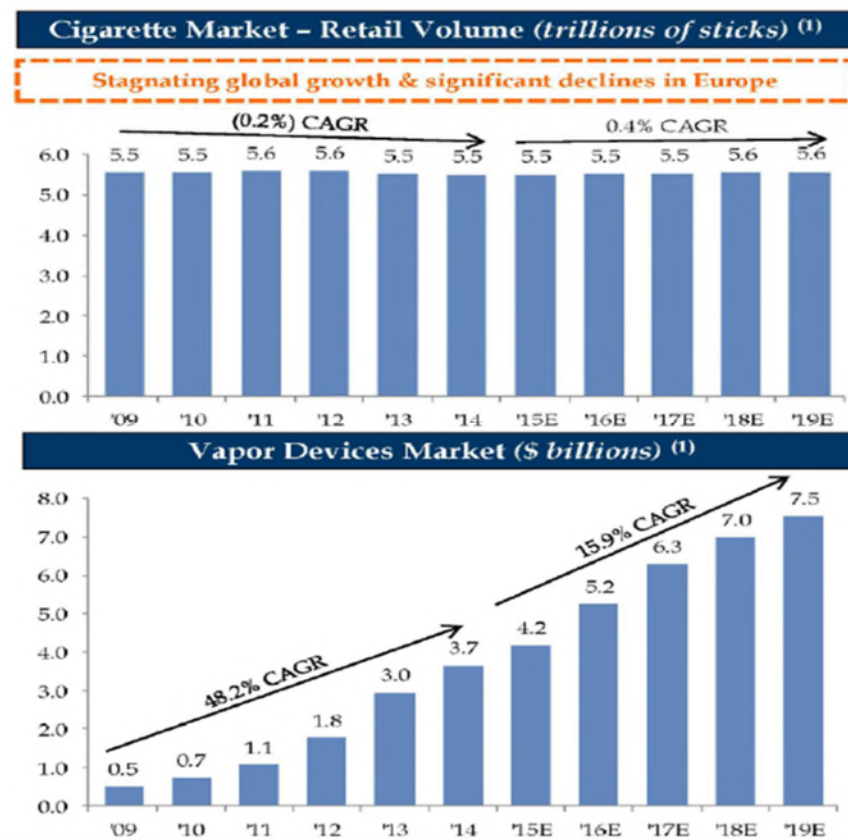
26 ⁷⁰ INREJUUL_00371423 (Pax Labs, Inc. company overview, Feb. 2015).

27 ⁷¹ INREJUUL_00371447.

28 ⁷² INREJUUL_00371458-INREJUUL_00371459.

accelerate JUUL.”⁷³ According to Stifel, “JUUL could be a multi-billion opportunity to LT [leading tobacco companies] over time,” and Stifel offered to manage a process that: “Identified the best Partner(s) for JUUL”; “Best positions JUUL to each Partner”; “Creates a catalyst for [leading tobacco company] decision making”; and “drives strong economic value and terms through competition.”⁷⁴ The end result of the process would be an exclusive agreement with the cigarette industry that would “maximize JUUL Growth Trajectory”:⁷⁵

91. Stifel’s presentation to the JLI Board of Directors, which included each of the Management Defendants, also emphasized both the stagnant and declining cigarette market, and the sharply growing e-cigarette market:⁷⁶



⁷³ INREJUUL_00016386 (Stifel Presentation, Aug. 2015).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ INREJUUL_0016399.

92. According to Stifel, “[s]ince 2013 [leading tobacco companies] have aggressively but unprofitably entered the vape category . . . with products that are not compelling.”⁷⁷ Stifel’s conclusion was that in light of the leading cigarette companies’ failures to develop an appealing e-cigarette product: “JUUL Presents a Prime Opportunity for [leading tobacco companies] to Compete with [vaporizers, tanks and mods] in Form Factor and Dominate the E-cig Experience Through Retail Channels that Leverage its Distribution Strengths.”⁷⁸

93. Consistent with Stifel’s presentation, and the profits it was forecasting, a draft December 7, 2015 presentation to the JLI Board of Directors included as a “management committee recommendation” that JLI position itself for “strategic alternatives (including licensing or sale)”:⁷⁹

JUUL

Position JUUL for strategic alternatives (including licensing or sale) by EOY by strengthening the core proposition

- Improve IRI report traction through dollar contributions and ACV
- Continue to improve repeat rates by adding more pre-qualified consumer doors
- Significantly strengthen IP portfolio
- Continue to support pillar accounts as required to preserve a strong brand reputation

Demonstrate a path towards positive JUUL margin contribution

- Ensure COGS improvements are realized and future improvements are clearly attainable
- Increase same store sales by focusing on high ROI doors
- Improve BDF requirements, particularly at pillar accounts, by reducing POP costs and negotiating improved sell-in cost repayment schedules.
- Reduce brand awareness and identity building programs until positive ROI is proven

⁷⁷ INREJUUL_0016400-INREJUUL_0016401.

⁷⁸ INREJUUL_0016404.

⁷⁹ INREJUUL_00061757 (board meeting presentation, Dec. 7, 2015).

94. The presentation also made clear that the “strategic alternative” for JLI envisioned by management was its acquisition by a large cigarette company:⁸⁰

JUUL sale considerations

Recent transactions

Tobacco

Description

- \$600m BAT // TDR
- \$350m JTI // Logic
- \$5bn JT // Natural Spirits
- \$130m Altria // GS
- £30m Victory // VIP
- \$135m Lorillard // blu

Est. LTM multiple

- 3.4x
- 5.8x
- 34x
- 3.3x
- 1.5x
- 4.5x

Non-SAAS consumer tech

Description

- \$3.2bn Google // Nest
- \$555m Google // Dropcam
- \$2.4bn Canon // Axis
- \$34m Logitech // UE
- \$100-150m Intel // Basis

Est. LTM multiple

- 28x (10x fwd)
- 18x (~9x fwd)
- 4.1x
- TBD
- TBD

Tobacco multiples: ~3-6x

Non-SAAS consumer tech: 4-10x [TBC]

Other considerations

- **Big tobacco unfamiliarity buying tech IP** - may be difficult to achieve a technology-based acquisition multiple
- **Declining ecig category** - JUUL growth may drive additional interest
- **Significant big tobacco consolidation underway** - potentially limits further M&A appetite
- PLI may generate **significant non-financial benefits from JUUL sale** - singular focus on cannabis

95. This goal – acquisition by a major cigarette company – was a motive that the JLI and the Management Defendants would return to in making decisions about the manufacture and marketing of JUUL products. As an example, in a 2016 email exchange with JLI employees regarding potential partnerships with e-cigarette juice manufacturers, Defendant Bowen reminded the employees that “big tobacco is used to paying high multiples for brands and market share.”⁸¹ Bowen knew that to achieve the ultimate goal of acquisition, JLI and the Management Defendants would have to grow the market share of nicotine-addicted e-cigarette users, including youth in particular, regardless of the human cost.

96. JLI and the Management Defendants sought to grow the market share of nicotine-addicted e-cigarette users beginning by at least early 2015 through two related schemes: first, by designing an unsafe product with a high nicotine content that was intended to addict, or exacerbate the addiction, especially among young people; and, second, by marketing and

⁸⁰ INREJUUL_00061833.

⁸¹ INREJUUL_00294198.

1 misbranding that potent product to the broadest possible audience of potential customers,
 2 including young people, in particular, whose addiction would last the longest and be the most
 3 profitable for the Defendants.

4 97. These schemes were an overwhelming success. By the close of 2017, according to
 5 Nielsen data, JLI had surpassed its competitors in capturing 32.9% of the e-cigarette market,
 6 with British American Tobacco at 27.4% and Altria at 15.2%.⁸² The total e-cigarette market
 7 expanded 40% to \$1.16 billion.⁸³

8 98. In 2018, JLI's gross profit margins were 70%⁸⁴ and it represented 76.1% of the
 9 national e-cigarette market.⁸⁵ In a complaint it filed in November 2018 against 24 vape
 10 companies for alleged patent infringement, JLI asserted that it was "now responsible for over
 11 95% of the growth in the ENDS pod refill market in the United States" and included the
 12 following chart:⁸⁶

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 20 ⁸² Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping*
 21 *company*, CNBC (Dec. 20, 2017), [https://www.cnbc.com/2017/12/19/juul-labs-raising-150-](https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html)
 22 [million-in-debt-after-spinning-out-of-pax.html](https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html).

23 ⁸³ *Id.*

24 ⁸⁴ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018),
 25 [https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-](https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html)
 26 [5da64e3e2f82.html](https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html).

27 ⁸⁵ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market* at 2,
 28 Stan. Res. into the Impact of Tobacco Advert. (2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁸⁶ 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).

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%

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.⁸⁷ 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."⁸⁸ 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

⁸⁷ 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>.

⁸⁸ Internal Memo from T.L. Achey, Lorillard Tobacco Company, to Curtis Judge, Product Information (August 1978).

1 get our share of the youth market. In my opinion this will require new brands tailored to the
 2 youth market.”⁸⁹ Dr. Teague noted that “learning smokers” have a low tolerance for throat
 3 irritation so the smoke should be “as bland as possible,” *i.e.*, not harsh; and he specifically
 4 recommended an acidic smoke “by holding pH down, probably below 6.” As seen below, JLI
 5 heeded Dr. Teague’s advice.

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

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

12 102. E-cigarettes struggled to compete with combustible cigarettes, because of the
 13 technical challenge of delivering enough aerosolized nicotine to satisfy a smoker’s addiction in a
 14 palatable form.⁹⁰ Before JUUL, most e-cigarettes used an alkaline form of nicotine called
 15 free-base nicotine.⁹¹ When aerosolized and inhaled, free-base nicotine is relatively bitter, irritates
 16 the throat, and is perceived as harsh by the user.⁹² This experience is often referred to as a “throat
 17 hit.” The higher the concentration of free-base nicotine, the more intense the “throat hit.”⁹³ While
 18 some “harshness” would not have much impact on seasoned cigarette smokers, it would deter
 19 newcomers, or nicotine “learners,” as Claude Teague at R.J. Reynolds called young non-smokers
 20 decades ago.

21 103. Before 2015, most e-liquids on the market were between 1% and 2%
 22 concentration; 3% concentrations were marketed as appropriate for consumers who were

23 ⁸⁹ 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).

24 ⁹⁰ Robert K. Jackler & Divya Ramamurthi, *Nicotine Arms Race: JUUL and the High-nicotine*
 25 *Product Market*, 28 Tobacco Control 623 (2019).

26 ⁹¹ *Id.*

27 ⁹² *Id.*

28 ⁹³ *Id.*

1 accustomed to smoking approximately 40 cigarettes a day.⁹⁴ None of these e-liquids delivered as
2 much nicotine as quickly as a combustible cigarette.

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

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

9 105. JLI intentionally designed its product to minimize "throat hit" and maximize
10 "buzz." JLI's first known testing of JUUL-related products occurred in 2013, when it conducted
11 "buzz" experiments included non-smoker participants, and measured "buzz" and throat
12 harshness. JLI officers and directors Adam Bowen, Ari Atkins, and Gal Cohen served as the
13 initial subjects in the "buzz" experiments. These early tests were performed with the assistance
14 of Perfetti, the same RJR chemist who had studied nicotine salt decades ago to help RJR
15 palatably deliver more nicotine.

16 106. In these early tests, JLI's goal was to develop a "buzz-effective e-cig
17 formulation," which would principally turn on "effectiveness (buzz, harshness)," followed by
18 shelf life and patentability.⁹⁵ The aim was to develop a nicotine salt formulation that maximized
19 buzz, minimized harshness. "Employees tested new liquid-nicotine formulations on themselves
20 or on strangers taking smoke breaks on the street. Sometimes, the mix packed too much punch –
21 enough nicotine to make some testers' hands shake or send them to the bathroom to
22 vomit"⁹⁶

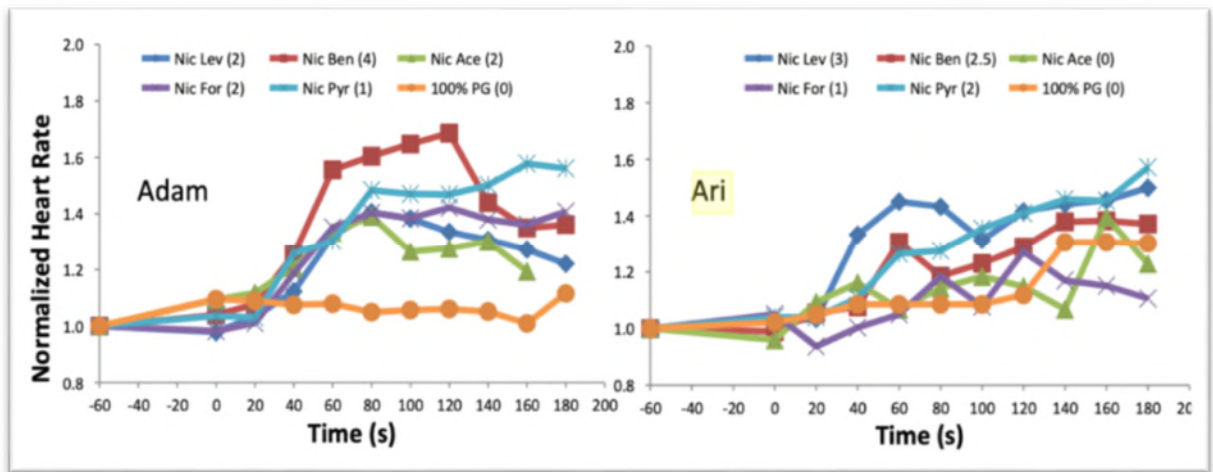
23 107. The "buzz" experiments, which used heart rate as a qualitative measurement for
24 buzz, showed that Bowen tested a 4% benzoate (nicotine salt) solution, which caused his resting

25 ⁹⁴ *Id.*

26 ⁹⁵ INREJUUL_00002903.

27 ⁹⁶ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5,
28 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

heart rate to increase by about 70% in under 2 minutes, far exceeding all other formulations JLI was considering.⁹⁷



108. Because they personally consumer these formulations, Bowen, Cohen, and Atkins knew that the 4% benzoate solution delivered a strong buzz that matched or exceeded a cigarette but had minimal throat hit.

109. 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 0.07.⁹⁸ 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 0.84,⁹⁹ resulting in over 14 mg/ml of free-base nicotine. The Duell Study’s authors found that the low

⁹⁷ INREJUUL_00002903.

⁹⁸ 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).

⁹⁹ Anna K. Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by H NMR Spectroscopy*, 31 Chem. Res. Toxicol. 431 (“Duell Study”).

1 free-base fraction in JUUL aerosols suggested a “decrease in the perceived harshness of the
2 aerosol to the user and thus a greater abuse liability.”¹⁰⁰

3 110. Dramatically reducing the throat hit is not necessary for a product that is aimed at
4 smokers, who are accustomed to the harshness of cigarette smoke, but it very effectively appeals
5 to nonsmokers, especially youth. The cigarette industry has long recognized this; a published
6 study of industry documents concluded that “product design changes which make cigarettes
7 more palatable, easier to smoke, or more addictive are also likely to encourage greater uptake of
8 smoking.”¹⁰¹ The Duell study concluded that JLI’s use of nicotine salts “may well contribute to
9 the current use prevalence of JUUL products among youth.”¹⁰²

10 111. Reducing the harshness of nicotine also allows more frequent use of e-cigarettes,
11 for longer periods of time, and masks the amount of nicotine being delivered. By removing the
12 physiological drawbacks of inhaling traditional free-base nicotine, JLI’s technology removes the
13 principal barrier to nicotine consumption and addiction. The Duell study further concluded that
14 JLI’s creation of a non-irritating vapor that delivers unprecedented amounts of nicotine is
15 “particularly problematic for public health.”¹⁰³

16 3. JUULs Rapidly Deliver Substantially Higher Doses of Nicotine 17 than Cigarettes.

18 112. In 2014, after the “buzz” experiments, JLI engineers ran a pilot pharmacokinetic
19 study in New Zealand, called the Phase 0 Clinical Study.¹⁰⁴ The participants in the study – Adam
20 Bowen, Gal Cohen, and Ari Atkins¹⁰⁵ – had their blood drawn while vaping prototype JUUL
21 aerosols. From these measurements, the scientists calculated key pharmacokinetic parameters,

22 ¹⁰⁰ *Id.* at 431-34.

23 ¹⁰¹ 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>.

24 ¹⁰² 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)).

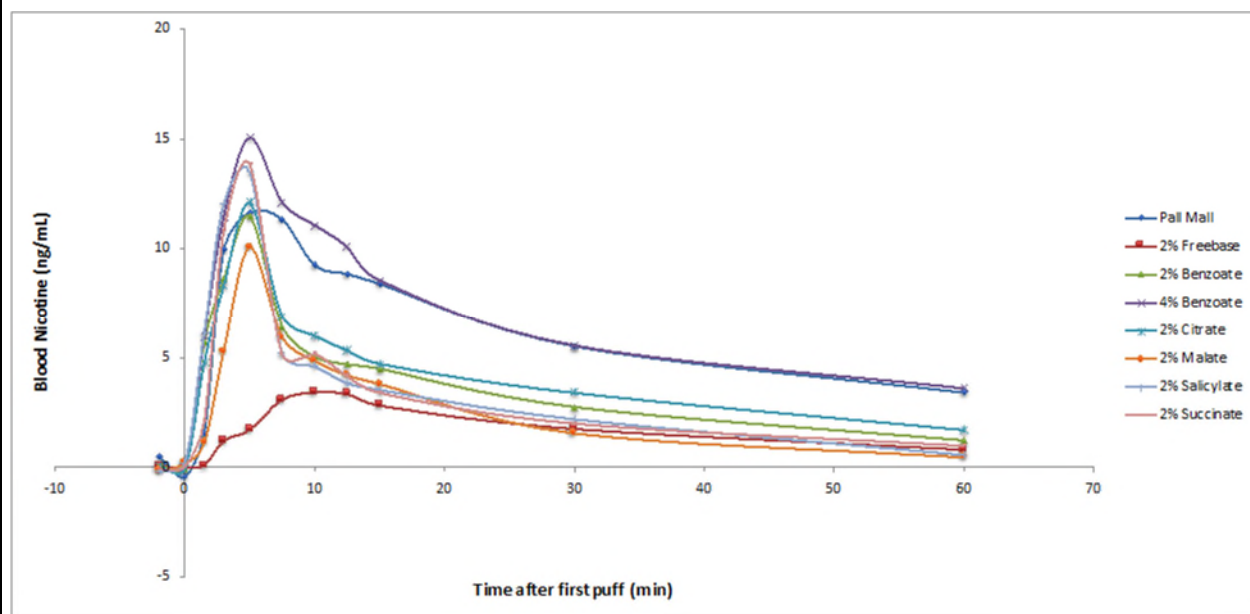
25 ¹⁰³ *Id.* at 431.

26 ¹⁰⁴ INREJUUL_00350930.

27 ¹⁰⁵ *Id.*

including maximum concentration of nicotine in the blood (C_{max}) 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, 2014,¹⁰⁶ 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.¹⁰⁷ As a comparator, JLI also measured nicotine blood levels after smoking Pall Mall cigarettes. The Phase 0 study also tested a 2% benzoate formulation, which had a similar C_{max} as a Pall Mall cigarette, and a variety of other formulations.¹⁰⁸ The following graph shows the pharmacokinetic results of the Phase 0 study:



114. According to Table 1 in the patent, the C_{max} (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

¹⁰⁶ 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).

¹⁰⁷ U.S. Patent No. 9,215,895, at 19:63-20:4 (filed Dec. 22, 2015).

¹⁰⁸ INREJUUL_00024437.

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."¹⁰⁹ 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 nicotine free-base formulations, while the peak nicotine concentration in the blood and total amount of nicotine delivered appears comparable to a traditional cigarette."¹¹⁰

116. In other words, JLI distinguishes itself, and established the patentability of its e-liquids, by reference to their superlative ability to deliver nicotine, both in terms of peak blood concentration and total nicotine delivery. The rate of nicotine absorption is key to providing users with the nicotine "kick"¹¹¹ that drives addiction and abuse, including among youth.¹¹² Because "nicotine yield is strongly correlated with tobacco consumption,"¹¹³ a JUUL pod with more nicotine will strongly correlate with higher rates of consumption of JUUL pods, generating

¹⁰⁹ U.S. Patent No. 9,215, 895, at 7:51-55 (filed Dec. 22, 2015) (emphasis added).

¹¹⁰ *Id.* at 7:63-8:4.

¹¹¹ Internal Memo from Frank G. Colby, R.J. Reynolds, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market* (Dec. 4, 1973).

¹¹² 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), https://www.ncbi.nlm.nih.gov/books/NBK53017/pdf/Bookshelf_NBK53017.pdf.

¹¹³ 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>.

1 more revenue for JUUL. For example, a historic cigarette industry study that looked at smoker
 2 employees found that “the number of cigarettes the employees smoked per day was directly
 3 correlated to the nicotine levels.”¹¹⁴ In essence, JLI distinguished itself based on its e-liquids’
 4 extraordinary potential to addict.

5 117. Another study corroborates the key result of the Phase 0 study that the 4%
 6 benzoate solution delivers more nicotine than a combustible cigarette.¹¹⁵ The Reilly study tested
 7 JUUL’s tobacco, crème brûlée, fruit medley, and mint flavors and found that a puff of JUUL
 8 delivered 164 ± 41 micrograms of nicotine per 75 mL puff. By comparison, a 2014 study using
 9 larger 100 mL puffs found that a Marlboro cigarette delivered 152-193 $\mu\text{g/puff}$.¹¹⁶ Correcting to
 10 account for the different puff sizes between these two studies, this suggests that, at 75 mL/puff, a
 11 Marlboro would deliver about 114-145 $\mu\text{g/puff}$. In other words, the Reilly study suggests that
 12 JUUL delivers more nicotine per puff than a Marlboro cigarette.

13 118. Additionally, depending on how the product is used, an e-cigarette with the 4%
 14 benzoate solution is capable of delivering doses that are materially higher than those seen in the
 15 Phase 0 study. As a paper published by the European Union notes: “[A]n e-cigarette with a
 16 concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in five minutes (the
 17 time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg
 18 of nicotine).”¹¹⁷ With at least 59 mg/ml of nicotine in a salt form that increases the rate and
 19 efficiency of uptake (and even with a lower mg/ml amount), a JUUL pod easily exceeds the
 20 nicotine dose of a combustible cigarette. Not surprisingly, the European Union has banned all e-

21 ¹¹⁴ Letter from Peggy Martin to Study Participants, *Resume of Results from Eight-Week Smoking*
 22 *Study*, UCSF Library, 1003285443-5443 (Sept. 10, 1971).

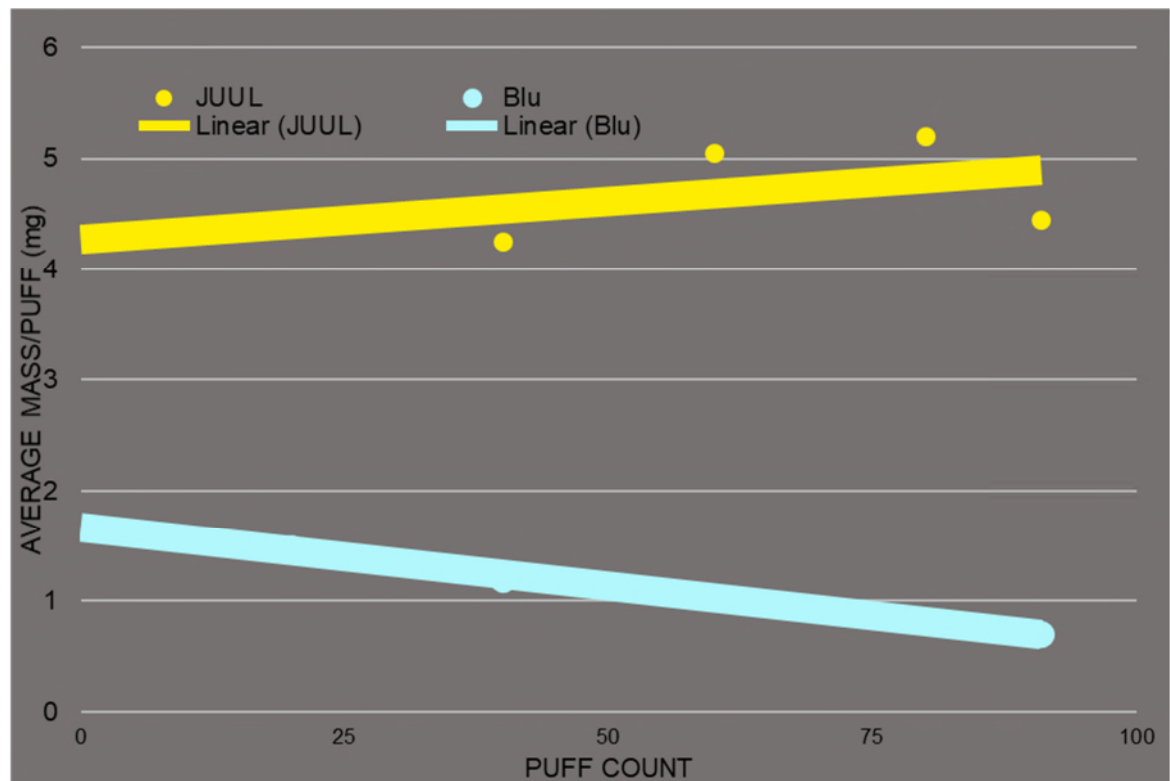
23 ¹¹⁵ Samantha M. Reilly *et al.*, *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL*
 24 *Electronic Cigarettes*, 21 NICOTINE TOBACCO RESEARCH 1274 (Aug. 19, 2019),
<https://www.ncbi.nlm.nih.gov/pubmed/30346584>.

25 ¹¹⁶ Megan J. Schroeder & Allison C. Hoffman, *Electronic Cigarettes and Nicotine Clinical*
 26 *Pharmacology*, 23 TOBACCO CONTROL ii30 (May 23, 2014),
www.ncbi.nlm.nih.gov/pmc/articles/PMC3995273/.

27 ¹¹⁷ E-Cigarettes, European Comm’n,
 28 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).

cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and other countries have considered similar regulations.¹¹⁸

119. Around 2014, JLI engineers designed the JUUL vaping device, which also was designed for addictiveness. On average, the JUUL was engineered to deliver between four to five milligrams of aerosol per puff, which is an unusually massive puff:¹¹⁹



120. Given the concentration of nicotine in a JUUL pod, four to five milligrams of JUUL e-liquid contains about 200-250 micrograms (μg) of nicotine. As noted by Dan Myers, a JLI scientist, in an internal 2018 email to Adam Bowen and Ziad Rouag, a regulatory employee at JLI at the time, “much more nicotine than 150 per puff could be problematic” because, according to Myers, cigarettes deliver between around 100-150 μg of nicotine per puff.¹²⁰ In

¹¹⁸ 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>.

¹¹⁹ INREJUUL_00442040-INREJUUL_00442080; INREJUUL_00442064.

¹²⁰ INREJUUL_00347306.

1 other words, JUUL’s precisely calibrated nicotine delivery system was specifically engineered to
 2 aerosolize up to 2.5 times as much nicotine per puff as a cigarette. Myers also noted that “Adam
 3 put in his recommendation of ~4mg/puff as the target” for a pharmacokinetic study.¹²¹

4 121. JLI scientists realized in 2014 that the amount of nicotine that JUUL e-cigarettes
 5 delivered could be problematic. Chenyue Xing stated that “[y]ou hope that they get what they
 6 want, and they stop,” but JLI scientists were concerned that “a Juul – unlike a cigarette – never
 7 burns out,” so the device gives no signal to the user to stop. According to Xing, JLI scientists
 8 “didn’t want to introduce a new product with stronger addictive power.”¹²² For this reason, “the
 9 company’s engineers explored features to stop users from ingesting too much of the drug, too
 10 quickly. JLI’s founders applied for a patent in 2014 that described methods for alerting the user
 11 or disabling the device when the dose of a drug such as nicotine exceeds a certain threshold.”¹²³
 12 For example, “[o]ne idea was to shut down the device for a half-hour or more after a certain
 13 number of puffs[.]”¹²⁴ But upper management rejected the concerns that the scientists raised, and
 14 “[t]he company never produced an e-cigarette that limited nicotine intake.”¹²⁵

15 122. As another option, JLI could have limited the duration of each puff to prevent the
 16 JUUL from delivering doses of nicotine exceeding those of a cigarette on a per-puff basis.
 17 Instead, it programmed the device to emit puffs for up to six seconds.¹²⁶ JUUL knew from the
 18 Phase 0 pharmacokinetic study in 2014 and the CH-1702 pharmacokinetic study in 2017 that
 19 puffs of three seconds generate pharmacokinetic profiles matching that of a cigarette.¹²⁷

21 ¹²¹ *Id.*

22 ¹²² Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, REUTERS (Nov. 5,
 23 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

24 ¹²³ *Id.*

25 ¹²⁴ *Id.*

26 ¹²⁵ *Id.*

27 ¹²⁶ INREJUUL_00431693.

28 ¹²⁷ INREJUUL_00351218; INREJUUL_00351239.

1 123. Further warnings about the addictive power of the JUUL e-cigarette – and its
 2 appeal to youths – came from consumer research that Ploom commissioned in 2014. Ploom hired
 3 the consumer research firm Tragon to do research with prototypes of the JUUL e-cigarette. On
 4 September 30, 2014, Lauren Collinsworth, a consumer researcher at Tragon, emailed Chelsea
 5 Kania, a marketing employee at Ploom, with some of the preliminary results from the studies.
 6 She stated that the testing showed that “the younger group is open to trying something new and
 7 liked J1 [the JUUL prototype] for being smart, new, techy, etc.”¹²⁸ Ms. Collinsworth added that
 8 “the qualitative information suggests J1 could fit into the e-cig or vapor category for the younger
 9 group. The qualitative findings suggested *this product isn’t going to fit as well with consumers*
 10 *who are looking to cut back on the cigarette intake.*”¹²⁹

11 124. On October 1, 2014, Ms. Collinsworth followed up with additional comments.
 12 She stated that “[t]he delivery was almost too much for some smokers, especially those used to
 13 regular e-cigarettes. When they approached the product like they would a Blu or other
 14 inexpensive e-cig, they were floored by the delivery and didn’t really know how to control it.”¹³⁰

15 125. Survey responses showed that the least important product attribute for the adult
 16 smokers and non-smokers in that group was “buzz.”¹³¹ Comments from the study’s subjects
 17 included “overwhelming when I first inhaled,” “too much for me,” “it was too strong,” and “it
 18 caught me off-guard.”¹³² Comments on the device’s style said JUUL “might manage to make
 19 smoking cool again”; others “thought it was a data storage device.”¹³³

22
 23 ¹²⁸ JLI00365905.

24 ¹²⁹ *Id.* (emphasis added).

25 ¹³⁰ JLI00365709.

26 ¹³¹ JLI00365176.

27 ¹³² INREJUUL_00058345.

28 ¹³³ *Id.*

126. The final results from this consumer research were distributed to upper management, including to then-CEO James Monsees¹³⁴ and then-Chief Marketing Officer Richard Mumby.¹³⁵

127. In late 2014, knowing the results of the buzz tests, the Phase 0 study and the consumer research, JLI executives, including Bowen, selected the 4% benzoate formulation to serve as the model for all formulations to be used in the JUUL product to be released in 2015. All JUUL formulations at launch used the same amount of nicotine and benzoic acid as did the formulation that resulted in the highest nicotine blood levels in the Phase 0 study. JUUL pods were foreseeably exceptionally addictive, particularly when used by persons without prior exposure to nicotine.

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

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

129. For example, on April 22, 2017, an e-cigarette retailer emailed Gal Cohen expressing concern about the addictiveness of JLI's products. He wrote:

I am very concerned about the JLI products. People's addiction behavior is SEVERE with this JLI device. I don't think I can justify carrying this anymore.

The Brooklyn store is run by someone else and he still wants to carry it. I am not really happy about this. It was a simple product for users who do not want to fill tanks and change atomizers and it was easy to sell, but I really don't feel good about selling it. I know we talked about this back a few years ago before we were carrying the product, but I am curious to know what is in the liquid. I know the nicotine salts are added but I would like to know what else is in it. Do you guys have a GCMS or ingredient listing for the liquid? Are there other additives? I want to feel more comfortable so I can keep carrying these, but **I have seen what it is doing to people and I am very uncomfortable with it.** Last year when the news came to me and wanted me to help them with the story that teens were using JLI I shut that story down by telling them it wasn't true. **It is true.. kids**

¹³⁴ JLI00364678.

¹³⁵ JLI00364487.

1 **are getting hooked on this thing and they don't even understand half the time**
 2 **that it has nicotine in it! Little kids.. like 14 and 15 year olds.** They try to come
 3 in my shop and we tell them it is 21 and over and get them out... but it is
 4 **REALLY bad!**

5 I have kids calling and trying to order using delivery services as well. We will
 6 only allow pickup and delivery for regular customers whose ID we have
 7 already checked... but they TRY and that worries me.. because the smoke shops
 8 and bodegas are NOT checking that the person they are picking up for is old
 9 enough to buy the product.

10 I agree that it is certainly less hazardous than smoking... **but to**
 11 **intentionally increase the addictiveness of nicotine seems really irresponsible**
 12 **and makes me feel like Big Tobacco pushing people onto a really addictive**
 13 **product.** I just don't think that it is necessary and I don't feel good about it.

14 Anyway... if there is any info you have that might make me feel better about
 15 selling it let me know... or if you could send me ingredient listing (I know Pax
 16 applied for the patent on the liquid with the nicotine salts so it should be ok to
 17 share now?) I would appreciate it.¹³⁶

18 130. Another example came just days later. On April 28, 2017, JLI held a science
 19 meeting discussing the scientific information in JLI's possession with outside scientists. Notes
 20 from the meeting state that "concern was raised that because the nicotine update [sic] is slightly
 21 faster the data could be interpreted as feeding an addiction faster. Given the current climate with
 22 addictions to OxyContin how the data is presented needs to be considered carefully."¹³⁷

23 131. Additionally, Dan Myers wrote to Adam Bowen in October 2017 that "single puff
 24 data from Juul suggests that a small number of puffs, at the beginning of the pod's lifetime, may
 25 contain 2-3X" the levels of nicotine in the puffs from the rest of the pod, "i.e., 200-300
 26 [μ]g/puff."¹³⁸ This is consistent with a central goal of the product's design: capturing "users with
 27 the first hit."¹³⁹

28 132. None of this information was a surprise, nor did it cause JLI or the Management
 Defendants to change JLI's products or marketing. In fact, they embraced it. On November 3,

¹³⁶ INREJUUL_00264888-INREJUUL_00264890.

¹³⁷ INREJUUL_00230416.

¹³⁸ INREJUUL_00434580-INREJUUL_00434590.

¹³⁹ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette>.

2017, Steven Hong, JLI's Director of Consumer Insights, described JUUL's "design and chemical formulation (fast acting nic salts)" as JLI's "ace in the hole" over the competition.¹⁴⁰

133. The following year, JLI and the Management Defendants obtained even more evidence that the amount of nicotine in JUULpods was needlessly high. By no later than May of 2018, JLI had completed Phase I of "Project Bears," a JLI study of smoker and vaper nicotine strength preferences. The results showed that "[a]cross the smoker segments, product liking is very similar[.]" and the "heaviest smokers (21+ cigs) like 1.7% more than higher strengths" such as 3% and 5%.¹⁴¹ Similarly, "for those who evaluated the 5% pod, when given the choice of lower level pod strengths, at least half would choose a lower strength pods."¹⁴²

134. The same tests also showed that, contrary to JLI's expectations, smokers did not increase their use of the 1.7% formulation relative to the 5% formulation in order to achieve nicotine satisfaction. "Smoking volume does seem to be a driver of vaping volume, but this does not vary much by strength within a given smoker type."¹⁴³

135. Thus, Project Bears revealed that 5% JUULpods delivered more nicotine than necessary to satisfy cigarette smokers, even those characterized as "heavy" smokers.¹⁴⁴

136. At some point during the coordination between JLI, the Management Defendants, and Altria, but no later than the due-diligence period for Altria's investment in JLI, either JLI (through its employees) or one or more of Defendants Bowen, Monsees, Pritzker, Huh, and Valani provided Altria with a copy of the Project Bears findings.¹⁴⁵

137. Nonetheless, JLI, the Management Defendants, and Altria have maintained and promoted the 5% JUULpods as JLI's flagship offering of JUULpods although they knew that

¹⁴⁰ INREJUUL_00228928-INREJUUL_00228930.

¹⁴¹ INREJUUL_00260068.

¹⁴² INREJUUL_00260065.

¹⁴³ INREJUUL_00244200.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

1 even current smokers prefer a *lower* nicotine content. They pushed the 5% JUULpod because it
 2 hooked users faster and kept them addicted to nicotine.¹⁴⁶

3 138. In addition to Project Bears, JLI and the Management Defendants (and potentially
 4 Altria) were aware of other internal studies that established that its 5% JUUL pod product would
 5 not be a successful cessation tool, as it was not attractive to an audience looking to reduce
 6 cigarette consumption.¹⁴⁷

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

10 139. Not only did JUUL contain high levels of nicotine that delivered a strong “buzz”
 11 from the first puff, JLI designed its product to look appealing to youth and non-smokers. In
 12 January 2015, six months before JUUL’s launch, JLI’s Marketing Director, Sarah Richardson,
 13 identified “key needs” for JUUL’s PR strategy, including “Establish premium positioning to
 14 entice the “masses” to follow the trend setters; own the “early adopter” / “cool kid” equity as we
 15 build out volume”, and highlighted that “JUUL deliberately doesn’t resemble e-cigs or cigalikes”
 16 that are “awkward” and “douche-y”.¹⁴⁸ Instead, JUUL is “elegant” and “cool”.

17 140. JLI’s strategy to position a nicotine-delivery device as the cool thing to do is not
 18 new. Decades before, Dr. Teague from R.J. Reynolds observed: “pre-smokers” face
 19 “psychological pressure” to smoke if their peers are doing so, “a new brand aimed at a young
 20 smoker must somehow be the ‘in’ brand and its promotion should emphasize togetherness,
 21 belonging and group acceptance, while at the same time emphasizing ‘doing one’s own
 22 thing.’”¹⁴⁹ Again, JUUL followed the cigarette playbook verbatim.

23 141. JLI knew that among its target audience, young people, cigarette smoking had
 24 become increasingly stigmatized. JLI wanted to create a product that would create “buzz” and

24 ¹⁴⁶ *Id.*

25 ¹⁴⁷ *Id.*

26 ¹⁴⁸ INREJUUL_00057291 *et seq.*

27 ¹⁴⁹ Internal RJR Memo, Claude Teague, Research Planning Memorandum on Some Thoughts
 28 About New Brands of Cigarettes for the Youth Market (Feb. 2, 1973).

1 excitement, totally different from the image of addicted cigarette smokers huddling outside their
2 workplaces in the cold to get their nicotine fix.

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

8 143. The JUUL device is also designed to be small and discrete. Fully assembled, the
9 device is just over 9.5 cm in length and 1.5 cm wide. The JUUL device resembles a memory
10 stick and can be charged in a computer's USB drive. This design allows the device to be
11 concealed in plain sight, camouflaged as a thumb-drive, for use in public spaces, like schools and
12 even charged in school computers. JLI has been so successful in emulating harmless technology
13 that its small, rectangular devices are often mistaken for – or passed off as – flash drives.
14 According to one high school senior, "that's what people tell the teachers a lot, too, if you charge
15 it in class, they'll just say it's my flash drive."





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.”¹⁵⁰ 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.¹⁵¹

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

¹⁵⁰ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

¹⁵¹ 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>.

1 device. This wasn't smoking or vaping, this was JUULing."¹⁵² The evocation of technology
 2 makes JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers.
 3 According to a 19-year-old interviewed for the Vox series By Design, "our grandmas have
 4 iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust
 5 modern stuff a little bit more so we're like, we can use it, we're not going to have any trouble
 6 with it because you can trust it."¹⁵³ A 16-year-old agreed, explaining that "the tech aspect
 7 definitely helps people get introduced to it and then once they're introduced to it, they're staying,
 8 because they are conditioned to like all these different products. And then this is another product.
 9 And it's just another product. Until you're addicted to nicotine."¹⁵⁴

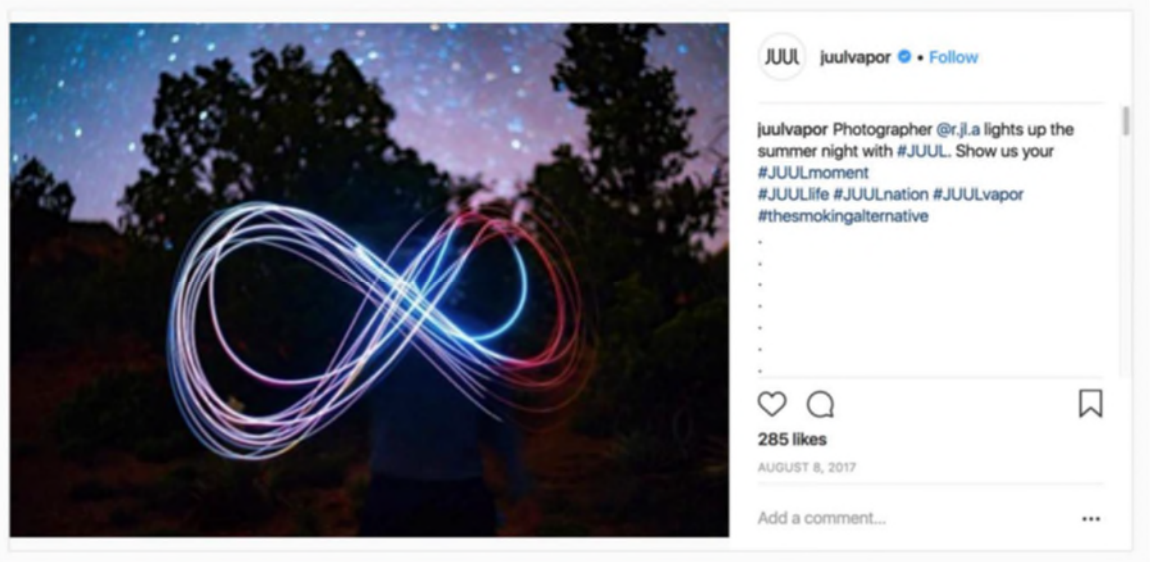
10 146. JUUL's design also included an LED light, which allowed users to active "party
 11 mode," whereby the LED light would flash a rainbow of colors. "Party mode" is activated by the
 12 user by waving the JUUL device back and forth until the white LED light starts flashing multiple
 13 colors, so that the rainbow colors are visible while the person inhales from the JUUL device.
 14 "Party mode" can also be permanently activated on the JUUL by the user quickly and firmly
 15 slapping the JUUL against the palm of the hand, until the LED light starts flashing multiple
 16 colors permanently. Party mode on the JUUL is described by users to be "like an Easter egg in a
 17 video game" and allows for "some cool tricks that are going to drive [] friends crazy."¹⁵⁵ This
 18 feature was another characteristic that set JUUL apart from other e-cigarettes on the market, and
 19 made it even more appealing and "cool" to young users.

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24 ¹⁵² *How JUUL Made Nicotine Go Viral*, Vox (Aug. 10, 2018),
<https://www.youtube.com/watch?v=AFOpoKBUyok>.

25 ¹⁵³ *Id.*

26 ¹⁵⁴ *Id.*

27 ¹⁵⁵ Jon Hos, *Getting Your Juul Into Party Mode*, VAPE DRIVE (Jul. 12, 2018),
 28 <https://vapedrive.com/getting-your-juul-into-party-mode>.



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.”¹⁵⁶ Dr. Kessler emphasized the reduced harshness of JUUL’s nicotine salt formulation, the high nicotine content, discreet vapor cloud, and use of flavors as design features that appeal to youth.¹⁵⁷ 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.”¹⁵⁸ 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.”

¹⁵⁶ 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>.

¹⁵⁷ *Id.*

¹⁵⁸ 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>.

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

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

6 148. Cigarette companies have known for decades that flavored products are key to
 7 getting young people to acclimate to nicotine. A 1972 Brown & Williamson memorandum:
 8 *Youth Cigarette – New Concepts*, specifically noted the “well known fact that teenagers like
 9 sweet products.”¹⁵⁹ A 1979 Lorillard memorandum concluded that younger customers would be
 10 “attracted to products with ‘less tobacco taste,” and even proposed borrowing data from the “Life
 11 Savers” candy company to determine which flavors enjoyed the widest appeal among youth.¹⁶⁰

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

15 New users of smokeless tobacco – attracted to the product for a variety of reasons
 16 – are most likely to begin with products that are milder tasting, more flavored,
 17 and/or easier to control in the mouth. After a period of time, there is a natural
 18 progression of product switching to brands that are more full-bodied, less
 19 flavored, have more concentrated “tobacco taste” than the entry brand.¹⁶¹

20 150. A sales manager who worked at U.S. Tobacco in the 1980s told *The Wall Street*
 21 *Journal* that “They talked about graduation all the time – in sales meetings, memos and manuals
 22 for the college program. It was a mantra.”¹⁶²

23 ¹⁵⁹ Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth*
 24 *Cigarette – New Concepts*, U.C.S.F. Truth Tobacco Indus. Documents (Sept. 1972),
 25 <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hzipd0040>.

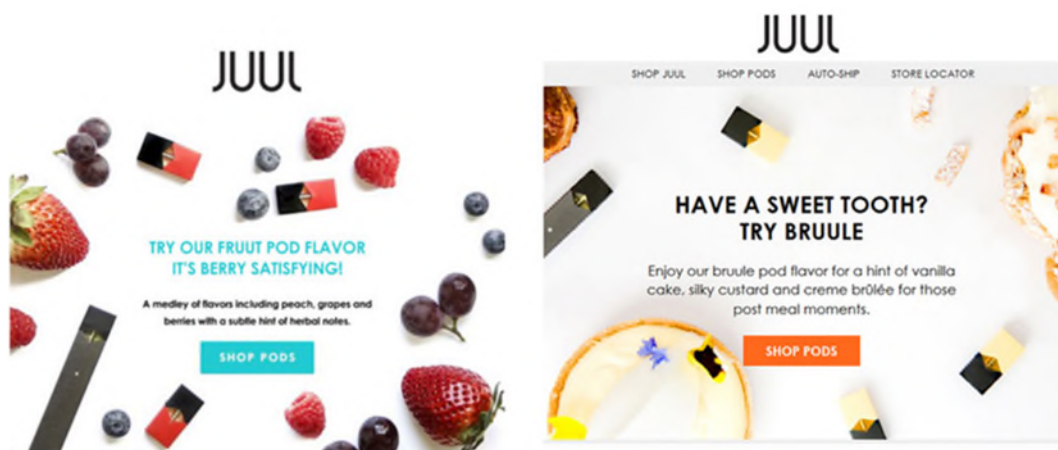
26 ¹⁶⁰ *Tobacco Industry Quotes and Facts Related to Flavored Tobacco*, Students Working Against
 27 Tobacco,
 28 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (citing Sedgfield Idea Sessions 790606-790607 (June 8, 1979), Bates No. 81513681/3691) (last visited May 7, 2020).

29 ¹⁶¹ G.N. Connolly, *The marketing of nicotine addiction by one oral snuff manufacturer*, 4
 30 *Tobacco Control* 73-79 (1995),
 31 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1759392/pdf/v004p00073.pdf>.

32 ¹⁶² Alix Freedman, *Juiced Up: How a Tobacco Giant Doctors Snuff Brands to Boost Their*
 33 *‘Kick,’* *Wall St. J.* (Oct. 26, 1994),
 34 <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mlch0185>.

151. A 2004 study found that 17-year-old smokers were more than three times as likely as those over the age of 25 to smoke flavored cigarettes, and they viewed flavored cigarettes as safer.¹⁶³

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.



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

¹⁶³ 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>.

1 held to announce the ban.¹⁶⁴ In agreement, former FDA Commissioner Dr. Margaret Hamburg
 2 declared that “flavored cigarettes are a gateway for many children and young adults to become
 3 regular smokers.”¹⁶⁵ A 2017 study of the cigarette flavor ban found that the ban was effective in
 4 lowering both the number of smokers and the amount smoked by smokers, though it was
 5 associated with an increased use of menthol cigarettes (the only flavor still available).¹⁶⁶

6 155. In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco”
 7 and “Menthol” flavors, in response to “epidemic levels of youth use of e-cigarettes” because
 8 these products are “so appealing” to children.”¹⁶⁷

9 156. The availability of e-liquids in flavors that appeal to youth increases rates of e-
 10 cigarette adoption by minors. According to the Surgeon General, 85% of adolescents who use e-
 11 cigarettes use flavored varieties.¹⁶⁸ Studies also show that flavors motivate e-cigarette initiation
 12 among youth¹⁶⁹ and that youth are much more likely to use flavored tobacco products than adults
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16 ¹⁶⁴ 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>.
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18 ¹⁶⁵ *Id.*

19 ¹⁶⁶ 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),
 20 <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),
 21 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5121224/pdf/main.pdf>.

22 ¹⁶⁷ 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),
 23 <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.
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25 ¹⁶⁸ U.S. Dep’t of Health & Human Servs., *E-Cigarette Use Among Youth and Young Adults* (2016), <https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf> (last visited May 7, 2020).
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27 ¹⁶⁹ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb. 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25>.
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are.¹⁷⁰ Flavored e-cigarettes play a large role in the youth vaping epidemic. As mentioned above, flavors motivate e-cigarette initiation among youth and youth are much more likely to use flavored tobacco products than adults.¹⁷¹ According to the FDA, 96% of 12 to 17-year-olds who recently begun using e-cigarettes reported using a flavored e-cigarette the first time they tried the product.¹⁷² Flavors work to attract youth. A 2014-2015 survey of teenagers between the ages of 13 to 17 from 2014-2015 showed that this age group was six times more interested in trying e-cigarettes in fruity flavors than they were in trying e-cigarettes with only tobacco flavor.¹⁷³

157. Research confirms that flavored products – no matter what the tobacco product – appeal to youth and young adults. According to the *2012 Surgeon General Report*, “Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth.”¹⁷⁴

158. A national survey found that that 81% of youth aged 12 to 17 who had ever used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3% of current youth e-cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5% of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”¹⁷⁵

¹⁷⁰ 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>.

¹⁷¹ See *E-Cigarette Use Among Youth and Young Adults*, *supra* note 168; Paul, *supra* note 169; Villanti *et al.*, *supra* note 170.

¹⁷² *Modifications to Compliance Policy for Certain Deemed Tobacco Products*, FDA (Mar. 2019), <https://www.fda.gov/media/121384/download>.

¹⁷³ 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.

¹⁷⁴ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (“2012 Surgeon General Report”) at 539, U.S. Dep’t of Health & Human Servs. (2012), https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

¹⁷⁵ See Bridget K. Ambrose *et al.*, *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 *JAMA* 1871 (2015). Another peer-reviewed study concluded that young adults who use electronic cigarettes are more than four times as likely to begin using regular

159. Adding flavors to e-liquids foreseeably increases the risk of nicotine addiction, especially among minors, by making it easier and more pleasant to ingest nicotine.¹⁷⁶ Research has shown that adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was not flavored.

160. In a recent study, 74% of youth surveyed indicated that their first use of a JUUL was of a flavored JUUL pod.¹⁷⁷

161. Research shows that when youth see advertisements for flavored e-cigarettes, they believe the advertisements and products are intended for them.¹⁷⁸

162. Flavors like mint and menthol are attractive to youth. According to Robin Koval, CEO and president of Truth Initiative, mint and menthol are among the most popular flavors for youth and that “[w]e also know, as does the tobacco industry, that menthol has been and continues to be the starter flavor of choice for young cigarette users.”¹⁷⁹ According to the FDA, “younger populations have the highest rate of smoking menthol cigarettes” and “menthol in cigarettes is likely associated with increased initiation and progression to regular [] cigarette smoking.”¹⁸⁰

cigarettes as their peers who have not used e-cigarettes. See Brian A. Primack, *et al.* *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 AM. J. MED. 443.e1 (2018).

¹⁷⁶ See U.S. Dep’t of Health & Human Servs., *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*, Chapter 4 (Centers for Disease Control and Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

¹⁷⁷ 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>

¹⁷⁸ 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).

¹⁷⁹ *Id.*

¹⁸⁰ *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes* at 5, FDA, <https://www.fda.gov/media/86497/download> (last visited May 7, 2020).

1 163. A significant majority of under-age users chose flavored e-cigarette products.¹⁸¹
 2 By at least early 2017, JLI knew that its flavors had attracted young people and non-smokers in
 3 droves.¹⁸² Instead of taking corrective action or withdrawing the kid friendly flavors, JLI
 4 capitalized on their popularity with kids and continued to promote JUUL's flavors. In a social
 5 media post from August 2017, for example, JLI tweeted "Beat The August Heat with Cool Mint"
 6 and "Crisp peppermint flavor with a pleasant aftertaste."¹⁸³ In another August 2017 tweet, JLI
 7 compared JUUL to dessert: "Do you brulée? RT [re-tweet] if you enjoy dessert without the
 8 spoon with our Creme Brulee #JUULpods."¹⁸⁴

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 20 ¹⁸¹ Karen A. Cullen *et al.*, E-cigarette Use Among Youth in the United States, 2019, 322 JAMA,
 21 2095 (2019), <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[.]").

22 ¹⁸² See INREJLI_00265068 (Feb. 13, 2017 internal JLI email string: ". . . [f]lavors are important
 23 for retention – especially when you consider the switching effectiveness of JLI. Would we still
 24 have these people as customers if we didn't offer fruit or dessert flavors? Hard to say on this
 alone, but if we removed our highest quality flavors (mint or mango), we would surely risk
 churn.").

25 ¹⁸³ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017),
 26 http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg.

27 ¹⁸⁴ Kathleen Chaykowski, *The Disturbing Focus of Juul's Early Marketing Campaigns*, FORBES
 28 (Nov. 16, 2018), [https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-
 focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9](https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9).

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



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164. JLI asserts that it did not intend its flavors to appeal to underage consumers. After 11 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.¹⁸⁵ JLI's statements to Congress – which parallel similar protests of innocence by cigarette company executives – were false.

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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 former senior manager, who was briefed on the company's

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¹⁸⁵ 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 business strategy. “Then, when they saw the social media, in fall and winter of 2015, they
2 suspected it was teens.”¹⁸⁶

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

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

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

19 168. In July 2013, Reynolds American Inc.¹⁸⁷ released the Vuse, the first-known
20 cartridge-based nicotine salt e-cigarette to reach the domestic market.¹⁸⁸ Altria entered the
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24 ¹⁸⁶ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, N.Y.
25 TIMES (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

26 ¹⁸⁷ Reynolds is now a wholly owned subsidiary of British American Tobacco.

27 ¹⁸⁸ See FAQs, RJR Vapor Co., LLC, <http://www.vusevapor.com/faqs/product/> (“Since Vuse’s
28 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.”).

1 nicotine salt market one month later, with the MarkTen cig-a-like.¹⁸⁹ JLI would enter the market
2 in June 2015.

3 169. Though mint was one of the least popular e-cigarette flavor categories with youth
4 in 2015, trailing the fruit and dessert categories,¹⁹⁰ Reynolds, Altria and JLI had all introduced
5 mint-flavored products within a year of each company's initial release. By mid-2014, Reynolds
6 had added "Mint, Rich Mint, Spearmint, [and] Wintergreen" to its Vuse lineup.¹⁹¹ By February
7 2015, Altria's Nu Mark, under the leadership of Joe Murillo (JLI's current regulatory head),
8 released a Winter Mint flavor for MarkTen.

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

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

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

18 **(1) JLI Manipulates Chemistry of Mint JUUL Pods.**

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23 ¹⁸⁹ Additional Info, Nu Mark LLC, <https://markten.com> ("certain varieties" of MarkTen Original
24 "contain . . . acetic acid, benzoic acid, and lactic acid.").

25 ¹⁹⁰ See M.B. Harrell *et al.*, *Flavored e-cigarette use: Characterizing youth, young adult, and*
26 *adult users*, 5 PREVENTIVE MEDICINE REPS. 33-40, §3.3 (Mar. 2017),
<https://www.sciencedirect.com/science/article/pii/S2211335516301346>.

27 ¹⁹¹ See Senator Richard Durbin, *et al.*, *Gateway to Addiction?* (April 14, 2014),
28 <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

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.¹⁹²

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

	C_{FA}/C_{NIC}	a_{FB}
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.

(2) 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. By February 2018, McKinsey & Company had provided a roadmap to JLI's Consumer Insights department, which included multiple flavor studies including a flavor "likability" tests, which was carried out under JUUL's marketing and commercial department.¹⁹³

¹⁹² 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>.

¹⁹³ INREJUUL_00053172.

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.¹⁹⁴

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 campaigns for JUUL products. This conduct resulted in a Warning Letter from the FDA's Center for Tobacco Products to JLI in September 2019.¹⁹⁵

179. Under the guise of this youth prevention program, *JLI directly studied 13- to 17-year-old teens' e-cigarette flavor preferences*.¹⁹⁶ These studies, undertaken at a time when JLI and Altria were coordinating their activities, asked teens to rank a variety of e-cigarette flavors in terms of appeal, and included the names of current JUUL flavors, JUUL flavors under development, and flavors offered by JLI's competitors. Though they were not made public, through document requests, two such studies have been identified from April 2018.

180. The first study, carried out by McKinsey & Company, generated over 1,000 responses from teens aged 13 to 17 years old.¹⁹⁷ The second study, conducted by DB Research, appears to have gathered data from a focus group of 16 kids in Bethesda, Maryland, and Baltimore, Maryland.¹⁹⁸

181. Both studies found that teens' co-favorite JUUL flavors were mango and mint, and that teens found only one third-party flavor more desirable than mango and mint: "Cotton Candy" (McKinsey)¹⁹⁹ and "Fruit Loops" (DB Research).²⁰⁰

¹⁹⁴ 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>.

¹⁹⁵ Letter from U.S. Food & 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>.

¹⁹⁶ INREJUUL_00121627 (preliminary slides); INREJUUL_00124965 (data).

¹⁹⁷ *Id.*

¹⁹⁸ INREJUUL_00035325.

¹⁹⁹ INREJUUL_00124965.

182. Though the McKinsey study did not survey teens' preference for menthol, the DB Research study did and found that while 28% of teens found menthol appealing, 72% of teens liked mint.²⁰¹

183. In other words, these surveys showed that teens respond to mint the way they respond to their favorite candy flavors and respond to Menthol the way they respond to traditional tobacco flavors typically disfavored by youth. This is unsurprising, as the "Mint" flavor was designed not to taste like a Menthol cigarette. Users have described JLI's Menthol flavor as "tast[ing] like a [N]ewport" cigarette that "doesn't have that good peppermint taste like [C]ool [M]int."²⁰²

184. Because of these and other studies, JLI, the Management Defendants, and the Altria Defendants knew that mint is an attractive flavor for kids. According to Siddharth Breja, who was senior vice president for global finance at JLI, after JLI pulled most flavored pods, including mango, from the market in a purported attempt to reduce youth usage of JUUL, then-CEO Kevin Burns said that "[y]ou need to have an IQ of 5 to know that when customers don't find mango they buy mint."²⁰³

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

[it is] completely false to suggest that mint is not an attractive flavor to children. From candy canes to toothpaste, children are introduced to mint flavor from a young age. Not only do children enjoy mint, but it has special properties that make it an especially dangerous flavor for tobacco. Menthol's anesthetic properties cool the throat, mask the harshness of nicotine, and make it easier for

²⁰⁰ *Id.*

²⁰¹ INREJUUL_00035325.

²⁰² Reddit, *How does Classic Menthol compare to Cool Mint*, https://www.reddit.com/r/juul/comments/7wo39m/how_does_classic_menthol_compare_to_cool_mint/.

²⁰³ Sheila Kaplan and Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

1 children to start using and continue using tobacco products. The impact of mint
2 and menthol flavors on increasing youth tobacco addiction is well documented.²⁰⁴

3 186. If the purpose of these youth prevention studies was to “better understand how
4 different flavor profiles appeal to different age groups to inform youth prevention,” as the
5 McKinsey slides presenting that study’s findings indicate, the lesson for JLI, the Management
6 Defendants, and the Altria Defendants was that teens like mint as much or more than any other
7 JUUL flavor, including mango, fruit medley, crème brulee, cucumber, and more than a dozen
8 other candy-like flavors produced by third-parties for use with the JUUL device.

9 187. With that knowledge and with no genuine interest in youth prevention, and as
10 detailed below, JLI, the Management Defendants, and Altria committed to work to preserve mint
11 as a flavor for as long as possible. Indeed, to further this goal, Defendants Pritzker and Valani
12 poured additional money into JLI a mere two months later as part of a \$600 million funding
13 round.²⁰⁵

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

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

19 189. Having created a product designed to hook users to its nicotine, JLI had to
20 mislead consumers, including youth in particular, into believing JUUL was something other than
21 what it actually was. So, the company engaged in a years’ long campaign to downplay JUUL’s
22 nicotine content, nicotine delivery, and the unprecedented risks of abuse and addiction JUUL
23

24 ²⁰⁴ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
25 *Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 3 (2019)
26 (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>.

27 ²⁰⁵ Alex Wilhelm & Jason D. Rowley, *JUUL Raises \$650M Of Its \$1.25B Mega-Round*,
28 CRUNCHBASE (Jul. 10, 2018), <https://news.crunchbase.com/news/juul-raises-650m-of-its-1-25b-mega-round/>.

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. Despite making numerous revisions to JUUL products' packaging since 2015, JLI did not include nicotine warnings until forced to do so in August 2018.²⁰⁶

191. Moreover, many of JUUL's advertisements, particularly prior to November 2017, also did not mention that JUUL contained nicotine. In the first year after JUUL's launch, not one of JLI's 171 promotional emails said anything about the nicotine content in JUUL products.²⁰⁷ For example, in a July 11, 2015 email, JLI advertised its promotional events with the text, "Music, Art, & JUUL. What could be better? Stop by and be gifted a free starter kit."²⁰⁸ This email did not mention that JUULpods contain nicotine, nor did it say that JUUL or the free starter kits were intended for adults only.

²⁰⁶ See INREJUUL_00444332 (2015 image of JLI packaging). The JLI packaging originally included such warnings about nicotine, but were removed during various rounds of revisions, see e.g., INREJUUL_00021583-INREJUUL_00021586 at 583 (2014 image of JLI packaging containing handwritten revisions of the original language).

²⁰⁷ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

²⁰⁸ *Check out our JUUL events this Summer*, JUUL (hello@juulvapor.com) (July 11, 2015), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/email/large/email_2.jpg.

192. Similarly, none of JLI's 2,691 tweets between June 2015 and October 6, 2017 mentioned that JUUL contained nicotine.²⁰⁹ For example:

- a. 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!"²¹⁰ This tweet did not mention that JUUL contained nicotine.
- b. On July 28, 2017, JLI tweeted an image of a Mango JUULpod next to mangos captioned "#ICYMI: Mango is now in Auto-ship! Get the #JUULpod flavor you love delivered & save 15%. Sign up today."²¹¹ This tweet did not mention that JUUL contained nicotine.
- c. On August 4, 2017, JLI tweeted "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."²¹² This tweet did not mention that JUUL contained nicotine.
- d. On August 28, 2017, JLI tweeted "Do you brul  e? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods."²¹³ 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 JLI's regulatory head explained internally to

²⁰⁹ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*, Stanford Research Into the Impact of Tobacco Advertising 25 (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

²¹⁰ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg.

²¹¹ JUUL Labs, Inc. (@JUULvapor), Twitter (July 28, 2017), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_38.jpg.

²¹² JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 4, 2017), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_39.jpg.

²¹³ 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>.

former CEO Kevin Burns in 2018, each JUUL pod contains “roughly *twice the nicotine content* of a pack of cigarettes.”²¹⁴

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 cigarette²¹⁵ and each cigarette yields between 1.0 to 1.4 mg of nicotine,²¹⁶ 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.²¹⁷ JLI’s own internal studies suggest a nicotine transfer efficiency rate of closer to 100%.²¹⁸

195. Defendants also knew that the use of benzoic acid and nicotine salts in JUUL pods affects pH and facilitates “absorption of nicotine across biological membranes.”²¹⁹ JUUL’s e-liquid formulation is highly addictive not only because it contains a high concentration of nicotine, but because it contains a particularly potent form of nicotine, *i.e.*, nicotine salts. Defendants knew this, as Adam Bowen advised the Board of Directors at an October 2015 Board

²¹⁴ INREJUUL_00279931.

²¹⁵ 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/>.

²¹⁶ 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.

²¹⁷ 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).

²¹⁸ See, e.g., INREJUUL_00023597 (finding 94% nicotine transfer efficiency with 4% benzoate formula).

²¹⁹ 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 meeting on JLI's "nicotine salts patent application."²²⁰ And the Altria Defendants were aware of
 2 the research showing the potency of nicotine salts from their many years in the tobacco business.

3 196. JLI and Defendant Bowen, knowing that the Phase 0 results illustrated that the
 4 nicotine content was greater than they wanted to represent, sought to engineer test results that
 5 differed from those results and were more consistent with JLI's deceptive messaging. In May
 6 2014, within weeks of the Phase 0 study, JLI and Defendant Bowen carried out a second
 7 pharmacokinetics study in New Zealand. This study was called the CH-1401, or the "Phase 1"
 8 study. This study again examined the effects of inhaling aerosol from various 2% nicotine
 9 solutions: nicotine benzoate (blend A), nicotine malate (blend B), and free-base nicotine (blend
 10 C).²²¹ In a further departure from the Phase 0 study, which used experienced e-cigarette users,
 11 the Phase 1 study used subjects that had not previously ingested aerosolized nicotine vapor, and
 12 who had certainly never ingested aerosolized nicotine vapor from nicotine salts. As Defendants
 13 JLI and Bowen knew, this difference is critical. Just as first-time smokers would not inhale as
 14 much cigarette smoke as regular smokers, inexperienced (or "learning") e-cigarette users will not
 15 inhale vapor at a rate that maximizes nicotine delivery.²²² JLI's decision to omit participants with
 16 previous e-cigarette experience from the criteria for inclusion in CH-1401 resulted in artificially
 17 deflated Cmax results.²²³

18 197. The Cmax recorded in the Phase 1 study was approximately a third of that
 19 achieved by smoking a cigarette. Specifically, e-cigarette users recorded a Cmax of
 20 approximately 12.87 ng/ml, compared with the 31.47 ng/ml Cmax resulting from smoking a Pall
 21 Mall.²²⁴

22
 23
 24 ²²⁰ INREJUUL_00278408.

25 ²²¹ INREJUUL_00014159-INREJUUL_00014226.

26 ²²² INREJUUL_00002526-INREJUUL_00002625.

27 ²²³ *Id.*

28 ²²⁴ *Id.*

1 198. In possession of the results from both the Phase 0 and Phase 1 studies, JLI
 2 nevertheless decided to launch a 5% nicotine salt solution as its commercial product. An internal
 3 memo explained JLI's reasoning as follows: "[s]ince the Cmax of the [2%] nicotine salt was
 4 about 1/3 that of cigarettes, we chose a concentration of 5% for our commercial product (JUUL),
 5 which should provide a Tmax and Cmax consistent with a cigarette."²²⁵

6 199. Instead of testing a 5% solution, JLI *estimated* the Cmax result of a 5% nicotine
 7 solution using a model.²²⁶ But the Phase 0 data showed that a 4% benzoic acid / 5% nicotine
 8 solution would have a higher Cmax and AUC than those of a cigarette, not one that was equal.

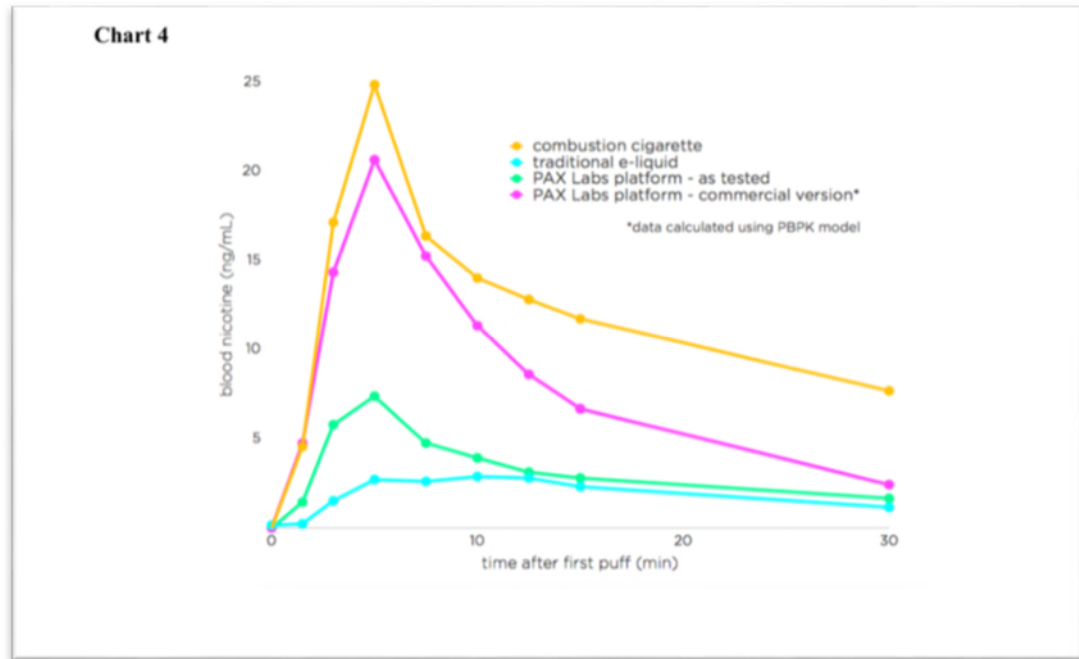
9 200. JLI and the Management Defendants knew that JLI's studies indicated that their
 10 5% solution product was more potent and more addictive than a typical cigarette. But JLI and the
 11 Management Defendants then used their unsupported extrapolation of their flawed studies to
 12 market JUUL as providing a nicotine experience on par with a cigarette, even though they
 13 designed JUUL to ensure that was not true. In reality, there were never any measured test results
 14 in accord with JLI's marketing to distributors, retailers, and the public at large.

15 201. In the United States, the unsupported extrapolations from what appears to be the
 16 Phase 1 study were used to create charts, which JLI posted on its website, shared with
 17 journalists, sent to retailers, and distributed to third party promoters, showing that JUUL's 5%
 18 solution achieved a pk profile just below that of a cigarette. For example, the following chart
 19 appeared on the online publication TechCrunch.²²⁷

20
 21
 22
 23
 24
 25 ²²⁵ INREJUUL_00351717-INREJUUL_00351719.

26 ²²⁶ *Id.*

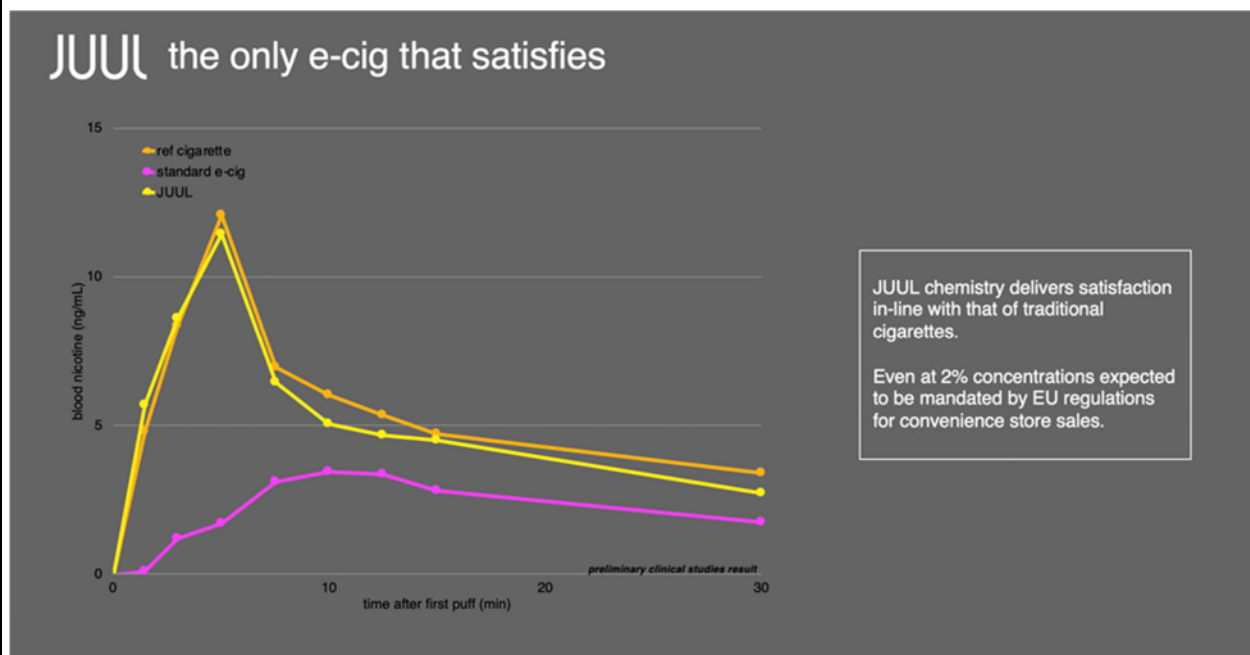
27 ²²⁷ Ryan Lawler, *Vaporization Startup Pax Labs Introduces Juul, Its Next-Gen-E-Cigarette*,
 28 TECH CRUNCH (Apr. 21, 2015), <https://techcrunch.com/2015/04/21/pax-juul/>.



202. Simultaneously, while providing extrapolated data to the public, Phase 1 was used as the basis for representations to retailers that a 2% *solution* achieved a pk profile equalling that of a cigarette. In a pitch deck dated March 25, 2015, and labeled as being intended for the convenience store distributor Core-Mark, JLI presented interim²²⁸ Phase 1 data showing this equivalence:²²⁹

²²⁸ See JLI00363360.

²²⁹ INREJUUL_00448896.



203. These misrepresentations to the public were not accidental, nor were they the work of a rogue employee. In a June 2014 Ploom Board meeting in London, the Ploom executives' presentation to the Board, which at that time included Defendants Bowen, Monsees, Pritzker, and Valani, explained the differences between the Phase 0 and Phase 1 results as "due to averaging across more subjects with variability in puffing behavior."²³⁰ Their explanation did not note that "variability in puffing behaviour" was partly a result of the fact that participants in the Phase 0 study were experienced e-cigarette users whereas the participants in the Phase 1 study were not. Thus, Defendants Bowen, Monsees, Pritzker, and Valani were privy to both the Phase 0 and Phase 1 results. And they *knew* that the data JLI (then Ploom) was pushing on the public was false and misleading, but none made any efforts to correct or withdraw those false and misleading statements. Aside from submitting the testing protocol and results of the Phase 0 study with the '895 patent, JLI, Bowen, Monsees, Pritzker, and Valani otherwise ignored the Phase 0 study and omitted it from public discussion of JUUL's nicotine delivery.

²³⁰ INREJUUL_00016443-INREJUUL_00016507.

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

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

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

11 206. By no later than October 30, 2016 (and likely earlier), the JLI Website – which, as
 12 discussed above, the Management Defendants on JLI’s Board of Directors reviewed and
 13 approved – advertised that “[e]ach JUULpod contains 0.7mL with 5% nicotine by weight,
 14 approximately equivalent to 1 pack of cigarettes or 200 puffs.”²³¹ The language on the website
 15 would later change, but still maintained the same fraudulent misrepresentation – *i.e.*, that “[e]ach
 16 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”²³²

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

23 208. In addition to approving the JLI website, knowing that it contained deceptive,
 24 misleading and false statements, JLI (through its employees) and the Management Defendants

25
 26 ²³¹ JUULpod, JUUL Labs, Inc. (Oct. 30, 2016),
<https://web.archive.org/web/20161030085646/https://www.juulvapor.com/shop-pods/>.

27 ²³² What is Vaping?, JUUL Labs, Inc. (July 2, 2019), <https://www.JUUL.com/resources/What-is-Vaping-How-to-Vape>.
 28

1 also were directly responsible for the interstate transport, *via* U.S. mail, of JUULpod packaging
 2 contained misrepresentations and omissions. At the same Board Meeting where Defendants
 3 Pritzker, Huh, and Valani were installed as the Executive Committee, the Board directed JLI's
 4 management on, among other things, "the need to rely on distributors and the challenges in
 5 reaching customers otherwise."²³³

6 209. JUUL pod packages that were sent *via* U.S. mail stated that a single Juul pod is
 7 "approximately equivalent to about 1 pack of cigarettes."²³⁴ These statements, as well as the
 8 statements on the JLI website, are false and misleading.

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

13 211. The Altria Defendants greatly expanded the reach of this fraud by providing their
 14 retail and distribution might for JLI products, causing millions of JUUL pods to be sent via U.S.
 15 mail with packaging stating that JUUL pods contain only 5% nicotine by weight and are
 16 "approximately equivalent to about 1 pack of cigarettes."²³⁵ JLI, the Management Defendants,
 17 and the Altria Defendants knew that these statements were false and misleading, but nevertheless
 18 utilized JUUL product packing, marketing and advertising to maintain their fraud.

19 212. The Altria Defendants knew in 2017 that a JUUL pod delivered more nicotine
 20 than one pack of cigarettes. In 2017, the Altria Defendants launched its MarkTen Bold e-
 21 cigarette, a relatively high-strength 4% formulation compared to the 2.5% and 3.5% strength
 22 MarkTen products initially offered. Even though JUUL was already on store shelves and was
 23 rapidly gaining market share with its 5% nicotine formulation, the Altria Defendants chose to
 24 bring a less potent 4% formulation to market.

25 ²³³ INREJUUL_00278408.

26 ²³⁴ Juul Labs, Inc., Twitter (Feb. 14, 2018),
 27 <https://twitter.com/JUULvapor/status/963844069519773698>.

28 ²³⁵ *Id.*

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.

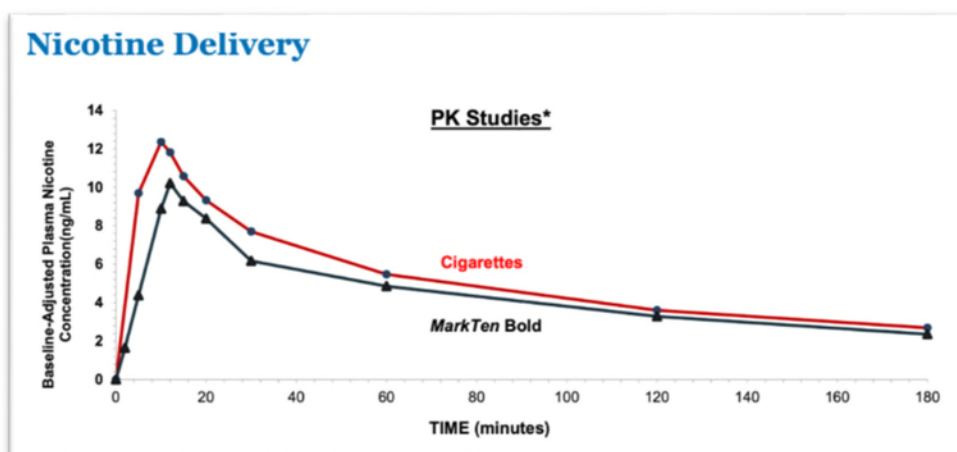


Figure 2: Presented at Altria Group Inc.'s November 1, 2017 Investor Day Presentation. MarkTen Bold 4%

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

216. From JUUL's pre-release announcements to this day, JLI has continuously represented that each pod is approximately equivalent to a pack of cigarettes. These claims, which JLI repeats widely in advertisements, press releases, and its web site, have been distributed *via* the wires and mails and disseminated by reputable and widely reliable sources that accepted those representations as true.²³⁶

217. Moreover, the form of nicotine JUUL pods contain is particularly potent. JUUL's use of "strength" to indicate concentration by weight is also at odds with the industry standard of reporting concentration by volume,²³⁷ leading users to believe it contains less nicotine than other formulations advertised as 6% nicotine, when JUUL pods in fact contain approximately the same nicotine as a solution that is 6% nicotine by volume.

218. The "5% strength" statement in Defendants' advertisements misrepresents the most material feature of the JUUL product – the nicotine content – and has misled young people to their detriment. Resellers, apparently assuming that "5% strength" means "50mg/ml" nicotine by volume, compound confusion among young people by stating that JUUL pods contain "50 mg/ml," which they do not.²³⁸

²³⁶ 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 (Nov. 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> (last visited May 7, 2020).

²³⁷ 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).

²³⁸ See, e.g., Tracy Vapors, Starter Kit, <http://web.archive.org/web/20190422143424/https://www.tracyvapors.com/collections/starter-kit>; Lindsey Fox, *JUUL Vapor Review, E-cigarette Reviewed* (Mar. 20, 2017),

219. If JLI and the Management Defendants did not know when JLI released JUUL pods that the “5% strength” representation in Defendants’ advertisements was misleading, they learned that there was widespread confusion about the JUUL pods’ nicotine content. By 2017, studies revealed that users did not understand “5% strength,” and some understood that phrase to mean 5% of a cigarette. Though this was identified as a “pain point” for new users,²³⁹ JLI and the Management Defendants (and later the Altria Defendants) did nothing to stop or correct this confusion about the nicotine content.

220. The “5% strength” statement in Defendants’ advertisements is also misleading. At least two independent studies testing multiple varieties of JUUL pods have likewise found significantly higher concentrations of nicotine than the 59 mg/mL JUUL’s website represents, suggesting that the difference in the total nicotine content of a JUUL pod vs. a pack of combustible cigarettes could be even greater.²⁴⁰

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

221. In late 2015, JLI and the Management Defendants employed a deceptive marketing scheme to downplay the harms of e-cigarettes with a food-based advertising campaign called “Save Room for JUUL.” The campaign framed JUUL’s addictive pods as “flavors” to be paired with foods.²⁴¹ JLI described its Crème Brûlée nicotine pods as “the perfect evening treat”

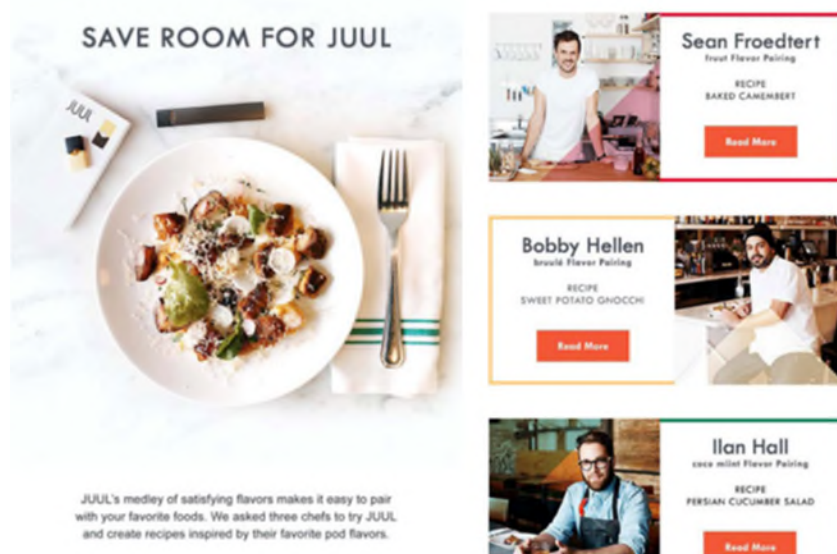
<https://ecigaretterevue.com/juul-review> (“The nicotine content of the JUUL pods is always the same: 5% or 50 mg/ml”); Jason Artman, *JUUL E-Cigarette Review*, eCig One (Oct. 26, 2016), <https://ecigone.com/e-cigarette-reviews/juul-e-cigarette-review/> (“the e-liquid contains 50 mg of nicotine per ml of e-liquid”); West Coast Vape Supply, Juul Starter Kit (July 18, 2019), <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.”).

²³⁹ INREJUUL_00123540.

²⁴⁰ 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).

²⁴¹ Erin Brodwin, *\$15 billion startup JUUL used ‘relaxation, freedom, and sex appeal’ to market its crème-brulee-flavored e-cigs on Twitter and Instagram—but its success has come at a*

that would allow users to “indulge in dessert without the spoon.”²⁴² 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.”²⁴³ JLI similarly promoted the fruit medley pods using images of ripe berries.²⁴⁴ 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.”²⁴⁵



big cost, BUSINESS INSIDER (Oct. 26, 2018), <https://www.businessinsider.com/juul-e-cig-marketing-youtube-twitter-instagram-social-media-advertising-study-2018-10>.

²⁴² Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_3.jpg.

²⁴³ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_34.jpg.

²⁴⁴ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_6.jpg.

²⁴⁵ Stanford University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/flavors/large/flavor_15.jpg.

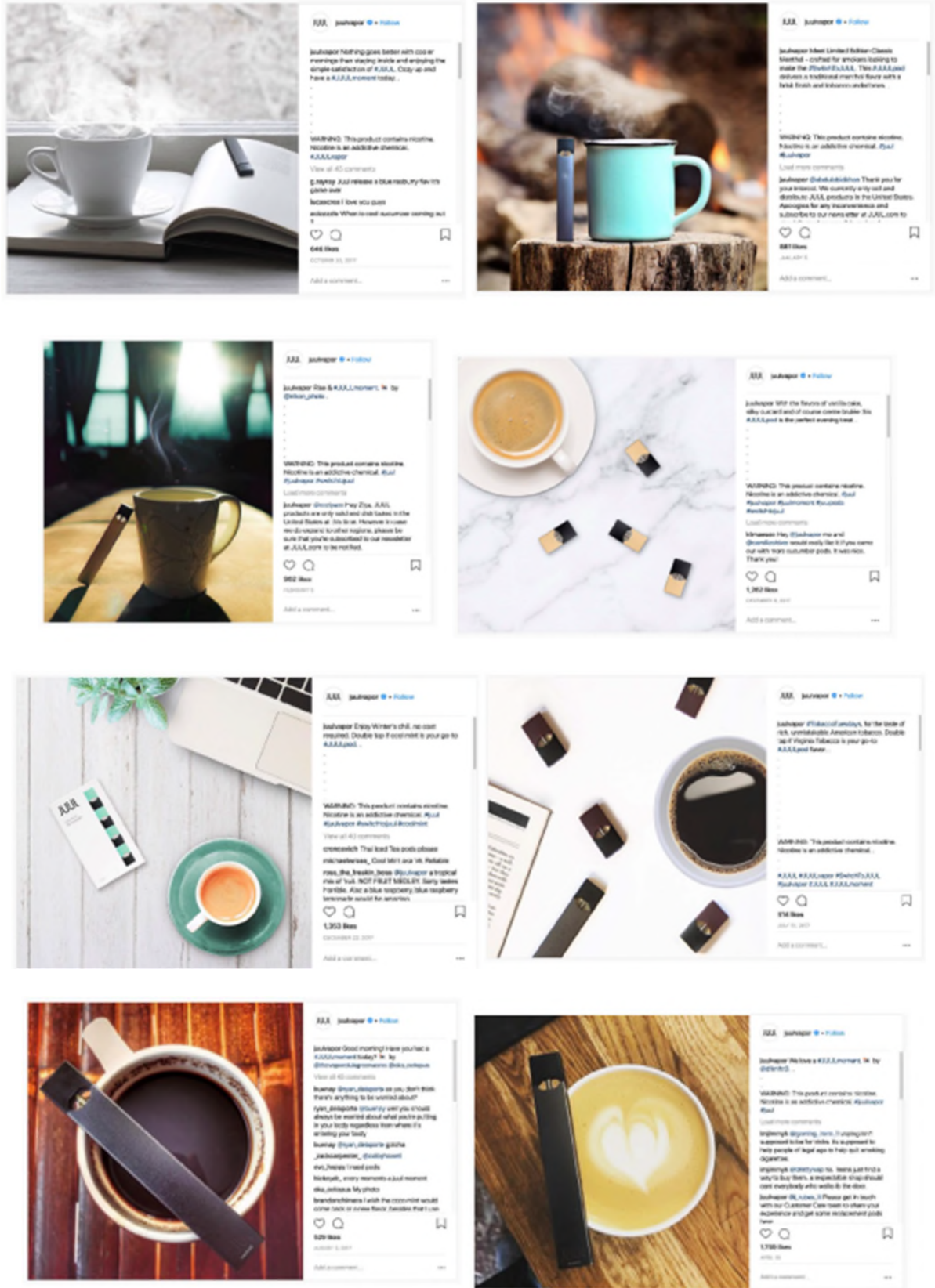


222. Again, none of these advertisements disclosed that JUUL was addictive and unsafe.

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.²⁴⁶ 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.

²⁴⁶ 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

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

3 228. The "*Make the Switch*" television ads featured former smokers aged 37 to 54
4 discussing "how JUUL helped them quit smoking."²⁴⁷ According to JLI's Vice President of
5 Marketing, the "*Make the Switch*" campaign was "an honest, straight down the middle of the
6 fairway, very clear communication about what we're trying to do as a company."²⁴⁸

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

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

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

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

23 ***The history of cessations products have extremely low efficacy. That is the***
24 ***problem we are trying to solve here.*** So, if we can give consumers an alternative

25 ²⁴⁷ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers*
26 *who quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019),
27 <https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html>.

28 ²⁴⁸ *Id.*

1 and market it right next to other cigarettes, then we can actually make something
2 work.

3 [T]raditional nicotine replacement therapies, which are generally regarded as the
4 gold standard for tools, right, for quitting, those are nicotine in a patch or a gum
5 form, typically, and the efficacy rates on those hover just below about a 10
6 percent or so. JUUL-we ran a very large study of JUUL consumers, ex-smokers
7 who had picked up JUUL, and looked at them, looked at their usage on a
8 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
9 smokers had stopped smoking completely, for a minimum of 30 days already.
10 And the most interesting part of this study is that if you follow it out further, to
11 180 days, that number continues to go up dramatically, and that is quite the
opposite of what happens with traditional nicotine replacement therapies.²⁴⁹

233. In response to a direct question about whether people buy JUUL to stop smoking,
12 Defendant Monsees responded: “Yes. I would say nearly everyone uses our product as an
13 alternative to traditional tobacco products.”²⁵⁰

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

14 ***Statements by Defendant JLI:***²⁵¹

- 15 • “JUUL Labs was founded by former smokers, James and Adam, with the
16 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));²⁵²
- 17 • “JUUL Labs, which exists to **help adult smokers switch** off of
18 combustible cigarettes.” (JLI Website, September 19, 2019);²⁵³ and

20 ²⁴⁹ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
21 *Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019)
(statement of James Monsees, Co-Founder, JUUL Labs, Inc.),
22 <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-ii>.

23 ²⁵⁰ *Id.*

24 ²⁵¹ Although these statements are attributed to Defendant JLI, JLI’s Board of Directors had
25 “final say” over marketing messaging and, accordingly, Defendants Bowen, Monsees, Pritzker,
Huh, and Valani are each directly responsible for the transmission of these fraudulent statements.

26 ²⁵² *Our Mission*, JUUL Labs, Inc. (2020), <https://www.juul.com/mission-values> (last visited
May 7, 2020).

27 ²⁵³ CONSUMER UPDATE: 9/19, JUUL Labs, Inc. (Sept. 19, 2019),
28 <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).²⁵⁴

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);²⁵⁵
- “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);²⁵⁶
- “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);²⁵⁷
- “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);²⁵⁸ and
- We expect the **JUUL product features that have driven JUUL’s success in switching adult smokers in the United States** to strongly appeal to international adult cigarette smokers. (Altria Earning Call, January 31, 2019).²⁵⁹

²⁵⁴ JLI Labs Action Plan, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/> (statement of then-CEO Kevin Burns).

²⁵⁵ *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>.

²⁵⁶ Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, at 2 (Oct. 25, 2018).

²⁵⁷ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth* (Dec. 20, 2018), BUSINESSWIRE, <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

²⁵⁸ 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>.

²⁵⁹ *Id.*

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

3 **Mr. Monsees:** I think the intention of this ad is to make it very clear to consumers
 4 that there is an alternative, finally, to combustible cigarettes. I am one of those
 people.²⁶⁰

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

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

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

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

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

18 243. JUUL labels and advertisements also marketed the product as an “alternative” to
 19 cigarettes:

20
 21
 22
 23
 24
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 26
 27 ²⁶⁰ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
 28 *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

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

11 247. JUUL is not a product adults typically use to quit smoking. Researchers have
 12 found that as of 2018, only 7.9% of American adults had ever used USB shaped e-cigarettes, like
 13 JUUL, and only 2% of adults currently used them.²⁶¹ By contrast, a recent study found that 15 to
 14 17-year-olds are **16 times** more likely to use JUUL products than 25 to 34-year-olds.²⁶²

15 248. JLI’s own marketing research indicated that JUUL was not appropriate as a
 16 cessation device for adults. In 2014, JLI when it was called Ploom hired the consumer research
 17 firm Tragon to do research with prototypes of the JUUL e-cigarette. On September 30, 2014,
 18 Lauren Collinsworth, a consumer researcher at Tragon, e-mailed Chelsea Kania, a marketing
 19 employee at Ploom, with some of the preliminary results from the studies. She stated that the
 20 testing showed that “the younger group is open to trying something new and liked J1 [the JUUL
 21 prototype] for being smart, new, techy, etc.”²⁶³ Ms. Collinsworth added that “The qualitative
 22 findings suggested ***this product isn’t going to fit as well with consumers who are looking to cut***
 23

24 ²⁶¹ Kristy L. Marynak *et al.*, *Use and reasons for use of electronic vapour products shaped like*
 25 *USB flash drivers among a national sample of adults*, 28 TOBACCO CONTROL 685 (Nov. 2019),
<https://tobaccocontrol.bmj.com/content/28/6/685>.

26 ²⁶² D.M. Vallone *et al.*, *Prevalence and correlates of JLI use among a national sample of youth*
 27 *and young adults*, TOBACCO CONTROL (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

28 ²⁶³ JLI00365905.

1 *back on the cigarette intake.*”²⁶⁴ On October 1, 2014, Ms. Collinsworth followed up with
 2 additional comments. She stated that “[t]he delivery was almost too much for some smokers,
 3 especially those used to regular e-cigarettes.”²⁶⁵ The final results from this consumer research
 4 were distributed to upper management, including to then-CEO James Monsees²⁶⁶ and then-Chief
 5 Marketing Officer Richard Mumby.²⁶⁷

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

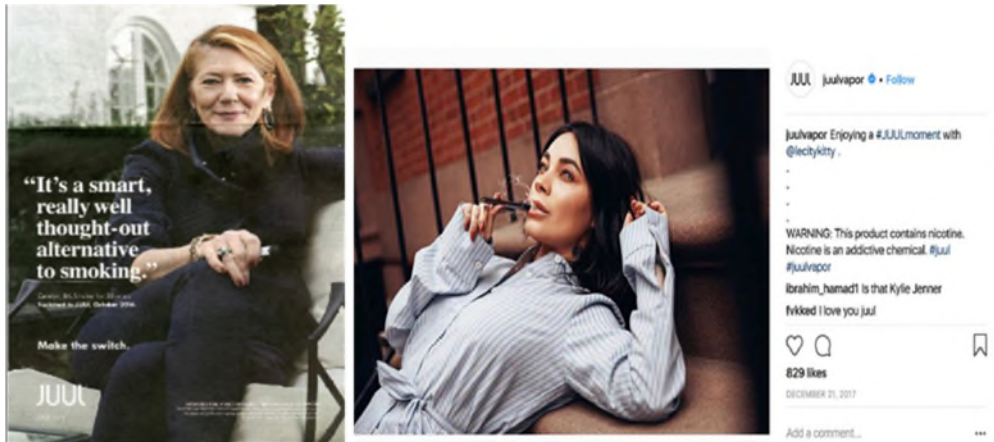


24
 25 ²⁶⁴ *Id.* (emphasis added).

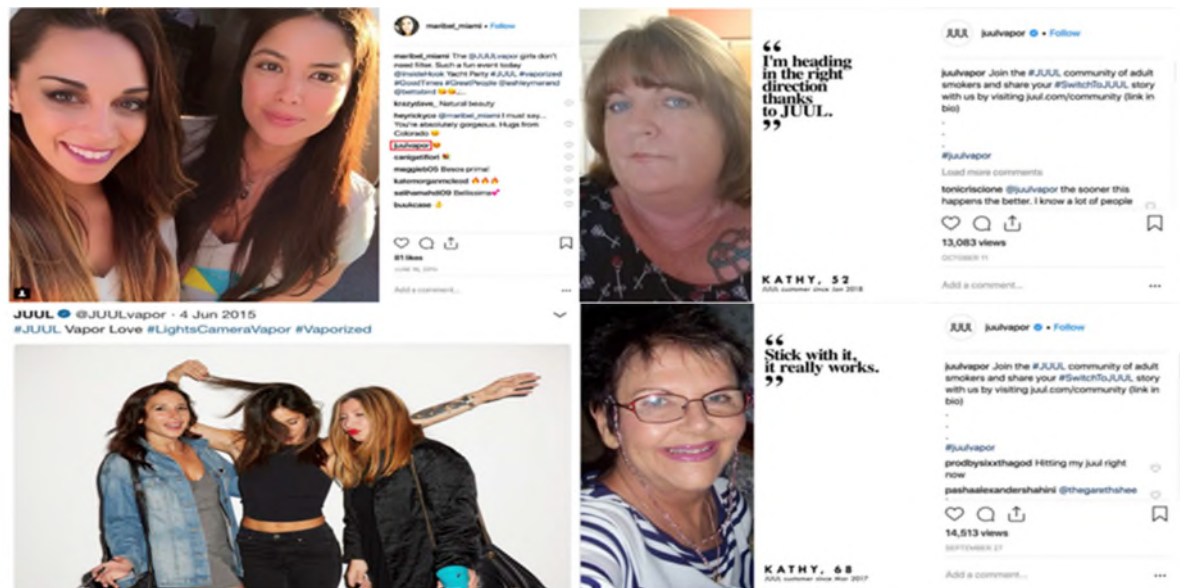
26 ²⁶⁵ JLI00365709.

27 ²⁶⁶ JLI00364678.

28 ²⁶⁷ 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.”²⁶⁸ 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.

²⁶⁸ 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>.

1 251. The *Switch* campaign also does not disclose or warn about the risks of using
 2 multiple tobacco products, “dual use” or that the JUUL is not a smoking cessation product. In
 3 addition to the heightened risks of addiction that multiple tobacco product use poses, one recent
 4 study found that persons who use e-cigarettes and smoke have blood toxin levels far higher than
 5 one would expect given the blood toxin levels that e-cigarettes and cigarettes generate
 6 individually.²⁶⁹

7 252. The FDA and other government regulators, enforcing existing laws addressing e-
 8 cigarettes,²⁷⁰ publicly criticized the “*Make the Switch*” campaign and other efforts by Defendants
 9 to depict JUUL as a smoking cessation device. Section 911(b)(2)(A)(i) of the Federal Food,
 10 Drug, and Cosmetics Act (FDCA) (21 U.S.C. §387k(b)(2)(A)(i)) states that when advertising or
 11 labeling of a cigarette product directly or indirectly suggests that the product has a lower risk of
 12 cigarette-related disease, is less harmful than traditional cigarettes, or is otherwise ‘safer’ than
 13 traditional cigarettes, then the product becomes a “modified risk tobacco product.”²⁷¹

14 253. In late 2019, and in response to the House of Representatives hearings in which
 15 JLI executives testified, the FDA issued two warning letters to JLI detailing its concern that JLI
 16 was unlawfully marketing its e-cigarette products as cessation tools or as “modified risk tobacco
 17 products” within the meaning of the FDCA.²⁷²

18 254. Then, in its September 9, 2019 letter to JLI, the FDA notified JLI that its
 19 advertising slogans such as “99% safer,” “much safer,” and “a safer alternative” than cigarettes
 20 was “particularly concerning because [those] statements were made directly to children in
 21 _____

22 ²⁶⁹ Julie B. Wang, *et al.*, *Cigarette and E-Cigarette Dual use and Risk of Cardiopulmonary*
Symptoms in the Health eHeart Study, 13 PLoS ONE 1 (2018).

23 ²⁷⁰ Section 911(b)(2)(A)(i) of the FDCA (21 U.S.C. §387k(b)(2)(A)(i)) states that when
 24 advertising or labeling of a cigarette product directly or indirectly suggests that the product has a
 25 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.”

26 ²⁷¹ *Id.*

27 ²⁷² Letter from U.S. Food and Drug Admin. to Kevin Burns, CEO of JUUL Labs, Inc. (Sept. 9,
 28 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

1 school.”²⁷³ The FDA concluded that in using advertising language that e-cigarettes were safer
 2 than cigarettes, JLI had violated Sections 902(8) and 911 by marketing JUUL products as
 3 “modified risk tobacco products” without prior approval.²⁷⁴

4 255. The September 9, 2019 letter also detailed the FDA’s concerns with JLI’s
 5 “Switch” marketing campaign. “[T]roubled by recent testimony” that JLI had given to the House
 6 Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform,
 7 the FDA noted that JLI’s *Switch* advertising campaign “may also convey that switching to JUUL
 8 is a safer alternative to cigarettes.”²⁷⁵

9 256. The FDA specifically highlighted the *Switch* campaign slogans which referenced
 10 smoking cigarettes, or attempts to quit smoking, followed by “*Make the Switch.*” The FDA stated
 11 that JLI’s campaign was in violation of multiple FDA regulations and the FDCA subsections,
 12 and that JLI’s *Switch* campaign purported to tell the public that using e-cigarettes was an
 13 alternative to smoking, or a possible cessation tool.²⁷⁶

14 257. On the same day, the FDA requested that JLI provide all documents related to its
 15 decision to market the Switch campaign to the Cheyenne River Sioux Tribe, in light of the
 16 testimony by JLI that it had taken a “public health” approach to Native American tribes, and had
 17 sought healthcare professionals to refer Native American smokers to JLI’s Switching Program.²⁷⁷

18 258. Perhaps unsurprisingly, the *Make the Switch* campaign was spearheaded by a
 19 marketing firm with long-standing ties to the cigarette industry. In particular, it was led by a
 20 subsidiary of Omnicom Group, Inc., one of the “Big Four” advertising holding companies
 21 dominating marketing and communications worldwide since the 1990s, second only to WPP.
 22 Omnicom is the parent company of Mercury Public Affairs which, by at least April 2018,

23 ²⁷³ *Id.*

24 ²⁷⁴ *Id.*

25 ²⁷⁵ Letter from U.S. Food and Drug Admin. Ctr. for Tobacco Prods. to JUUL Labs, Inc. (Sept. 9,
 26 2019).

27 ²⁷⁶ *Id.*

28 ²⁷⁷ *Id.*

counted both Altria and JLI as its clients. Mercury lobbied for Altria on tobacco regulations,²⁷⁸ and helped JLI push back against negative press coverage of youth usage of its products.²⁷⁹

259. For example, on April 2, 2018, a managing director from Mercury, Erick Mullen, emailed Defendant Valani and Daniel Cruise, Chief Public Affairs Officer at JLI, with a numbered list of actions in response to *The New York Times* article published that day, “‘I Can’t Stop’: Schools Struggle With Vaping Explosion.”²⁸⁰ Mercury’s list includes the recommendation to push the idea that JLI’s nicotine formulation is no more harmful than water, sugar, and caffeine: “Engage the press on all the definitions in every fucking story: it’s not a ‘cigarette’ of any kind; there’s no smoke and nothing medical science has on the books says water and nicotine is more harmful than water, sugar and caffeine.”²⁸¹

260. Defendant Valani and Cruise each separately forwarded the email to JLI CEO Kevin Burns, with Cruise commenting, “Kevin, recent email from friend Erick – a possible ‘campaign manager’” for us. His argument is in line with yours. We need to be systematic, aggressive and relentless. Btw we are not tobacco – have [you] corrected today’s NYT story?”²⁸²

261. In August 2018, Omnicom agency DDB Chicago²⁸³ sent JLI a proposal for an estimated \$11 million campaign “to more firmly establish the true intent of the company,” noting that JLI was “moving *very* fast.”²⁸⁴ This campaign was “*Make the Switch.*”

²⁷⁸ Kevin McCauley, *Altria Taps Mercury For Tobacco Regulation Work*, O’Dwyer’s (Jun. 4, 2018), <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>.

²⁷⁹ See, e.g., INREJUUL_00262168; INREJUUL_00262226-INREJUUL_00262227.

²⁸⁰ See INREJUUL_00262168; see also Kate Zernike, ‘I Can’t Stop’: Schools Struggle With Vaping Explosion, N.Y. Times (Apr. 2, 2018), <https://www.nytimes.com/2018/04/02/health/vaping-ecigarettes-addiction-teen.html>.

²⁸¹ INREJUUL_00262168.

²⁸² INREJUUL_00262226-227.

²⁸³ See INREJUUL_00066530-539 (Other Omnicom entities were involved in this campaign. For example, OMD, “sister company to DDB and part of the Omnicom Group,” sent JLI detailed Statements of Work for a U.S. Brand Campaign covering September 16, 2018 through February 28, 2019).

²⁸⁴ See INREJUUL_00074841; see also INREJUUL_00074842-844 at 842.

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

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

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

16 **a. The American Vaping Association**

17 264. The American Vaping Association ("AVA") is a pro-e-cigarette lobby group
 18 founded by Greg Conley, who notably publishes articles criticizing the CDC for its stance on
 19 restricting e-cigarette use.²⁸⁵ Other executive members of the AVA possess business interests in
 20 e-cigarettes; for example, Treasurer David J. Danzak Jr. is associated with an e-cigarette business
 21 called Vapornine LLC.²⁸⁶ Vice-President Antoinette Lanza is an owner of an exclusively e-
 22 cigarette shop in Hoboken, New Jersey called Smokeless Image.²⁸⁷ Half of the AVA's functional
 23

24 ²⁸⁵ Jeff Stier & George Conley, *The War on E-Cigarettes*, National Rev. (Sept. 19, 2011),
 25 <https://www.nationalreview.com/2011/09/war-e-cigarettes-jeff-stier-gregory-conley/>.

26 ²⁸⁶ Vapornine LLC, BUZZFILE, <http://www.buzzfile.com/business/Vapornine-LLC-904-372-3244> (business information page).

27 ²⁸⁷ Stacy Jones, *Tobacco regulators mull more oversight as e-cigarettes see increased*
 28 *popularity*, NJ.com (Mar. 30, 2019),
https://www.nj.com/business/2013/07/tobacco_regulators_mull_more_o.html.

1 expenses are for lobbying efforts.²⁸⁸ It lists several sponsors, all of which are e-cigarette, e-
 2 liquid, or cigarette companies.²⁸⁹

3 265. Conley has a prolific social media presence and frequently appears on television
 4 and radio to tout the benefits of consuming e-cigarettes and dispute negative news. The AVA
 5 website lists “studies” which are uniformly authored by noted industry-funded or industry-
 6 friendly authors, such as Polosa and Shahab.²⁹⁰ AVA lists CASAA, Not Blowing Smoke, and the
 7 VTA, all established fronts for 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.²⁹¹ Current advertised sponsors include e-cigarette
 10 distributors and retailers such as E-Cigarette Empire, and VaporBeast.²⁹² Prior sponsors are a
 11 who’s who of e-cigarette retailers. In 2016, Platinum sponsors included AltSmoke and Vapor
 12 Kings, while Gold sponsors included the now defunct Smokeless Image.²⁹³

13 267. On social media, the AVA regularly downplays the risks of consuming e-
 14 cigarettes, criticizes negative coverage as myths or exaggerations, and lauds efforts to curb any
 15 regulation of the e-cigarette industry.²⁹⁴

16 268. JLI actively sought out the AVA to promote JUUL. In January 2016, e-mails
 17 between employees at JLI (then known as PAX) discussed a “list of thought leaders [JLI] can tap
 18 for stories for JUUL” which included Conley at the AVA and Satel.²⁹⁵

19
 20 ²⁸⁸ Form 990, American Vaping Association Inc.’s Return of Organization Exempt from Income
 21 Tax (2018), https://apps.irs.gov/pub/epostcard/cor/464203951_201812_990O_2019122716980021.pdf.

22 ²⁸⁹ AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

23 ²⁹⁰ Research Reports, American Vaping Association, <https://vaping.org/research-report/>.

24 ²⁹¹ AVA Sponsors, American Vaping Association, <https://vaping.org/about-us/ava-sponsors/>.

25 ²⁹² *Id.*

26 ²⁹³ AVA Sponsors, American Vaping Association, Wayback Machine – Internet Archive (Aug.
 27 14, 2017), <https://web.archive.org/web/20170814221226/http://vaping.org/about-us/ava-sponsors/>.

28 ²⁹⁴ 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. In an e-mail exchange between Christine Castro of JLI and a “Stratcomms” internal mailing list, Castro lamented a “testy conversation” with a USA Today reporter who pointed out that JLI’s marketing and advertising appeared to feature and target minors and teenagers.²⁹⁶ Castro noted that “I hit back at [the reporter] very aggressively but we can expect the usual B.S. Greg Conley is being allowed to write a 300-word rebuttal. I will email him and copy you Ashley [JLI employee] just so we can stay coordinated.”²⁹⁷

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.²⁹⁸ In the e-mail, Conley asks Farsalinos to send Cohen “some info on your flavor study” to which Farsalinos responds by sending Conley and Cohen an attachment: “USA FLAVORS SURVEY.pptx” and the note: “[A]ttached is a powerpoint presentation about the study we proposed.”²⁹⁹

271. The proposed study was a survey aimed at determining what flavors different demographic groups preferred as e-cigarette flavors, which flavors they use frequently, and which flavors they used when they first started consuming e-cigarettes. While the study was purportedly to determine the impact of e-cigarette flavors on e-cigarette and smoking behavior, the data obtained from such a study would have allowed JLI to understand which flavors were not only the most popular, but which flavors were most popular by demographic.³⁰⁰

²⁹⁵ INREJUUL_00278889.

²⁹⁶ See INREJUUL_00173252 (Apr. 4, 2018 email).

²⁹⁷ *Id.*

²⁹⁸ 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>).

²⁹⁹ INREJUUL_0034128.

³⁰⁰ *Id.*

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.”³⁰¹ 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.”³⁰²

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.”³⁰³

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, including on Facebook and Twitter, but also comments on others posts extensively disputing negative news about consuming e-cigarettes.³⁰⁴

³⁰¹ Jim McDonald, *10 Lies and Myths About Juuling Exposed*, Vaping 360 (May 9, 2018), <https://vaping360.com/lifestyle/juuling/>.

³⁰² *Id.*

³⁰³ 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/>.

³⁰⁴ Jim McDonald, *Mass. Senate Passes Worst Vaping Law in the Countr*, Vaping 360 (Nov. 21, 2019), <https://vaping360.com/vape-news/86852/mass-senate-passes-worst-vaping-law-in-the-country/>; Jim McDonald, *Meet the Rich Moms Who Want to Ban Vaping*, Vaping 360 (Oct. 8, 2018), <https://vaping360.com/vape-news/71696/meet-the-rich-moms-who-want-to-ban-vaping/>.

276. Vaping360 has taken funding from e-cigarette manufacturers, and in return coordinates with e-cigarette manufacturers to promote their products, while publishing favorable content. Vaping360 was paid by JLI for advertising, and was given kickbacks (referred to as commission) for every coupon used for JUUL that originated from Vaping 360's website.

277. In March 2017, JLI (then PAX) communicated with Chris Kendell and others at Vaping360 to discuss promoting JLI's products with a 15% discount coupon on Vaping360's website.³⁰⁵ JLI representative Andy Martin also noted that JLI "figured out the commission issue," and expressed excitement at JLI's new mango flavor JUUL pod.³⁰⁶ They also discussed a Facebook advertising link whereby Vaping360 could offer similar discounts for JLI products on social media.³⁰⁷

278. In November 2017, Martin of JLI and Rawad Nassif of Vaping360 discussed a meeting agenda, with topics such as "new affiliate commission terms," "JLI funnelling [sic] project," and "exploring further opportunities."³⁰⁸

279. In 2018, McDonald continued to write articles specifically praising JLI, such as "Coming Soon: A JUUL to Help You Quit JUULing" and "10 Lies and Myths About JUULing Exposed."³⁰⁹ As of 2020, Vaping360 continues to offer discounts for JUUL products.³¹⁰

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

³⁰⁵ INREJUUL_00143870.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ INREJUUL_00139196.

³⁰⁹ 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/>.

³¹⁰ [One FREE Pack] JUUL Coupon Codes 2019, Vaping 360 (Aug. 24, 2018) <https://vaping360.com/vape-coupons/juul-coupon-promo-code/>.

reduction.”³¹¹ It is funded entirely by Philip Morris International, which in 2017 announced a \$1 billion commitment to fund the Foundation.³¹² The Foundation’s 2018 Form 990 lists only one donor: PMI Global Services, Inc., or Philip Morris International, with a contribution of \$80 million.³¹³

281. The Foundation is headed by Derek Yach, a noted advocate and promoter of e-cigarettes and consuming e-cigarettes.³¹⁴

282. In 2018, the Foundation announced that it would support Centers of Excellence to conduct tobacco control research.³¹⁵ 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.

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.³¹⁶ 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

³¹¹ Foundation for a Smoke-Free World (2020), <https://www.smokefreeworld.org/>.

³¹² David Meyer, *Philip Morris Pledges Almost \$1 Billion to Anti-Smoking Fight*, Fortune (Sept. 13, 2017), <https://www.webcitation.org/6tjyBv4dA>.

³¹³ 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.

³¹⁴ *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>.

³¹⁵ 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>.

³¹⁶ 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>.

that their aerosol lingers for less time indoors than combustible cigarettes.³¹⁷ Industry-funded authors then regularly cite to each other's studies in their own research.³¹⁸ 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."³¹⁹

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 paid VTA \$100,000 in 2018 to become a Platinum Member, and in return, VTA offered JLI a board seat; invitations to lobbying strategy meetings; access to the FDA, other federal agencies, and members of Congress; and conference participation.³²⁰

³¹⁷ 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).

³¹⁸ 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).

³¹⁹ Vape is Hope, Vapor Technology Association (Feb. 25, 2016), <https://web.archive.org/web/20160225154600/http://www.vaportechology.org:80/>.

³²⁰ Some of Our Members, Vapor Technology Association (Nov. 28, 2018), <https://web.archive.org/web/20181128162940/https://vaportechology.org/membership/>.

1 286. The VTA, like other lobbying and trade association groups in the industry,
2 advocates for less regulation of e-cigarettes, and testifies in opposition to flavor bans.³²¹

3 **e. Retailer Lobbying**

4 287. Retailers have also taken to creating subsidiaries or wholly owned companies
5 whose purpose is to produce quasi-journalistic content to promote consuming e-cigarettes,
6 discredit health initiatives, and suggest that consuming e-cigarettes has no harmful health
7 impacts. The best example of this is the website SoupWire, which publishes articles and
8 editorials that promote consuming e-cigarettes and criticizes studies that look at the negative
9 impacts of consuming e-cigarettes.³²² For example, when JLI donated \$7.5 million towards a
10 study on the impacts of consuming e-cigarettes on teens, a SoupWire report concluded that the
11 study will likely find “nothing Earth-shattering.”³²³

12 **6. Altria Falsely Stated That It Intended to Use Its Expertise in**
13 **“Underage Prevention” Issues to JLI.**

14 288. Altria’s announcement that it intended to invest in JLI came less than two months
15 after it told the FDA that Altria “believe[s] that pod-based products significantly contribute to the
16 rise in youth use of e-vapor products” and that it accordingly would be removing its own pod-
17 based products from the market.³²⁴ Altria made the same representations to its investors.³²⁵

18 289. Although Altria claimed its investment in JLI had an altruistic motive – “When
19 you add to JUUL’s already substantial capabilities, our underage tobacco prevention expertise
20 and ability to directly connect with adult smokers, we see a compelling future with long-term
21 benefits for both adult tobacco consumers and our shareholders,” Altria recently confirmed that

22 _____
23 ³²¹ Vapor Technology Association, <https://vaportechnology.org>.

24 ³²² Soupwire – The Truth About Vaping, <https://soupwire.com>.

25 ³²³ Jeff Hawkins, *JUUL Donates \$7.5 Million to Teen Vaping Study*, Soupwire – The Truth
26 About Vaping (July 2, 2019), [https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-](https://soupwire.com/juul-donates-7-5-million-to-teen-vaping-study/)
study/.

27 ³²⁴ Letter from Howard A. Willard III, Altria, to Dr. Scott Gottlieb, FDA, 2 (October 25, 2018).

28 ³²⁵ Altria Group Inc (MO) Q3 2018 Earnings Conference Call Transcript (October 25, 2018).

1 JLI has not even availed itself of that experience.³²⁶ In Altria’s October 2019 letter to Senator
 2 Dick Durbin, Altria CEO Howard Willard acknowledged that while Altria “offered to JUUL
 3 services relating to underage prevention efforts,” to date “JUUL has not accepted Altria’s offers
 4 of assistance in addressing underage vaping relating issues.”³²⁷ Willard has stated that the deal
 5 would allow Altria to “work[] with JUUL to accelerate its mission.”³²⁸ but as Altria knew, as
 6 reflected in its letter to the FDA just two months prior, that mission involved had resulted in
 7 usage throughout the youth market. Altria’s admission that pod-based products contributed to
 8 underage use show that Altria knew its investment in JLI would “strengthen[] its financial profile
 9 and enhance[] future growth prospects” specifically because JLI dominated the youth market for
 10 e-cigarettes.³²⁹

11 290. Altria recognized JLI’s market share dominance in the e-cigarette market as the
 12 path to Altria’s continued viability and profitability. In a January 31, 2019 earnings call, Altria
 13 explained that “[w]hen you add to JUUL’s already substantial capabilities, our underage tobacco
 14 prevention expertise and ability to directly connect with adult smokers, we see a compelling
 15 future with long-term benefits for both adult tobacco consumers and our shareholders. We are
 16 excited about JUUL’s domestic growth and international prospects and their potential impact on
 17 our investment.”³³⁰ JUUL’s growth was, as Altria well knew, due to the product’s viral
 18 popularity among teens. Willard briefly acknowledged the youth e-cigarette use crisis, stating,
 19 “Briefly touching on the regulatory environment, the FDA and many others are concerned about

20 ³²⁶ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the
 21 period ending December 31, 2018 (Jan. 31, 2019).

22 ³²⁷ Letter from Howard A. Willard III to Senator Richard J. Durbin (October 14, 2019)
 (emphasis added).

23 ³²⁸ Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and
 24 Drive Growth, Business Wire (Dec. 20, 2018, 7:00 AM EST),
 25 <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

26 ³²⁹ *Id.*

27 ³³⁰ Altria Group (MO) Q4 2018 Earnings Conference Call Transcript: MO earnings call for the
 28 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 an epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others
2 in the industry must continue to address aggressively and promptly.”³³¹

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

6 **E. Defendants Targeted the Youth Market.**

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

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

18 **1. JLI Emulated the Marketing of Cigarette Companies.**

19 294. As Defendants know, nearly 9 out of 10 smokers start smoking by age 18, and
20 more than 80% of underage smokers choose brands from among the top three most heavily
21 advertised.³³² The overwhelming consensus from public health authorities, independent studies,
22 and credible expert witnesses is that “marketing is a substantial contributing factor to youth
23 smoking initiation.”³³³

24 ³³¹ *Id.*

25
26 ³³² U.S. Dep’t of Health & Human Servs., *Preventing Tobacco Use Among Youths*, Surgeon
27 *General Fact Sheet*, <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/preventing-youth-tobacco-use-factsheet/index.html>.

28 ³³³ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 570 (D.D.C. 2006) (J. Kessler).

295. Struggling to define their own identities, teenagers are particularly vulnerable to image-heavy advertisements that psychologically cue them on the “right” way to look and behave amongst peers.³³⁴ Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.³³⁵

296. For decades, cigarette companies spun smoking as a signifier of adulthood. This turned smoking into a way for teenagers to project independence and enhance their image among their peers.³³⁶

297. Youth marketing was critical to the success of cigarette companies. In the 1950s, Philip Morris – now JUUL’s corporate affiliate – intentionally marketed cigarettes to young people as a pool from which to “replace smokers” to ensure the economic future of the cigarette industry.³³⁷

298. Philip Morris’ documents set out their youth strategy, explaining: “Today’s teenager is tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens”.³³⁸

299. It wasn’t just Philip Morris. The strategy of hooking kids was an open secret in the cigarette industry.³³⁹

³³⁴ *Id.* at 578.

³³⁵ *Id.* at 570, 590.

³³⁶ *Id.* at 1072.

³³⁷ *United States v. Philip Morris*, No. 99- 2496 (D.D.C. Aug. 17, 2006), ECF No. 5750 at 972 (Amended Final Opinion).

³³⁸ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

³³⁹ 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.”).

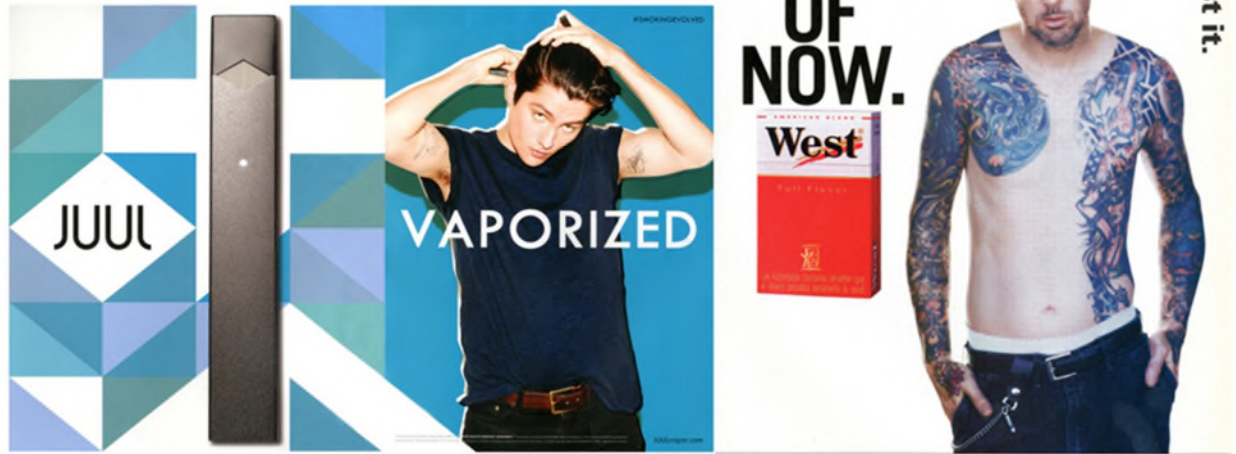
300. As detailed below, JLI and the Management Defendants sought to emulate this approach. Indeed, Monsees admitted to using historical cigarette ads to inform JLI's own advertising campaign.³⁴⁰

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.³⁴¹



³⁴⁰ 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 May 7, 2020).

³⁴¹ 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.³⁴² 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.”³⁴³ 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.”³⁴⁴ The CDC blamed e-cigarette marketing, the use of “a mixture of ‘sex, free samples,

³⁴² 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>.

³⁴³ *Id.*

³⁴⁴ *Id.*

1 [and] flavors’ – the same things that were originally found to be problematic with cigarette
2 ads.”³⁴⁵

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

6 305. Consistent with Monsees’ position that he has no “qualms” with marketing to
7 people that were not yet addicted to nicotine,³⁴⁶ JLI’s marketing strategy targeted people that
8 were “flavor-seeking, social ‘vapers,’” and those who “have very limited experience with
9 traditional tobacco cigarettes.”³⁴⁷

10 306. JLI’s first major marketing hire, Cult Collective Ltd. (“Cult Collective”),
11 presented a pitch deck to JLI in late 2014, which defined the “target consumer” as a person
12 “within a life stage or mindset where they are defining their own identity.”³⁴⁸ The study
13 described the “modern vaper” as “trendy, sophisticated image managers seeking to balance their
14 desire for originality against acceptance.”³⁴⁹ Put differently, their target consumer was an
15 adolescent.

16 307. JLI professedly wanted kids to think JUUL was cool. In an email dated January
17 29, 2015, Sarah Richardson – then Director of Communications – sent a document dated
18 December 31, 2014, to Dima Martirosyan, Director of Digital Marketing, who forwarded it to
19 Rafael Burde, Director of Ecommerce.³⁵⁰ The document stated that “[m]ost e-cigarettes to date
20 are unsatisfying and seem ‘douche-y’. The JUUL product delivers nicotine far more effectively,

21 ³⁴⁵ Jacob Kastrenakes, *More teens are vaping instead of smoking*, The Verge (Apr. 16, 2015),
22 <https://www.theverge.com/2015/4/16/8429639/teen-ecigarette-use-triples-vaping-beats-smoking>.

23 ³⁴⁶ David H. Freedman, *How do you Sell a Product When You Really Can’t Say What it Does?*,
24 Inc., [https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-](https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html)
company-marketing-dilemma.html (last visited May 7, 2020).

25 ³⁴⁷ INREJUUL_00441209.

26 ³⁴⁸ INREJUUL_00057298-INREJUUL_00057487.

27 ³⁴⁹ INREJUUL_00057298-INREJUUL_00057487.

28 ³⁵⁰ INREJUUL_00057289.

1 and the product design is elegant and cool. We need to tell this story in a credible fashion
 2 through press, influencers and social media.”³⁵¹ The document repeatedly referred to Pax Labs’
 3 Inc.’s plan to target the “cool kids[.]”³⁵² For example, it described as one of the “Key needs” to
 4 “Establish premium positioning to entice the ‘masses’ to follow the trend setters; own the ‘early
 5 adopter’ / ‘cool kid’ equity as we build out volume[.]”³⁵³ The document noted that “the voices of
 6 influencers can build strong demand.”³⁵⁴ Messaging to media similarly focused on “coolness”
 7 and the message that “JUUL singlehandedly made e-cigarettes cool.”³⁵⁵

8 308. This focus on “cool kids” continued up to and after launch. On May 18, 2015,
 9 Kate Morgan, field marketing manager, emailed Richard Mumby, Chief Marketing Officer, and
 10 a variety of other marketing employees about “Some Music Options for JUUL Party” and noted
 11 that one of the options was a pair who were both “cool kids.”³⁵⁶ On June 7, 2015, Rafael Burde
 12 emailed Scott Dunlap, then Chief Operating Officer, stating that the JUUL launch party “was a
 13 resounding success (at least in my mind) in terms of winning over the cool kids”³⁵⁷ Pax
 14 Labs, Inc.’s employees used similar wording regarding interest in targeting “cool kids” in an
 15 email from Sarah Richardson on August 12, 2015,³⁵⁸ and emails from Ashley Marand on
 16 September 15, 2015,³⁵⁹ and October 21, 2015.³⁶⁰ The consistency of the language around this
 17 target demographic confirms that marketing to “cool kids” was a company policy set by the

18
 19 ³⁵¹ INREJUUL_00057293.

20 ³⁵² *Id.*

21 ³⁵³ *Id.*

22 ³⁵⁴ *Id.*

23 ³⁵⁵ INREJUUL 00441325-INREJUUL_00441326.

24 ³⁵⁶ JLI00218598.

25 ³⁵⁷ JLI00206206.

26 ³⁵⁸ JLI00222528.

27 ³⁵⁹ JLI00461564.

28 ³⁶⁰ JLI00235965.

1 executives and the Board, particularly because, before selling the Ploom assets to JTI, James
2 Monsees said similar things about Ploom.³⁶¹

3 309. JLI identified its competitor in this space as cigarette companies, complaining that
4 “cigarettes continue to own the ‘cool’ equity,” and identifying a “key pillar to go-to-market” as
5 “win[ning] with the ‘cool crowd’” away from cigarettes.³⁶²

6 310. With this goal in mind, JLI hired the Grit Creative Group (“Grit”), which billed
7 itself as an agency whose marketing appealed to “cool kids.”³⁶³ Grit helped JLI to “use external
8 audiences to communicate nuanced messages around early adoption ‘coolness’ and product
9 performance.”³⁶⁴

10 311. In short order, the phrase “it’s cool to JUUL” became an anthem among kids
11 while youth e-cigarette use skyrocketed.

12 **3. JLI Advertising Exploited Young People’s Psychological** 13 **Vulnerabilities.**

14 312. Informed by decades of tobacco marketing, JLI ran a consistent, simple message:
15 JUUL is used by young, popular, attractive, and stylish people.

16 313. This was not the only marketing scheme JLI could have adopted. JLI had other
17 options. In 2014, JLI engaged a Calgary-based advertising agency, Cult Collective, to complete a
18 “diagnostic” evaluation of the JUUL brand and to make recommendations regarding the best
19 advertising strategy to market the JUUL e-cigarette.

20 314. In keeping with typical e-cigarette marketing, which messaged to existing
21 smokers looking to quit, Cult Collective recommended that JUUL position its e-cigarette
22 technology as the focus of its advertisements. Cult Collective presented JUUL with exemplar
23

24 ³⁶¹ JLI00514343 (describing Ploom as “providing optionality for distribution growth and
25 consumer outreach to a younger, opinion leading audience”).

26 ³⁶² INREJUUL_00161703-INREJUUL_00161715.

27 ³⁶³ *Id.*

28 ³⁶⁴ INREJUUL_00277080-INREJUUL_00277104.

1 advertisements that used images of a boom box and a joy stick, juxtaposed against the JUUL e-
 2 cigarette, with the tag line: “Everything changes. JUUL the evolution of smoking.”



12
 13 315. This campaign expressly invokes combustible cigarettes and positions the JUUL
 14 as a technological upgrade for the modern smoker.

15 316. JLI rejected this approach.

16 317. Instead, in June of 2015, JLI launched the “Vaporized” advertising campaign.³⁶⁵
 17 The express mission of the Vaporized campaign was to “own the ‘early adopter’/‘cool kid’
 18 equity.”³⁶⁶

19 318. Applying the template for preying on teens established by the cigarette industry,
 20 the Vaporized campaign used stylish models, bold colors, and highlighted themes of sexual
 21 attractiveness, thinness, independence, rebelliousness and being “cool.”³⁶⁷

24
 25 ³⁶⁵ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge
 26 (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

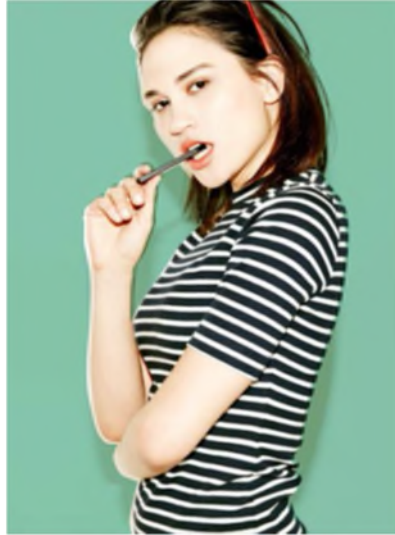
27 ³⁶⁶ INREJUUL_00057291-INREJUUL_00057295.

28 ³⁶⁷ See Appendix A, Advertisement 1 (example of targeting of young people).

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.”³⁶⁸



³⁶⁸ *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, Pax Labs, Inc. executives and directors discussed how to market the new product. On March 23, 2015,³⁶⁹ there was a meeting of the Board of Directors where the upcoming advertising campaign was discussed.³⁷⁰ According to Chelsea Kania, then Brand Manager at Pax Labs, Inc., at this meeting, “there was some commentary at the youthfulness of the models[,]” but “nobody disliked them” and “everybody agreed they are pretty ‘effective[.]’”³⁷¹ The Management Defendants knew that the ads targeted youth, but “Juul’s board of directors signed off on the company’s launch plans[.]”³⁷² In addition, “Monsees, who was CEO at the time, personally reviewed images from the billboard photo shoot while it was in session.”³⁷³ A senior manager later told the New York

³⁶⁹ INREJUUL_00371285.

³⁷⁰ INREJUUL_00371314.

³⁷¹ INREJUUL_00174387.

³⁷² 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>.

³⁷³ *Id.*

1 Times that “he and others in the company were well aware” that the marketing campaign “could
2 appeal to” teenagers.³⁷⁴

3 321. As part of the Vaporized campaign, JLI advertised on a 12-panel display over
4 Times Square.³⁷⁵ Billboard advertising of cigarettes has for years been unlawful under the Master
5 Settlement Agreement.



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18 322. These ads, which ran for nearly a month, generated an estimated 1.5 million
19 impressions per day.³⁷⁶

20 323. In fact, JLI’s Vaporized campaign was so effective that it gained national
21 attention on an October 15, 2015 episode of Late Night with Stephen Colbert, who ridiculed the
22 notion that the young, dancing models were consistent with a target market of adult smokers. As

23 ³⁷⁴ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*, N.Y.
24 Times (Aug. 27, 2018), [https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-](https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html)
marketing.html.

25 ³⁷⁵ See Appendix A, image 14; see also JUUL Image Galleries (2015-2018) SRITA Collection,
26 <https://inrejuul.myportfolio.com> (also available at
27 http://tobacco.stanford.edu/tobacco_main/subtheme_pods.php?token=fm_pods_mt068.php) (last
visited May 7, 2020) (additional images and videos).

28 ³⁷⁶ INREJUUL_00093933-INREJUUL_00093934.

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.”³⁷⁷

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.³⁷⁸ 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.³⁷⁹

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

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

³⁷⁷ *The Late Show With Stephen Colbert: Vaping is So Hot Right Now*, YouTube (Oct. 7, 2015), https://www.youtube.com/watch?v=PMtGca_7leM.

³⁷⁸ See Appendix A, Advertisement 3.

³⁷⁹ See Appendix A, Advertisement 65; see also JUUL Image Galleries (2015-2018) SRITA Collection, <https://inrejuul.myportfolio.com/twitter-1> (last visited May 7, 2020).

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; allfreekidscrafts.com; hellokids.com; and kidsgameheroes.com.

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



329. JLI also purchased banner advertisements on websites providing games targeted to younger girls,³⁸⁰ educational websites for middle school and high school students,³⁸¹ and other teen-targeted websites.³⁸²

³⁸⁰ The sites included dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com.

³⁸¹ 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.

³⁸² 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.

330. JLI knew what it was doing. In May 2015, Chelsea Kania contacted Cult Collective to raise concerns about advertising on younghollywood.com. Kania explained that the website's demographics are "age 12-34 . . . and *weighing the % who could actually afford JUUL against the risk we'd run being flagged for advertising on that site* – I don't think we should do it."³⁸³ 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.

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.³⁸⁴



335. By 2016, an estimated 20.5 million U.S. middle and high school students were exposed to advertisements for e-cigarettes, including JUUL.³⁸⁵

³⁸³ INREJUUL_00082179-INREJUUL_00082185.

³⁸⁴ 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>.

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

336. JLI used “influencers” to push their product to young people. Influencers are “high-social net worth” individuals who have developed large social media followings – *i.e.*, the “cool kids” of the social media world.³⁸⁶ Influencers are prized sources of brand promotion on social media networks.

337. Like its Vaporized campaign, JLI’s influencer strategy was youth-focused, with the stated aim of “show[ing] that the tastemakers, cool kids and early adopters who consume tobacco use JUUL.”³⁸⁷ In keeping with this strategy, JLI targeted influencers that were young and popular with adolescents. One influencer JLI targeted was Tavi Gevinson, who was 19 years old in the summer of 2015. The year before, Rolling Stone magazine described Gevinson as “possibly the most influential 18-year-old in America.”³⁸⁸

338. JLI contracted with Grit to enlist influencers by sending them free JUUL e-cigarettes. Documents obtained pursuant to a Congressional investigation show that in July 2015, JLI’s contract with Grit was for services that included “Influencer Relations,” in which Grit agreed to provide two “Social Buzzmakers” for six events within a four-week period, with each Social Buzzmaker having a minimum of 30,000 followers and be active on at least two social media channels, such as Instagram, Twitter, or Facebook. The contract provided that JLI would determine or approve the timing of the Buzzmakers’ posts. In addition, JLI engaged Grit to

³⁸⁵ 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>.

³⁸⁶ See INREJUUL_00091138 (Aug. 26, 2015 “JLI Influencer Program” defining an influencer as “individuals who have strong influence over their audience. We are aiming for influencers in popular culture with large audiences in various sectors such as music, movies, social, pop media, etc.”).

³⁸⁷ INREJUUL_00057293.

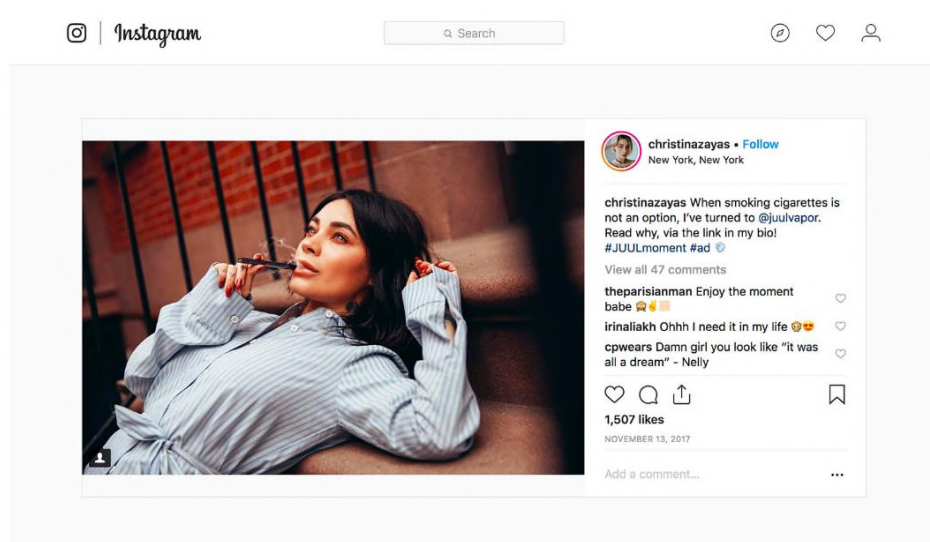
³⁸⁸ Alex Morris, *Tavi Gevinson: A Power Teen’s New Direction*, Rolling Stone (Aug. 14, 2014), <https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

“develop influencer engagement efforts to establish a network of creatives to leverage as loyalists for Juul/Pax brand activations.”³⁸⁹

339. Grit provided free JUULs to Luka Sabbat, known as the “the Internet’s Coolest Teenager,”³⁹⁰ who was 17 years old during the summer of 2015.

340. Grit targeted celebrities with large numbers of underage fans, including Miley Cyrus, former star of “Hannah Montana,” a series that aired for four seasons on the Disney Channel and won eight Teen Choice Awards.³⁹¹

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

³⁸⁹ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>. See JLI-HOR-00042050-052 at 050.

³⁹⁰ 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>.

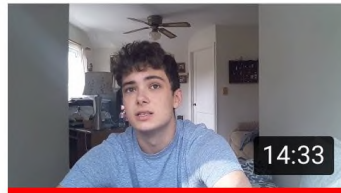
³⁹¹ See, INREJUUL_00091141 (Aug. 26, 2015 “JLI Influencer Seeding Chart” provided by Grit listing various celebrities and influencers, including Miley Cyrus).

1 paid directly by JLI, these influencers profited from the promotion of JUUL products either
 2 because they were paid by JUUL resellers, JUUL accessory sellers, or sellers of JUUL-
 3 compatible products.

4 343. For example, one YouTube user Donnysmokes (Donny Karle, age 21) created a
 5 JUUL promotional video in 2017 that garnered roughly 52,000 views, many of which were from
 6 users under the age of 18.³⁹² Since that time, Karle has made a series of videos, including videos
 7 titled “How to hide your JUUL from your parents” and “How to HIDE & HIT Your JUUL at
 8 SCHOOL WITHOUT Getting CAUGHT.”³⁹³ Karle has admitted to earning approximately
 9 \$1200 a month from unspecified sources simply from posting videos of himself consuming e-
 10 cigarettes, especially of JUUL products online.³⁹⁴



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

19 344. Karle also created a YouTube sensation called the “JUUL Challenge,” which is a
 20 play on the viral “Ice Bucket Challenge.” In the JUUL Challenge, the goal is to suck down as
 21 much nicotine as possible within a predetermined amount of time. The JUUL Challenge, which
 22

23 ³⁹² *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
 24 *Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019)
 25 (statement of Robert K Jackler, Professor, Stanford University),
[https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-](https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf)
[JacklerR-20190724.pdf](https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf).

26 ³⁹³ *Id.*

27 ³⁹⁴ Allie Conti, *This 21-year-old is Making Thousands a Month Vaping on YouTube*, Vice (Feb.
 28 5, 2018), [https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-](https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube)
[month-vaping-on-youtube](https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube).

1 promotes nicotine abuse and adolescent use of JUUL products, went viral like the Ice Bucket
 2 Challenge it mimicked. Soon, youth across the country were posting their own JUUL Challenge
 3 videos, a practice that continues to this day on YouTube, Instagram, Snapchat, and other social
 4 media platforms. In one recent JUUL Challenge on YouTube, which has received nearly 500,000
 5 views, the two teenagers filming themselves discussing the hundreds of thousands of views their
 6 prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge
 7 content.³⁹⁵

8 345. JLI knowingly sought and accepted the benefits of viral marketing and user-
 9 generated content. For example, JLI was aware of Karle’s videos and his young followers. A
 10 sales representative at JLI sent Karle a direct message on Twitter stating, “Thanks for the Juul
 11 plugs. There ya go. An actual JUUL employee thanking you.”³⁹⁶

12 346. JLI also recruited “affiliates” to help its viral marketing campaign. In or around
 13 2017, JLI began using a company called Impact Radius for the management of JLI’s affiliate
 14 program. Impact Radius’ affiliate application stated that JLI “auto-approve[d]” applications and
 15 did not ask for or confirm the affiliate’s age.³⁹⁷ JLI’s affiliates promoted JUUL on social media
 16 platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed
 17 to disclose that they were being paid to promote JUUL products.

18 347. JLI’s “affiliate program” recruited those who authored favorable reviews of its
 19 products by providing such reviewers with a 20% discount of purchases of JUUL products.³⁹⁸ It
 20
 21

22 ³⁹⁵ Nate420, JUUL Challenge (Apr. 22, 2018), https://youtu.be/gnM8hqW_2oo (last visited May
 23 7, 2020).

24 ³⁹⁶ Karle000009-011 at 009 (undated Twitter direct messages exchange).

25 ³⁹⁷ INREJUUL_00113437-INREJUUL_00113441.

26 ³⁹⁸ *Examining Juul’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
 27 *Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. (2019)
 28 (statement of Robert K. Jackler, Professor, Stanford University), <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

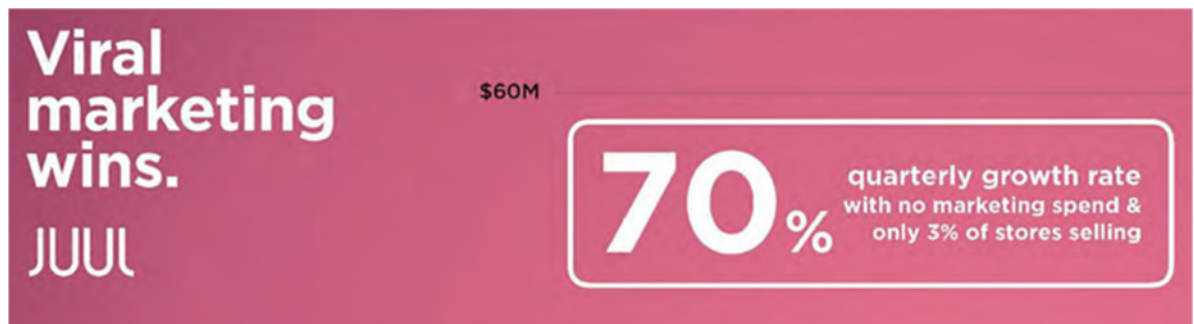
1 even recruited JUUL users to act as part of their marketing team by asking users to “refer a
2 friend and get a discount.”³⁹⁹

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

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

7 349. JLI deployed “viral marketing” techniques to great success. Viral marketing is
8 defined as “marketing techniques that seek to exploit pre-existing social networks to produce
9 exponential increases in brand awareness, through processes similar to the spread of an
10 epidemic.”⁴⁰⁰ Viral marketing effectively converts customers into salespeople, who, by sharing
11 their use of a product (on social media or otherwise), repeat a company’s representations and
12 endorse the product within their network. The success of viral marketing depends on peer-to-peer
13 transmission. Hence, a successful viral marketing campaign looks like a series of unrelated,
14 grassroots communications, when in fact they are the result of carefully orchestrated corporate
15 advertising campaigns.

16 350. As JLI boasted in a pitch deck to potential investors dated December 2016, “Viral
17 Marketing Wins.”⁴⁰¹



24 ³⁹⁹ *Id.* at 9.

25 ⁴⁰⁰ Dr. N. Deepa & Dr. S. Thenmozhi, *Viral Marketing as an On-Line Marketing Medium*, IOSR
26 J. of Bus. & Mgmt. 18, <http://iosrjournals.org/iosr-jbm/papers/ncibppte-volume-2/1115.pdf> (last
27 visited May 7, 2020); P. R. Datta *et al.*, *Viral Marketing: New Form of Word-of-Mouth Through Internet*, 3 The Bus. Rev. 69 (2005).

28 ⁴⁰¹ INREJUUL_00349529-560 at 541.

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.”⁴⁰²

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).⁴⁰³



⁴⁰² 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/>.

⁴⁰³ *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.”⁴⁰⁴

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. JLI’s hashtag marketing went beyond passive posts to being “very proactive to find and reach out to people who are (or might be) interested in JUUL. This means searching hashtags to engage, using widely used hashtags, paying close attention to our followers, being responsive to posts, etc.”⁴⁰⁵

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

356. Just as JLI intended, JUUL users began taking photos of themselves using JUUL devices and putting them on social media with the hashtag #juul. They were creating JUUL content that looked and felt like real JUUL ads: featuring young people having fun and using JUUL. The flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of thousands of user-generated posts.

357. JLI could have stepped in and attempted to stop the use of its trademark in posts directed to underage audiences, including the use of all the hashtags that contain the word “JUUL.” It could have sought to shut down infringing accounts such as @doit4juul and @JUULgirls. It did not do so.

⁴⁰⁴ 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>.

⁴⁰⁵ INREJUUL_00093294.

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

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

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

11 360. JLI marketed its products extensively in convenience stores, employing video and
12 product displays with bright colors and young adults using and displaying the JUUL device. The
13 retail marketing worked and, by late 2017, JUUL became the most popular e-cigarette sold in
14 convenience stores according to Nielsen data.⁴⁰⁶

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

21 362. Before JUUL's launch in 2015, JLI and Cult Collective developed packaging and
22 in-store displays that looked similar to iPhone packaging, which JLI knew would resonate with
23 young people and further JLI's campaign to be the "the iPhone of e-cigarettes."
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27 ⁴⁰⁶ Laura Bach, *JUUL and Youth: Rising E-Cigarette Popularity*, Campaign for Tobacco-Free
28 Kids (July 6, 2018), <https://www.tobaccofreekids.org/assets/factsheets/0394.pdf>.

363. As a 2015 marketing plan shows, JLI’s in-store promotional content “stands out” from competing tobacco products by conveying that the “JUUL brand is colorful, approachable, and fun – core elements of trade support assets.”⁴⁰⁷



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

364. JLI also sponsored at least 25 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.⁴⁰⁸ Instead, the invitations traded on PAX Labs, Inc.’s reputation as a manufacturer of marijuana vaporizers and promised attendees “free #JUUL starter kit[s],” live music, or slumber parties.⁴⁰⁹ 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.

⁴⁰⁷ INREJUUL_00370796-INREJUUL_00370806, 805.

⁴⁰⁸ See Appendix A, Advertisements 78-81.

⁴⁰⁹ *Id.*



Twitter



CONFIDENTIAL

BellaAGC0002146



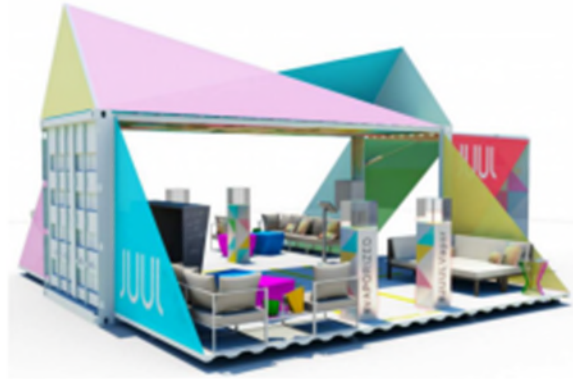
365. At these live social events, JLI gave attendees free JUUL “Starter Kits,” which contain a JUUL device and 4 JUUL pods of various flavors. JLI gave away samples at music events without age restrictions, including Outside Lands in San Francisco’s Golden Gate Park, and other events aimed at a youthful 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!”⁴¹⁰

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

367. 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

⁴¹⁰ JUUL Labs, Inc. (@JUULvapor), Twitter (Aug. 7, 2015), http://tobacco.stanford.edu/tobacco_web/images/pod/juul/twitter/large/twitter_18.jpg.

1 Angeles and New York City metro areas. The firm BeCore designed and created the container
 2 for JLI, and managed it as a mobile JUUL product sampling lounge.⁴¹¹



Juul's container bar

412

12 368. JLI also held sampling events in stores. By September 2015, JLI was on schedule
 13 to host sampling events in more than 5,000 stores in 20 cities in 12 states.⁴¹³ Documents obtained
 14 by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff
 15 these events and required a dress code that included skinny jeans, high-top sneakers or booties,
 16 and an iPhone in a JUUL-branded case.⁴¹⁴

20 ⁴¹¹ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*,
 21 Stanford Research Into the Impact of Tobacco Advertising 9 (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

22 ⁴¹² Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge
 23 (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

24 ⁴¹³ INREJUUL_00160394.

25 ⁴¹⁴ Jake Offenhartz, *Juul Hooked Teens Through Sick Parties and Hip Ambassadors*, NY AG
 26 Says, Gothamist (Nov. 19, 2019), <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),
 27 <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.
 28



369. 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. In a September 2017 email between PUSH and JLI, for example, PUSH offered suggestions “for the nightlife shifts” of “places that are popular for nightlife” that “would be great to hit,” including the Marquee nightclub in Chelsea, Provocateur, and Le Bain, a penthouse discotheque.⁴¹⁵

370. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events,⁴¹⁶ it continued to reach out to new users by offering samples, sometimes at \$1 “demo events.” Like so many of JLI’s initiatives, promotions of this kind are prohibited for cigarette companies by the Master Settlement Agreement.

371. The effect – and purpose – of JLI’s Vaporized giveaways was to flood major cities with products that would hook thousands of new users, and to generate buzz for the brand

⁴¹⁵ INREJUUL_00158794-803 at 794.

⁴¹⁶ See Nik Davis (@bigbabynik), Twitter (Nov. 17, 2017), <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), <https://docs.house.gov/meetings/GO/GO05/20190724/109844/HHRG-116-GO05-Wstate-JacklerR-20190724.pdf>.

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

3 372. According to BeCore, one of the firms responsible for designing and
4 implementing JLI's live events, JLI distributed the nicotine-equivalent of approximately 500,000
5 packs of cigarettes at all 25 events.⁴¹⁷ And this was just to get people started.

6 **7. The Management Defendants' Direction and Participation in**
7 **the Youth Marketing Schemes**

8 **a. The Management Defendants, and in Particular Bowen,**
9 **Monsees, Pritzker, Huh, and Valani, Oversaw the Youth**
10 **Marketing Scheme.**

11 373. The Management Defendants were well aware that JUUL branding was oriented
12 toward teens and duplicated earlier efforts by the cigarette industry to hook children on nicotine.
13 The Management Defendants directed and approved JUUL branding to be oriented toward
14 teenagers. The Management Defendants directed and participated in each marketing campaign
15 pushing the JUUL e-cigarette, as they had "final say" over all marketing campaigns (including
16 the Vaporized campaign and the other formal and informal marketing efforts described
17 above),⁴¹⁸ and Monsees provided specific direction on the content of the website to JLI
18 employees.

19 374. After launch, executives and directors discussed whether to rein in the advertising
20 to teenagers. According to Scott Dunlap, then Chief Operating Officer, in June 2015, Nicholas
21 Pritzker commented that the branding "feels too young[.]"⁴¹⁹ In early July 2015, Nicholas
22 Pritzker, Riaz Valani, and Alexander Asseily "spoke[] at length on the JUUL approach[.]" and
Asseily also "spoke to James [Monsees] at length" on the same topic.⁴²⁰ Asseily followed up

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

25 ⁴¹⁸ *Examining JLI's Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcomm.*
26 *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.).

27 ⁴¹⁹ JLI00206239.

28 ⁴²⁰ JLI00214617.

1 with a lengthy email to Valani and Pritzker, which he also sent to Richard Mumby. He began by
 2 noting that “our fears around tobacco / nicotine are not going away. We will continue to have
 3 plenty of agitation if we don’t come to terms with the fact that these substances are almost
 4 irretrievably connected to the shittiest companies and practices in the history of business.”⁴²¹ He
 5 stated that “an approach needs to be taken that actively, if implicitly, distances us from [Big
 6 Tobacco]: what we say, the way we sell, the way we run the company, what we emphasi[z]e,
 7 who we hire, etc.”⁴²² Referring to JLI’s strategy to use the same marketing techniques as major
 8 tobacco companies used to market to youths, Asseily added that “[t]he trouble with just doing
 9 ‘what the others do’ is that we’ll end up as Nick [Pritzker] rightly points out in the same ethical
 10 barrel as them, something none of us want no matter the payoff (I think).”⁴²³ He continued that
 11 “the world is transparent and increasingly intolerant of bullshit. It’s not about faking it - it’s
 12 about doing it correctly . . . which could mean *not doing a lot of things we thought we would do*
 13 *like putting young people in our poster ads or drafting in the wake of big players in the*
 14 *market.*”⁴²⁴

15 375. But some company leaders, including Huh, opposed any actions to curb youth
 16 sales. Youth sales were a large potential source of revenue.⁴²⁵ As one manager explained,
 17 perhaps “people internally had an issue” with sales of JUULs to teenagers, “[b]ut a lot of people
 18 had no problem with 500 percent year-over-year growth.”⁴²⁶ And company leaders understood
 19 that teenagers who were hooked on nicotine were the most likely segment to become lifelong
 20 addicts and thus were the most profitable customers to target.⁴²⁷

21 ⁴²¹ *Id.*

22 ⁴²² *Id.*

23 ⁴²³ *Id.*

24 ⁴²⁴ *Id.*

25 ⁴²⁵ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5,
 26 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

27 ⁴²⁶ *Id.*

28 ⁴²⁷ *Id.*

1 376. In October 2015, JLI leadership resolved the debate in favor of selling to teens.
 2 Even though the directors and executives of JLI knew – and explicitly stated – that what they
 3 were doing was wrong, JLI pressed ahead with its youth-oriented Vaporized ad campaign
 4 through early 2016.⁴²⁸

5 377. The company also implemented the Board’s decision in October 2015 to target
 6 and sell to minors in many other ways. For example, in early October 2015, sales and marketing
 7 employees of Pax Labs, Inc. noted that only 74% of users were able to pass the age gate on the
 8 website, “which is a steep decline in sales for us.”⁴²⁹ In mid-January 2016, a similar group of
 9 employees estimated that about 11% of those reaching the JUUL Purchase Confirmation Page on
 10 Pax Labs, Inc.’s own website were under 18 years old.⁴³⁰ But, rather than strengthen JUUL’s age
 11 verification system, Pax Labs, Inc. worked to weaken it. In February 2016,⁴³¹ Pax Labs, Inc.
 12 modified the age verification system so that 92% of users were able to pass the age gate.⁴³² By
 13 changing the age verification process so that users were more likely to pass – while knowing that
 14 some minors had already been able to pass before the change – Pax Labs deliberately chose to
 15 continue selling to underage purchasers.

16 378. In July 2015, Asseily suggested “a cheeky campaign that asks existing smokers to
 17 return their unused cigarette packets (or other vaping products) to us in return for a discount on
 18 JUUL” because that would “send the only message that’s needed: JUUL is a superior alternative
 19
 20

21 ⁴²⁸ The Vaporized advertising campaign continued at least into early 2016. Robert K. Jackler *et*
 22 *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.

23 ⁴²⁹ INREJUUL_00276445.

24 ⁴³⁰ Native attachment to INREJUUL_00078494.

25 ⁴³¹ JLI00068428.

26 ⁴³² Kate Horowitz’s LinkedIn profile, <https://www.linkedin.com/in/k8horowitz> (last visited May
 27 7, 2020) (stating that while serving as an Ecommerce Product Manager at PAX Labs, Inc. from
 28 July 2015 to May 2016, she “[i]ncreased success rate of age verification by 25%, up from 74% to
 92%”).

1 to conventional smoking and mediocre vaping products.”⁴³³ But JLI did not run this campaign
 2 then and in fact did not begin focusing its advertising on switching from combustible cigarettes
 3 until 2018.⁴³⁴

4 379. By March 2016, however, JLI employees internally recognized that JLI’s efforts
 5 to market to children were too obvious. On March 2, 2016, Richard Mumby, the Chief
 6 Marketing Officer, sent a document related to JLI’s branding to Hoyoung Huh and a number of
 7 other marketing employees of JLI.⁴³⁵ According to Mumby, he was sending the document
 8 because Hoyoung Huh “indicated that [he] would review [JLI’s] brand and collateral positioning
 9 on behalf of the board.”⁴³⁶ The attached document noted that “[t]he models that we used for the
 10 #Vaporized campaign appeared to be too youthful for many consumers (and the media)[.]”⁴³⁷
 11 Under a header that listed as one of JLI’s “Objectives” to “Be Different & Have Integrity[,]” the
 12 document stated that “[w]e need to be sensitive to the subjectivity of youthfulness by positioning
 13 the brand to be mature and relatable.”⁴³⁸ On March 11, 2016, Mumby sent another version of this
 14 document to Hoyoung Huh and Zach Frankel, who was an observer on the Board and would later
 15 become a director, and Mumby thanked them “for the support on this.”⁴³⁹ Around this time, Pax
 16 Labs, Inc. reoriented its JUUL advertising from the explicitly youth-oriented Vaporized
 17 campaign to a more subtle approach to appeal to the young. The advertising’s key themes

18
 19
 20
 21 ⁴³³ JLI00214617.

22 ⁴³⁴ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*,
 23 Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 16.

24 ⁴³⁵ INREJUUL_00178377.

25 ⁴³⁶ INREJUUL_00061469.

26 ⁴³⁷ INREJUUL_00178379.

27 ⁴³⁸ INREJUUL_00178384.

28 ⁴³⁹ INREJUUL_00061274.

1 continued to include pleasure/relaxation, socialization/romance, and flavors⁴⁴⁰ – all of which still
 2 appealed to teenagers, as was made clear in the previous litigation against the cigarette industry.

3 380. The Management Defendants continued to direct and approve misleading
 4 marketing campaigns long after launch. For example, JLI deceptively marketed mint to youth,
 5 through flavor-driven advertising, hashtag campaigns, and ads cross-promoting mango and mint.
 6 Through their positions on the JLI Board of Directors, the Management Defendants were directly
 7 responsible for this marketing, as they had “final say” over all of JLI’s marketing activities.⁴⁴¹ In
 8 other words, JLI and the Management Defendants controlled the messaging around JUUL
 9 products.

10 381. 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.

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

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

24
 25 ⁴⁴⁰ Robert K. Jackler *et al.*, *JUUL Advertising Over Its First Three Years on the Market*,
 26 Stanford Research Into the Impact of Tobacco Advertising (Jan. 31, 2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf at 9.

27 ⁴⁴¹ *Examining JLI’s Role in the Youth Nicotine Epidemic: Part II: Hearing Before the Subcomm.*
 28 *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.

384. 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.

385. For example, JLI stopped interacting with the press in the summer of 2015 while its Board of Directors, led by Bowen, Monsees, Pritzker, Huh, and Valani, was finalizing a “messaging framework.”⁴⁴² A legitimate business enterprise would typically ramp up, rather than shut down, press outreach at the very time the company is supposed to be building awareness for its recently launched product.

386. 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 JLI stopped traditional press engagement, the Board of Directors was directing and monitoring the launch plans that they had set in motion – including the launch of sponsored content on social media in July 2015 (which content did not include any warnings about JUUL’s nicotine content or health risks).⁴⁴³

387. 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.

388. 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

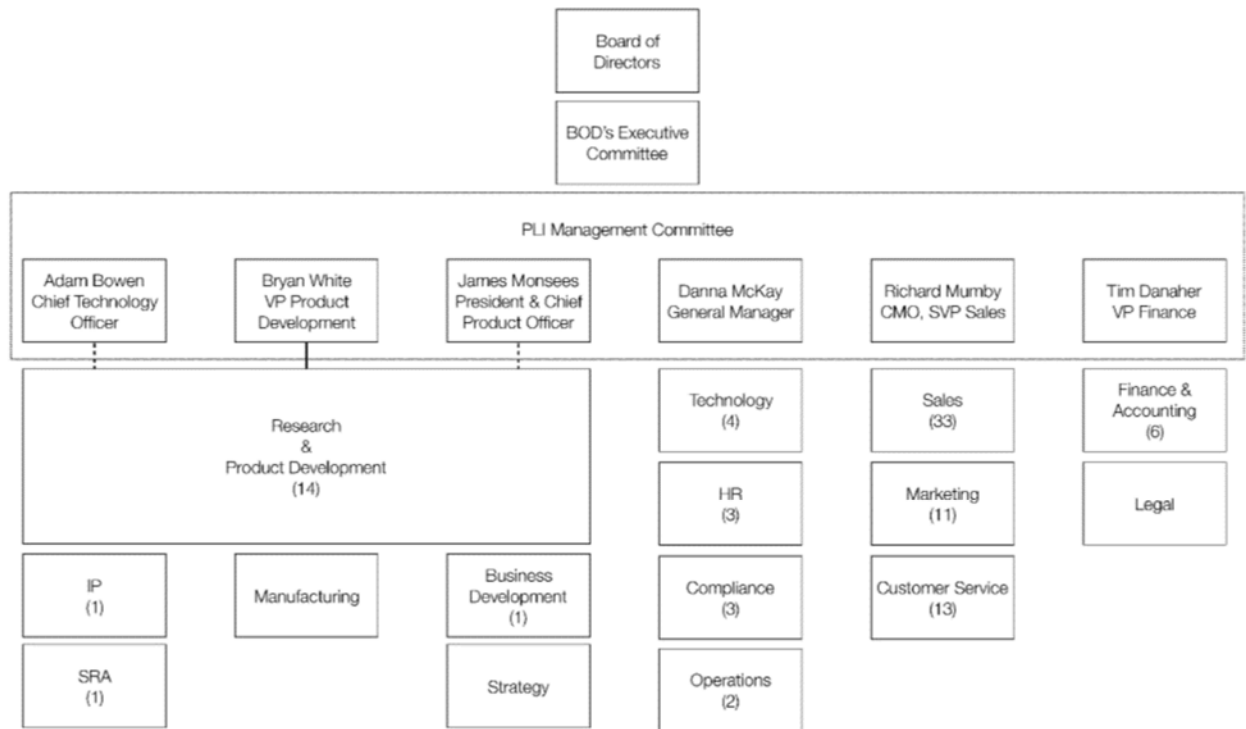
⁴⁴² INREJUUL_00056077 [Confidential].

⁴⁴³ *Id.*

1 fraudulently marketing JUUL products, including to youth. The Management Defendants, and in
 2 particular Huh, wanted to continue their fraudulent marketing, knowing that these ads were also
 3 targeted to youth, “argu[ing] that the company couldn’t be blamed for youth nicotine
 4 addiction[.]”⁴⁴⁴

5 389. JLI’s organizational charts later reflected the executive committee in the place of
 6 a CEO. Before late 2015, the company’s organizational charts showed the CEO at the head of the
 7 company, reporting to the Board.⁴⁴⁵

8 390. After Monsees was removed as CEO, the executive committee appeared in the
 9 place of the CEO.⁴⁴⁶



22 391. Board minutes also illustrate the direct control of the company and all the critical
 23 decisions about how to market JLI by the Executive Committee. Until late October 2015,
 24

25 ⁴⁴⁴ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5,
 26 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

27 ⁴⁴⁵ See INREJUUL_00016456 (July 9, 2014).

28 ⁴⁴⁶ INREJUUL_00278332 (Dec. 7, 2015); INREJUUL_00061420 (Apr. 21, 2016).

Monsees ran Board meetings.⁴⁴⁷ In late October 2015 and thereafter, however, Huh began running Board meetings.⁴⁴⁸ Also, the late October minutes report that the “Board discussed . . . the additional responsibilities that would be assigned to Bryan White” (who was a Vice President of Engineering and Product Design at the time), and furthermore, that “[a] discussion followed regarding who Bryan should report to, and it was agreed that the executive committee that had been formed since the last Board meeting, consisting of Messrs. Huh, Pritzker and Valani, would address this issue.”⁴⁴⁹ Additionally, the Board “discussed how these new roles and responsibilities would be communicated internally.”⁴⁵⁰ As these minutes illustrate, the Executive Committee was acting as the CEO of the company at this time.

392. Similarly, in December 2015, at Board of Directors/Executive Committee meeting, it was decided that “Hoyoung [Huh] will make decisions on behalf of the BOD [Board of Directors] Exec[utive] Comm[ittee]” and “3-4 days/week Nick [Pritzker] and/or Hoyoung [Huh] will be in the office” to “help us manage our people[.]”⁴⁵¹

393. Over the next year, until the installation of a new CEO in August 2016, Defendants Pritzker, Huh, and Valani used their newly formed Executive Committee to expand the number of addicted e-cigarette users through fraudulent advertising and representations to the public. They cleaned house at JLI by “dismiss[ing] other senior leaders and effectively tak[ing] over the company.”⁴⁵² Defendants Huh, Pritzker, and Valani wanted even “more aggressive rollout and [marketing].”⁴⁵³ Despite any potential internal misgivings about their fraudulent

⁴⁴⁷ See INREJUUL_00278406 *et seq.* (Oct. 5, 2015); INREJUUL_00278410 *et seq.* (Sept. 24, 2015).

⁴⁴⁸ See INREJUUL_00278404 *et seq.* (Oct. 26, 2015); INREJUUL_00278402 *et seq.* (Nov. 10, 2015).

⁴⁴⁹ INREJUUL_00278405 (Oct. 26, 2015).

⁴⁵⁰ *Id.*

⁴⁵¹ INREJUUL_00061856.

⁴⁵² 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>.

⁴⁵³ INREJUUL_00278359.

conduct, notably, none of Management Defendants terminated their relationship with JLI during this time period.

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.

394. 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.”⁴⁵⁴ 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.”⁴⁵⁵ Adam Bowen admitted that “he was aware early on of the risks e-cigarettes posed to teenagers[.]”⁴⁵⁶ On January 5, 2016, Gal Cohen forwarded a presentation dated December 16, 2015, which asked the question: “If *large numbers of youth are initiating tobacco use with flavored e-cigarettes*, but adults [sic] smokers may benefit from completely switching to an e-cigarette, what should the market look like?”⁴⁵⁷ It was common knowledge within JLI that JUULs were being sold to children.

⁴⁵⁴ Chris Kirkham, *Juul Disregarded Early Evidence it was Hooking Teens*, Reuters (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

⁴⁵⁵ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?: The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, N.Y. Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

⁴⁵⁶ *Id.*

⁴⁵⁷ INREJUUL_00339938 (emphasis added).

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

3 396. Furthermore, it was obvious to those outside the company that JLI was selling
4 JUUL products to children. In June 2015, reporting on the “Vaporized” campaign that
5 accompanied the JUUL launch, AdAge reported that John Schachter, director of state
6 communications for Campaign for Tobacco-Free Kids, “expressed concern about the JUUL
7 campaign because of the youth of the men and women depicted in the campaign, especially when
8 adjoined with the design” and added that there had been “obvious trends that appeal to
9 adolescents in e-cigarette campaigns^[.]”⁴⁵⁸ Robert Jackler, a Stanford physician who investigated
10 JLI’s launch campaign, concluded that “JLI’s launch campaign was patently youth-oriented.”⁴⁵⁹
11 JLI’s commercials’ attempts to appeal to teenagers were so obvious that, by October 2015,
12 Stephen Colbert ran a satirical segment on it that noted, among other things: “And it’s not just
13 ads featuring hip young triangles that appeal to the youths; so do vape flavors like cotton candy,
14 gummi bear, and skittles.”⁴⁶⁰

15 397. Moreover, the Management Defendants knew that kids were marketing JLI
16 products on social media, and some even sought to take advantage of that to build the JLI brand.
17 For example, on July 16, 2016, Adam Bowen emailed Tyler Goldman about social media posts
18 by children about JUUL e-cigarettes, stating, “I’m astounded by this ‘ad campaign’ that
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23 ⁴⁵⁸ Declan Harty, *JUUL Hopes to Reinvent E-Cigarette Ads with ‘Vaporized Campaign’*, AdAge
24 (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

25 ⁴⁵⁹ Erin Brodwin, *See how Juul turned teens into influencers and threw buzzy parties to fuel its*
26 *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>.

27 ⁴⁶⁰ *The Late Show with Stephen Colbert: Vaping is So Hot Right Now*, YouTube (Oct. 7, 2015),
28 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.

1 apparently some rich east coast boarding school kids are putting on.”⁴⁶¹ Bowen added that “Riaz
2 [Valani] was thinking maybe we can leverage user generated content.”⁴⁶²

3 **b. JLI Closely Tracked Its Progress in Reaching Young**
4 **Customers Through Social Media and Online Marketing.**

5 398. Tracking the behaviors and preferences of youth that are under 21, and especially
6 those under 18, has long been essential to the successful marketing of tobacco products. Whether
7 the activity is called “tracking” or “targeting,” the purpose has always been the same: getting
8 young people to start smoking and keeping them as customers.

9 399. As early as 1953, Philip Morris was gathering survey data on the smoking habits
10 of “a cross section of men and women 15 years of age and over.”⁴⁶³ Commenting on these data,
11 George Weissman, then-Vice President of Philip Morris, observed that “we have our greatest
12 strength in the 15-24 age group.”⁴⁶⁴

13 400. Traditional approaches to youth tracking (*e.g.*, interviews conducted face-to-face
14 or over the telephone) were limited, however, in that they often failed to capture data from
15 certain subsets of the target market. As a Philip Morris employee noted in a June 12, 1970
16 memorandum, Marlboro smokers were “among the types of young people our survey misses of
17 necessity (on campus college students, those in the military and those under 18 years of age).”⁴⁶⁵

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

23 ⁴⁶¹ JLI00382271.

24 ⁴⁶² *Id.*

25 ⁴⁶³ Philip Morris Vice President for Research and Development, Why One Smokes, First Draft,
26 1969, Autumn (Minnesota Trial).

27 ⁴⁶⁴ *United States v. Philip Morris*, 449 F. Supp. 2d 1, 581 (D.D.C. 2006).

28 ⁴⁶⁵ *Id.*

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

3 403. Between 2015 and 2017, JUUL-related posts on Twitter increased quadratically,
4 which is the exact result to be expected from an effective viral marketing campaign.⁴⁶⁶ Its growth
5 on Instagram was likely even more rapid.

6 404. A 2018 study of JLI's sales and presence on social media platforms found that JLI
7 grew nearly 700%, yet spent "no recorded money" in the first half of 2017 on major advertising
8 channels, and spent only \$20,000 on business-to-business advertising.⁴⁶⁷ Despite JLI's
9 apparently minimal advertising spend in 2017, the study found a significant increase in JUUL-
10 related tweets in 2017.⁴⁶⁸

11 405. On Instagram, the study found seven JUUL-related accounts, including
12 DoIt4JUUL and JUUL.girls, which accounted for 4,230 total JUUL-related posts and had more
13 than 270,000 followers.⁴⁶⁹

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

19 407. The lead author of the study concluded that JLI was "taking advantage" of the
20 reach and accessibility of multiple social media platforms to "target the youth and young adults .
21 . . because there are no restrictions" on social media advertising.⁴⁷⁰

23 ⁴⁶⁶ See Brittany Emelle *et al.*, *Mobile Marketing of Electronic Cigarettes in the U.S.* (May
24 2017), <https://www.slideshare.net/YTHorg/mobile-marketing-of-electronic-cigarettes>.

25 ⁴⁶⁷ Jidong Huang *et al.*, *Vaping versus JUULing: how the extraordinary growth and marketing*
26 *of JUUL transformed the US retail e-cigarette market*, Tobacco Control (May 31, 2018),
<https://tobaccocontrol.bmj.com/content/28/2/146.full>.

27 ⁴⁶⁸ *Id.*

28 ⁴⁶⁹ *Id.*

1 408. Similarly, an account named @JUULnation was established on Instagram and
 2 posted tips on how to conceal JUUL devices in school supplies. The account also ridiculed
 3 efforts to combat JUUL use in schools, promoted videos of JUUL influencers, and promoted
 4 videos like the “JUUL Challenge,” in which users inhale as much JUUL nicotine vapor as
 5 possible in a fixed period of time. JLI repeatedly used the hashtag “#JUULnation” on posts on its
 6 own Instagram account, for example when advertising its “Cool Mint” JUULpods, JUUL’s
 7 portability, or party mode.⁴⁷¹

8 409. A separate study of e-cigarette advertising on mobile devices, where young
 9 people spend most of their day consuming media, found that 74% of total advertising
 10 impressions were for JUUL products.⁴⁷²

11 410. A 2019 study found that as much as half of JUUL’s Twitter followers were aged
 12 13 to 17.⁴⁷³

13 411. A 2019 study characterizing JUUL-related Instagram posts between March and
 14 May 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram
 15 accounts, more than half were related to youth or youth lifestyle.⁴⁷⁴

18 ⁴⁷⁰ Laura Kelly, *JUUL Sales Among Young People Fueled by Social Media, Says Study*, The
 19 Wash. Times (June 4, 2018), <https://www.washingtontimes.com/news/2018/jun/4/juul-sales-among-young-people-fueled-by-social-med/>.

20 ⁴⁷¹ JLI00682401-484 at 428, 444, 451; *see also* Stanford University, *Research into the Impact of*
 21 *Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_11.jpg; Stanford
 22 University, *Research into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_web/images/pod/juul/instagram/large/ig_12.jpg.

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

25 ⁴⁷³ Steven Reinberg, *Study: Half of Juul’s Twitter followers are teens, young adults*, HealthDay
 26 News (May 20, 2019) https://www.upi.com/Health_News/2019/05/20/Study-Half-of-Juuls-Twitter-followers-are-teens-young-adults/1981558384957/.

27 ⁴⁷⁴ Lauren Czaplicki *et al.*, *Characterising JUUL-related posts on Instagram*, Truth Initiative
 28 (Aug. 1, 2019), <https://tobaccocontrol.bmj.com/content/early/2019/07/30/tobaccocontrol-2018-054824>.

1 412. Some Twitter users have reported what appear to be JUUL bots.⁴⁷⁵ Other Twitter
2 users appear to either be bot accounts or native advertisers, in that they have a small number of
3 followers, follow few other users, and post exclusively about JUUL content.⁴⁷⁶

4 413. By April 2018, searching “JUUL” on YouTube yielded 137,000 videos with 43
5 videos having over 100,000 views.⁴⁷⁷ Of these, a huge number were plainly related to underage
6 use, including: 1,730 videos on “hiding JUUL in school,” 789 on “JUUL in school bathroom,”
7 992 on “hiding JUUL at home,” and 241 on “hiding JUUL in Sharpie.”⁴⁷⁸

8 414. In 2018, JLI was internally collecting hundreds of social media posts – directed at
9 JLI – informing it of JUUL’s wild popularity with young people and in many cases requesting
10 that JLI do something to stop it.⁴⁷⁹

11 **9. JLI Coordinated with Veratad Technologies LLC to Expand**
12 **Youth Access to JUUL Products.**

13 415. At the same time JLI and the Management Defendants were taking coordinated
14 actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to
15 ensure a steady and growing customer base through unlawful marketing and distribution
16 activities, they were coordinating with an outside entity – Veratad Technologies LLC
17 (“Veratad”) – to get JUULs into the hands of the largest number of consumers possible.

18 416. JLI’s website, including its online store, was pivotal to these efforts. Early
19 marketing documents show that JLI planned a “consumer journey” that started with a consumer
20 being exposed to misleading JUUL marketing in stores, where JLI’s “fun” and “approachable”
21 in-store marketing would lead consumers to JLI’s website for additional misrepresentations and

22 ⁴⁷⁵ 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 May 7, 2020).

23 ⁴⁷⁶ Hennrythejuul (@hennrythejuul), Twitter (Mar. 4, 2020) <https://twitter.com/hennrythejuul>.

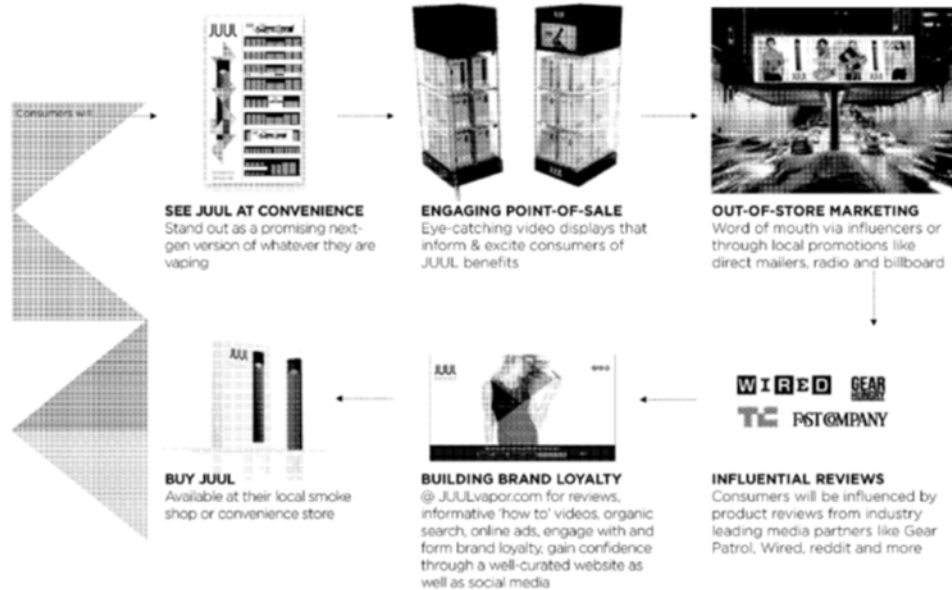
24 ⁴⁷⁷ Divya Ramamurthi *et al.*, *JUUL and Other Stealth Vaporizers: Hiding the Habit from*
25 *Parents and Teachers, Tobacco Control* 2019, Stanford Univ. (Sept. 15, 2018),
<https://www.ncbi.nlm.nih.gov/pubmed/30219794>.

26 ⁴⁷⁸ *Id.*

27 ⁴⁷⁹ Complaint at 60, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18,
28 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

omissions about JUUL products, an email subscription sign-up, and purchases through JLI's ecommerce platform:⁴⁸⁰

CUSTOMER JOURNEY



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INREJUUL_00329660

417. JLI coordinated with Veratad to provide age verification services for its website from 2015 to 2018. Veratad has also provided age verification services to other e-cigarette sellers, including Lorillard⁴⁸¹ and Altria.⁴⁸² Consistent with the claim on Veratad's website that *"You can create your own verification rules,"* the company encouraged sellers like JLI to set the desired compliance level for age verification. As a member of a major e-cigarette trade organization, Veratad also offered insight into what competitors were doing, and offered to "guide your setup to follow industry best practices for age verification."

418. Though it is illegal to sell and ship e-cigarettes to minors under both state and federal law, JLI and Veratad designed and implemented an age verification system designed to

⁴⁸⁰ INREJUUL_00329660.

⁴⁸¹ Staff of Senator Richard Durbin *et al.*, 113th Cong., *Gateway to Addiction?* (Apr. 14, 2014), <https://www.durbin.senate.gov/imo/media/doc/Report%20-%20E-Cigarettes%20with%20Cover.pdf>.

⁴⁸² INREJUUL_00174362.

1 maximize the number of prospective purchasers who “pass” the process rather than to minimize
2 the number of underage sales.⁴⁸³ As a result of these intentionally permissive age verification
3 practices, JLI and Veratad used online payment systems and the U.S. mails to ship tens of
4 millions of dollars of JUULpods to unverified customers, many of whom were minors.

5 419. From June 2015 through the end of 2018, the age verification process on JLI’s
6 website typically prompted prospective purchasers to submit their name, address, and date of
7 birth, which JLI forwarded to Veratad. Veratad then attempted to match all or some limited part
8 of the consumer’s information to a person of the minimum legal sales age in its database. If
9 Veratad was able to locate a sufficient match of the prospective purchaser to a person of the
10 minimum legal sales age in its database, then it would return a “pass” result to JLI. If Veratad
11 was unable to make such a match, Veratad returned a “fail” result to JLI.

12 420. If Veratad returned a “fail” result to JLI, rather than decline the prospective
13 purchaser, JLI would prompt the person to enter an “alternate” address. If Veratad still could not
14 find a match based on this alternate address, JLI would prompt the consumer to enter the last
15 four digits of his or her social security number.

16 421. If Veratad, supplied with the last four digits of a consumer’s social security
17 number, still could not match the consumer to a person of the minimum legal sales age in its
18 database, JLI would prompt the consumer to upload an image or photograph of his or her
19 driver’s license or another governmental identification document. A JLI employee would then
20 conduct a personal review of the image and decide whether the consumer was of the minimum
21 legal sales age.

22 422. 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
24 information had to match records in Veratad’s database in order to “pass” the age verification
25 process. JLI and Veratad could also set, or modify, the applicable minimum legal sales age to be
26 used for verification.

27 ⁴⁸³ Complaint at 165, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18,
28 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

423. 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.⁴⁸⁴ For example, on May 25, 2016, JLI employees discussed an online purchase of JUUL products made by a 15-year-old boy.⁴⁸⁵ A JLI employee wrote that "[t]his order had failed age verification a few times with the person's information as below. The person even uploaded an ID, which was obviously fake and rejected by us. Then, the user entered a different email address and passed from Veratad, and the order was sent."⁴⁸⁶ The employee discussed a communication with Veratad that confirmed that Veratad did not review the date of birth entered by the user when determining whether a person passed age verification for JUUL.⁴⁸⁷ JLI recognized that "[t]his situation can potentially happen again."⁴⁸⁸

424. 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. Internal JLI documents confirm that JLI discussed underage purchases with Veratad. For example, on May 27, 2016, JLI's Head of Compliance & Brand Protection wrote that an "underage purchaser changed his email address; which, allowed the order to be passed by Veratad. . . . I believe that Nick and his team are still looking into the matter with Veratad to see if they can get a better understanding of what happened."⁴⁸⁹ A JLI employee replied "hmmm. Probably impossible to put up an age gate that thwarts a committed teenager from penetrating it :)"⁴⁹⁰

⁴⁸⁴ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?: The e-cigarette company says it never sought teenage users, but the F.D.A. is investigating whether Juul intentionally marketed its devices to youth*, N.Y. Times (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

⁴⁸⁵ INREJUUL_00300253-INREJUUL_00300258 at 257.

⁴⁸⁶ *Id.* at 256.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.* at 253.

⁴⁸⁹ INREJUUL_00209176-INREJUUL_00209180 at 176.

⁴⁹⁰ *Id.*

1 425. Nevertheless, the two companies worked together to find ways to “bump up
2 [JLI’s] rate of people who get through age verification.”⁴⁹¹ JLI repeatedly sought, and Veratad
3 repeatedly recommended and directed, changes to the age verification process so that more
4 prospective JUUL purchasers would “pass.” Both did so in an effort to increase direct sales of
5 JLI’s e-cigarettes without regard to whether it’s less stringent age verification process would
6 permit more underage consumers to purchase them.

7 426. Between June 2015 and August 2017 (and perhaps even through early 2018), JLI
8 and Veratad tailored the age verification system to “pass” prospective purchasers even if certain
9 portions of the purchaser’s personal information – *e.g.*, the purchaser’s street address or date of
10 birth – did not match the information corresponding to a person of the minimum legal sales age
11 in Veratad’s database.⁴⁹²

12 427. Similarly, between June 2015 and August 2017, JLI and Veratad tailored the
13 system to “pass” a prospective purchaser under certain circumstances even when the prospective
14 purchaser’s year of birth did not match the information corresponding to a person of the
15 minimum legal sales age in Veratad’s database.

16 428. JLI and Veratad sought to increase “pass” rates by modifying the age verification
17 system to allow users multiple opportunities to change their personal information if a match was
18 not initially found in an appropriate government database. A Veratad Performance Report from
19 August 5, 2017, shows that for 1,963 consumers Veratad recorded 3,794 transactions – an
20 average of 1.93 attempts per consumer.⁴⁹³ Only 966 consumers – less than half – passed age

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22 ⁴⁹¹ INREJUUL_00276489-INREJUUL_00276490

23 ⁴⁹² Complaint at 43, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18,
24 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>. A January 29, 2018
25 email exchange between Tom Canfarotta, Director of Strategic Accounts & Client Quality
26 Services at Veratad, and Annie Kennedy, JUUL’s Compliance Manager, reveals this to have
27 been the case. Kennedy asked Canfarotta why a particular customer had “passed via the address
28 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.

⁴⁹³ *Id.*

1 verification on the first attempt.⁴⁹⁴ By allowing consumers to alter their personal information and
 2 attempt age verification up to three times, JLI was able to increase its database match pass rate
 3 from 49.2% to 61.2%.⁴⁹⁵

4 429. By design, these lax requirements ensured underage consumers could “pass” JLI’s
 5 age verification process and purchase JUUL e-cigarettes directly from JLI’s website by using
 6 their parent’s name, home address, and an approximate date of birth. JLI was aware of this fact,
 7 as evidenced by the multiple complaints it received from parents who alleged their children did
 8 just that.⁴⁹⁶

9 430. JLI directed and approved the system it had implemented with Veratad that
 10 caused accounts with “bad info” to be “AV approved” but, as a Senior Business Systems
 11 Manager at JLI commented, “if [v]eratad passed it [then] it’s not on us.”

12 431. JLI customer service representatives even encouraged those who failed age
 13 verification to “make multiple accounts in order to pass AV [age verification].”⁴⁹⁷ Customer
 14 service representatives would go so far as to alter identifying information for them; a Slack chat
 15 among customer service representatives confirmed that representatives were authorized to
 16 “adjust the street address, apartment number, or zip code” associated with shipment.⁴⁹⁸

17 432. The age verification procedures designed by JLI and Veratad have allowed
 18 hundreds of thousands of e-cigarette products to be sold and/or delivered to fictitious individuals
 19 at fictitious addresses.⁴⁹⁹ Many of these improper sales may have been made to underage
 20 purchasers or to resellers who sold the products to underage consumers on the grey market.⁵⁰⁰

21 ⁴⁹⁴ *Id.*

22 ⁴⁹⁵ *Id.*

23 ⁴⁹⁶ INREJUUL_00184119.

24 ⁴⁹⁷ INREJUUL_00215324-INREJUUL_00215325.

25 ⁴⁹⁸ Complaint at 168, *People v. JUUL Labs, Inc.*, No. RG19043543 (Super. Ct. of Cal. Nov. 18,
 26 2019), <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

27 ⁴⁹⁹ *Id.* at 138.

28 ⁵⁰⁰ *Id.*

1 433. By divorcing the address from the other customer data in the age verification
 2 process, JLI and Veratad allowed consumers to request that tobacco products be sent to locations
 3 other than their permanent legal residences.⁵⁰¹ For example, JLI sent thousands of orders to
 4 commercial high rises and office parks.⁵⁰² It is unlikely these orders would have been approved
 5 had JLI and Veratad required that addresses provided by users match information in an
 6 appropriate government database and followed the requirement that the shipping address and
 7 billing address be the same.⁵⁰³

8 434. The failure of the JLI/Veratad age verification procedure was intentional.⁵⁰⁴ And
 9 despite JLI and Veratad's concerted effort to enable the sale of federally regulated tobacco
 10 products to minors, JLI nevertheless publicly touted Veratad as the "gold standard" of age
 11 verification services. For example, JLI told a reporter with CBS News, Pam Tighe, that "[t]here
 12 is an extensive age verification process in place to purchase JUUL online" and that JLI "work[s]
 13 with Veratad Technologies, the state-of-the-art, gold-standard for age verification. . . . Veratad
 14 uses billions of records from multiple trusted data sources to verify the information customers
 15 provide and to ensure customers qualify to access and purchase products from
 16 JUULvapor.com."⁵⁰⁵ JLI later planned on sending this same, canned false language to a student
 17 journalist at Georgetown University.⁵⁰⁶ Similarly, a JLI spokesperson told a reporter at a New
 18 York newspaper, *ANMY*, that JLI uses "industry-leading ID match and age verification
 19
 20

21
 22 ⁵⁰¹ *Id.* at 146.

23 ⁵⁰² *Id.* at 147.

24 ⁵⁰³ *Id.*

25 ⁵⁰⁴ *Id.* at 173.

26 ⁵⁰⁵ INREJUUL00178123-INREJUUL00178124 (JLI also told Ms. Tighe that "Our Marketing
 27 Efforts are Adult-targeted. . . Any media is focused on 21+ adult smokers and we always adhere
 to or exceed all tobacco guidelines for advertising in home, radio and digital.").

28 ⁵⁰⁶ INREJUUL_00264882-INREJUUL_00264884.

1 technology to ensure that customers” are over 21 years of age and that the “information is
2 verified against multiple databases.”⁵⁰⁷

3 435. In August 2017, JLI responded to public scrutiny by publicly stating that it would
4 increase the purchase age on its website to 21+ by August 23, 2017. In the weeks leading up to
5 that date, it emailed the approximately 500,000 or more potential customers to report that
6 customers who signed up for JLI’s “auto-ship” subscription service before August 23, 2017
7 would not have to prove that they were 21+ for as long as they maintained the subscription to
8 receive JUULpods. As discussed herein, JLI knew that these marketing emails were being sent to
9 underage individuals, including those who failed age verification. And at the same time, JLI
10 advertised that the most popular flavor among youth, Mango, was now available on its “auto-
11 ship” subscription service.” As a result of this scheme, JLI’s subscription gains more than offset
12 any losses from the site’s heightened age verification requirements.

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27 ⁵⁰⁷ Alison Fox, ‘Juul’ e-cigarettes require stronger FDA regulation, *Schmuer Says*, AMNY
28 (Oct. 15, 2017), <https://www.amny.com/news/juul-e-cigarettes-fda-regulation-1-14485385/>.

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 JUUL pods.

**Free Delivery**

JUUL pods delivered to
your door every month.

**Cancel Anytime**

No contracts.
No stress.



mango



cool mint



virginia tobacco



fruit medley



cream lemon

**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 [JUL Support](#)

Live support is available everyday, 9am-10pm PT.

JUULVAPOR



JUUL

800-888-8888 or 415

JUULVAPOR.COM



436. 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.

437. Tellingly, after JLI and Veratad implemented industry-standard age verification practices, JLI boasted to the FDA that the approval rate for sales on its website had dropped to 27%.

438. 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."⁵⁰⁸ 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

⁵⁰⁸ JUUL Labs, Inc. (@JUULvapor), Twitter (June 5, 2018), <https://twitter.com/juulvapor/status/1004055352692752386>.

1 verification.”⁵⁰⁹ A video accompanying this message stated “At JUUL labs we’re committed to
 2 leading the industry in online age verification security to ensure that our products don’t end up in
 3 the hands of underage users” and included an image of a computer with a chain wrapped around
 4 it and locked in place.⁵¹⁰ These statements were fraudulent because JLI and the Management
 5 Defendants were and had been coordinating with Veratad to ensure that their age verification
 6 system did not actually prevent youth from purchasing JUUL products.

7 439. Not only did JLI and Veratad’s efforts result in more sales to minors, it also
 8 allowed JLI to build a marketing email list that included minors – a data set that would prove
 9 highly valuable to Altria.

10 440. In the summer of 2017, JLI engaged a company called Tower Data to determine
 11 the ages of the persons associated with email addresses on its email marketing list. According to
 12 this analysis, approximately 269,000 email addresses on JLI’s email marketing list were not
 13 associated with a record of an individual who had “passed” JLI’s age verification process.⁵¹¹
 14 Additionally, approximately 40,000 email addresses on JLI’s email marketing list were
 15 associated with records of individuals who had “failed” JLI’s own age verification process.⁵¹²
 16 Tower Data informed JLI that 83% of the approximately 420,000 email addresses on JLI’s
 17 marketing list could not be matched with the record of an individual at least 18 years of age.⁵¹³

18 441. Despite knowing that their marketing list included minors, JLI continued to use
 19 that marketing list to sell JUUL products, and then shared that list with Altria to use for its
 20 marketing purposes.

21 ⁵⁰⁹ *JUUL Labs Action Plan* (“November 2018 Action Plan”), JUUL Labs, Inc. (Nov. 13, 2018),
 22 <https://newsroom.juul.com/juul-labs-action-plan/> (last visited May 7, 2020).

23 ⁵¹⁰ *Id.*

24 ⁵¹¹ Complaint at 121, *Commonwealth of Massachusetts v. Juul, et al.*, No. 20-00402 (Super. Ct.
 25 of Mass. Feb. 12, 2020), <https://www.mass.gov/doc/juul-complaint/download>; Janice Tan, *E-*
 26 *cigarette firm JUUL sued for using programmatic buying to target adolescents*, Marketing (Feb.
 14, 2020), [https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-](https://www.marketing-interactive.com/e-cigarette-firm-juul-sued-for-using-programmatic-buying-to-target-adolescents)

27 ⁵¹² *Id.*

28 ⁵¹³ *Id.*

442. JLI and the Management Defendants knew, however, that it was not enough to disseminate advertisements and marketing materials that promote JLI to youth or to open online sales to youth, while omitting mention of JUUL's nicotine content and manipulated potency. To truly expand the nicotine market, they needed to deceive those purchasing a JUUL device and JUULpods as to how much nicotine they were actually consuming. And, through Defendants Pritzker, Huh, and Valani's control of JLI's Board of Directors, they did just that.

10. JLI Engaged in a Sham "Youth Prevention" Campaign.

443. By April 2017, JLI had determined that the publicity around its marketing to children was a problem. Ashley Gould, the company's General Counsel and Chief Regulatory and Communications Officer, thus sought to "hire a crisis communication firm to help manage the youth interest JUUL has received[.]"⁵¹⁴ By June 2017, JLI began developing a "youth prevention program[.]"⁵¹⁵ While ostensibly aimed at reducing youth sales, JLI's youth prevention program actually served to increase, not reduce, sales to children.

444. By December 2017, JLI's youth prevention program included extensive work with schools.⁵¹⁶ JLI paid schools for access to their students during school time, in summer school, and during a Saturday School Program that was billed as "an alternative to 'traditional discipline' for children caught using e-cigarettes in school."⁵¹⁷ JLI created the curriculum for these programs, and, like the "Think Don't Smoke" campaign by Philip Morris, which "insidiously encourage[d] kids to use tobacco and become addicted Philip Morris customers[.]"⁵¹⁸ JLI's programs were shams intended to encourage youth e-cigarette use, not curb it. According to testimony before Congress, during at least one presentation, "[n]o parents

⁵¹⁴ INREJUUL_00264878; *see also* INREJUUL_00265042 (retaining Sard Verbinnen, a strategic communications firm).

⁵¹⁵ *See, e.g.*, INREJUUL_00211242.

⁵¹⁶ INREJUUL_00173409.

⁵¹⁷ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

⁵¹⁸ 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.

1 or teachers were in the room, and JUUL’s messaging was that the product was ‘totally safe.’ The
 2 presenter even demonstrated to the kids how to use a JUUL.”⁵¹⁹ Furthermore, JLI “provided the
 3 children snacks” and “collect[ed] student information from the sessions.”⁵²⁰

4 445. The problems with JLI’s youth prevention programs were widespread. According
 5 to outside analyses, “the JUUL Curriculum is not portraying the harmful details of their product,
 6 similar to how past tobacco industry curricula left out details of the health risks of cigarette
 7 use.”⁵²¹ Although it is well-known that teaching children to deconstruct ads is one of the most
 8 effective prevention techniques, JLI programs entirely omitted this skill, and JLI’s curriculum
 9 barely mentioned JUUL products as among the potentially harmful products to avoid.⁵²² As one
 10 expert pointed out, “we know, more from anecdotal research, that [teens] may consider [JUULs]
 11 to be a vaping device, but they don’t call it that. So when you say to a young person, ‘Vapes or e-
 12 cigarettes are harmful,’ they say, ‘Oh I know, but I’m using a JUUL.’”⁵²³

13 446. Internal emails confirm both that JLI employees knew about the similarities of
 14 JLI’s “youth prevention program” to the earlier pretextual antismoking campaigns by the
 15 cigarette industry and that JLI management at the highest levels was personally involved in these
 16 efforts. In April 2018, Julie Henderson, the Youth Prevention Director, emailed school officials
 17 about “the optics of us attending a student health fair” because of “how much our efforts seem to
 18 duplicate those of big tobacco (Philip Morris attended fairs and carnivals where they distributed
 19 various branded items under the guise of ‘youth prevention’).”⁵²⁴ She later wrote that she would

21 ⁵¹⁹ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

22 ⁵²⁰ *Id.*

23 ⁵²¹ Victoria Albert, *Juul Prevention Program Didn’t School Kids on Dangers, Expert Says:*
 24 *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,
 25 2018), [https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-](https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says)
expert-says.

26 ⁵²² *Id.*

27 ⁵²³ *Id.*

28 ⁵²⁴ INREJUUL_00197608.

1 “confirm our participation w[ith] Ashley & Kevin”⁵²⁵ – an apparent reference to Kevin Burns, at
 2 the time the CEO of JLI, who would later personally approve JLI’s involvement in school
 3 programs. In May 2018, Julie Henderson spoke with former members of Philip Morris’ “youth
 4 education” team,⁵²⁶ and Ashley Gould received and forwarded what was described as “the paper
 5 that ended the Think Don’t Smoke campaign undertaken by Philip Morris.”⁵²⁷ The paper
 6 concluded that “the Philip Morris campaign had a counterproductive influence.”⁵²⁸

7 447. JLI also bought access to teenagers at programs outside of school. For example,
 8 JLI paid \$89,000 to the Police Activities League of Richmond, California, so that all youth in the
 9 Richmond Diversion Program – which targeted “youth, aged 12-17, who face suspension from
 10 school for using e-cigarettes and/or marijuana” and “juveniles who have committed
 11 misdemeanor (lesser category) offenses” – would “participate in the JUUL labs developed
 12 program, Moving Beyond” for as long as ten weeks.⁵²⁹ Similarly, JLI paid \$134,000 to set up a
 13 summer program for 80 students from a charter school in Baltimore, Maryland.⁵³⁰ Participants
 14 were “recruited from grades 3 through 12”⁵³¹ and worked closely with teachers to develop
 15 personal health plans. JLI paid nearly 70% of the cost of hiring eight teachers, eight instructional
 16 aides, and three other support personnel for the program.⁵³²

17 _____
 18 ⁵²⁵ INREJUUL_00197607.

19 ⁵²⁶ INREJUUL_00196624.

20 ⁵²⁷ INREJUUL_00265202.

21 ⁵²⁸ Matthew C. Farrelly *et al.*, *Getting to the Truth: Evaluating National Tobacco*
Countermarketing Campaigns, 92 Am. J. Public Health 901 (2002).

22 ⁵²⁹ JLI-HOR-00002181-JLI-HOR-00002182.

23 ⁵³⁰ INREJUUL_00194247; Invoice to JUUL Labs from The Freedom & Democracy Schools,
 24 Inc. for \$134,000 (June 21, 2018),
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00003711.pdf>.

25 ⁵³¹ INREJUUL_0019428.

26 ⁵³² *The Freedom & Democracy Schools, Inc., Proposal to JUUL Labs for Funding the Healthy*
 27 *Life Adventures Summer Pilot* (June 9, 2018),
[https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00002789_Redacted.pdf)
 28 [00002789_Redacted.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/JLI-HOR-00002789_Redacted.pdf).

1 448. JLI was aware that these out-of-school programs were, in the words of Julie
 2 Henderson, “eerily similar” to the tactics of the tobacco industry.⁵³³ In June 2018, Ms.
 3 Henderson described “current executive concerns & discussion re: discontinuing our work w[ith]
 4 schools[.]”⁵³⁴ Eventually, JLI ended this version of the youth prevention program, but the
 5 damage had been done: following the playbook of the tobacco industry, JLI had hooked more
 6 kids on nicotine.

7 449. The Board was intimately involved in these “youth prevention” activities. For
 8 example, in April 2018, Defendants Valani and Pritzker edited a youth prevention press release,
 9 noting that they “don’t want to get these small items wrong” and “think it’s critical to get this
 10 right.”⁵³⁵

11 **11. The FDA Warned JLI and Others that Their Conduct Is 12 Unlawful.**

13 450. Throughout 2018, the FDA put JLI and others in the e-cigarette industry on notice
 14 that their practices of marketing to minors needed to stop. It issued a series of warnings letters
 15 and enforcement actions:

16 451. On February 24, 2018, the FDA sent a letter to JLI expressing concern about the
 17 popularity of its products among youth and demanding that JLI produce documents regarding its
 18 marketing practices.⁵³⁶

19 452. In April 2018, the FDA conducted an undercover enforcement effort, which
 20 resulted in 56 warning letters issued to online retailers, and six civil money complaints to retail
 21 establishments, all of which were related to the illegal sale of e-cigarettes to minors.⁵³⁷

22 ⁵³³ INREJUUL_00194646.

23 ⁵³⁴ INREJUUL_00194646.

24 ⁵³⁵ JLI00151300.

25 ⁵³⁶ Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to*
 26 *Zaid Rouag, at JUUL Labs, Inc., U.S. FDA (Apr. 24, 2018),*
<https://www.fda.gov/media/112339/download>.

27 ⁵³⁷ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed*
 28 *Products on the Market Without Premarket Authorization, U.S. FDA (Jan. 2020),*
<https://www.fda.gov/media/133880/download>.

1 Manufacturers such as JLI were also sent letters requesting documents regarding their marketing
2 and sales methods.⁵³⁸

3 453. In May 2018, the FDA again issued more warning letters to manufacturers,
4 distributors, and retailers of e-liquids for labeling and advertising violations; these labels and
5 advertisements targeted children and resembled children's food items such as candy or
6 cookies.⁵³⁹

7 454. In September 2018, the FDA engaged in several other regulatory enforcement
8 actions, issuing over 1300 warning letters and civil money complaints to e-cigarette and e-liquid
9 retailers and distributors.⁵⁴⁰

10 455. On September 12, 2018, the FDA sent letters to JLI and other e-cigarette
11 manufacturers putting them on notice that their products were being used by youth at disturbing
12 rates.⁵⁴¹ The FDA additionally requested manufacturers to enhance their compliance monitoring
13 mechanisms, implement stricter age verification methods, and limit quantities and volume of e-
14 cigarette products that could be purchased at a time.⁵⁴²

15 456. Finally, in October 2018, the FDA raided JLI's headquarters and seized more than
16 a thousand documents relating to JLI's sales and marketing practices.⁵⁴³ Since then, the FDA,
17 the Federal Trade Commission, multiple state attorneys general and the U.S. House of

18 ⁵³⁸ *Id.*

19 ⁵³⁹ *Id.*

20 ⁵⁴⁰ *Id.*

21 ⁵⁴¹ *Letter from US FDA to Kevin Burns*, U.S. FDA (Sept. 12, 2018),
22 <https://www.fda.gov/media/119669/download>.

23 ⁵⁴² *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*, U.S. 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).

26 ⁵⁴³ *Laurie McGinley, FDA Seizes Juul E-Cigarette Documents in Surprise Inspection of*
27 *Headquarters*, *Wash. Post* (Oct. 2, 2018),
28 [https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/)
[surprise-inspection-headquarters/](https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/).

Representatives Committee on Oversight and Reform have all commenced investigations into JLI's role in the youth e-cigarette epidemic and whether JLI's marketing practices purposefully targeted youth.

457. Siddharth Breja, who was senior vice president for global finance at JLI, "claims that after the F.D.A. raided Juul headquarters in October 2018, seeking internal documents, Mr. Burns instructed Mr. Breja and other executives not to put anything relating to regulatory or safety issues in writing, so that the F.D.A. could not get them in the future."⁵⁴⁴

12. In Response to Regulatory Scrutiny, Defendants Misled the Public, Regulators, and Congress that JLI Did Not Target Youth.

458. To shield their youth-driven success from scrutiny, Altria, JLI, and the Management Defendants' had a long-running strategy to feign ignorance over JLI and the Management Defendants' youth marketing efforts and youth access to JLI's products. They were well aware that JLI's conduct in targeting underage users was reprehensible and unlawful, and that if it became widely known that this was how JLI obtained its massive market share, there would be a public outcry and calls for stricter regulation or a ban on JLI's products. Given the increasing public and regulatory scrutiny of JLI's market share and marketing tactics, a dis-information campaign was urgently needed to protect Defendants' bottom line. For this reason, JLI, the Management Defendants, and Altria all hid JLI's conduct by vociferously denying that JLI had marketed to and targeted youth and instead falsely claimed that JLI engaged in youth prevention. Defendants continued to make these statements while and after actively and successfully trying to market to and recruit youth non-smokers. These false statements were designed to protect JLI's market share, and Altria's investment, by concealing JLI's misconduct.

459. For example, after 11 senators sent a letter to JLI questioning its marketing approach and kid-friendly e-cigarette flavors like Fruit Medley, Creme Brulee and mango, JLI visited Capitol Hill and told senators that it never intended its products to appeal to kids and did

⁵⁴⁴ Sheila Kaplan & Jan Hoffman, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Says*, N.Y. Times (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

not realize youth were using its products, according to a staffer for Senator Richard Durbin (D-Ill.). JLI's statements to Congress – which parallel similar protests of innocence by tobacco company executives – were false.

460. JLI also engaged in wire fraud when it made public statements seeking to disavow the notion that it had targeted and sought to addict teens:

- “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);⁵⁴⁵
- “We market our products responsibly, following strict guidelines to have material directly **exclusively toward adult smokers and never to youth audiences.**” (JLI Social Media Post, March 14, 2018);⁵⁴⁶
- “Our company’s mission is to eliminate cigarettes and **help the more than one billion smokers worldwide switch to a better alternative,**” said JUUL Labs Chief Executive Officer Kevin Burns. “We are already seeing success in our efforts to enable adult smokers to transition away from cigarettes and believe our products have the potential over the long-term to contribute meaningfully to public health in the U.S. and around the world. At the same time, we are committed to deterring young people, as well as adults who do not currently smoke, from using our products. **We cannot be more emphatic on this point: No young person or non-nicotine user should ever try JUUL.**” (JLI Press Release, April 25, 2018);⁵⁴⁷
- “Our objective is to provide the 38 million American adult smokers with **meaningful alternatives to cigarettes while also ensuring that individuals who are not already smokers, particularly young people, are not attracted to nicotine products such as JUUL,**” said JUUL Labs Chief Administrative Officer Ashley Gould, who heads the company’s regulatory, scientific and youth education and prevention programs. “We want to be a leader in seeking solutions, and are actively engaged with, and listening to, community leaders, educators and lawmakers on how best

⁵⁴⁵ 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 Ashley Gould, JUUL Chief Administrative Officer) (emphasis added).

⁵⁴⁶ 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).

⁵⁴⁷ *JUUL Labs Announces Comprehensive Strategy to Combat Underage Use*, JUUL Labs, Inc. (Apr. 25, 2019), <https://newsroom.juul.com/juul-strategy-to-combat-underage-use/> (emphasis added).

1 to effectively keep young people away from JUUL.” (JLI Press Release,
2 April 25, 2018);⁵⁴⁸

- 3 • “Of course, we understand that **parents and lawmakers are concerned**
4 **about underage use of JUUL. As are we.** We can’t restate this enough.
5 As an independent company that is not big tobacco, we are driven by our
6 mission and commitment to adult smokers.” (JLI CEO Kevin Burns Letter
7 to JUUL Community on Reddit, July 18, 2018);⁵⁴⁹
- 8 • “We welcome the opportunity to work with the Massachusetts Attorney
9 General because, **we too, are committed to preventing underage use of**
10 **JUUL.** We utilize stringent online tools to block attempts by those under
11 the age of 21 from purchasing our products, including unique ID match
12 and age verification technology. Furthermore, we have never marketed to
13 anyone underage. Like many Silicon Valley technology startups, our
14 growth is not the result of marketing but rather a superior product
15 disrupting an archaic industry. When adult smokers find an effective
16 alternative to cigarettes, they tell other adult smokers. That’s how we’ve
17 gained 70% of the market share. . . Our ecommerce platform utilizes
18 unique ID match and age verification technology to make sure minors are
19 not able to access and purchase our products online.” (Statement from
20 Matt David, JLI Chief Communications Officer, July 24, 2018);⁵⁵⁰
- 21 • “**We did not create JUUL to undermine years of effective tobacco**
22 **control, and we do not want to see a new generation of smokers. . . .**
23 We want to be part of the solution to end combustible smoking, not part of
24 a problem to attract youth, never smokers, or former smokers to nicotine
25 products. . . .We adhere to strict guidelines to ensure that our marketing is
26 directed towards existing adult smokers.” (JLI’s website as of July 26,
27 2018);⁵⁵¹
- 28 • “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);⁵⁵²

⁵⁴⁸ *Id* (emphasis added).

⁵⁴⁹ *A Letter to the JUUL Community from CEO Kevin Burns*, Reddit (July 18, 2018),
https://www.reddit.com/r/juul/comments/8zv1bh/a_letter_to_the_juul_community_from_ceo_kevin_burns/ (emphasis added).

⁵⁵⁰ *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).

⁵⁵¹ *Our Responsibility*, JUUL Labs, Inc. (July 26, 2018),
<https://web.archive.org/web/20180726021743/https://www.juul.com/our-responsibility> (last
visited May 7, 2020) (emphasis added).

⁵⁵² *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).

- 1 • “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);⁵⁵³
- 2
- 3 • “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);⁵⁵⁴
- 4
- 5 • “First of all, I’d tell them that I’m sorry that their child’s using the product. **It’s not intended for them.** I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.” (CNBC Interview of JLI CEO, July 13, 2019);⁵⁵⁵
- 6
- 7
- 8 • “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);⁵⁵⁶
- 9
- 10 • 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);⁵⁵⁷
- 11
- 12 • 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);⁵⁵⁸
- 13
- 14
- 15 • “**We have never marketed to youth and we never will.**” (JLI Statement to Los Angeles Times, September 24, 2019);⁵⁵⁹

16 ⁵⁵³ *Id.* (emphasis added).

17 ⁵⁵⁴ 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> (statement of James Monsees).

18 ⁵⁵⁵ 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).

19 ⁵⁵⁶ *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).

20 ⁵⁵⁷ 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).

21 ⁵⁵⁸ *Id.* (emphasis added).

22 ⁵⁵⁹ 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).

- 1 • “I have long believed in a future where adult smokers overwhelmingly
2 choose alternative products like JUUL. **That has been this company’s**
3 **mission since it was founded**, and it has taken great strides in that
4 direction.” (JLI’s CEO K.C. Crosthwaite, September 25, 2019);⁵⁶⁰
- 5 • “As scientists, product designers and engineers, we believe that vaping can
6 have a positive impact when used by adult smokers, and can have a
7 negative impact when used by nonsmokers. **Our goal is to maximize the**
8 **positive and reduce the negative.**” (JLI Website, last visited May 7,
9 2020);⁵⁶¹ and
- 10 • **“JUUL was designed with adult smokers in mind.”** (JLI Website, last
11 visited May 7, 2020).⁵⁶²

12 461. As the JLI Board of Directors had “final say” over all of JLI’s marketing efforts,
13 these statements regarding JLI’s marketing efforts can be imputed to the Management
14 Defendants, who were therefore directly responsible for the messaging over the marketing of
15 JUUL products.

16 462. Altria also engaged in wire fraud when it made public statements seeking to
17 disavow the notion that JLI had targeted and sought to addict teens:

- 18 • “Altria and JUUL are committed to preventing kids from using any
19 tobacco products. As recent studies have made clear, youth vaping is a
20 serious problem, which both Altria and JUUL are committed to solve. **As**
21 **JUUL previously said, ‘Our intent was never to have youth use JUUL**
22 **products.’”** (Altria News Release, December 20, 2018).⁵⁶³

23 463. However, JLI, the Management Defendants, and Altria realized that attempting to
24 shift public opinion through fraudulent statements was not enough to achieve their goal of
25 staving off regulation. To accomplish this goal, they would also need to deceive the FDA and

26 ⁵⁶⁰ Juul Labs Names New Leadership, Outlines Changes to Policy and Marketing Efforts, JUUL
27 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).

28 ⁵⁶¹ *Our Mission*, JUUL Labs, Inc. (2019), <https://www.juul.com/mission-values> (last visited May 7, 2020) (emphasis added).

⁵⁶² JUUL Labs, Inc., <https://www.juul.com/> (last visited May 7, 2020) (emphasis added).

⁵⁶³ 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).

1 Congress. And so they set out to do just that through statements and testimony by JLI
2 representatives. These include, but are not limited to, the following:

3 *Statements by JLI to the FDA:*

- 4 • “JUUL was not designed for youth, **nor has any marketing or research**
5 **effort since the product’s inception been targeted to youth.**” (Letter to
FDA, June 15, 2018).⁵⁶⁴
- 6 • “With this response, the Company hopes FDA comes to appreciate why
7 the product was developed and **how JUUL has been marketed – to**
8 **provide a viable alternative to cigarettes for adult smokers.**” (Letter to
FDA, June 15, 2018).⁵⁶⁵

9 *Statements by Altria to the FDA:*

- 10 • “[W]e do not believe we have a current issue with youth access to or
11 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).⁵⁶⁶
- 12 • “We believe e-vapor products present an important opportunity to **adult**
13 **smokers to switch from combustible cigarettes.**” (Letter to FDA
Commissioner Gottlieb, 10/25/18).⁵⁶⁷

14 *Statements by JLI to Congress:*

- 15 • “We never wanted any non-nicotine user, and certainly nobody under
16 the legal age of purchase, to ever use JLI products. . . . That is a serious
17 problem. Our company has no higher priority than combatting underage
18 use.” (Testimony of James Monsees, July 25, 2019).⁵⁶⁸

21 ⁵⁶⁴ Letter from JUUL’s Counsel at Sidley Austin to Dr. Matthew Holman, FDA at 2 (June 15,
2018) (emphasis added).

22 ⁵⁶⁵ *Id.* at 3 (emphasis added).

23 ⁵⁶⁶ Letter from Altria CEO Howard Willard to Dr. Scott Gottlieb, FDA at 2 (Oct. 25, 2018)
24 (emphasis added).

25 ⁵⁶⁷ *Id.* at 1 (emphasis added).

26 ⁵⁶⁸ *Examining JUUL’s Role in the Youth Nicotine Epidemic, Hearing Before the H. Comm. on*
27 *Oversight and Reform, Subcomm. on Econ. and Consumer Policy*, 116th Cong. 1 (2019),
28 <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.).

- “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).⁵⁶⁹

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).⁵⁷⁰

464. 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.

465. Their disinformation scheme was successful. While certain groups such as the American Medical Association were calling for a “sweeping ban on vaping products,”⁵⁷¹ no such ban has been implemented to date. Accordingly, JLI’s highly addictive products remain on the market and available to underage users.

⁵⁶⁹ *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).

⁵⁷⁰ Letter from Howard A. Willard III, Altria to Senator Richard J. Durbin, at 6 (Oct. 14, 2019) (emphasis added).

⁵⁷¹ 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>.

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

466. In October 2017, JLI and Avail Vapor ("Avail"), a chain of more than 99 high-end vape stores,⁵⁷² negotiated the first purchase order for Avail stores to sell JUUL products.⁵⁷³

467. On November 2, 2017, Altria announced that it had acquired a minority interest in Avail.⁵⁷⁴ Altria's comments to investors highlighted that the investment allowed Altria access to Avail's "extensive data around adult vapor purchasing patterns," and "full-service analytical science laboratory," located in Altria's hometown of Richmond, Virginia.⁵⁷⁵

468. 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, 2019.⁵⁷⁶

469. 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 represented to Congress that "[JLI's] data [from Avail] was not available to Altria,"⁵⁷⁷ statements in Altria's October 2019 letter to Congress suggest otherwise.

⁵⁷² *About Us*, Avail Vapor, <https://www.availvapor.com/about-us> (last visited May 7, 2020).

⁵⁷³ INREJUUL_00066273.

⁵⁷⁴ 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>.

⁵⁷⁵ 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 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>.

⁵⁷⁶ *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).

⁵⁷⁷ *Id.*

470. In that letter, Altria admitted that it possessed JUUL sales data that corresponds to the very same time period in which JLI began selling its products at Avail stores, starting in late 2017.⁵⁷⁸ That sales data showed that JLI was dominating the e-cigarette market during this time period.⁵⁷⁹ By November 2017, JLI had sold one million units of its blockbuster product, boasting 621% growth in year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.⁵⁸⁰ Sales of Altria's own e-cigarettes, on the other hand, trailed behind both the JUUL and British American Tobacco's Vuse. Altria sought to grow JLI's market dominance and young customer base. JLI, in the regulatory crosshairs, needed Altria's experience and its influence in Washington D.C.

471. Altria recognized that JLI had, against the backdrop of steadily declining cigarette sales, created the right product to addict a new generation to nicotine. JLI faced existential threats, however, from regulatory and congressional scrutiny, and public outrage over the growing youth e-cigarette epidemic.

472. JLI, Altria, and the Management Defendants thus began to coordinate their activities in 2017 through Avail Vapor. This back-channel, and the information it provided Altria, allowed Altria to take actions to benefit itself, JLI, and the Management Defendants without drawing the scrutiny of the public and regulators that they knew would inevitably follow a formal announcement of a partnership between JLI and Altria.

2. JLI, the Management Defendants and Altria Coordinated to Market JUUL in Highly Visible Retail Locations.

473. JLI, the Management Defendants, and Altria's coordination continued in other ways throughout 2018 as they prepared for Altria's equity investment in JLI.

⁵⁷⁸ Letter from Howard A. Willard III, Altria to Senator Richard J. Durbin, 6 (October 14, 2019) (emphasis added).

⁵⁷⁹ *Id.*

⁵⁸⁰ 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>.

1 474. A key aspect of this early coordination was Altria’s acquisition of shelf-space that
 2 it would later provide to JLI to sustain the exponential growth of underage users of JUUL
 3 products. By acquiring shelf space, Altria took steps to ensure that JUUL products would be
 4 placed in premium shelf space next to Marlboro brand cigarettes, the best-selling cigarette
 5 overall and by far the most popular brand among youth.⁵⁸¹

6 475. Altria’s investment was not for its own e-cigarette products. Altria spent
 7 approximately \$100 million in 2018 to secure shelf-space at retailers for e-cigarette products –
 8 purportedly for the MarkTen e-cigarette that Altria stopped manufacturing in 2018, and its pod-
 9 based MarkTen Elite, which it launched on a small scale in only 25,000 stores.⁵⁸² By
 10 comparison, the 2014 launch of the original MarkTen resulted in product placement in 60,000
 11 stores in the first month in the western United States alone.⁵⁸³ Yet Altria’s payments for shelf
 12 space were a mixture of “cash and display fixtures in exchange for a commitment that its e-
 13 cigarettes would occupy prime shelf space for at least two years.”⁵⁸⁴

14 476. In reality, Altria spent approximately \$100 million on shelf-space in furtherance
 15 of expanding the e-cigarette market, including JLI’s massive, ill-gotten market share. It has since
 16 been reported that Altria “pulled its e-cigarettes off the market” not out of concern for the
 17 epidemic of youth nicotine addiction JUUL created, but because a non-compete was a “part of its
 18 deal with J[LI].”⁵⁸⁵

20 ⁵⁸¹ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General*, Centers
 21 for Disease Control & Prevention 161, 164 (2012),
<https://www.ncbi.nlm.nih.gov/books/NBK99237/>.

22 ⁵⁸² Sheila Kaplan, *Altria to Stop Selling Some E-Cigarette Brands That Appeal to Youths*, N.Y.
 23 Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/health/altria-vaping-ecigarettes.html>.

24 ⁵⁸³ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July
 25 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

26 ⁵⁸⁴ Jennifer Maloney & John McKinnon, *Altria-JLI Deal Is Stuck in Antitrust Review*, Wall St. J.
 27 (Jan. 17, 2020), <https://www.wsj.com/articles/altria-juul-deal-is-stuck-in-antitrust-review-11579257002>.

28 ⁵⁸⁵ *Id.*

1 477. When Altria later announced its \$12.8 billion investment in JLI, part of the
2 agreement between the two companies was that Altria would provide JLI with this premium
3 shelf space.⁵⁸⁶

4 478. Altria's purchase of shelf space in 2018 and its subsequent provision of that space
5 to JLI shows how Altria, JLI, and the Management Defendants were coordinating even before
6 Altria announced its investment in JLI. Altria's actions ensured that, even after public and
7 regulatory scrutiny forced JLI to stop its youth-oriented advertising, JUUL products would still
8 be placed where kids are most likely to see them – next to Marlboros, the most iconic, popular
9 brand of cigarettes among underage users – in a location they are most likely to buy them – retail
10 establishments.⁵⁸⁷

11 **3. Altria Contributes to the Success of JLI's and the Management**
12 **Defendants' Scheme Through a Range of Coordinated**
13 **Activities.**

14 479. While JLI and Altria remain separate corporate entities in name, following its
15 equity investment in JLI, Altria and JLI forged even greater significant, systemic links, *i.e.*,
16 shared leadership, contractual relationships, financial ties, and continuing coordination of
17 activities.

18 480. In 2019, two key Altria executives became JLI's CEO and head of regulatory
19 affairs, respectively.

20 481. K.C. Crosthwaite, who was president of Altria Client Services when the company
21 carried out a study that would later be used by Altria to shield JUUL's mint pods from federal
22 regulation, is now JLI's CEO. Before joining JLI, Crosthwaite was Altria's chief growth officer.

23 482. Joe Murillo, who launched the MarkTen line at Altria and more recently headed
24 regulatory affairs for Altria, is now JLI's chief regulatory officer.⁵⁸⁸ A 24-year career Altria

25 ⁵⁸⁶ *Id.*

26 ⁵⁸⁷ 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>.

27 ⁵⁸⁸ Jennifer Maloney, *JLI Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019),
28 <https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306>.

1 executive, Murillo previously ran Altria’s e-cigarette business, Nu Mark, “before Altria pulled its
2 e-cigarettes off the market as part of its deal with J[UUL].”⁵⁸⁹

3 483. In addition to its effective takeover of JUUL, Altria provides services to JLI in
4 furtherance of their common goal of expanding the number of nicotine-addicted e-cigarette
5 users, in the areas of “direct marketing; sales, distribution and fixture services; and regulatory
6 affairs.”⁵⁹⁰ These services include, among other things:

- 7 • “Piloting a distribution program to provide long haul freight, warehouse
8 storage and last mile freight services;”
- 9 • “Making available [Altria’s] previously contracted shelf space with certain
10 retailers,” thus allowing JUUL products to receive prominent placement
11 alongside a top-rated brand of combustible cigarettes, Marlboro, favored
12 by youth;
- 13 • “Executing direct mail and email campaigns and related activities. . . .;”
- 14 • “Leveraging Altria’s field sales force to . . . provide services such as
15 limited initiative selling, hanging signs, light product merchandising, and
16 surveys of a subset of the retail stores that Altria calls upon;” and
- 17 • “Providing regulatory affairs consulting and related services to [JUUL] as
18 it prepares its PMTA application.”⁵⁹¹

19 484. Altria also worked with JLI to cross-market JUUL and Marlboro cigarettes. For
20 example, Altria offered coupons for JUUL starter kits inside packs of Marlboro cigarettes.⁵⁹²

21
22
23
24 ⁵⁸⁹ *Id.*

25 ⁵⁹⁰ Letter from Howard Willard III, Altria Senator Durbin, *et al.*, at 11 (Oct. 14, 2019).

26 ⁵⁹¹ *Id.* at 13.

27 ⁵⁹² *Points for us!*, Reddit (Sept. 16, 2019), (depicting an image of a Marlboro carton with a
28 JUUL starter kit coupon inside).



485. 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.

486. 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.”⁵⁹³ 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.”⁵⁹⁴ While an Altria spokesman has denied that there was any contractual services agreement for lobbying between JLI and Altria, he admitted that he did not know what informal

⁵⁹³ 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>.

⁵⁹⁴ *Id.*

advice and conversations Altria has had with JLI about lobbying efforts. Since JLI, the Management Defendants, and Altria joined forces, JLI's spending on lobbying has risen significantly. JLI spent \$4.34 million on lobbying in 2019, compared to \$1.64 million in 2018.⁵⁹⁵

487. In addition, Altria's arrangement with JLI greatly expands JLI's retail footprint. While JUUL products have typically been sold in 90,000 U.S. retail outlets, Altria reaches 230,000 U.S. retail outlets. Altria also brings its logistics and distribution experience (although, after increasing public scrutiny, Altria announced on January 30, 2020 that it would limit its support to regulatory efforts beginning in March 2020⁵⁹⁶). And importantly, as noted above, Altria gives JLI access to shelf space that it had obtained under fraudulent pretenses. This is not just any shelf space; it is space near Altria's blockbuster Marlboro cigarettes, and other premium products and retail displays. The arrangement allows JLI's tobacco and menthol-based products to receive prominent placement alongside a top-rated brand of combustible cigarettes.

488. Altria decided to make a significant investment in JLI to further its efforts to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base, which ultimately benefits Altria by ensuring a new generation of customers for its products. In fact, when announcing its investment, Altria explained that its investment in JLI "enhances future growth prospects" and committed to applying "its logistics and distribution experience to help JLI expand its reach and efficiency."⁵⁹⁷ Altria has helped JLI maintain and expand its market share – a market share that, based on Altria's own October 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising practices that contributed to youth e-cigarette use.

⁵⁹⁵ *Client Profile: JUUL Labs*, penSecrets.org, Center for Responsive Politics, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920> (last visited May 7, 2020).

⁵⁹⁶ Nathan Bomey, *Marlboro maker Altria distances itself from vaping giant JLI amid legal scrutiny*, USA Today (Jan. 31, 2020), <https://www.usatoday.com/story/money/2020/01/31/juul-altria-distances-itself-e-cigarette-maker-amid-scrutiny/4618993002/>.

⁵⁹⁷ *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>.

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.

489. 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.

490. 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.

491. 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.

492. 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.⁵⁹⁸

493. Two years later, despite the ongoing efforts of public health advocates, a 2018 study of JUUL users between the ages of 15 and 24 revealed that 63% remained unaware that JUUL products contain nicotine.⁵⁹⁹ 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.⁶⁰⁰

^{494.} Similarly, in 2018, a literature review of 72 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

⁵⁹⁸ *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 7, 2020).

⁵⁹⁹ Jeffrey G. Willett *et al.* *Recognition, Use and Perceptions of Juul Among Youth and Young Adults*, 28 Tobacco Control 054273 (2019).

⁶⁰⁰ *Id.*

safer to use during pregnancy than combustible cigarettes.⁶⁰¹ 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.⁶⁰² In addition, researchers found that youth e-cigarette users perceived e-cigarettes as safe to use and fashionable.⁶⁰³

495. 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.⁶⁰⁴

496. 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 51 articles.⁶⁰⁵ Researchers found consistent evidence showing that flavors attract both youth and young adults to use e-cigarettes.⁶⁰⁶ 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.⁶⁰⁷

2. Use of JUUL by Minors Has Skyrocketed.

497. 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

⁶⁰¹ *Id.*

⁶⁰² 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 Env'tl. Research & Public Health* 1190 (2018), <https://doi.org/10.3390/ijerph15061190>.

⁶⁰³ *Id.*

⁶⁰⁴ 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>.

⁶⁰⁵ 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>.

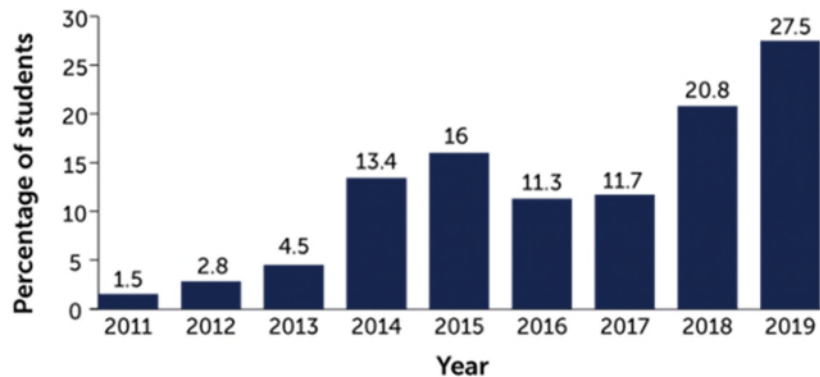
⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.*

“largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S.”⁶⁰⁸

498. The percentage of 12th grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%.⁶⁰⁹ This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in 12th grade.”

499. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly,⁶¹⁰ and one in five 12th graders reported used an e-cigarette containing nicotine in the last 30 days.⁶¹¹ 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 30 days and with most youth reporting JUUL as their usual brand.⁶¹²



500. The Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-

⁶⁰⁸ *National Adolescent Drug Trends in 2018*, Univ. of Mich. Inst. for Social Research (Dec. 17, 2018), <http://monitoringthefuture.org/pressreleases/18drugpr.pdf>.

⁶⁰⁹ 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>.

⁶¹⁰ 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>.

⁶¹¹ *Id.*

⁶¹² National Youth Tobacco Survey, U.S. FDA (2019); Karen Cullen *et al.*, *e-Cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

cigarette use [is rising].”⁶¹³ Then FDA Commissioner Dr. Gottlieb described the increase in e-cigarette consumption as an “almost ubiquitous – and dangerous – trend” that is responsible for an “epidemic” of nicotine use among teenagers.⁶¹⁴ The rapid – indeed infectious – adoption of e-cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.”⁶¹⁵ CDC Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”⁶¹⁶ Then-Commissioner Gottlieb identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”⁶¹⁷

501. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.”⁶¹⁸ The Surgeon General’s 2018 advisory states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular concern for young people, because it could make it easier for

⁶¹³ Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

⁶¹⁴ News Release, *FDA Launches New, Comprehensive Campaign to Warn Kids About the Dangers of E-Cigarette Use as Part of Agency’s Youth Tobacco Prevention Plan, Amid Evidence of Sharply Rising Use Among Kids*, U.S. FDA (Sept. 18, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm>.

⁶¹⁵ *Id.*

⁶¹⁶ 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>.

⁶¹⁷ *Id.*

⁶¹⁸ 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-use-among-youth-2018.pdf>.

1 them to initiate the use of nicotine . . . and also could make it easier to progress to regular e-
2 cigarette use and nicotine dependence.”⁶¹⁹

3 502. Kids are consuming so much nicotine that they are experiencing symptoms of
4 nicotine toxicity, including headaches, nausea, sweating, and dizziness, and they have even
5 coined a term for it: “nic sick.” As one high school student explained to CBS News, it “kinda
6 seems like a really bad flu, like, just out of nowhere. Your face goes pale, you start throwing up
7 and stuff, and you just feel horrible.”⁶²⁰

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

12 Between classes the big bathroom in my school averages 20-25 kids, and 5-10
13 JUULs. Kids usually will give you a dollar for a JUUL rip if you don’t know
14 them, if you want to buy a pod for 5\$ you just head into the bathroom after lunch.
15 We call the kids in there between every class begging for rips “JUUL fiends.” Pod
16 boys are the freshman that say “can I put my pod in ur juul?” and are in there
17 every block. I myself spent about 180\$ on mango pods and bought out a store,
18 and sold these pods for 10\$ a pod, making myself an absolutely massive profit in
19 literally 9 days. Given because I’m 18 with a car and that’s the tobacco age
20 around here, I always get offers to get pod runs or juuls for kids. people even
21 understand the best system to get a head rush in your 2 minutes between classes,
22 is all the juuls at once. So someone yells “GIVE ME ALL THE JUULS” and 3-7
23 are passed around, two hits each. This saves us all juice, and gives you a massive
24 head rush. Kids also scratch logos and words onto their juuls to make i[t] their
25 own, every day you can find the pod covers in my student parking lot. I know this
26 sounds exaggerated, but with a school with 1400 kids near the city and JUULs
27 being perceived as popular, it’s truly fascinating what can happen.⁶²¹

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

24 ⁶¹⁹ *Id.* at 2.

25 ⁶²⁰ *High school students say about 20% of their peers are vaping, some as young as 8th grade*,
26 CBS News (Aug. 30, 2019), <https://www.cbsnews.com/news/high-school-students-say-about-20-of-their-peers-are-vaping-some-as-young-as-8th-grade/>.

27 ⁶²¹ *What’s Juul in School*,
28 https://www.reddit.com/r/juul/comments/61is7i/whats_juul_in_school/ (last visited May 7, 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.”⁶²²
- b. “Same thing at my school. JUUL fiend is a term too.”⁶²³
- c. “Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are.”⁶²⁴
- 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.”⁶²⁵
- e. “[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now.”⁶²⁶
- 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?’”⁶²⁷
- g. “It’s the same at my school and just about every other school in Colorado.”⁶²⁸
- h. “2 months into this school year, my high school made a newspaper article about the ‘JUUL epidemic.’”⁶²⁹
- 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.”⁶³⁰
- 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,

⁶²² *Id.*

⁶²³ *Id.*

⁶²⁴ *Id.*

⁶²⁵ *Id.*

⁶²⁶ *Id.*

⁶²⁷ *Id.*

⁶²⁸ *Id.*

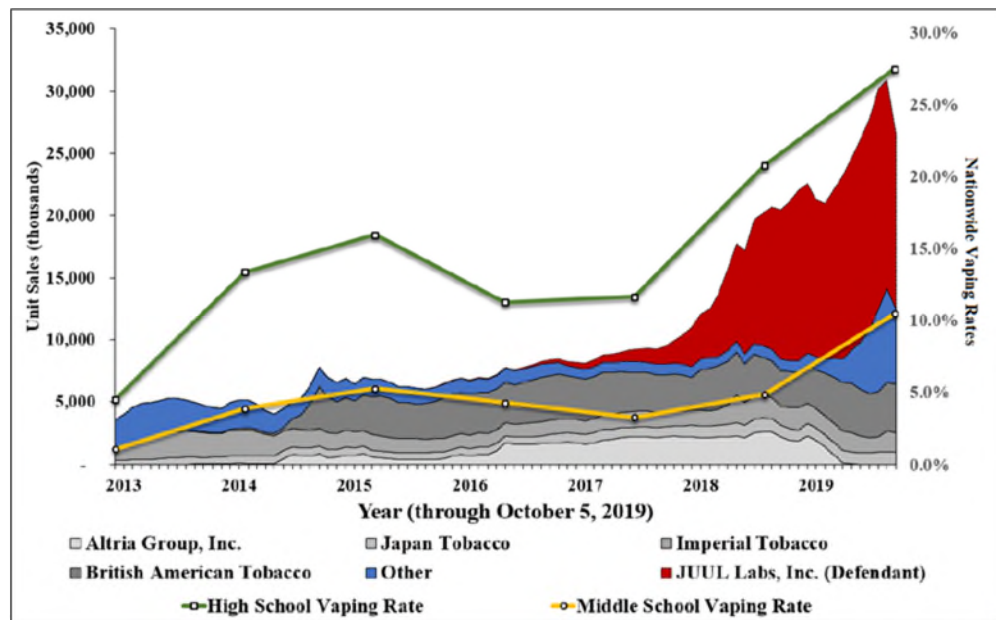
⁶²⁹ *Id.* (citing *Juuls Now Rule the School as Students Frenzy Over E-cig* (Oct. 5, 2016), <https://imgur.com/a/BKepw>).

⁶³⁰ *Id.*

phixes, etc. It's actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping."⁶³¹

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."⁶³²

505. 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.



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⁶³¹ *Id.*

⁶³² *Id.* (emphasis added).

⁶³³ 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

1 506. The unique features of the JUUL e-cigarette – high nicotine delivery, low
2 harshness, and easy-to-conceal design – have caused patterns of addiction with no historical
3 precedent. It is not uncommon for 15-year-old students, even those who live at home with their
4 parents, to consume two or more JUUL pods a day.

5 507. The downwards trend in youth smoking that public health departments and school
6 anti-tobacco programs worked so hard to create has completely reversed. In 2018, more than one
7 in four high school students in the United States reported using a tobacco product in the past 30
8 days, a dramatic increase from just one year before.⁶³⁴ But there was no increase in the use of
9 cigarettes, cigars, or hookahs during that same time period.⁶³⁵ There was only increased use in a
10 single tobacco product: e-cigarettes. While use of all other tobacco products continued to
11 decrease as it had been for decades, e-cigarette use increased 78% in just one year.⁶³⁶ This drastic
12 reversal caused the CDC to describe youth e-cigarette use as an “epidemic.”⁶³⁷

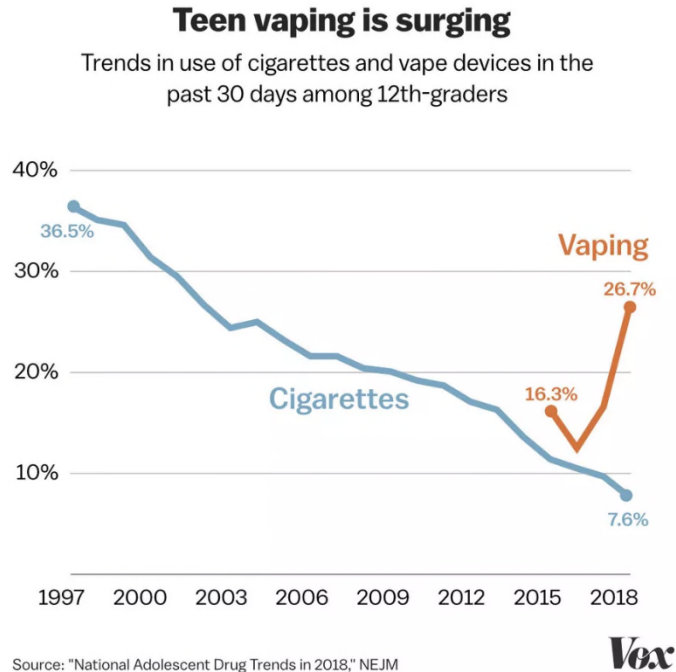
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19 Youth Tobacco Survey (2019); *see also* Compl. at 2 (Figure 1), *Commonwealth of Penn. v. Juul*
20 *Labs, Inc.* (Ct. Common Pleas, Feb. 10, 2020).

21 ⁶³⁴ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, CDC (Feb. 11, 2019),
<https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

22 ⁶³⁵ *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, CDC (Feb. 2019),
23 <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

24 ⁶³⁶ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new
25 steps to protect youth by preventing access to flavored tobacco products and banning menthol in
26 cigarettes, FDA (Nov. 15, 2018), [https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)
[youth-preventing-access](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access).

27 ⁶³⁷ Jerome Adams, *Surgeon General’s Advisory on E-cigarette Use Among Youth*, CDC (Dec.
28 2018), [https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf)
[cigarette-use-among-youth-2018.pdf](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

508. 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.⁶³⁸

509. 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.

⁶³⁸ Melvin Davis, *Developments in Policy: The FDA's Tobacco Regulations* 15 *Yale L. & Policy Rev.* 399 (1996).

1 510. 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 –
3 including those that had not yet been invented or were not yet popular. To “deem” a product for
4 regulation, the FDA must issue a “deeming rule” that specifically designates a tobacco product,
5 such as e-cigarettes, as falling within the purview of the FDA’s authority under the TCA.

6 511. The TCA also mandated that all “new” tobacco products (*i.e.*, any product not on
7 the market as of February 15, 2007) undergo a premarket authorization process before they could
8 be sold in the United States.

9 512. Four years later, on April 25, 2014, the FDA finally issued a proposed rule
10 deeming e-cigarettes for regulation under the Tobacco Act (“2014 Proposed Rule”).

11 513. Once issued, the e-cigarette industry, together with its newfound allies, parent
12 companies, and investors – the cigarette industry and pro-e-cigarette lobbyists – set to work to
13 dilute the rule’s effectiveness. For example, in comments to the 2014 Proposed Rule, companies
14 such as Johnson Creek Enterprises (one of the first e-liquid manufacturers) stated that the “FDA
15 [] blatantly ignored evidence that our products improve people’s lives.”⁶³⁹

16 514. The New York Times reported that Altria was leading the effort to dilute,
17 diminish, or remove e-cigarette regulations. Notwithstanding Altria’s professed concern about
18 flavors attracting youth customers, Altria submitted comments in August 2014 in response to the
19 proposed rule opposing the regulation of flavors. Altria asserted that restrictions could result in
20 more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors.⁶⁴⁰

21 515. In 2015, Altria lobbied Capitol Hill with its own draft legislation to eliminate the
22 new requirement that most e-cigarettes already on sale in the United States be evaluated
23 retroactively to determine if they are “appropriate for the protection of public health.” In effect,

24 ⁶³⁹ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*,
25 N.Y. Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

26 ⁶⁴⁰ Altria Client Services Inc., Comment Letter on Proposed Rule Deeming Tobacco Products to
27 be Subject to the Federal Food, Drug, and Cosmetic Act, at 47-48 (Aug. 8, 2014),
28 <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>.

Altria lobbied to “grandfather” all existing e-cigarette brands, including JUUL, into a lax regulatory regime. That proposed legislation was endorsed by R.J. Reynolds. Altria delivered its proposal, entitled *F.D.A. Deeming Clarification Act of 2015*, to Representative Tom Cole of Oklahoma, who introduced the bill two weeks later using Altria’s draft verbatim.⁶⁴¹ Seventy other representatives signed on to Altria’s legislation.⁶⁴²

516. The e-cigarette industry, along with the intertwined cigarette industry, was able to leverage support among Members of Congress such as Representative Cole and Representative Sanford Bishop of Georgia, who advocated for cigarette industry interests and opposed retroactive evaluation of e-cigarette products. Both Cole and Bishop echoed a common cigarette and e-cigarette industry refrain, that any regulations proposed by the FDA would bankrupt small businesses, even though the overwhelming majority of e-cigarettes were manufactured and distributed by large cigarette companies.

517. Representatives Cole and Bishop received some of the largest cigarette industry contributions of any member of the U.S. House of Representatives, with Representative Bishop receiving \$13,000 from Altria, and Representative Cole \$10,000 from Altria in the 2015-2016 cycle.⁶⁴³

518. By thwarting and delaying regulation, or by ensuring what regulation did pass was laced with industry-friendly components, the e-cigarette industry, including Defendants, hobbled the FDA – and by extension – Congress’ efforts to regulate e-cigarettes. Simultaneously, the e-cigarette industry continued to market their products to youth, and it coordinated to sow doubt and confusion about the addictiveness and health impacts of e-cigarettes.

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

⁶⁴¹ Eric Lipton, *A Lobbyist Wrote the Bill. Will the Tobacco Industry Win Its E-Cigarette Fight?*, N.Y. Times (Sept. 2, 2016), <https://www.nytimes.com/2016/09/03/us/politics/e-cigarettes-vaping-cigars-fda-altria.html>.

⁶⁴² *Id.*

⁶⁴³ *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 took over as the FDA Commissioner, one of his first major acts was to grant e-cigarette
 2 companies a four-year extension to comply with the deeming rule, even as data indicated sharp
 3 increases in teen e-cigarette use.⁶⁴⁴ Gottlieb had previously served on the board of Kure, a chain
 4 of e-cigarette lounges in the United States, though he fully divested before taking the helm at the
 5 FDA.⁶⁴⁵

6 520. The four-year extension was celebrated by e-cigarette lobbyists. Greg Conley,
 7 president of the American Vaping Association (“AVA”), stated that but for the extension, “over
 8 99 percent of vapor products available on the market today would be banned next year.”⁶⁴⁶
 9 Despite the minimal research publicly available on the health effect of e-cigarettes, Ray Story,
 10 who had since become commissioner of the Tobacco Vapor Electronic Cigarette Association,
 11 lauded the decision: “Absolutely, it’s a good thing . . . [w]hen you look at harm reduction, it’s a
 12 no brainer.”⁶⁴⁷

13 **2. JLI, the Management Defendants, and Altria Defendants** 14 **Successfully Shielded the Popular Mint Flavor from** **Regulation.**

15 521. JLI, the Management Defendants, and Altria Defendants had a two-fold plan for
 16 staving off regulation: (1) ensure the FDA allowed certain flavors, namely mint, to remain on the
 17 market; and (2) stave off a total prohibition on JUUL that was being contemplated in light of
 18 JLI’s role in the youth e-cigarette epidemic. These schemes involved acts of mail and wire fraud,
 19 with the intent to deceive the FDA, Congress, and the public at large.

21 _____
 22 ⁶⁴⁴ Katie Thomas & Sheila Kaplan, *E-Cigarettes Went Unchecked in 10 Years of Federal*
 23 *Inaction*, N.Y. Times (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/health/vaping-e-cigarettes-fda.html>.

24 ⁶⁴⁵ Zeke Faux *et al.*, *Vaping Venture Poses Potential Conflict for Trump’s FDA Nominee*,
 25 Bloomberg (Apr. 19, 2017), <https://www.bloomberg.com/news/articles/2017-04-19/vaping-venture-poses-potential-conflict-for-trump-s-fda-nominee>.

26 ⁶⁴⁶ Sheila Kaplan, *F.D.A. Delays Rules That Would Have Limited E-Cigarettes on Market*, N.Y.
 27 Times (July 28, 2017), <https://www.nytimes.com/2017/07/28/health/electronic-cigarette-tobacco-nicotine-fda.html>.

28 ⁶⁴⁷ *Id.*

522. First, JLI, the Management Defendants, and Altria publicly defended mint flavoring as a substitute for menthol cigarette smokers, when in fact JLI's studies indicated that mint users are not former menthol smokers. Second, by fighting to keep mint as the last flavor on the market, the cigarette industry could continue to appeal to non-smokers, including youth. JLI and the Management Defendants coordinated with Altria to pursue a fraudulent scheme to convince the FDA into leaving the mint flavor on the market, sacrificing other flavors in the process.

523. On August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral study regarding the prevalence of use, perceptions of use, and intentions to use JUUL and other tobacco products among adolescents aged 13-17 years ("Youth Prevalence Study").⁶⁴⁸

524. On November 5, 2018, JLI transmitted the results of the Youth Prevalence Study to the FDA and reported that a study of over 1,000 youth had found that only 1.5% of youth had ever used a JUUL, and that only 0.8% of youth had used a JUUL in the last 30 days. And in stark contrast to the McKinsey and DB Research studies discussed above, the Youth Prevalence Study suggested that mango was four times as popular as mint.⁶⁴⁹ Specifically, the study found that 47% of youth who reported use of a JUUL device in the last 30-days professed to using mango most often, with only about 12% reporting the same for mint.

525. JLI's study was a sham. JLI, the Management Defendants, and Altria knew their reported data was inconsistent with the McKinsey and DB Research studies conducted just a few months earlier. JLI's report featured responses to a carefully selected survey question – which *single* flavor youth used most often? – that obscured the widespread use of mint JUUL pods among youth.

526. Ironically, just a few days after JLI submitted the misleading Youth Prevalence Study to the FDA, the National Youth Tobacco Survey was released. Revealing the depths of the deception of JLI's Youth Prevalence Study, which found that only 1.5% of youth were current

⁶⁴⁸ Letter from Joanna Engelke, JUUL Labs, Inc., to David Portnoy, Ph.D., M.P.H., FDA Center for Tobacco Products (Nov. 5, 2018).

⁶⁴⁹ *Id.* at 3.

1 users of e-cigarettes, the National Youth Tobacco Survey found that 20.8% of high school
2 student were current users (*i.e.*, consumed e-cigarettes within the last 30 days).

3 527. The Youth Prevalence Study that JLI submitted to the FDA, either via U.S. mail
4 or by electronic transmission, was false and misleading. JLI, the Management Defendants, and
5 Altria knew as much. Indeed, they counted on it.

6 528. As the e-cigarette crisis grew, on September 25, 2018, then-FDA Commissioner
7 Scott Gottlieb sent letters to Altria, JLI and other e-cigarette manufacturers, requesting a
8 “detailed plan, including specific timeframes, to address and mitigate widespread use by
9 minors.”⁶⁵⁰

10 529. As evidenced by Altria’s recent admission that negotiations with JLI were
11 ongoing in late 2017,⁶⁵¹ Altria and JLI’s responses to the FDA reflect a coordinated effort to
12 mislead the FDA with the intention that regulators, in reliance on their statements, allow JLI to
13 continue marketing mint JUUL pods.⁶⁵²

14 530. Defendants’ plan centered on efforts to deceive the FDA that: (1) mint was more
15 akin to Tobacco and Menthol than other flavors; and (2) kids did not prefer mint.

16 531. JLI took the first step in this coordinated effort to deceive the FDA. In response to
17 then-Commissioner Gottlieb’s September 12, 2018 letter, JLI prepared an “Action Plan,” which
18 it presented to the FDA at an October 16, 2018 meeting, and presented to the public on
19 November 12, 2018. The substance of JLI’s presentation to the FDA and its public-facing Action
20 Plan were largely identical.⁶⁵³ JLI purported to “share a common goal- preventing youth from
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22
23 ⁶⁵⁰ 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).

24 ⁶⁵¹ Letter from Howard Willard III, Altria to Senator Durbin, *et al.* (Oct. 14, 2019).

25 ⁶⁵² *See United States v. Jones*, 712 F.2d 1316, 1320-21 (9th Cir. 1983) (“It is enough that the
26 mails be used as part of a ‘lulling’ scheme by reassuring the victim that all is well and
discouraging him from investigating and uncovering the fraud.”).

27 ⁶⁵³ JUUL did not include in its Action Plan a proposal for Bluetooth or Wi-Fi equipped devices
28 that was included in JLI’s October presentation.

1 initiating on nicotine.”⁶⁵⁴ As part of this plan, JLI stated that it would be “stopping flavored
2 JUUL pod sales to all 90,000+ retail stores.”⁶⁵⁵

3 532. But this statement was not true. JLI was continuing retail sales of its mint JUUL
4 pods, which JLI categorized as a non-flavored “tobacco and menthol product.”⁶⁵⁶ In JLI’s Action
5 Plan, then-CEO Burns stated that only products that “mirror what is currently available for
6 combustible cigarettes – tobacco and menthol-based products (menthol and mint pods) – will be
7 sold to retail stores.”⁶⁵⁷

8 533. In both JLI’s October 2018 presentation to the FDA and JLI’s Action Plan that
9 was shared with the public, JLI and its CEO fraudulently characterized mint as a non-flavored
10 cigarette product, akin to tobacco and menthol cigarettes, suggesting that it was a product for
11 adult smokers. The image below was included in both the public-facing Action Plan and JLI’s
12 presentation to the FDA.



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23 534. JLI knew that non-smoking youth liked mint as much as any flavor.

24 ⁶⁵⁴ JUUL Labs, Inc., *FDA Presentation*, at 2 (Oct. 16, 2018); INREJUUL_00182989.

25 ⁶⁵⁵ *JUUL Labs Action Plan*, JUUL Labs, Inc. (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

26 ⁶⁵⁶ *Id.*

27 ⁶⁵⁷ *Id.*

1 535. Numerous internal studies had informed JLI that mint’s success was “not because
2 it’s a menthol/a familiar tobacco flavor but because it is the best JUUL flavor profile on multiple
3 levels.”⁶⁵⁸ Indeed, despite JLI’s attempts to explicitly link mint to menthol, JLI knew there was
4 “No Implied Relationship Between Mint & Menthol,”⁶⁵⁹ and “menthol smokers are not the only
5 driver behind the popularity of mint flavored JUULpods.”⁶⁶⁰

6 536. Most importantly, JLI knew that mint was the most popular JUUL pod. Though
7 other flavors might draw new customers, JLI’s most addictive “flavor” predictably became its
8 most popular.

9 537. The characterization of mint as an adult tobacco product was also fraudulent
10 because JLI *knew first hand* from the McKinsey and DB Research studies that teens viewed mint
11 as favorably as mango, which implies that mango and mint were fungible goods for JLI’s
12 underage users. The McKinsey and DB Research studies also showed that youth preferred mint
13 over the more stereotypically youth-oriented flavors like fruit medley, crème brule, and
14 cucumber. As alleged in a Whistleblower Complaint, JLI’s then-CEO told his employees: “You
15 need to have an IQ of 5 to know that when customers don’t find mango they buy mint.”⁶⁶¹

16 538. On October 25, 2018, less than ten days after JLI presented its fraudulent,
17 misleading Action Plan to the FDA, Altria’s CEO Howard Willard submitted a letter in response
18 to the FDA’s call to combat the youth epidemic. Willard’s letter was a clear indication of Altria’s
19 willingness to continue the fraudulent scheme and deception of the FDA. While Willard’s letter
20 confirmed that Altria understood that JLI’s conduct and product was addicting many children to
21 nicotine, this letter repeated the misleading statement that mint was a “traditional tobacco flavor”
22 despite Altria and JLI knowing it was no such thing. Willard then claimed that the youth
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24 ⁶⁵⁸ INREJUUL_00265069.

25 ⁶⁵⁹ INREJUUL_00079307-INREJUUL_00079409 at 395.

26 ⁶⁶⁰ *Id.*

27 ⁶⁶¹ Angelica LaVito, *Former JLI executive sues over retaliation, claims company knowingly*
28 *sold tainted nicotine pods*, CNBC (Oct. 30, 2019), <https://www.cnbc.com/2019/10/30/former-juul-executive-sues-over-retaliation-claims-company-knowingly-sold-tainted-pods.html>.

1 epidemic was caused, in part, by “flavors that go beyond traditional tobacco flavors” – which,
 2 according to JLI and Altria, did not include mint – and announced that Altria would discontinue
 3 all MarkTen flavors except for “traditional tobacco, menthol and mint flavors.” Willard asserted
 4 that these three flavors were essential for transitioning smokers. But Willard, and Altria, knew
 5 this was not true.⁶⁶²

6 539. That same day – October 25, 2018 – Altria continued its deception on an earnings
 7 call with investors. Altria fraudulently described its decision to remove its pod-based products
 8 from the market as one intended to address the dramatic increase in youth e-cigarette use, while
 9 it was only weeks away from publicly announcing its 35% stake in JLI:

10 We recently met with Commissioner Gottlieb to discuss steps that could be taken
 11 to address underage access and use. Consistent with our discussion with the FDA
 12 and because we believe in the long-term promise of e-vapor products and harm
 reduction, we’re taking immediate action to address this complex situation.

13 First, Nu Mark will remove from the market MarkTen Elite and Apex by
 14 MarkTen pod-based products until these products receive a market order from the
 15 FDA or the youth issue is otherwise addressed. Second, for our remaining
 16 MarkTen and Green Smoke cig-a-like products, Nu Mark will sell only tobacco,
 17 menthol and mint varieties. Nu Mark will discontinue the sale of all other flavor
 variants of our cig-a-like products until these products receive a market order
 from the FDA or the youth issue is otherwise addressed. Although we don’t
 believe we have a current issue with youth access or use of our e-vapor products,
 we are taking this action, because we don’t want to risk contributing to the issue.

18 After removing Nu Mark’s pod-based products and cig-a-like flavor variants,
 19 approximately 80% of Nu Mark’s e-vapor volume in the third quarter of 2018 will
 remain on the market.⁶⁶³

20 540. Willard reiterated that “pod-based products and flavored products” were behind
 21 the increase in youth use of e-cigarettes:

22 I mean, I think the way we thought about this was that we believe e-vapor has a
 23 lot of opportunity to convert adult cigarette smokers in the short, medium and
 24 long-term, but clearly, this significant increase in youth usage of the products puts
 that at risk and we think rapid and significant action is necessary. And I think as
 we looked at the data that 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

26 ⁶⁶² Letter from Howard Willard III, Altria to Senator Durbin, *et al.* (Oct. 14, 2019).

27 ⁶⁶³ Altria Group Inc. (MO) Q3 2018 Earnings Conference Call Transcript MO earnings call for
 28 the period ending September 30, 2018 (Oct. 25, 2018).

1 products and flavored products and so we thought that the two actions that we
2 took addressed the drivers of the increased youth usage here in the short run.⁶⁶⁴

3 541. Willard emphasized that Altria's withdrawal of its own pod-based products was
4 intended to address youth use: "[W]e really feel like in light of this dramatic increase in youth
5 usage, withdrawing those products until the PMTA is filed is one path forward." He later said:
6 "And frankly, the actions we took were the actions that we thought we could take that would
7 have the biggest impact on addressing the increased use of e-vapor products by youth . . . we
8 wanted to make a significant contribution to addressing the issue."⁶⁶⁵ As noted above, however,
9 it has since been reported that Altria "pulled its e-cigarettes off the market" not out of concern
10 for the epidemic of youth nicotine addiction that JLI created, but because a non-compete clause
11 was a "part of its deal with J[LI]."⁶⁶⁶

12 542. Thus, while Altria publicly announced that it would pull its pod-based products to
13 combat youth usage, and publicly seemed to support removal of youth-friendly flavors, its
14 defense of mint as a tobacco-analog was actually part of the scheme to protect the profits
15 associated with JLI's mint JUUL pods, one of JLI's strongest products with the highest nicotine
16 content and highest popularity among non-smokers and youth.

17 543. In support of his arguments to the FDA that mint was a flavor for adult smokers,
18 Willard cited to a study that Altria had conducted and presented at a conference that JLI
19 attended.⁶⁶⁷ But Willard did *not* disclose that Altria's "study" was merely a "quasi-experimental
20 online survey" and not a true scientific study.⁶⁶⁸ Notably, JLI's current CEO, K.C. Crosthwaite,
21 was the President and Chief Growth Officer of Altria Client Services, which conducted Altria's

22 ⁶⁶⁴ *Id.*

23 ⁶⁶⁵ *Id.*

24 ⁶⁶⁶ *Id.*

25 ⁶⁶⁷ Jessica Parker Zdinak, Ph.D., *E-vapor Product Appeal Among Tobacco Users and Non-users*
26 *and the Role of Flavor in Tobacco Harm Reduction*, 72nd Tobacco Science Research Conference
27 (Sept. 18, 2018), <https://sciences.altria.com/library/-/media/Project/Altria/Sciences/library/conferences/2018%20TSRC%20J%20Zdniak%20Presentation.pdf>.

28 ⁶⁶⁸ *Id.*

1 mint “study” in Spring 2017, the same time that the Management Defendants and Altria began
 2 their “confidential negotiations.”⁶⁶⁹ Willard did not disclose that this study was contradicted by
 3 the “youth prevention” data provided by JLI during its acquisition due-diligence showing that
 4 mint was popular among teens.

5 544. Through these letters, Altria sought to prevent the FDA – which was actively
 6 considering regulating flavors⁶⁷⁰ – from banning JLI’s mint JUULpods.

7 545. Acting in concert, JLI and Altria committed acts of mail or wire fraud when: (1)
 8 JLI transmitted its Action Plan to the FDA and the public; and (2) Altria transmitted Willard’s
 9 letter to the FDA.

10 546. At the heart of these acts of fraud was Defendants’ characterization of mint as a
 11 tobacco product that was targeted to adult smokers. This characterization was fraudulent because
 12 Defendants knew kids prefer mint flavor and that JLI designed mint to be one of JLI’s most
 13 potent products. Altria supported this plan and helped execute it. Together, these actions by JLI
 14 and Altria ensured that mint would remain available to youths for many months, furthering their
 15 efforts to maintain and expand the number of nicotine-addicted e-cigarette users in order to
 16 ensure a steady and growing customer base.

17 547. The deceptive scheme worked – the FDA did not protest JLI and Altria’s plan.
 18 And on December 20, 2018, one month after JLI announced its Action Plan to keep selling mint,
 19 Altria made a \$12.8 billion equity investment in JLI.

20 548. By February of 2019, the FDA became aware that it had been deceived by JLI and
 21 Altria. On February 6, 2019, then-FDA commissioner Gottlieb wrote JLI and Altria demanding
 22 in-person meetings, excoriating Altria for its “newly announced plans with JUUL [that]
 23 *contradict the commitments you made to the FDA*” in a prior meeting and Willard’s October
 24

25 _____
 26 ⁶⁶⁹ Letter from Howard Willard III, Altria to Senator Durbin, *et al.* (Oct. 14, 2019).

27 ⁶⁷⁰ Alex Lardieri, *FDA Considers Ban on E-Cigarette Flavors Amid ‘Epidemic’ Use By Teens*,
 28 U.S. News & World Report (Sept. 12, 2018), <https://www.usnews.com/news/health-care-news/articles/2018-09-12/fda-considers-ban-on-e-cigarette-flavors-amid-epidemic-use-by-teens>.

25, 2018 letter to the FDA.⁶⁷¹ Gottlieb’s letter to JLI alleged that JLI’s conduct was “inconsistent with its previous representations to the FDA.”⁶⁷²

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

550. JLI and Altria met with Gottlieb in March 2019 in a meeting the then-Commissioner described as “difficult.”⁶⁷³ Gottlieb did not come away with any evidence that public health concerns drove Altria’s decision to invest in JLI, and instead said it looked like a business decision. According to reporting by the New York Times, Gottlieb angrily criticized JLI’s lobbying of Congress and the White House, stating:

We have taken your meetings, returned your calls and I had personally met with you more times than I met with any other regulated company, and yet you still tried to go around us to the Hill and White House and undermine our public health efforts. I was trying to curb the illegal use by kids of your product and you are fighting me on it.⁶⁷⁴

551. But just a week after the “difficult” meeting with JLI and Altria, Gottlieb posted a statement about the FDA’s new e-cigarette policy, proposing to ban all flavors *except* “tobacco-, mint- and menthol-flavored products.”⁶⁷⁵ He cited the strong support of President Trump (whose

⁶⁷¹ Letter from Scott Gottlieb, FDA to Howard Willard, Altria (Feb. 9, 2019).

⁶⁷² Letter from Scott Gottlieb, FDA to Kevin Burns, JUUL Labs, Inc. (Feb. 9, 2019).

⁶⁷³ 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>.

⁶⁷⁴ 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>.

⁶⁷⁵ News Release, *Statement from FDA Commissioner Scott Gottlieb, M.D., on advancing new policies aimed at preventing youth access to, and appeal of, flavored tobacco products, including e-cigarettes and cigars*, U.S. FDA (Mar. 13, 2019), <https://www.fda.gov/news-events/press->

administration JLI had aggressively lobbied⁶⁷⁶), and also cited “recent evidence indicat[ing] that mint- and menthol-flavored ENDS products are preferred more by adults than minors.”⁶⁷⁷ Just a few weeks later, Gottlieb resigned from his position as commissioner of the FDA.

552. The scheme had succeeded in saving mint JUUL pods, as well as each Defendant’s bottom line. JLI’s sale of mint JUUL pods rose from one third of its sales in September 2018 to approximately two thirds in February 2019. JLI’s 2019 revenues were estimated to be between \$2.36 billion and \$3.4 billion, and mint JUUL pods accounted for approximately 75% of JLI’s total 2019 sales. And because mint remained on the market until JLI withdrew it in November 2019 in the face of growing scrutiny,⁶⁷⁸ thousands, if not millions, of underage JUUL users suffered the consequences.

553. 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.”⁶⁷⁹

554. JLI continues to sell menthol-flavored products.⁶⁸⁰

3. In Response to the Public Health Crisis Created by JUUL, the FDA Belatedly Tried to Slow the Epidemic.

555. 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

announcements/statement-fda-commissioner-scott-gottlieb-md-advancing-new-policies-aimed-preventing-youth-access.

⁶⁷⁶ 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-record-1-2-million-lobbying-as-regulators-stepped-up>.

⁶⁷⁷ *Id.*

⁶⁷⁸ 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-vaping-products>.

⁶⁷⁹ *Id.*

⁶⁸⁰ 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>.

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.”⁶⁸¹ 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.⁶⁸²

556. 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 applications for all new deemed products” (“new” referred to any product launched after February 15, 2007 and thus would include JUUL) be submitted within ten months, by May 2020.⁶⁸³

557. In January 2020, the FDA issued: *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization: Guidance for Industry* (“2020 FDA Guidance”), directed at the e-cigarette industry, which detailed the FDA’s plan to prioritize enforcement of regulations prohibiting the sale of flavored e-cigarette products and prohibiting the targeting of youth and minors.⁶⁸⁴ The 2020 FDA Guidance focused on flavored e-cigarettes that appeal to children, including fruit and mint: “[C]ompanies that do not cease manufacture, distribution and sale of unauthorized flavored cartridge-based e-cigarettes . . . within 30 days risk FDA enforcement actions.”⁶⁸⁵

⁶⁸¹ *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>.

⁶⁸² *Id.*

⁶⁸³ *Id.*; *Am. Academy of Pediatrics v. FDA*, 379 F. Supp. 3d 461, 496 (D. Md. 2019).

⁶⁸⁴ *Id.*

⁶⁸⁵ News Release, *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint*, U.S. FDA (Jan. 2, 2020),

4. The Government's Efforts to Address the JUUL Crisis Were Too Late and the Damage Has Already Been Done.

558. By the time the FDA acted, youth consumption of e-cigarettes had already reached an all-time high, and the e-cigarette industry's presence on social media became an unstoppable force. The 2020 FDA Guidance acknowledges that two of the largest 2019 surveys of youth cigarette use found that e-cigarette use had reached the highest levels ever recorded.⁶⁸⁶ By December 2019, there were over 2,500 reported cases of e-cigarette related hospitalization for lung injury, including over 50 confirmed deaths.⁶⁸⁷ Despite the FDA's efforts between 2017 and 2019, youth consumption of e-cigarettes doubled among middle and high school students over the same period.⁶⁸⁸ In 2019, the total number of middle and high school students reporting current use of e-cigarettes surpassed five million for the first time in history.⁶⁸⁹

559. JLI's presence on social media has also persisted, even without further initiation by JLI – the hallmark of a successful viral marketing campaign. When the “#juul” hashtag was first used on social media, it was a series of 13 tweets on Twitter. By the time JLI announced it would shut down its Instagram account, “#juul” had been featured in over 250,000 posts on Instagram. A study by Stanford University found that in the eight months after JLI ceased all promotional postings, community posting accelerated, to nearly half a million posts. Whereas before JLI exited Instagram, “#juul” appeared on average in 315 posts per day, that number tripled to 1084 posts per day after JLI shut down its Instagram account.⁶⁹⁰

<https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

⁶⁸⁶ *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>.

⁶⁸⁷ 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>.

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.*

⁶⁹⁰ 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), http://tobacco.stanford.edu/tobacco_main/publications/Hashtag_JUUL_Project_7-22-19F.pdf.

560. The FDA’s anti-e-cigarette campaign on social media was aimed at youth and middle and high school students. The campaign used the slogan “The Real Cost” to educate youth on social media platforms about the health impacts of e-cigarette consumption – the real cost of using e-cigarettes. A recent study from the University of California Berkeley found that since September 2018, when the FDA’s social media campaign began, the hashtag “#TheRealCost” was used about 50 times per month on Instagram. By comparison, e-cigarette related hashtags were used as many as 10,000 times more often. Despite the FDA’s social media intervention, the number of e-cigarette related posts, and the median number of likes (a strong metric of viewer engagement) the posts received, increased three-fold and six-fold, respectively.⁶⁹¹

561. In short, by the time the FDA reacted to the epidemic created by Defendants, millions of youth were addicted to e-cigarettes and nicotine, and were sharing e-cigarette related posts on social media on their own.

V. GOVERNMENT ENTITY FACTUAL ALLEGATIONS

A. E-cigarette Use in Schools

562. In addition to severe health consequences, widespread e-cigarette use, and particularly JUUL use, has placed severe burdens on society and schools in particular. It is not an overstatement to say that JUUL has changed the high school and even middle school experience of students across the nation. As one e-cigarette shop manager told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”⁶⁹²

563. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created patterns of youth usage, illegal youth transactions, and addiction, that are consistent with the account from Reddit that described widespread JUUL use discussed above.

⁶⁹¹ Julia Vassey, *#Vape: Measuring E-cigarette Influence on Instagram With Deep Learning and Text Analysis*, 4 *Frontiers in Commc’n* 75 (2020), <https://www.frontiersin.org/articles/10.3389/fcomm.2019.00075/full>.

⁶⁹² *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

564. E-cigarette use has completely changed school bathrooms – now known as “the Juul room.”⁶⁹³ As one high school student explained, “it’s just a cloud.”⁶⁹⁴

565. As another high school student explained, “You can pull it out, you can have it anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the bathroom, it’s easy.”⁶⁹⁵ He added that JLI “market[s] it as an alternative to cigarettes but really it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine addiction there.”⁶⁹⁶ Students at another high school stated that classmates had “set off the fire alarm four times last year from vaping in the bathrooms [at school],” adding that it is commonplace to see students using e-cigarettes in school bathrooms or in the parking lot.⁶⁹⁷

566. An April 20, 2018 article in *The Wall Street Journal* described the problems parents and schools are facing with the meteoric rise of nicotine use by America’s youth:

At Northern High School in Dillsburg, Pa., Principal Steve Lehman’s locked safe, which once contained the occasional pack of confiscated cigarettes, is now filled with around 40 devices that look like flash drives.

The device is called a Juul and it is a type of e-cigarette that delivers a powerful dose of nicotine, derived from tobacco, in a patented salt solution that smokers say closely mimics the feeling of inhaling cigarettes. It has become a coveted teen status symbol and a growing problem in high schools and middle schools, spreading with a speed that has taken teachers, parents and school administrators by surprise.

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⁶⁹³ 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.

⁶⁹⁴ 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>.

⁶⁹⁵ Alison Grande, *‘Juuling’: Vaping device that looks like USB drive popular with teens*, KIRO 7 (Dec. 8, 2017), <https://www.kiro7.com/news/local/juuling-vaping-device-that-looks-like-usb-drive-popular-with-teens/660965605/>.

⁶⁹⁶ *Id.*

⁶⁹⁷ Manisha Jha, *‘You need to stop vaping right now’: Students and faculty react to Washington vape ban*, The Daily, U. of Wash. (Sept. 30, 2019), http://www.dailyuw.com/news/article_960d8692-e324-11e9-870c-9f9d571115d6.html.

1 After two decades of declining teen cigarette use, “JUULing” is exploding. The
 2 JUUL liquid’s 5% nicotine concentration is significantly higher than that of most
 3 other commercially available e-cigarettes. JUUL Labs Inc., maker of the device,
 4 says one liquid pod delivers nicotine comparable to that delivered by a pack of
 5 cigarettes, or 200 puffs – important for adult smokers trying to switch to an e-
 6 cigarette. It is also part of what attracts teens to the product, which some experts
 7 say is potentially as addictive as cigarettes and has schools and parents scrambling
 8 to get a grip on the problem.⁶⁹⁸

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

11 568. Such rampant e-cigarette use has effectively added another category to teachers’
 12 and school administrators’ job descriptions; many now receive special training to respond to the
 13 various problems that youth e-cigarette use presents, both in and out of the classroom. A national
 14 survey of middle schools and high schools found that 44.4% of schools have had to implement
 15 policies to address JUUL use.⁶⁹⁹ Participants in the survey reported multiple barriers to enforcing
 16 these policies, including the discreet appearance of the product, difficulty pinpointing the vapor
 17 or scent, and the addictive nature of the product.

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24 ⁶⁹⁸ Anne Marie Chaker, *Schools and Parents Fight a Juul E-Cigarette Epidemic*, Wall St. J.
 25 (Apr. 4, 2018), <https://www.wsj.com/articles/schools-parents-fight-a-juul-e-cigarette-epidemic-1522677246>.

26 ⁶⁹⁹ Barbara A. Schillo, Ph.D. *et al.*, *JUUL in School: Teacher and Administrator Awareness and*
 27 *Policies of E-Cigarettes and JUUL in U.S. Middle and High Schools*, Truth Initiative Vol. 21(1)
 28 Health Promotion Practice 20-24 (Sept. 18, 2019),
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.

1 569. Across the United States, schools have had to divert resources and administrators
 2 have had to go to extreme lengths to respond to the ever-growing number of students using e-
 3 cigarettes on school grounds, including in restrooms. According to the *Truth Initiative*, more than
 4 40% of all teachers and administrators reported responding to the JUUL crisis through camera
 5 surveillance near the school's restroom; almost half (46%) reported camera surveillance
 6 elsewhere in the school; and 23% reported using assigned teachers for restroom surveillance.⁷⁰⁰
 7 Some schools have responded by removing bathroom doors or even shutting bathrooms down,
 8 and schools have banned flash drives to avoid any confusion between flash drives and JUULs.
 9 Schools have also paid thousands of dollars to install special monitors to detect e-cigarette use,
 10 which they say is a small price to pay compared to the plumbing repairs otherwise spent as a
 11 result of students flushing e-cigarette paraphernalia down toilets. Other school districts have
 12 sought state grant money to create new positions for tobacco prevention supervisors, who get
 13 phone alerts when e-cigarette smoke is detected in bathrooms.

14 570. Many schools have also shifted their disciplinary policies in order to effectively
 15 address the youth e-cigarette epidemic. Rather than immediately suspending students for a first
 16 offense, school districts have created anti-e-cigarette curricula which students are required to
 17 follow in sessions held outside of normal school hours, including on Saturdays. Teachers prepare
 18 lessons and study materials for these sessions with information on the marketing and health
 19 dangers of e-cigarettes – extra work which requires teachers to work atypical hours early in the
 20 mornings and on weekends. Some schools will increase their drug testing budget to include
 21 random nicotine tests for students before they join extracurricular activities. Under this drug-
 22 testing protocol, first offenders will undergo drug and alcohol educational programming; second
 23 and third offenders will be forced to sit out from extra-curricular activities and attend substance
 24 abuse counseling.

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 27 ⁷⁰⁰ *How are schools responding to JUUL and the youth e-cigarette epidemic?*, Truth Initiative
 28 (Jan. 18, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-and-youth-e-cigarette>.

1 571. A July 26, 2019 article in *The Washington Post* noted the measures some schools
2 were taking to combat JUULing by students:

3 Many schools are at a loss for how to deal with Juuls and other e-cigarettes.
4 Some educators report increases in the number of students being suspended after
5 they're caught with e-cigarettes.

6 Desperate school administrators have banned USB drives because they're
7 indistinguishable from Juuls. Others removed bathroom doors because teens were
8 regularly gathering there to vape, and some have even started searching students.

9 Jonathon Bryant, chief administrator of Lincoln Charter School in North Carolina,
10 estimated that three-quarters of suspensions in the just-completed academic year
11 were related to vaping, and some students were suspended more than once.⁷⁰¹

12 572. JUUL's prevalence in schools is not a coincidence; JLI actively sought to enter
13 school campuses. By June 2017, JLI began developing what they claimed to be a "youth
14 prevention program[.]"⁷⁰² By December 2017, JLI's venture included extensive work with
15 schools.⁷⁰³
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24 ⁷⁰¹ Moriah Balingit, *In the 'Juul room': E-cigarettes spawn a form of teen addiction that worries*
25 *doctors, parents and schools*, Wash. Post (July 26, 2019),
26 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.

27 ⁷⁰² See, e.g., INREJUUL_00211242-INREJUUL_00211243 at 242.

28 ⁷⁰³ INREJUUL_00173409.

573. 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.”⁷⁰⁴ 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.”⁷⁰⁵

574. 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.⁷⁰⁶ Participants were “recruited from grades 3 through 12.”⁷⁰⁷ 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. The Richmond Diversion Program targeted “youth, aged 12-17, who face suspension from school for using e-cigarettes and/or marijuana” and “juveniles who have committed misdemeanor (lesser category) offenses” and required students to “participate in the JUUL labs developed program, Moving Beyond,” for as long as ten weeks.⁷⁰⁸

⁷⁰⁴ *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>.

⁷⁰⁵ *Id.*

⁷⁰⁶ *See* INREJUUL_00194247-INREJUUL_00194251; *see also* JLI-HOR-00003711-JLI-HOR-00003712 (invoice to JLI from The Freedom & Democracy Schools, Inc. for \$134,000 dated June 21, 2018).

⁷⁰⁷ INREJUUL_00194247-INREJUUL_00194251 at 428.

⁷⁰⁸ JLI-HOR-00002180-JLI-HOR-00002184 at 181-182.

1 575. Community members testified before the Subcommittee as to the content of one
2 of JLI's presentations in school. During JLI's presentation to students, "[n]o parents or teachers
3 were in the room, and JUUL's messaging was that the product was 'totally safe.' The presenter
4 even demonstrated to the kids how to use a JUUL."⁷⁰⁹

5 576. In 2018, a representative from JLI spoke at a high school during a presentation for
6 ninth graders, stating that JUUL "was much safer than cigarettes," that the "FDA would approve
7 it any day," that JUUL was "totally safe," that JUUL was a "safer alternative than smoking
8 cigarettes, and it would be better for the kid to use," and that the "FDA was about to come out
9 and say it [JUUL] was 99% safer than cigarettes . . . and that . . . would happen very soon[.]"⁷¹⁰
10 "The presenter even demonstrated to the kids how to use a JUUL."⁷¹¹

11 577. In the FDA's September 9, 2019 Warning Letter, which discussed this
12 presentation to ninth graders, the agency noted its "concern is amplified by the epidemic rate of
13 increase in youth use of ENDS products, including JUUL's products, and evidence that ENDS
14 products contribute to youth use of, and addiction to, nicotine, to which youth are especially
15 vulnerable."⁷¹²

22 ⁷⁰⁹ Committee Staff, *Memorandum re: Supplemental Memo for Hearing on Examining JUUL's*
23 *Role in the Youth Nicotine Epidemic: Parts I & II*, at 1, Subcommittee on Econ. & Consumer
24 Policy (July 25, 2019), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.p](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)
df.

25 ⁷¹⁰ *Juul Labs, Inc. Warning Letter*, FDA (Sept. 9, 2019), [https://www.fda.gov/inspections-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019)
26 [compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019)
09092019.

27 ⁷¹¹ Subcommittee on Economic and Consumer Policy Memo (July 25, 2019).

28 ⁷¹² *Id.*

Ms. Meredith Berkman, Co-founder, Parents Against Vaping e-cigarettes (PAVe), testified that, “In California, a retired school superintendent was offering schools in his state and in Massachusetts money if they would implement the anti-JUUL curriculum that...a man named Bruce Harder was offering on JUUL’s behalf.”

On July 25, 2019, in response to questions from Chairman Krishnamoorthi about JUUL’s program to pay schools \$10,000 or more to use a JUUL “youth prevention” curriculum, Ms. Ashley Gould, Chief Administrative Officer, JUUL Labs, Inc., testified: “That is not currently the case. We ended that program in the fall of 2018,” and that, “...there were six schools that received funding from JUUL to implement programming to prevent teen vaping....”

⁷¹³ 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>.

⁷¹⁵ 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>.

1 580. JLI also sponsored a “Saturday School Program” in which students caught using
 2 e-cigarettes in school were presented with JLI-sponsored curriculum and snacks, and JLI
 3 “established the right to collect student information from the sessions.”⁷¹⁶ A JLI spokesman said
 4 the company is no longer funding such programs.

5 581. As mentioned above, the problems with JLI’s youth prevention programs were
 6 widespread. According to outside analyses, “the JUUL Curriculum is not portraying the harmful
 7 details of their product, similar to how past tobacco industry curricula left out details of the
 8 health risks of cigarette use.”⁷¹⁷ Although it is well-known that teaching children to deconstruct
 9 ads is one of the most effective prevention techniques, JLI programs entirely omitted this skill,
 10 and JLI’s curriculum barely mentioned JUUL products as among the potentially harmful
 11 products to avoid.⁷¹⁸ As one expert pointed out, “we know, more from anecdotal research, that
 12 [teens] may consider [JUULs] to be a vaping device, but they don’t call it that. So when you say
 13 to a young person, ‘Vapes or e-cigarettes are harmful,’ they say, ‘Oh I know, but I’m using a
 14 JUUL.’”⁷¹⁹

21 ⁷¹⁶ Committee Staff, *Memorandum re: Supplemental Memo for Hearing on Examining JUUL’s*
 22 *Role in the Youth Nicotine Epidemic: Parts I & II*, at 2, Subcommittee on Econ. & Consumer
 23 Policy (July 25, 2019),
[https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.p](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf)
[df](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf).

24 ⁷¹⁷ Victoria Albert, *Juul Prevention Program Didn’t School Kids on Dangers, Expert Says:*
 25 *SMOKE AND MIRRORS. JUUL – which made up 68 percent of the e-cigarette market as of mid-*
 26 *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-](https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says)
[expert-says](https://www.thedailybeast.com/juul-prevention-program-didnt-school-kids-on-dangers-expert-says).

27 ⁷¹⁸ *Id.*

28 ⁷¹⁹ *Id.*

582. 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. In April 2018, Julie Henderson, the Youth Prevention Director, emailed school officials about "the optics of us attending a student health fair" because of "how much our efforts seem to duplicate those of big tobacco (Philip Morris attended fairs and carnivals where they distributed various branded items under the guise of 'youth prevention')." ⁷²⁰ She later wrote that she would "confirm our participation w[ith] Ashley & Kevin" ⁷²¹ – an apparent reference to Kevin Burns, at the time the CEO of JLI, who would later personally approve JLI's involvement in school programs. In May 2018, Henderson spoke with former members of Philip Morris' "youth education" team, ⁷²² and Ashley Gould received and forwarded what was described as "the paper that ended the Think Don't Smoke campaign undertaken by Philip Morris." ⁷²³ The paper concluded that "the Philip Morris' ['youth prevention'] campaign had a counterproductive influence." ⁷²⁴

583. The Management Defendants were intimately involved in these "youth prevention" activities. For example, in April 2018, Defendants Valani and Pritzker edited a "youth prevention" press release, noting that they "don't want to get these small items wrong" and that they "think it's critical to get this right." ⁷²⁵

⁷²⁰ INREJUUL_00197607-INREJUUL_00197608 at 608.

⁷²¹ *Id.* at 607.

⁷²² INREJUUL_00196624-INREJUUL_00196625.

⁷²³ INREJUUL_00265202.

⁷²⁴ Matthew C. Farrelly *et al.*, *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, 92 Am. J. Public Health 901 (2002), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=nxhb0024>.

⁷²⁵ JLI00151300.

1 584. JLI was aware that these out-of-school programs were, in the words of
2 Henderson, “eerily similar” to the tactics of the tobacco industry.⁷²⁶ Eventually, JLI ended this
3 version of its youth prevention program, but the damage had been done: following the cigarette
4 industry playbook, JLI had hooked more youth on nicotine.

5 585. As the sales of JUUL continued to mushroom, it was readily apparent, and widely
6 reported, that the rapid growth in sales was due to the surging popularity of e-cigarette use
7 among teenagers. By March 2018, multiple national news outlets including *National Public*
8 *Radio*, *USA Today*, and *Business Insider* reported youth were using JUUL with alarming
9 frequency, posting about using JUUL in school restrooms on social media, and bragging about
10 being able to use the device in the classroom due to JUUL’s discreet design.

11 586. One of the priorities for JLI, Altria, and the Management Defendants was
12 therefore to control the messaging and narrative around youth e-cigarette use. Faced with an
13 urgent, growing public health crisis, national media attention, and the ire of the public, the FDA
14 and members of Congress, the Defendants realized that dis-information campaign was urgently
15 needed to protect its bottom line. This campaign was the “*Make the Switch*” campaign discussed
16 above.

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⁷²⁶ INREJUUL_00194646.

587. 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.”⁷²⁷ 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.

588. 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.

589. 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.⁷²⁸

⁷²⁷ 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>.

⁷²⁸ 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>.

1 590. The launch of “JUULalike” products concerned Vince Willmore, Vice President
 2 of Communications for the Campaign for Tobacco-Free Kids. According to Willmore, “Juul is
 3 our biggest concern right as it is being widely used by kids across the country . . . [b]ut we are
 4 also concerned that the introduction of a growing number of Juul-like products could make the
 5 problem even worse.”⁷²⁹ Willmore was not the only one worried. Then FDA Commissioner
 6 Gottlieb expressed concern about products copying JUUL’s features, stating that such products
 7 “closely resemble a USB flash drive, have high levels of nicotine and emissions that are hard to
 8 see. These characteristics may facilitate youth use, by making the products more attractive to
 9 children and teens.”⁷³⁰

10 591. Researchers from SRITA called it “a nicotine arms race,” writing that “JUUL’s
 11 success in the e-cigarette marketplace has spurred a variety of new pod-based products with
 12 exceptionally high nicotine.”⁷³¹ “As of September 2018,” the researchers wrote, “there were at
 13 least 39 JUUL knock off devices on the market” – none of which were sold prior to the
 14 introduction of JUUL.⁷³²

15 592. 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.

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 20 ⁷²⁹ Ben Tobin, *FDA targets e-cigarettes like Juul as teachers fear ‘epidemic’ use by students*,
 21 USA Today (Aug. 16, 2018), <https://www.usatoday.com/story/money/2018/08/16/juul-labs-back-school-teachers-e-cigarettes/917531002/>.

22 ⁷³⁰ Scott Gottlieb, Statement from FDA Commissioner Scott Gottlieb, M.D., on new
 23 enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to,
 24 JUUL and other e-cigarettes, FDA (Apr. 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.
 25

26 ⁷³¹ Robert K. Jackler & Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine*
 27 *product market*, 28 Tobacco Control 623-28 (2019),
<https://tobaccocontrol.bmj.com/content/28/6/623>.

28 ⁷³² *Id.*

593. The Secretary of HHS recognized, “The United States has never seen an epidemic of substance use arise as quickly as our current epidemic of youth use of e-cigarettes.”⁷³³ FDA 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.”⁷³⁴

594. 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.⁷³⁵

595. 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.

596. The rise in disposable products demonstrates why additional measures are necessary to halt the spread of youth e-cigarette use.⁷³⁶

B. Impact of the Youth Vaping Crisis on Plaintiff Broward Schools

597. Plaintiff The School Board of Broward County, Florida, is a school district located in Broward County, Florida. It is the second largest school district in the state of Florida

⁷³³ 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”), FDA (Jan. 2, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.

⁷³⁴ *Id.*

⁷³⁵ 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>.

⁷³⁶ *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.

and the sixth largest in the U.S. During the 2016-2017 school year, Broward Schools served 271,517 students enrolled in 327 schools and education centers district wide.

598. Broward Schools has been hit hard by the youth vaping epidemic. While the percentage of youth in Broward County who have tried or currently use cigarettes is at an all-time low, the percentage of youth in the county who have tried or currently use e-cigarettes has increased dramatically during the same period, from **4.5% to 22.6%** and from **1.6% to 12.5%**, respectively.⁷³⁷



Broward Youth (Ages 11-17): 2012 - 2018

PERCENTAGE OF YOUTH WHO HAVE	2012		2014		2016		2018	
	County	State	County	State	County	State	County	State
Ever tried cigarettes	16.7%	21.6%	13.4%	17.5%	n/a	13.7%	6.5%	11.4%
Ever tried cigars	13.8%	16.2%	8.9%	12.8%	n/a	9.0%	5.6%	8.0%
Ever tried smokeless tobacco	3.4%	7.0%	2.7%	6.1%	n/a	5.0%	2.0%	4.4%
Ever tried hookah	11.5%	9.4%	14.7%	14.1%	n/a	15.4%	9.5%	9.3%
Ever tried electronic vaping	4.5%	5.7%	10.4%	14.3%	n/a	24.5%	22.6%	26.3%
Ever tried cigarettes, cigars, or smokeless tobacco	22.7%	27.6%	18.4%	23.4%	n/a	18.5%	10.4%	16.6%
Ever tried cigarettes, cigars, smokeless, hookah, or electronic vaping	27.0%	30.2%	27.9%	30.7%	n/a	32.8%	28.7%	33.1%

PERCENTAGE OF YOUTH WHO	2012		2014		2016		2018	
	County	State	County	State	County	State	County	State
Currently use cigarettes	3.1%	6.1%	2.2%	4.3%	n/a	3.0%	1.2%	2.2%
Currently use cigars	5.8%	6.5%	2.8%	5.1%	n/a	3.4%	0.9%	3.0%
Currently use smokeless tobacco	1.7%	3.0%	1.6%	3.0%	n/a	2.2%	0.8%	1.7%
Currently use hookah	4.7%	4.1%	5.8%	7.1%	n/a	4.8%	2.5%	3.0%
Currently use electronic vaping	1.6%	2.3%	4.4%	7.2%	n/a	11.6%	12.5%	15.7%
Currently use cigarettes, cigars, or smokeless tobacco	8.0%	11.0%	5.3%	9.0%	n/a	6.3%	2.6%	5.2%
Currently use cigarettes, cigars, smokeless, hookah, or electronic vaping	10.9%	13.1%	10.6%	15.3%	n/a	16.3%	15.1%	19.1%

599. As the graphic above shows, these rising numbers are consistent with the rise in vaping among youth throughout the state of Florida. Notably, these numbers are self-reported, so many public health officials believe they likely underestimate the actual prevalence of youth vaping.

600. Tobacco Free Florida has noted that “[e]-cigarette companies claim that their products are intended for adults, but skyrocketing rates among teens tell a different story.”⁷³⁸ It

⁷³⁷ Florida Health, *Broward Youth (Ages 11-17): 2012 – 2018*, <http://www.floridahealth.gov/statistics-and-data/survey-data/behavioral-risk-factor-surveillance-system/Broward2018.pdf> (last visited May 7, 2020).

⁷³⁸ Tobacco Free Florida, *Youth & Vaping* (Apr. 21, 2019), <https://tobaccofreeflorida.com/current-issues/teen-vaping/>.

is no surprise that Tobacco Free Florida recognized that “[t]he most popular e-cigarette brand is JUUL, a device shaped like a USB flash drive.”⁷³⁹ The Tobacco Free Florida website summarizes the risks associated with vaping and illustrates why young people, like students in Plaintiff’s schools, are particularly at risk:

Know the Risks

E-cigarettes, including JUUL, typically contain nicotine, which is highly addictive. Teens may be more sensitive to nicotine and feel dependent on nicotine sooner than adults.

A single JUUL pod (the liquid nicotine refill) contains as much nicotine as a pack of 20 regular cigarettes. JUUL uses nicotine salts, which can allow high levels of nicotine to be inhaled more easily and with less irritation.

The brain continues to develop until about age 25 and the developing brain is more vulnerable to nicotine’s effects, including reduced impulse control, deficits in attention and cognition, and mood disorders. Evidence suggests that teens who use e-cigarettes may be at greater risk of starting to smoke regular cigarettes.

While the long-term health effects of e-cigarettes are still unknown, some of the ingredients in e-cigarette aerosol could be harmful to your lungs. For example, some e-cigarette flavorings may be safe to eat but not to inhale because the gut can process more substances than the lungs.

E-cigarette aerosol – aka vapor – is not harmless “water vapor,” as many youths mistakenly believe. The aerosol that users breathe from an e-cigarette device and exhale may contain harmful substances including cancer-causing chemicals and heavy metals such as nickel, tin, and lead.⁷⁴⁰

601. The *South Florida Sun Sentinel*, in an article entitled, *Vaping triggers health issues for Florida teens*, recognized the vaping crisis impacting Florida youth: [e]ducators, school districts and medical organizations are responding to the increasing popularity of vaping among teens[,]” and in April 2019, “the Florida Department of Health’s Bureau of Tobacco Free Florida launched a statewide campaign, E-Epidemic: Vaping and Youth, to give parents and educators the latest facts on youth vaping and the highly addictive properties of e-cigarettes.”⁷⁴¹

⁷³⁹ *Id.*

⁷⁴⁰ *Id.*

⁷⁴¹ Cindy Krischer Goodman, *Vaping triggers health issues for Florida teens*, S. Fla. Sun Sentinel (Aug. 31, 2019), <https://www.sun-sentinel.com/health/fl-ne-teen-vaping-health-20190831-drcptoaxanfrddpdj3s65kkm-story.html>.

602. In a story entitled *Teen Use of E-Cigs Increases in Broward County as FDA Issues Warnings About Juul Devices*, the *Broward Palm Beach New Times* profiled a Broward County senior, who says he has friends who “JUUL” “all the time[,]” and that school bathrooms have become meeting places for young smokers, where “people charge their Juuls, sell Juul pods.”⁷⁴² As an illustration of the success of Defendants’ efforts to conceal the addictive and dangerous qualities of JUUL products, the Broward County senior in the article expressed his belief that “It’s [JUUL] supposed to be considered healthier than a cigarette – I don’t know if that’s accurate or not, that’s just what people always say.”⁷⁴³

603. Defendants’ conduct has created a public health crisis in Plaintiff’s schools, which has caused a huge disruption to Plaintiff and a negative impact on student life and education. As a result, Plaintiff has been forced to divert significant and unexpected amounts of time and resources to address the pervasiveness of youth vaping in its schools, which has imposed a significant drain on Plaintiff’s resources.

604. As reported by the *Sun Sentinel* in early 2019, in recognition of the growing problem of youth vaping among its students, Broward Schools “stepped up its vaping education efforts,” which, included, *inter alia*, telephoning all parents or guardians of teenagers in Broward public schools to notify them of the high levels of nicotine in e-cigarettes and urge them to discuss the health and disciplinary issues of vaping with their children.⁷⁴⁴

605. Shortly after this *Sun Sentinel* article ran, another news outlet, in an article entitled *Legislation, Lawsuits, Education: Broward Leaders Attack Teen Vaping*, reported that “Broward County lawmakers, school district officials and parents are launching a multi-front war against e-cigarette companies, which they argue are targeting teenagers in hopes of addicting

⁷⁴² Ayurella Horn-Muller, *Teen Use of E-Cigs Increases in Broward County as FDA Issues Warnings About Juul Devices*, *Broward Palm Beach New Times* (Sept. 21, 2018), <https://www.browardpalmbeach.com/news/teen-use-of-e-cigs-increases-in-broward-county-as-fda-issues-warnings-about-juul-devices-9891570>.

⁷⁴³ *Id.*

⁷⁴⁴ Cindy Krischer Goodman, *Vape pens are hooking more and more teens. And school leaders are fighting the epidemic.*, *S. Fla. Sun Sentinel* (Apr. 29, 2019), <https://www.sun-sentinel.com/health/fl-ne-vaping-among-teens-20190426-story.html>.

1 them to nicotine.”⁷⁴⁵ The article quoted Democratic Congresswoman Debbie Wasserman
 2 Schultz from Florida as saying, “Their only purpose [e-cigarette manufacturers], let’s be very
 3 clear, is to hook another generation of smokers – or vapers. . . . I mean, their job is to make
 4 money.”⁷⁴⁶ The article also noted that “the Broward County school board has just amended its
 5 policies for how to discipline students who are caught vaping in schools, adding anti-tobacco
 6 curriculum programs to be used during in-school suspensions.”⁷⁴⁷ A representative from the
 7 school district reported that “the number of tobacco-related incidents doubled between the 2017-
 8 18 and 2018-19 school years,” and that “vaping was the culprit.”⁷⁴⁸ The article further reported
 9 that Broward Schools “plans to start more anti-tobacco clubs, which allow students to educate
 10 each other about the risks of using e-cigarettes. Students will create public service
 11 announcements, as well.”⁷⁴⁹ According to Broward Schools board member Robin Bartelman
 12 (“Bartelman”) who was referenced in the article, education about e-cigarette use among teens is
 13 not just for the kids themselves; it’s for their parents, too.⁷⁵⁰ Some parents do not know that e-
 14 cigarette devices look like flash drives and can be easily hidden or disguised. Bartelman
 15 recounted a recent incident with a Broward County student who had “bedazzled” an e-cigarette
 16 device and was wearing it in her hair like a barette.⁷⁵¹ “Parents need to open their eyes,”
 17 Bartelman said.⁷⁵²

20 ⁷⁴⁵ Jessica Bakeman, *Legislation, Lawsuits, Education: Broward Leaders Attack Teen Vaping*,
 21 WLRN News (June 1, 2019), <https://www.wlrn.org/post/legislation-lawsuits-education-broward-leaders-attack-teen-vaping#stream/0>.

22 ⁷⁴⁶ *Id.*

23 ⁷⁴⁷ *Id.*

24 ⁷⁴⁸ *Id.*

25 ⁷⁴⁹ *Id.*

26 ⁷⁵⁰ *Id.*

27 ⁷⁵¹ *Id.*

28 ⁷⁵² *Id.*

606. As noted, Plaintiff has expended substantial amounts of time, effort, money, and resources to address the rapidly evolving vaping crisis and to combat misinformation spread by Defendants. To dedicate the necessary time and attention that this important task requires, Plaintiff created a taskforce to address the vaping crisis in its schools. As part of Plaintiff's anti-vaping efforts, teachers, administrators, and staff in Plaintiff's schools have dedicated much of their time to training and researching e-cigarette use and the impact that vaping has on students in order to share this information with students and parents. It is necessary for teachers and administrators in Plaintiff's schools to educate themselves about JUUL products and their dangers because, as noted, due to the USB-mimicking design of JUUL and its copycats, many teachers may not recognize the vape devices when they see them. And many students in Plaintiff's schools, and their parents, do not understand what JUUL products are or the harmful chemicals they contain.

607. Plaintiff has also partnered with a number of organizations to conduct parent presentations, including United Way, Hanley, The National Guard, and others. One important partnership Plaintiff entered into for the purposes of developing and implementing an anti-vaping curriculum is its partnership with CATCH My Breath, a best-practices youth e-cigarette and JUUL prevention program developed to provide up-to-date information to teachers, parents, and health professionals to equip students with the knowledge and skills they need to make informed decisions about the use of e-cigarettes, including JUUL devices.⁷⁵³ The CATCH My Breath curriculum is part of Tier 1 in Broward School's three-tier Substance Abuse Prevention: E-Cigarette and Vaping School Curriculum, which is intended to provide greater awareness regarding the prevention and intervention resource Broward Schools offers. The Tier 2 curriculum in Broward Schools' Substance Abuse Prevention: E-Cigarette and Vaping School Curriculum targets students who have been provided a school level consequence for the possession or use of e-cigarettes and focuses on teaching students the dangers and health risks

⁷⁵³ CATCH My Breath, *Youth E-Cigarette & JUUL Prevention Program*, https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13726/CATCH%20My%20Breath%20One-Pager_Broward_Small.pdf. (last visited May 7, 2020).

1 associated with the use of e-cigarettes and vaping. Tier 3 resources are intended for Alternative
2 Center schools to utilize as intensive intervention curriculum within their Alternative to External
3 Suspension programs and the Preventing Recidivism Through Opportunities, Mentoring,
4 Interventions, Support & Education (PROMISE) program. It includes a combination of theory-
5 based and evidence-informed resources created by educators, parents, and researchers aimed at
6 preventing middle and high school students' use of tobacco and nicotine.

7 608. Plaintiff has also devoted substantial amounts of time, effort, money, and
8 resources to update its website to include anti-vaping resources and information for both parents
9 and students, as well as to create anti-vaping fact sheets; presentations for students, parents, and
10 staff; posters; videos; and educational resources for its schools and organizations. Plaintiff has
11 spent additional time, effort, money, and resources sponsoring anti-vaping events and school
12 contests with cash prizes for students, as well as a student rally centered around vaping
13 prevention.

14 609. The work that Plaintiff does to educate students and parents is particularly
15 important and necessary as a result of the widespread misinformation about vapor products that
16 Defendants disseminated. Many students in Plaintiff's schools have been deceived by
17 Defendants' marketing and misinformation and are unaware of the true nature, health risks, and
18 addictiveness of vapor products. As a result of Defendants' advertising campaigns, some
19 students in Plaintiff's schools believe that JUUL products contain only flavoring, not nicotine.
20 Additionally, both students and their parents have been deceived into believing vaping is
21 harmless, and as a result of the false perception of minimal harm, youth vape more frequently.
22 As noted above, one Broward County senior told the *Broward Palm Beach New Times* that "It's
23 [JUUL] supposed to be considered healthier than a cigarette – I don't know if that's accurate or
24 not, that's just what people always say."⁷⁵⁴

25 610. Due to the significant increase in vaping among students in its schools, Plaintiff's
26 Student Code of Conduct Committee recommended, and Broward Schools approved, the

27 ⁷⁵⁴ Horn-Muller, *supra* note 742.
28

1 separation of e-cigarette/vaping incidents from general tobacco incidents, and the
 2 implementation of increasing consequences for vaping, beginning with an in-school detention
 3 and progressing to a 10-day suspension with a recommendation for expulsion. These
 4 consequences apply not only to e-cigarette devices themselves, but also to clothing designed to
 5 facilitate discreet vaping use, which is a product category that was spawned in the wake of the
 6 youth vaping epidemic Defendants created. The consequences for vaping in violation of
 7 Plaintiff's revised Code of Conduct include referrals to a Broward Schools' substance abuse case
 8 manager, e-cigarette intervention assignments, and/or referral to appropriate treatment program.
 9 Plaintiff expended significant amounts of time, money, and resources in revising its Code of
 10 Conduct, creating its e-cigarette intervention curriculum, and hiring at least two new substance
 11 abuse counselors to handle the significant increase in student vaping referrals.

12 611. Indeed, Plaintiff has experienced a sharp increase in the number of e-cigarette
 13 related incidences, detentions, and suspensions among its students. The ubiquitous occurrence of
 14 vaping among students is a distraction to teachers and administrators in Plaintiff's schools, who
 15 are required to spend increasing time addressing discipline problems related to student e-
 16 cigarette use, which interferes with curriculum and regular teaching time.

17 612. Relatedly, because e-cigarette use in bathrooms is pervasive at Plaintiff's schools,
 18 Plaintiff's staff has had to devote staff time and resources to monitoring the bathrooms, including
 19 regularly walking through, or "patrolling," both during class and between classes. Some of
 20 Plaintiff's schools have even been forced to install vapor detectors to attempt to reduce student
 21 vaping.

22 613. Not only have Defendants' JUUL products addicted a new generation to nicotine,
 23 Defendants are also creating a growing hazardous waste problem in Plaintiff's schools. JUUL
 24 products contain chemicals that can be toxic or fatal if ingested in their concentrated forms,⁷⁵⁵ as

26 ⁷⁵⁵ See, e.g., *How do I dispose of a JUULpod?*, JUUL USA (2020),
 27 <https://support.juul.com/hc/en-us/articles/360023529793-How-do-I-dispose-of-a-JUULpod-> (last
 28 visited May 7, 2020) ("JUULpods should be recycled along with other e-waste."); American
 Acad. of Pediatrics, *Liquid Nicotine Used in E-Cigarettes Can Kill Children*,
<https://www.healthychildren.org/english/safety-prevention/at->

well as lithium-ion batteries,⁷⁵⁶ which cannot be safely disposed of in the normal stream of trash. The vaping epidemic has led to significant levels of hazardous waste from JUUL products throughout Plaintiff's schools, either from youth improperly disposing of them by littering or throwing them in the trash, or because teachers and school staff must confiscate and store them.

614. Plaintiff has been taking important steps to combat the youth vaping crisis, but it cannot fully address the existing widespread use of vaping and the resulting nicotine addiction among its students. Because of the smoothness of nicotine salts in JUUL products, as well as their discreet designs, many youth use their vape devices with high frequency throughout the day – with some kids taking a puff as often as every few minutes. Unlike a combustible cigarette with its telltale emissions of smoke and distinct odor, JUUL products allow kids to vape undetected behind closed doors and even behind their teachers' backs in the classroom. Such frequent vaping makes it much more likely that nicotine addiction will develop, particularly when coupled with the high nicotine content in JUULpods. Youth vaping has therefore resulted in a higher incidence of addiction than that caused by youth smoking of combustible cigarettes.

615. 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 vaping:

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

home/pages/liquid-nicotine-used-in-e-cigarettes-can-kill-children.aspx (last visited May 7, 2020).

⁷⁵⁶ See, e.g., *What kind of battery is in the device?*, JUUL USA (2020), <https://support.juul.com/hc/en-us/articles/360023319614-What-kind-of-battery-is-in-the-device-> (last visited May 7, 2020) (“JUUL uses a lithium-ion polymer battery. All portable electronics containing lithium-ion batteries present rare, but potentially serious safety hazards.”); *How do I dispose of a JUULpod?*, *supra* note 755 (“Unlike other e-cigarettes, JUUL isn’t disposable and should be treated as a consumer electronic device. Follow your city’s local recommendations for disposing of a lithium-polymer rechargeable battery.”).

1 particularly susceptible to permanent changes from nicotine use and when almost
2 all nicotine addiction is established.⁷⁵⁷

3 616. The lack of available nicotine-addiction treatment options for youth presents a
4 challenge to school districts across the country. The lack of suitable treatment options for
5 students in Plaintiff's schools who are addicted to nicotine is a significant concern for Plaintiff.
6 The available FDA-approved tobacco cessation products are not intended for, and are not
7 approved for, pediatric use. With additional resources, Plaintiff would support the development
8 of additional, youth-appropriate cessation options that can meet the needs of its students.
9 Plaintiff would also support the development of vaping-specific cessation resources to address
10 the ways in which vaping cessation may differ from traditional smoking cessation. Development
11 of such resources is a crucial step to combat the youth vaping epidemic.

12 617. With additional resources, Plaintiff would expand its current education and
13 outreach programs related to vaping and its dangers in order to combat Defendants' marketing
14 and the social pressures the youth vaping epidemic has created, as well as instituting additional
15 programs. Carrying out such a campaign effectively and countering Defendants' extensive
16 marketing will require significant funding as well as staff time. This education and outreach
17 campaign must include developing prevention and education materials appropriate for high
18 school, middle school, and even elementary school students, as the vaping crisis continues to
19 spread to even younger children.

20 618. With additional resources, Plaintiff would hire additional staff to allow for more
21 campus patrols to deter vaping, as well as additional substance abuse counselors to work with
22 students who violate vaping policies in Plaintiff's Code of Conduct.

23 619. With sufficient funding, Plaintiff would also purchase vape detectors to install in
24 schools bathrooms in order to both reduce the amount of staff time devoted to patrolling the
25 bathroom and ensure that students vaping at school are identified and connected with resources
26 to help them quit.

27 ⁷⁵⁷ Richard Miech, Ph.D. *et al.*, *Trends in Adolescent Vaping, 2017-2019*, 381 New Eng. J. Med.
28 1490-91 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

620. 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 Plaintiff Seeks Here.

621. The injuries Plaintiff has 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 Plaintiff the relief it seeks in this litigation.

622. Even if e-cigarettes were entirely banned today or only used by adults, millions of youth, including students in Plaintiff's schools, would remain addicted to nicotine.

623. Regulatory action would do nothing to compensate Plaintiff for the money and resources it has already expended addressing the impacts of the youth e-cigarette epidemic and the resources it will need in the future. Only this litigation has the ability to provide Plaintiff with the relief it seeks.

624. Furthermore, the costs Plaintiff has incurred in responding to the public health crisis caused by youth e-cigarette and taking the actions described above are recoverable pursuant to the causes of actions raised by Plaintiff. Defendants' misconduct alleged herein is not a series of isolated incidents, but instead the result of a sophisticated and complex marketing scheme and related cover-up scheme that has caused a continuing, substantial, and long-term burden on the services provided by Plaintiff. In addition, the public nuisance created by Defendants and Plaintiff's requested relief in seeking abatement further compels Defendants to reimburse and compensate Plaintiff for the substantial resources it has expended and will need to continue to expend to address the youth e-cigarette epidemic.

VI. CAUSES OF ACTION

**COUNT I
Violations of Florida Public Nuisance Law**

625. Plaintiff incorporates each preceding paragraph as though set forth fully herein.

626. Plaintiff brings this claim under Florida public nuisance law as to all Defendants.

1 627. Florida courts have long recognized that anything which interferes with public
2 health and promotes the spread of disease, bodily injury, and/or death, may be considered a
3 public nuisance, and that a use or interference with real property is not required. A public
4 nuisance is one which interferes with public health and welfare and creates an imminent risk of
5 public harm.

6 628. Plaintiff and its students have a right to be free from conduct that endangers their
7 health and safety. Yet Defendants have engaged in conduct and omissions which unreasonably
8 and injuriously interfered with the public health and safety in Plaintiff's schools and created
9 substantial annoyance, inconvenience, and injury to Plaintiff by their production, promotion,
10 distribution, and marketing of e-cigarette products, including, but not limited to, JUUL, for use
11 by youth in Plaintiff's schools. Defendants' actions and omissions have substantially,
12 unreasonably, and injuriously interfered with Plaintiff's functions and operations and affected the
13 public health, safety, and welfare of Plaintiff's schools.

14 629. Each Defendant has created or assisted in the creation of a condition that is
15 injurious to the health and safety of Plaintiff and its students and interferes with the comfortable
16 enjoyment of life and property in Plaintiff's schools.

17 630. Defendants' conduct has directly caused a severe disruption of the public health,
18 order, and safety in Plaintiff's schools. Defendants' conduct is ongoing and continues to produce
19 permanent and long-lasting damage.

20 631. This harm to Plaintiff is substantial, widespread, and ongoing. It outweighs any
21 potential offsetting benefit of the Defendants' wrongful conduct because Defendants' conduct
22 violates Florida's public policy against marketing e-cigarette products to minors. This policy is
23 expressed through statutes and regulations, including but not limiting to:

24 (a) Fla. Stat. §877.112(2), under which it is illegal to sell, deliver, barter,
25 furnish, or give, directly or indirectly, to any person who is under 18 years of age, any nicotine
26 product or a nicotine dispensing device;

27 (b) Fla. Stat. §877.112(3), under which it is illegal to give a gift of a sample
28 nicotine product or nicotine dispensing device to any person under the age of 18;

1 (c) Fla. Stat. §877.112(6), under which it is unlawful for any person under 18
2 years of age to knowingly possess any nicotine product or a nicotine dispensing device; and

3 (d) Fla. Stat. §877.112(11)(12), which prohibits self-service displays of
4 nicotine products or nicotine dispensing devices prohibited in places accessible to persons under
5 18 years except sales made through vending machine with lockout device controlled by retailer.

6 (e) Fla. Stat. §386.212, which prohibits any person under 18 years of age from
7 smoking tobacco or vaping in, on, or within 1,000 feet of the real property comprising a public or
8 private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.

9 632. Defendants' conduct violated this public policy, including by:

10 (a) actively seeking to enter school campuses, targeting children as young as
11 eight through summer camps and school programs, extensively targeting youth through social
12 media campaigns, and recruiting "influencers" to market to teens;

13 (b) engaging in marketing tactics specifically designed to mislead children
14 and youth and to ensnare minors into nicotine addiction, including by explicitly adopting tactics
15 prohibited in the cigarette industry, with the knowledge that those tactics were likely to ensnare
16 children and youth into nicotine addiction, including using billboards and outdoor advertising,
17 sponsoring events, giving free samples, paying affiliates and "influencers" to push e-cigarette
18 products, and by selling e-cigarette products in flavors designed to appeal to youth;

19 (c) engaging in advertising modeled on cigarette ads and featuring youthful-
20 appearing models and designing advertising in a patently youth-oriented fashion;

21 (d) directing advertising to youth media outlets and media designed to appeal
22 to children and youth, such as Instagram and other social media channels;

23 (e) hosting youth-focused parties across the United States, at which free
24 samples were dispensed and in which e-cigarette use was featured prominently across social
25 media;

26 (f) formulating e-cigarette products with flavors with the knowledge that such
27 flavors appealed to youth and with the intent that youth become addicted or dependent upon e-
28 cigarette products; and

1 (g) promoting and assisting the growth of the e-cigarette product market and
2 its availability with knowledge that e-cigarette products were being purchased and used by large
3 numbers of youth.

4 633. Defendants' conduct substantially and unreasonably interfered with public health,
5 safety, and the right to a public education in a safe and healthy environment. In that regard, and
6 in other ways discussed herein, the public nuisance created or maintained by Defendants was
7 connected to Plaintiff's property, including, but not limited to, school buildings.

8 634. The health and safety of the youth in Plaintiff's schools, including those who use,
9 have used, or will use e-cigarette products, as well as those affected by others' use of e-cigarette
10 products, are matters of substantial public interest and of legitimate concern to the Plaintiff, as
11 well as to Plaintiff's community.

12 635. Defendants' conduct has affected and continues to affect a substantial number of
13 students within Plaintiff's schools and is likely to continue causing significant harm.

14 636. But for Defendants' actions, e-cigarette products, including, but not limited to,
15 JUUL, used by youth would not be as widespread as it is today, and the youth e-cigarette public
16 health crisis that currently exists as a result of Defendants' conduct would have been averted.

17 637. Defendants knew or should have known that their conduct would create a public
18 nuisance. Defendants knew or reasonably should have known that their statements regarding the
19 risks and benefits of e-cigarette use were false and misleading, that their marketing methods
20 were designed to appeal to minors, and that their false and misleading statements, marketing to
21 minors, and active efforts to increase the accessibility of e-cigarette products and grow JUUL's
22 market share, or the market share of Defendants' products, were causing harm to you and to
23 municipalities, schools, and counties, including youth in Plaintiff's schools and to Plaintiff itself.

24 638. Thus, the public nuisance caused by Defendants was reasonably foreseeable,
25 including the financial and economic losses incurred by Plaintiff.

26 639. Alternatively, Defendants' conduct was a substantial factor in bringing about the
27 public nuisance even if a similar result would have occurred without it. By directly marketing to
28 youth and continuing these marketing practices after it was evident that children were using

JUUL products in large numbers and were specifically using these products in schools, JLI and the Management Defendants directly facilitated the spread of the youth e-cigarette crisis and the public nuisance affecting Plaintiff.

640. Altria, by investing billions of dollars in JLI and actively working to promote the sale and spread of JUUL products with the knowledge of JLI's practice of marketing JUUL products to youth and its failure to control youth access to JUUL products, directly facilitated the spread of the youth e-cigarette crisis and the public nuisance affecting Plaintiff.

641. As detailed herein, Plaintiff has suffered special damage or injury, beyond that of the general inconvenience to the public at large. The damages suffered by Plaintiff have been greater in degree and different in kind than those suffered by the general public.

642. Plaintiff has taken steps to address the harm caused by Defendants' conduct, including, but not limited to, those listed in Section V.B. above.

643. Fully abating the epidemic of youth e-cigarette use resulting from Defendants' conduct will require much more than these steps.

644. Plaintiff therefore requests all the relief to which it is entitled, including damages in an amount to be determined at trial and an order providing for the abatement of the public nuisance that Defendants have created or assisted in the creation of, and enjoining Defendants from future conduct contributing to the public nuisance described above.

COUNT II
Violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"),
18 U.S.C. §1961(c)

645. Plaintiff incorporates each preceding paragraph as though set forth fully herein.

646. This claim is brought by Plaintiff against Defendants JLI, Monsees, Bowen, Pritzker, Huh, Valani, and Altria ("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."

1 647. At all relevant times, each RICO Defendant is and has been a “person” within the
2 meaning of 18 U.S.C. §1961(3), because they are capable of holding, and do hold, “a legal or
3 beneficial interest in property.”

4 648. Plaintiff is a “person,” as that term is defined in 18 U.S.C. §1961(3), and has
5 standing to sue as they were and are injured in their business and/or property as a result of the
6 RICO Defendants’ wrongful conduct described herein.

7 649. Section 1962(c) makes it “unlawful for any person employed by or associated
8 with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
9 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through
10 a pattern of racketeering activity” 18 U.S.C. §1962(c).

11 650. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
12 1962(c), among other provisions. *See* 18 U.S.C. §1962(d).

13 651. Each RICO Defendant conducted the affairs of an enterprise through a pattern of
14 racketeering activity and conspired to do so, in violation of 18 U.S.C. §1962(c) & (d).

15 652. Plaintiff demands the applicable relief set forth in the Prayer for Relief below.

16 **A. Description of the Nicotine Market Expansion Enterprise**

17 653. RICO defines an enterprise as “any individual, partnership, corporation,
18 association, or other legal entity, and any union or group of individuals associated in fact
19 although not a legal entity.” 18 U.S.C. §1961(4).

20 654. Under 18 U.S.C. §1961(4) a RICO “enterprise” may be an association-in-fact
21 that, although it has no formal legal structure, has: (i) a common purpose; (ii) relationships
22 among those associated with the enterprise; and (iii) longevity sufficient to pursue the
23 enterprise’s purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).

24 655. The RICO Defendants formed an association-in-fact enterprise – the Nicotine
25 Market Expansion Enterprise. The Nicotine Market Expansion Enterprise exists separately from
26 the otherwise legitimate business operations of JLI, Altria, or the investment companies with
27 which Defendants Pritzker, Huh, and Valani are affiliated. Rather, the Enterprise is an ongoing
28 and continuing business organization consisting of “persons” within the meaning of 18 U.S.C.

1 §1961(3) that created and maintained systematic links for a more nefarious common purpose:
2 maintaining and expanding the number of nicotine-addicted e-cigarette users in order to ensure a
3 steady and growing customer base, including by maintaining and expanding JLI's massive, and
4 ill-gotten, share of the e-cigarette market.

5 656. The Early Enterprise Defendants and non-defendant Veratad Technologies LLC
6 ("Veratad") formed the Nicotine Market Expansion Enterprise by at least 2015, when the Early
7 Enterprise Defendants prepared to launch the JUUL e-cigarette and capture and grow a market of
8 nicotine-addicted users, including youth, that would serve as customers for life.

9 657. As tobacco companies have long known, profitable growth requires a pipeline of
10 "replacement smokers" or vapers. For that reason and others, Defendant Altria joined the
11 Nicotine Market Expansion Enterprise in the Spring of 2017. The Early Enterprise Defendants,
12 for their part, eagerly invited Altria into the fold – they needed allies and resources to further
13 their Enterprise, and, despite their public statements to the contrary, sought to be a part of the
14 tobacco industry.

15 658. When Altria joined the Nicotine Market Expansion Enterprise, it shared the Early
16 Enterprise Defendants' common purpose: maintaining and expanding the number of nicotine-
17 addicted e-vapor users in order to ensure a steady and growing customer base. Among Altria's
18 motivations for pursuing this common purpose was access to JLI's customer base that would
19 serve as Altria's pipeline of "replacement smokers" or vapers.

20 659. The Nicotine Market Expansion Enterprise involved a growing membership and
21 changed its shape to fit its current needs, adding members when necessary and eliminating them
22 when they became obsolete. From 2015 through 2017, the Enterprise consisted of the Early
23 Enterprise Defendants and non-defendant Veratad. In the Spring of 2017, Defendant Altria
24 joined the Nicotine Market Expansion Enterprise. Non-defendant member Veratad would leave
25 the Enterprise sometime in 2018 when it stopped coordinating with Defendant JLI. Each Early
26 Enterprise Defendant is liable for the predicate acts of the enterprise committed no later than its
27 formation in 2015, and Defendant Altria is liable for the predicate acts of the enterprise
28 committed no later than when it joined the Enterprise in Spring 2017.

660. As described above, the Early Enterprise Defendants established an ongoing relationship through, among other connections, Defendants' Pritzker, Huh, and Valani's investment in JLI; Defendants' Bowen, Monsees, Pritzker, Huh, and Valani's control of the JLI Board of Directors; the Early Enterprise Defendants' assumption of "final say" on all marketing for JLI products, including fraudulent advertising; and the Early Enterprise Defendants' coordination on ensuring broad access to JLI products, including underage access, with non-defendant Enterprise member Veratad. And the Early Enterprise Defendants and Altria established an ongoing relationship through, among other connections, Altria's equity investment in JLI, the many informal and formal agreements between these two Defendants and their coordinated activities in furtherance of the common purpose of the Nicotine Market Expansion Enterprise, and the overlap between JLI executives and leadership and Altria.

661. The RICO Defendants formed the Nicotine Market Expansion Enterprise in order to engage in a collaborative scheme to defraud. As described above, the Nicotine Market Expansion Enterprise Defendants shared and acted on a common purpose of maintaining and expanding the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base, including by maintaining and expanding JLI's massive, and ill-gotten, share of the e-cigarette market.

662. The Nicotine Market Expansion Enterprise has been in existence for almost five years and continues to operate to this day. As described above, it has had sufficient longevity to pursue the Nicotine Market Expansion Enterprise's common purpose.

B. Conduct of the Nicotine Market Expansion Enterprise

663. "[T]o conduct or participate, directly or indirectly, in the conduct" of an enterprise, "one must participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993).

664. As described above, each RICO Defendant participated in the operation or management of the Nicotine Market Expansion Enterprise. Illustrative but non-exhaustive examples include the following:

1 **Early Leadership**

2 665. As described in Sections IV.A, IV.B, and IV.C, Defendants Bowen and Monsees
3 were the visionaries behind the Enterprise and would lead it in its early days.

4 **Fraudulent Marketing Scheme**

5 666. As described in Sections IV.E.3, IV.E.4, and IV.E.7.a, JLI, and Defendants
6 Bowen, Monsees, Pritzker, Huh, and Valani (through their “final say” on all of JLI’s marketing
7 efforts) caused false and misleading advertisements that omitted references to JUUL’s nicotine
8 content and potency to be transmitted via the mail and wires, including the Vaporized campaign.

9 **Youth Access Scheme**

10 667. As described in Section IV.E.9, Defendant JLI (through its employees)
11 coordinated with non-defendant member Veratad on behalf of the other Early Enterprise
12 Defendants to expand youth access to JUUL products.

13 668. As described in Section IV.E.9, Veratad was a key player in the Nicotine Market
14 Expansion Enterprise. And while each member of the Enterprise was not involved in every
15 scheme (Veratad, for example, did not transmit the advertisements or packaging containing
16 misrepresentations regarding JLI’s nicotine content), each worked in furtherance of the same
17 common purpose and was aware of the other members’ participation in the Enterprise.
18 Moreover, each scheme was integral to the Enterprise’s success in maintaining and expanding
19 the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing
20 customer base. Veratad shared this common purpose, and its motivation for doing so was to
21 maintain a lucrative client – one of several clients who relied on Veratad for intentionally
22 ineffective age verification services. Veratad knew that JUUL products were being purchased
23 online by youth and that youth were able to “pass” age verification, yet coordinated with JLI to
24 reduce the requirements for purchasers to “pass” age verification.

25 **Coopting JLI’s Board of Directors**

26 669. As described in Section IV.E.7.b, Defendants Pritzker, Huh, and Valani took
27 control of the JLI Board of Directors in October 2015, so they could use the Board as an
28 instrumentality to effectuate fraudulent schemes in furtherance of the Nicotine Market Expansion

Enterprise's common purpose. In doing so, leadership of the Enterprise transitioned from Bowen and Monsees to Pritzker, Huh, and Valani.

Coordinating Activities of JLI and Altria

670. By August 2016, Defendants Pritzker, Huh, and Valani had ceded executive leadership at JLI to a new CEO, Tyler Goldman. Thus, when these parties started to coordinate with Altria, it was JLI (through its executives and employees – including Tyler Goldman and his successors) and Altria (through its executives and employees) that primarily directed the affairs of the Enterprise, although Defendants Bowen, Monsees, Pritzker, Huh, and Valani remained critical to the success of the Enterprise's common purpose. Without their control of the JLI Board of Directors and prior fraudulent conduct, the close coordination between JLI and Altria, and Altria's investment in JLI, would not have been possible.

671. As described in Sections IV.A and IV.F, the Early Enterprise Defendants and Altria began to actively coordinate their activities in 2017 and each took actions that would further the Enterprise's common purpose of maintaining and expanding the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base, including by maintaining and expanding JLI's massive, and ill-gotten, share of the e-cigarette market, as alleged above.

672. As early as 2017, the Early Enterprise Defendants and Altria shared data and strategy to support their common purpose, through a conduit, Avail Vapor.

673. By 2018, Altria was taking actions to ensure JLI's products had access to prime shelf space in retail locations.

674. By 2018, Altria was distributing and marketing JLI's products to its wider base of retailers.

675. In December 2018, Altria decided to cash in on its role in the Nicotine Market Expansion Enterprise by making a \$12.8 billion equity investment in JLI, the largest equity investment in U. S. history. This investment would give Altria three seats on the JLI Board of Directors, and thus allow it to assert greater control over both JLI and the Nicotine Market

1 Expansion Enterprise, which used the instrumentalities of JLI to effectuate many of its fraudulent
2 schemes.

3 **Nicotine Content Misrepresentation Scheme**

4 676. As described in Section IV.D, the Early Enterprise Defendants and Altria caused
5 thousands, if not millions, of JUULpods packages to be distributed to consumers with false and
6 misleading information regarding the JUULpods' nicotine content. The Early Enterprise
7 Defendants also caused the same false and misleading information to be distributed via JLI's
8 website.

9 **Flavor Preservation Scheme**

10 677. As described in Sections IV.C.6 and IV.H.2, RICO Defendants worked in concert
11 to defraud the public and regulators in order to prevent regulation and public outrage that would
12 have impeded their plan to maintain and expand the number of nicotine-addicted e-cigarette
13 users in order to ensure a steady and growing customer base. Specifically, they worked to ensure
14 the FDA allowed certain flavors, namely mint, to remain on the market.

15 **Cover-up Scheme**

16 678. The RICO Defendants were not only concerned with protecting flavors, however.
17 In light of growing public scrutiny of JLI's role in the youth e-cigarette crisis, these defendants
18 continued their scheme to prevent a complete ban on JLI's product due to regulatory action or
19 public outcry.

20 679. As described in Sections IV.D.2 and IV.E.12, JLI maintained its website pages
21 that provided false information about the addictive potential of its products and denied that JLI
22 marketed to youth, and Defendants Bowen, Monsees, Pritzker, Huh, and Valani provided direct
23 input as to the content of the JLI website and had "final say" over JLI's marketing messaging.

24 680. As described in paragraphs Sections IV.D.4 and IV.E.12, JLI, and Defendants
25 Bowen, Monsees, Pritzker, Huh, and Valani (through their "final say" on all of JLI's marketing
26 efforts) caused false and misleading advertising to be distributed over television and the internet
27 in order to give the impression that JLI's product was a smoking cessation device and that JLI
28

1 never marketed to youth. Defendant Altria continued this scheme by transmitting the fraudulent
2 “Make the Switch” advertisements in packs of its combustible cigarettes.

3 681. As described in Section IV.E.12, beginning in October 2018, both Altria and JLI
4 were transmitting false and misleading communications to the public and the government in an
5 attempt to stave off regulation and public outcry.

6 682. And no later than December 2018, Altria began providing even more services to
7 the Nicotine Market Expansion Enterprise, as described in Section IV.F.3.

8 683. The pattern of racketeering activity by the RICO Defendants, described below,
9 provides further support that each RICO Defendant conducted or participated in the conduct of
10 the Nicotine Market Expansion Enterprise.

11 **C. Pattern of Racketeering Activity**

12 684. To carry out, or attempt to carry out, the objectives of the Nicotine Market
13 Expansion Enterprise, the RICO Defendants, each of whom is a person associated-in-fact with
14 the Enterprise, did knowingly conduct or participate in, directly or indirectly, the affairs of the
15 Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§1961(1),
16 1961(5), 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C.
17 §1341 (mail fraud) and 18 U.S.C. §1343 (wire fraud).

18 685. Specifically, the RICO Defendants have committed, conspired to commit, and/or
19 aided and abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*,
20 violations of 18 U.S.C. §§1341, 1343), within the past ten years.

21 686. The multiple acts of racketeering activity which the RICO Defendants committed,
22 or aided or abetted in the commission of, were related to each other, pose a threat of continued
23 racketeering activity, and therefore constitute a “pattern of racketeering activity.”

24 687. The racketeering activity was made possible by the Enterprise’s regular use of the
25 facilities, services, and employees of the members of the Enterprise.

26 688. The RICO Defendants participated in the Nicotine Market Expansion Enterprise
27 by using mail, telephone, and the internet to transmit mailings and wires in interstate or foreign
28 commerce.

1 689. The RICO Defendants used, directed the use of, and/or caused to be used,
2 thousands of interstate mail and wire communications in service of the Enterprise's objectives
3 through common misrepresentations, concealments, and material omissions.

4 690. In devising and executing the objectives of the Nicotine Market Expansion
5 Enterprise, the RICO Defendants devised and knowingly carried out material schemes and/or
6 artifices to defraud the public and regulators by: (1) transmitting advertisements that fraudulently
7 and deceptively omitted any reference to JUUL's nicotine content or potency (or any meaningful
8 reference, where one was made); (2) causing false and misleading statements regarding the
9 nicotine content of JUULpods to be posted on the JLI website; (3) causing thousands, if not
10 millions, of JUULpod packages containing false and misleading statements regarding the
11 nicotine content of JUULpods to be transmitted via U.S. mail; (4) representing to consumers and
12 the public-at-large that JUUL was created and designed as a smoking cessation device, and by
13 misrepresenting the nicotine content and addictive potential of its products; (5) making
14 fraudulent statements to the FDA to convince the FDA to allow certain flavors, namely mint, to
15 remain on the market; and (6) making fraudulent statements to the public (including through
16 advertising), the FDA, and Congress to stave off a total prohibition on JUUL e-cigarettes that
17 was being contemplated in light of JLI's role in the youth e-cigarette epidemic.

18 691. For the purpose of furthering the Enterprise's common purpose of maintaining
19 and expanding the number of nicotine-addicted e-cigarette users in order to ensure a steady and
20 growing customer base, including by preserving and increasing JLI's market share, even at the
21 expense of exposing and addicting children to nicotine, the RICO Defendants committed these
22 racketeering acts, which number in the thousands, intentionally and knowingly with the specific
23 intent to advance the Enterprise's objectives.

24 692. The RICO Defendants' predicate acts of racketeering, 18 U.S.C. §1961(1),
25 include, but are not limited to:

- 26 A. Mail Fraud: the Nicotine Market Expansion Enterprise violated 18 U.S.C.
27 §1341 by sending or receiving, or by causing to be sent and/or received,
28 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.

693. 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.

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 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>			

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 (via Pam Tighe at CBS News)	October 17, 2016	“There is an extensive age verification process in place to purchase JUUL online” and that JLI “work[s] with Veratad Technologies, the state-of-the-art, gold-standard for age verification. . . . Veratad uses billions of records from multiple trusted data sources to verify the information customers provide and to ensure customers qualify to access and purchase products from JUULvapor.com.” This email was delivered via the wires in interstate

From	To	Date	Description
<i>Fraudulent Statements that the Coordination with Veratad was Designed to Reduce Youth Access (see Section IV.E.9)</i>			
			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 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

From	To	Date	Description
<i>Fraudulent Statements that the Coordination with Veratad was Designed to Reduce Youth Access (see Section IV.E.9)</i>			
			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 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

From	To	Date	Description
<i>Fraudulent Statements that JUUL is a Cessation Device (see Section IV.D.4)</i>			
			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 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 JUULpods (see Section IV.D)</i>			
All Early Enterprise Defendants	Public (via internet – JLI website)	July 2, 2019 (or earlier) to Present	“Each 5% JUULpod is roughly equivalent to one pack of cigarettes in nicotine delivery.”
All Early Enterprise Defendants	Public (via internet – JLI website)	April 21, 2017	“JUULpod is designed to contain approximately 0.7mL with 5% nicotine by weight at time of manufacture which is approximately equivalent

From	To	Date	Description
<i>Fraudulent Statements Regarding Nicotine Content in JUULpods (see Section IV.D)</i>			
			to 1 pack of cigarettes or 200 puffs.”
All RICO Defendants	Public (via U.S. mail distribution of JUULpod packaging)	2015 to Present	JUULpod packages: (1) claiming a 5% nicotine strength; (2) stating that a JUULpod 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 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.

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
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 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	September 24, 2019	“We have never marketed

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
	Los Angeles Times – later posted on internet)		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 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

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			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 (via Pam Tighe at CBS News)	October 17, 2016	“Our Marketing Efforts are Adult-targeted. . . Any media is focused on 21+ adult smokers and we always adhere to or exceed all tobacco guidelines for advertising in home, radio and digital.”
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 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

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			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 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,

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
			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 meaningfully in the e-vapor category but to also support and even accelerate transition to noncombustible alternative products by adult smokers.”

From	To	Date	Description
<i>Fraudulent Statements to Prevent Ban on JUUL Products or Overwhelming Public Outcry (see Section IV.E.12)</i>			
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."

694. 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.

695. 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.

696. 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.

697. 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 positions, and long-term strategies. Because these high level executives made statements inconsistent with the internal knowledge and practice of the corporations, it would be absurd to believe that these highly ranked representatives and agents of these corporations had no knowledge that their public statements were false and fraudulent.

1 Similarly, the RICO Defendants caused to be transmitted through the wires and mails false and
2 misleading statements regarding the nicotine content in JUULpods which JLI's own internal
3 data, and Altria's own pharmacokinetic studies, showed were false. Moreover, each of the Early
4 Enterprise Defendants had "final say" over all marketing statements by JLI and thus caused such
5 statements to be made, notwithstanding that they knew they were false for the reasons detailed
6 above.

7 698. The RICO Defendants intended for the public and regulators to rely on these false
8 transmissions and this scheme was therefore reasonably calculated to deceive persons of ordinary
9 prudence and comprehension.

10 699. Both the public and government regulators did rely on the Nicotine Market
11 Expansion Enterprise's mail and wire fraud. For example, the regulators, including the FDA,
12 relied on the Nicotine Market Expansion Enterprise's statements that mint was not an appealing
13 flavor for nonsmokers in allowing mint JUULpods to remain on the market and relied on the
14 Nicotine Market Expansion Enterprise's statements that it did not market to youth in allowing
15 the RICO Defendants to continue marketing and selling JUUL. Congress, likewise, relied on the
16 Enterprise's statements in not bringing legislation to recall or ban e-cigarettes, despite the calls
17 of members of both parties to do just that. And, the public relied on statements (or absence
18 thereof) that were transmitted by the RICO Defendants regarding the nicotine content in and
19 potency of JUULpods in deciding to purchase JUUL products and relied on statements denying
20 JLI's past youth marketing in not creating a public outcry forcing these products to be removed
21 from the market.

22 700. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
23 wire facilities have been deliberately hidden and cannot be alleged without access to the RICO
24 Defendants' books and records. However, Plaintiff has described the types of predicate acts of
25 mail and/or wire fraud, including the specific types of fraudulent statements upon which, through
26 the mail and wires, the Nicotine Market Expansion Enterprise engaged in fraudulent activity in
27 furtherance of its overlapping schemes.

1 701. These were not isolated incidents, instead, the RICO Defendants engaged in a
2 pattern of racketeering activity by committing thousands of predicate acts in a five-year period in
3 the form of mail and wire fraud. That each RICO Defendant participated in a variety of schemes
4 involving thousands of predicate acts of mail and wire fraud establishes that such fraudulent acts
5 are part of the Enterprise's regular way of doing business. Moreover, Plaintiff expects to uncover
6 even more coordinated, predicate acts of fraud as discovery in this case continues.

7 **D. Plaintiff Has Been Damaged by the Nicotine Market Expansion**
8 **Enterprise Defendants' RICO Violations.**

9 702. Plaintiff has been injured by the Nicotine Market Expansion Enterprise
10 Defendants' conduct, and such injury would not have occurred but for the predicate acts of those
11 defendants which also constitute the acts taken by the RICO Defendants in furtherance of their
12 conspiracy pursuant to Section 1962(d). By working to preserve and expand the market of
13 underage JUUL customers, fraudulently denying JLI's youth-focused marketing, and deceiving
14 regulators and the public in order to allow JUUL products and mint-flavored JUULpods to
15 remain on the market, the Nicotine Market Expansion Enterprise caused the expansion of an
16 illicit e-cigarette market for youth in Plaintiff's schools and caused a large number of youth in
17 Plaintiff's schools to become addicted to nicotine, thus forcing Plaintiff to expend time, money,
18 and resources to address the epidemic Defendants created through their conduct. Indeed, the
19 Nicotine Market Expansion Enterprise Defendants intentionally sought to reach into schools and
20 deceive public health officials in order to continue growing JLI's youth customer base. The
21 repeated fraudulent misstatements by the Nicotine Market Expansion Enterprise Defendants
22 denying that JLI marketed to youth have served to preserve JUUL's market share – a market
23 share that is based upon children purchasing JLI's tobacco products.

24 703. Plaintiff was a direct victim of Defendants' misconduct. The Nicotine Market
25 Expansion Enterprise Defendants displayed a wanton disregard for public health and safety by
26 intentionally addicting youth, including youth in Plaintiff's schools, to nicotine and then
27 attempted to cover up their scheme in order to maintain and expand JUUL's market share.
28 Defendants actively concealed that they marketed to youth in order to avoid public

1 condemnation and to keep their products on the market and continue youth sales. This forced
2 Plaintiff to shoulder the responsibility for this youth e-cigarette crisis created by Defendants'
3 misconduct. The harm from the illicit youth e-cigarette market created by Defendants required
4 Plaintiff to expend its limited financial and other resources to mitigate the health crisis of youth
5 e-cigarette use. The expansion of this youth e-cigarette market was the goal of the Nicotine
6 Market Expansion Enterprise and is critical to its success. Therefore, the harm suffered by
7 Plaintiff because it must address and mitigate the youth e-cigarette crisis was directly foreseeable
8 and, in fact, an intentional result of Defendants' misconduct.

9 704. The creation and maintenance of this youth e-cigarette market directly harms
10 Plaintiff by imposing costs on its business and property. Plaintiff's injuries were not solely the
11 result of routine school district expenses. Instead, as a result of Defendants' misconduct, Plaintiff
12 has been and will be forced to go far beyond what a school district might ordinarily be expected
13 to pay to enforce the laws and to promote the general welfare in order to combat the youth e-
14 cigarette crisis. This includes providing new programs and new services as a direct result and in
15 direct response to Defendants' misconduct. As a result of the conduct of the Nicotine Market
16 Expansion Enterprise Defendants, Plaintiff has incurred and will incur costs that far exceed the
17 norm.

18 705. There are no intervening acts or parties that could interrupt the causal chain
19 between the Defendants' mail and wire fraud and Plaintiff's injuries. Defendants, in furtherance
20 of the Nicotine Market Expansion Enterprise's common purpose, made false and misleading
21 statements directly to the public, including Plaintiff, its employees, and its students. And in the
22 case of fraud on third parties (*i.e.*, FDA and Congress), causation is not defeated merely because
23 the RICO Defendants deceived a third party into not taking action where the FDA's and
24 Congress' failure to regulate directly allowed youth in Plaintiff's community to purchase
25 products that should not have been on the market and/or that should not have been marketed to
26 minors.

27 706. As to predicate acts occurring prior to December 19, 2015, Plaintiff did not
28 discover, and could not have been aware despite the exercise of reasonable diligence, until

1 shortly before the initiation of the instant litigation that Defendants transmitted fraudulent
 2 statements via the mails and wires regarding the topics described above including, inter alia, the
 3 true nicotine content in and delivered by JUUL products, such information the Defendants
 4 concealed and failed to truthfully disclose.

5 707. The Nicotine Market Expansion Enterprise's violations of 18 U.S.C. §1962(c)
 6 have directly and proximately caused injuries and damages to Plaintiff, and Plaintiff is entitled to
 7 bring this action for three times its actual damages, as well as for injunctive/equitable relief,
 8 costs, and reasonable attorneys' fees and costs pursuant to 18 U.S.C. §1964(c).

9 **COUNT III**
 10 **Violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"),**
 11 **18 U.S.C. §1962(d)**

12 708. Plaintiff incorporates by reference all preceding paragraphs.

13 709. The RICO Defendants have not undertaken the practices described herein in
 14 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §1962(d),
 15 the members of the Nicotine Market Expansion Enterprise agreed to conspire and conspired to
 16 violate 18 U.S.C. § 1962(c), as described herein. The conspiracy is coterminous with the time
 17 period in which the Nicotine Expansion Market Enterprise has existed, beginning in 2015 and
 18 continuing to this day (with Defendant Altria joining the conspiracy in Spring 2017). The RICO
 19 Defendants' agreement is evidenced by their predicate acts and direct participation in the control
 20 and operation of the Enterprise in furtherance of a common purpose, as detailed above in relation
 21 to the RICO Defendants' substantive violation of Section 1962(c). The acts in furtherance of the
 22 conspiracy attributable to the RICO Defendants include each of the predicate acts underlying the
 23 Nicotine Market Expansion Enterprise's violation of Section 1962(c), as described above.
 24 Various other persons, firms, and corporations, including third-party entities and individuals not
 25 named as defendants in this Amended Complaint, have participated as co-conspirators with the
 26 members of the Nicotine Market Expansion Enterprise in these offenses and have performed acts
 27 in furtherance of the conspiracy to increase or maintain revenue, maintain or increase market
 28 share, and/or minimize losses for the Defendants and their named and unnamed co-conspirators
 throughout the illegal scheme and common course of conduct.

1 710. Plaintiff has been injured by the Nicotine Market Expansion Enterprise
2 Defendants' conduct, and such injury would not have occurred but for the predicate acts of those
3 Defendants which also constitute the acts taken by the RICO Defendants in furtherance of their
4 conspiracy pursuant to Section 1962(d). By working to preserve and expand the market of
5 underage JUUL customers, fraudulently denying JLI's youth-focused marketing, and deceiving
6 regulators and the public in order to allow JUUL products and mint-flavored JUULpods to
7 remain on the market, the Nicotine Market Expansion Enterprise caused the expansion of an
8 illicit e-cigarette market for youth in Plaintiff's schools and cause a large number of youth in
9 Plaintiff's schools to become addicted to nicotine, thus forcing Plaintiff to expend time, money,
10 and resources to address the epidemic Defendants created through their conduct. Indeed, the
11 Nicotine Market Expansion Enterprise Defendants intentionally sought to reach into schools and
12 deceive public health officials in order to continue growing JLI's youth customer base. The
13 repeated fraudulent misstatements by the Nicotine Market Expansion Enterprise Defendants
14 denying that JLI marketed to youth have served to preserve JUUL's market share – a market
15 share that is based upon children purchasing JLI's tobacco products. The harm to Plaintiff would
16 not have occurred absent the RICO Defendants' conspiracy to engage in a pattern of racketeering
17 activity through a RICO Enterprise, the common purpose of which was maintaining and
18 expanding the number of nicotine-addicted e-cigarette users, and youth in particular, in order to
19 ensure a steady and growing customer base, including by preserving and growing JLI's ill-gotten
20 market share.

21 711. Plaintiff was a direct victim of Defendants' misconduct. The Nicotine Market
22 Expansion Enterprise Defendants' acts in furtherance of their RICO conspiracy displayed a
23 wanton disregard for public health and safety by intentionally addicting youth, including youth in
24 Plaintiff's schools, to nicotine and then attempting to cover up their scheme in order to maintain
25 and expand JUUL's market share. Defendants actively concealed that they marketed to youth in
26 order to avoid public condemnation and to keep their products on the market and continue youth
27 sales. This forced Plaintiff to shoulder the responsibility for this youth e-cigarette crisis created
28 by Defendants' misconduct. The harm from the illicit youth e-cigarette market created by

1 Defendants required Plaintiff to expend its limited financial and other resources to mitigate the
2 health crisis of youth e-cigarette. The expansion of this youth e-cigarette market was the goal of
3 the Nicotine Market Expansion Enterprise and is critical to its success. Therefore, the harm
4 suffered by Plaintiff because it must address and mitigate the youth e-cigarette crisis was directly
5 foreseeable and, in fact, an intentional result of Defendants' misconduct.

6 712. The creation and maintenance of this youth e-cigarette market, and Defendants
7 actions in furtherance of their RICO conspiracy, directly harms Plaintiff by imposing costs on its
8 business and property. Plaintiff's injuries were not solely the result of routine school district
9 expenses. Instead, as a result of Defendants' misconduct, Plaintiff has been and will be forced to
10 go far beyond what a school district might ordinarily be expected to pay to enforce the laws and
11 to promote the general welfare in order to combat the youth e-cigarette crisis. This includes
12 providing new programs and new services as a direct result and in direct response to Defendants'
13 misconduct. As a result of the conduct of the Nicotine Market Expansion Enterprise Defendants,
14 Plaintiff has incurred and will incur costs that far exceed the norm.

15 713. There are no intervening acts or parties that could interrupt the causal chain
16 between the RICO Defendants' mail and wire fraud acts in furtherance of their RICO conspiracy
17 and Plaintiff's injuries. The RICO Defendants, in furtherance of their conspiracy to form the
18 Nicotine Market Expansion Enterprise and advance its common purpose, made false and
19 misleading statements directly to the public, including Plaintiff, its employees, and its students.
20 And in the case of fraud on third parties (*i.e.*, FDA and Congress), causation is not defeated
21 merely because the RICO Defendants deceived a third party into not taking action where the
22 FDA's and Congress' failure to regulate directly allowed youth in Plaintiff's community to
23 purchase products that should not have been on the market and/or that should not have been
24 marketed to minors.

25 714. As to predicate acts undertaken in furtherance of the conspiracy which occurred
26 prior to December 19, 2015, Plaintiff did not discover, and could not have been aware despite the
27 exercise of reasonable diligence, until shortly before the initiation of the instant litigation that the
28 RICO Defendants transmitted fraudulent statements via the mails and wires regarding the topics

described above including, inter alia, the true nicotine content in and delivered by JUUL products, such information the RICO Defendants concealed and failed to truthfully disclose.

715. The Nicotine Market Expansion Enterprise's violations of 18 U.S.C. §1962(d) have directly and proximately caused injuries and damages to Plaintiff, and Plaintiff is entitled to bring this action for three times its actual damages, as well as for injunctive/equitable relief, costs, and reasonable attorneys' fees and costs pursuant to 18 U.S.C. §1964(c).

COUNT IV Violation of the Florida Deceptive and Unfair Trade Practices Act

716. Plaintiff incorporates each preceding paragraph as though set forth fully herein.

717. The Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* ("FDUTPA") prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.204. In construing the provisions of FDUTPA, "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017." *Id.*

718. Broward Schools is an "[i]nterested party or person" within the meaning of Fla. Stat. §501.203(6) and a "person" as envisioned in Fla. Stat. §501.211.

719. During the relevant period, and as alleged herein, Defendants each engaged in unfair methods of competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in the conduct of "[t]rade or commerce" in violation of FDUTPA by actively promoting and marketing e-cigarettes to minors, circulating false and misleading information concerning the safety of e-cigarettes, and downplaying or omitting the risk of addiction caused by their use.

720. Defendants' violations of FDUTPA offend Florida public policy, are immoral, unethical, oppressive, or unscrupulous, as well as malicious, wanton, manifesting ill will, and causing substantial injury to Plaintiff.

721. As a direct and proximate result of Defendants' FDUTPA violations, Plaintiff has been harmed, and is threatened with continuing harm.

COUNT V

Negligence

724. Defendants owed Plaintiff a duty to not expose Plaintiff to an unreasonable risk of
and to act with reasonable care as a reasonably careful person and/or company would act
the circumstances.

726. At all times relevant to this litigation, Defendants had a duty to exercise reasonable care in the marketing, advertisement, and sale of vapor products, including, but not limited to, JUUL. Defendants' duty of care owed to consumers and the general public, including Plaintiff, included providing accurate, true, and correct information concerning the risks of using JUUL products and appropriate, complete, and accurate warnings concerning the potential adverse effects of vaping and nicotine use and, in particular, JUUL's patented nicotine salts and the chemical makeup of JUULpods liquids.

728. Accordingly, at all times relevant to this litigation, Defendants knew or should have known that use of Defendants' products by students could cause Plaintiff's injuries and thus create a dangerous and unreasonable risk of injury to Plaintiff.

1 729. Defendants also knew or should have known that users and consumers of
2 Defendants' products were unaware of the risks and the magnitude of the risks associated with
3 the use of Defendants' products including, but not limited to, the risks of continued nicotine use
4 and nicotine addiction.

5 730. Defendants breached their duty of care in the design, research, development,
6 manufacture, testing, marketing, supply, promotion, advertisement, packaging, sale, and
7 distribution of their vapor products, in that Defendants manufactured and produced defective
8 products containing nicotine and other chemicals known to cause harm to consumers, knew or
9 had reason to know of the defects inherent in their products, knew or had reason to know that a
10 consumer's use of the products created a significant risk of harm and unreasonably
11 dangerous side effects, and failed to prevent or adequately warn of these risks and injuries.

12 731. Despite their ability and means to investigate, study, and test their products
13 and to provide adequate warnings, Defendants have failed to do so. Indeed, Defendants have
14 wrongfully concealed information and have made false and/or misleading statements
15 concerning the safety and/or use of Defendants' products and nicotine vaping.

16 732. Defendants' negligence included:

17 (a) researching, designing, manufacturing, assembling, inspecting, testing,
18 packaging, labeling, marketing, advertising, promoting, supplying, distributing, and/or selling
19 their products, without thorough and adequate pre- and post-market testing;

20 (b) failing to undertake sufficient studies and conduct necessary tests to
21 determine whether or not their products were safe for their intended use;

22 (c) failing to use reasonable and prudent care in the design, research,
23 manufacture, formulation, and development of their products so as to avoid the risk of serious
24 harm associated with the prevalent use of vaping and nicotine products;

25 (d) designing and manufacturing their products to cause nicotine addiction,
26 including by maximizing nicotine delivery while minimizing "throat hit" or "harshness";

27 (e) failing to utilize proper materials, ingredients, additives and components
28 in the design of their products to ensure they would not deliver unsafe doses of nicotine;

1 (f) designing and manufacturing their products to appeal to minors and young
2 people, including through the use of flavors and an easily concealable, tech-inspired design;

3 (g) advertising, marketing, and promoting their products to minors, including
4 through the use of viral social media campaigns;

5 (h) failing to take steps to prevent their products from being sold to,
6 distributed to, or used by minors;

7 (i) failing to provide adequate instructions, guidelines, and safety precautions
8 to those persons who Defendants could reasonably foresee would use their products;

9 (j) affirmatively encouraging new JUUL users through an instructional starter
10 pack insert to disregard any initial discomfort and to continue vaping by instructing users to
11 “keep trying even if the JUUL feels too harsh,” and telling them, “[d]on’t give up, you’ll find
12 your perfect puff”;

13 (k) misrepresenting to Plaintiff, users, consumers, and the general public the
14 actual nicotine content of Defendants’ products;

15 (l) failing to disclose to Plaintiff, users, consumers, and the general public
16 that Defendants’ products deliver more nicotine than represented;

17 (m) misrepresenting Defendants’ products as non-addictive, less addictive,
18 and/or safer nicotine delivery systems than traditional cigarettes;

19 (n) representing that Defendants’ products were safe for their intended use
20 when, in fact, Defendants knew or should have known that the products were not safe for their
21 intended use;

22 (o) declining to make or propose any changes to the labeling or other
23 promotional materials for Defendants’ vaping and nicotine products that would alert consumers
24 and the general public, including minors in Plaintiffs’ schools of the true risks of using
25 Defendants’ products;

26 (p) advertising, marketing, and recommending Defendants’ products while
27 concealing and failing to disclose or warn of the dangers known by Defendants to be associated
28 with, or caused by, the use of Defendants’ products;

1 (q) continuing to disseminate information to consumers, which indicates or
2 implies that Defendants' products are not unsafe for their intended use;

3 (r) continuing the manufacture and sale of Defendants' products with
4 knowledge that the products were unreasonably unsafe, addictive, and dangerous;

5 (s) failing to recall Defendants' products; and

6 (t) committing other failures, acts, and omissions set forth herein.

7 733. Defendants knew and/or should have known that it was foreseeable that Plaintiff
8 would suffer injuries as a result of Defendants' failure to exercise ordinary care in the
9 manufacturing, marketing, labeling, distribution, and sale of vapor products, particularly when
10 Defendants' products were made and marketed so as to be attractive and addictive to youth in
11 Plaintiff's schools.

12 734. Plaintiff did not know the nature and extent of the injuries that could result from
13 the intended use of vapor products, including, but not limited to, JUUL's patented JUULpods
14 liquids by Plaintiff's students.

15 735. In breaching their duties owed to Plaintiff, Defendants acted with actual malice.

16 736. Defendant regularly risks the lives and health of consumers and users of its
17 products with full knowledge of the dangers of its products. Defendants made conscious
18 decisions not to redesign, re-label, warn, or inform the unsuspecting public, including
19 Plaintiff's students or Plaintiff. Defendants' willful, knowing and reckless conduct
20 therefore warrants an award of aggravated or punitive damages.

21 737. As a direct and proximate result of Defendants' wrongful acts and omissions in
22 placing their defective products into the stream of commerce without adequate warnings of
23 their hazardous nature, and marketing their products to minors, Plaintiff has been injured and
24 suffered economic damages and will continue to incur damages in the future.

COUNT VI
Gross Negligence

738. Plaintiff incorporates each preceding paragraph as though set forth fully herein.

739. Defendants owed a duty of care to Plaintiff to conduct their business of manufacturing, promoting, marketing, and/or distributing vapor products in compliance with applicable state law and in an appropriate manner.

740. Specifically, Defendants had a duty and owed a duty to Plaintiff to exercise a degree of reasonable care including, but not limited to: ensuring that Defendants' marketing does not target minors; ensuring that Defendants' products including, but not limited to, JUUL e-cigarettes and JUULpods are not sold and/or distributed to minors and are not designed in a manner that makes them unduly attractive to minors; designing a product that will not addict youth or other users to nicotine; and adequately warning of any reasonably foreseeable adverse events with respect to using the product. Defendants designed, produced, manufactured, assembled, packaged, labeled, advertised, promoted, marketed, sold, supplied and/or otherwise placed Defendants' products into the stream of commerce, and therefore owed a duty of reasonable care to those, including Plaintiff, who would be impacted by their use.

741. Defendants' products were the types of products that could endanger others if negligently made, promoted, or distributed. Defendants knew the risks that young people would be attracted to their vapor products and knew or should have known the importance of ensuring that the products were not sold and/or distributed to anyone under age 26, but especially to minors.

742. Defendants knew or should have known that their marketing, distribution, and sales practices did not adequately safeguard minors from the sale and/or distribution of Defendants' products and, in fact, induced minors to purchase their products.

743. As powerfully addictive and dangerous nicotine-delivery devices, Defendants knew or should have known that their vapor products needed to be researched, tested, designed, advertised, marketed, promoted, produced, packaged, labeled, manufactured, inspected, sold, supplied, and distributed properly, without defects, and with due care to avoid needlessly causing

1 harm. Defendants knew or should have known that their products could cause serious risk of
2 harm and addiction, particularly to young persons like student in Plaintiff's schools.

3 744. Defendants conduct was so reckless or wanting in care that it constitutes a
4 conscious disregard or indifference to the life, safety, or rights of persons exposed to such
5 conduct, including minors in Plaintiff's schools, in that they acted with reckless indifference to
6 the results, or to the rights or safety of others because Defendants knew, or a reasonable person
7 or company in Defendants' position should have known, that Defendants' conduct created an
8 unreasonable risk of harm, and the risk was so great that it was highly probable that harm would
9 result. Defendants' gross negligence caused Plaintiff to suffer harm.

10 745. The gross negligence of Defendants includes, but is not limited to, the following:

11 (a) Researching, designing, manufacturing, assembling, inspecting, testing,
12 packaging, labeling, marketing, advertising, promoting, supplying, distributing, and/or selling
13 their products, without thorough and adequate pre- and post-market testing;

14 (b) Failing to undertake sufficient studies and conduct necessary tests to
15 determine whether or not their products were safe for their intended use;

16 (c) Failing to use reasonable and prudent care in the design, research,
17 manufacture, formulation, and development of their products so as to avoid the risk of serious
18 harm associated with the prevalent use of vaping and nicotine products;

19 (d) Designing and manufacturing their products to cause nicotine addiction,
20 including by maximizing nicotine delivery while minimizing "throat hit" or "harshness";

21 (e) Failing to utilize proper materials, ingredients, additives and components
22 in the design of their products to ensure they would not deliver unsafe doses of nicotine;

23 (f) Designing and manufacturing their products to appeal to minors and
24 young people, including through the use of flavors and an easily concealable, tech-inspired
25 design;

26 (g) Advertising, marketing, and promoting their products to minors, including
27 through the use of viral social media campaigns;

1 (h) Failing to take steps to prevent their products from being sold to,
2 distributed to, or used by minors;

3 (i) Failing to provide adequate instructions, guidelines, and safety precautions
4 to those persons who Defendants could reasonably foresee would use their products;

5 (j) Affirmatively encouraging new JUUL users through an instructional
6 starter pack insert to disregard any initial discomfort and to continue vaping by instructing users
7 to “keep trying even if the JUUL feels too harsh,” and telling them, “[d]on’t give up, you’ll find
8 your perfect puff”;

9 (k) Misrepresenting to Plaintiff, users, consumers, and the general public the
10 actual nicotine content of Defendants’ products;

11 (l) Failing to disclose to Plaintiff, users, consumers, and the general public
12 that Defendants’ products deliver more nicotine than represented;

13 (m) Misrepresenting Defendants’ products as non-addictive, less addictive,
14 and/or safer nicotine delivery systems than traditional cigarettes;

15 (n) Representing that Defendants’ products were safe for their intended use
16 when, in fact, Defendants knew or should have known that the products were not safe for their
17 intended use;

18 (o) Declining to make or propose any changes to the labeling or other
19 promotional materials for Defendants’ vaping and nicotine products that would alert consumers
20 and the general public, including minors in Plaintiffs’ schools of the true risks of using
21 Defendants’ products;

22 (p) Advertising, marketing, and recommending Defendants’ products while
23 concealing and failing to disclose or warn of the dangers known by Defendants to be associated
24 with, or caused by, the use of Defendants’ products;

25 (q) Continuing to disseminate information to consumers, which indicates or
26 implies that Defendants’ products are not unsafe for their intended use;

27 (r) Continuing the manufacture and sale of Defendants’ products with
28 knowledge that the products were unreasonably unsafe, addictive, and dangerous;

(s) Failing to recall Defendants' products; and

(t) Committing other failures, acts, and omissions set forth herein.

746. Defendants breached the duties they owed to Plaintiff and in doing so, were wholly unreasonable. A responsible company, whose primary purpose is to help adult smokers, would not design a product to appeal to minors and nonsmokers nor market their products to minors and nonsmokers. If they are aware of the dangers of smoking and nicotine ingestion enough to create a device to help people stop smoking, then they are aware of the dangers enough to know that it would be harmful for young people and nonsmokers to use.

747. As a foreseeable consequence of Defendants' breaches of their duties, Plaintiff suffered direct and consequential economic and other injuries as a result of dealing with the vaping epidemic in Plaintiff's schools.

748. Defendants' gross negligence was a direct and proximate cause of Plaintiff's injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Entering an Order that the conduct alleged herein constitutes a public nuisance under Florida law;
- B. Entering an Order requiring Defendants to abate the public nuisance described herein and to deter and/or prevent the resumption of such nuisance;
- C. Enjoining Defendants from engaging in further actions causing or contributing to the public nuisance as described herein;
- D. Awarding equitable relief to fund prevention education and addiction treatment;
- E. Awarding actual and compensatory damages;
- F. Awarding punitive damages;
- G. Awarding statutory damages in the maximum amount permitted by law;
- H. Awarding reasonable attorneys' fees and costs of suit;
- I. Awarding pre-judgment and post-judgment interest; and

1 J. Such other and further relief as the Court deems just and proper under the
2 circumstances.

3 **JURY TRIAL DEMANDED**

4 Plaintiff hereby demands a trial by jury.

5 DATED: May 8, 2020

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16 *Attorneys for Plaintiff*
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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


Introducing JUUL - Smoking Evolved


Check it out: <https://www.JUULvapor.com>


 4





1 Share

 Like

 Comment


 Share






Press Enter to post.

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>





creme brulee
The perfect evening treat.


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

 20

13 Comments

 Like

 Comment

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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/)



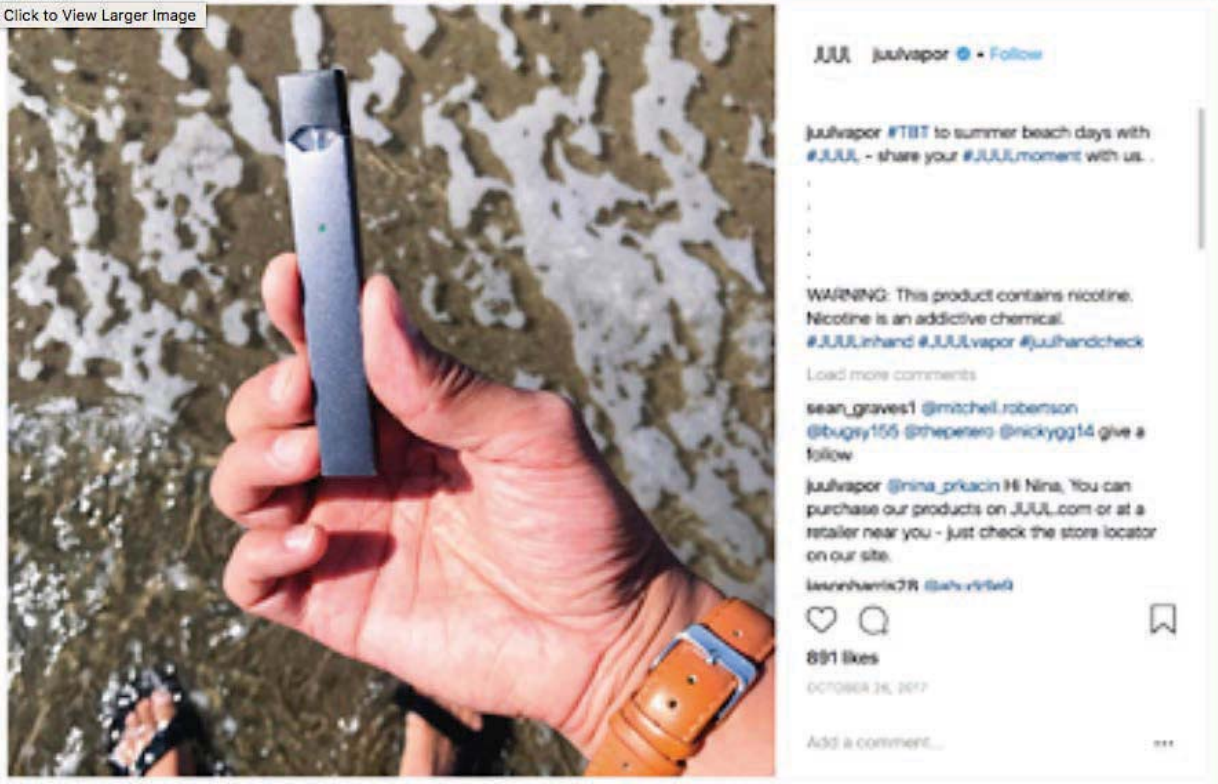


 2



Advertisement 6

Click to View Larger Image



Advertisement 7



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

A vintage-style illustration of a man and a woman in 1930s attire embracing. The man is holding a cane. In the bottom left corner, there is a pack of Old Gold cigarettes with the text "NOT A COUGH IN A CARLOAD" and "Old Gold CIGARETTES".

... 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, all-tobacco aroma. It's a favor to your family and friends, as well as to yourself, to smoke NATURAL-FLAVORED, pure-tobacco OLD GOLDS.

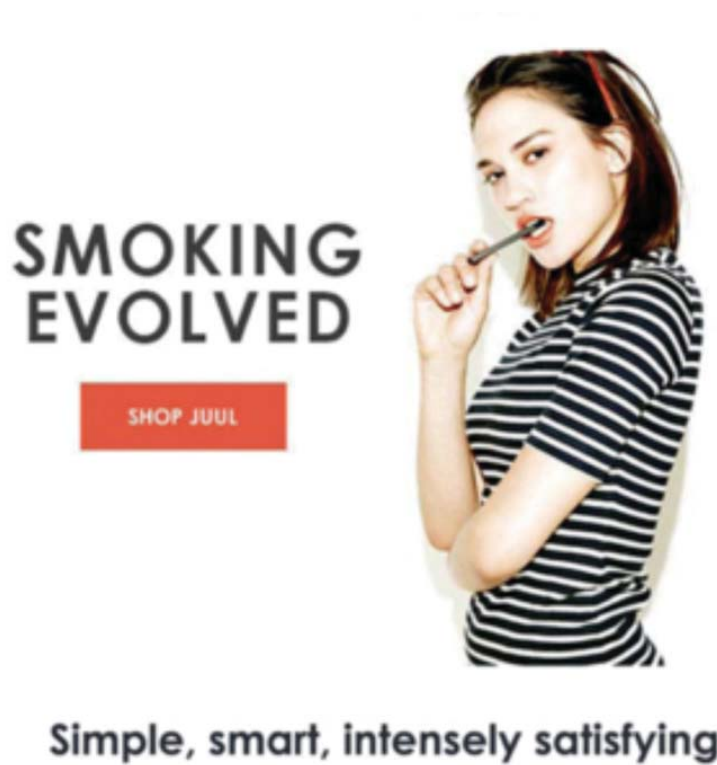
© F. Lorillard Co., Inc.

*"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

NATURAL AMERICAN SPIRIT

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.

© 2012 Natural American Spirit is a registered trademark of Santa Fe Natural Tobacco Co. © SPNTC 2012

Advertisement 16 (Colors)

JUUL **STARTER KIT**

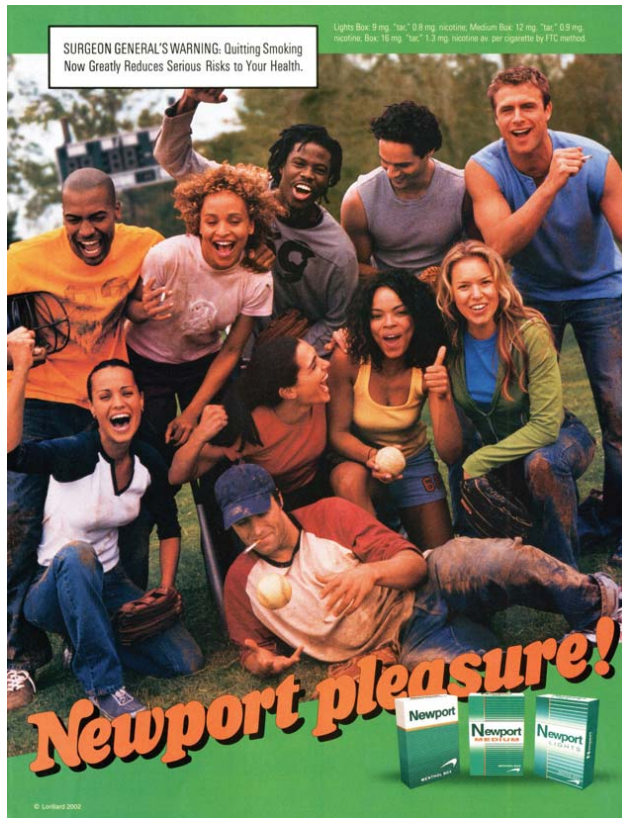
Advertisement 17



Advertisement 18



Advertisement 19



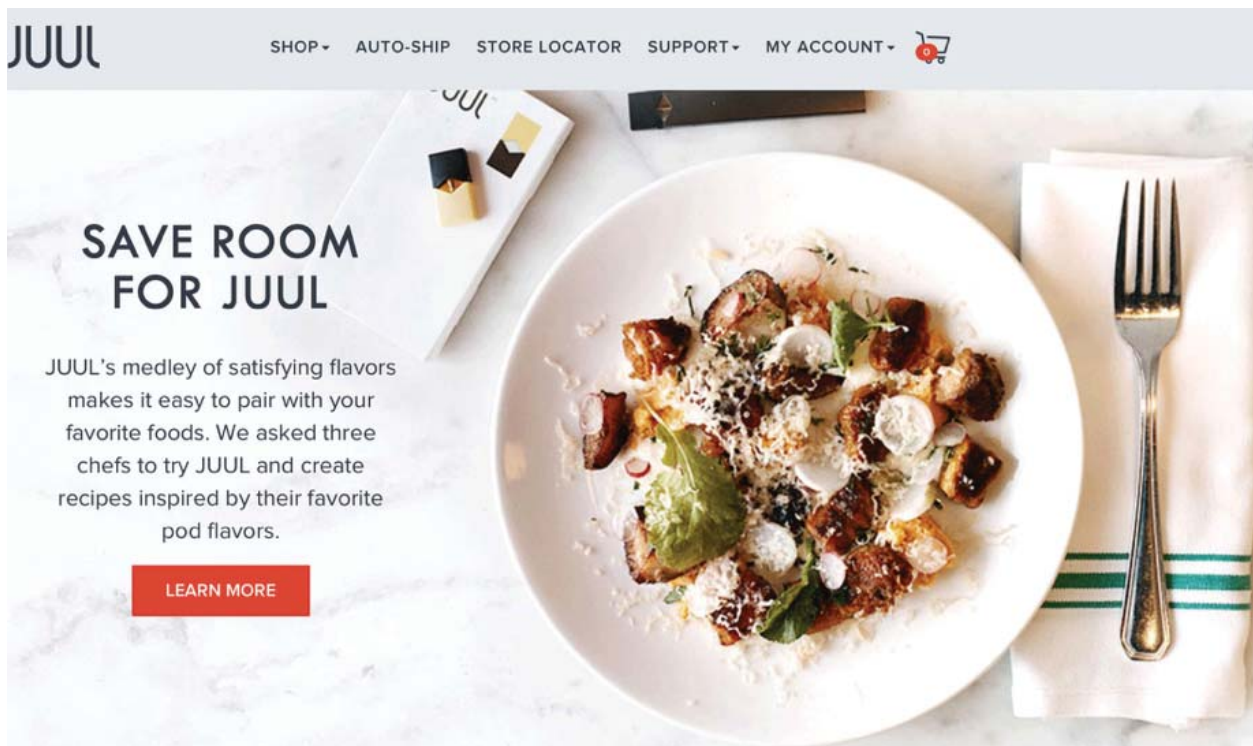
Advertisement 20



Advertisement 21 (Food)



Advertisement 22 (Food)



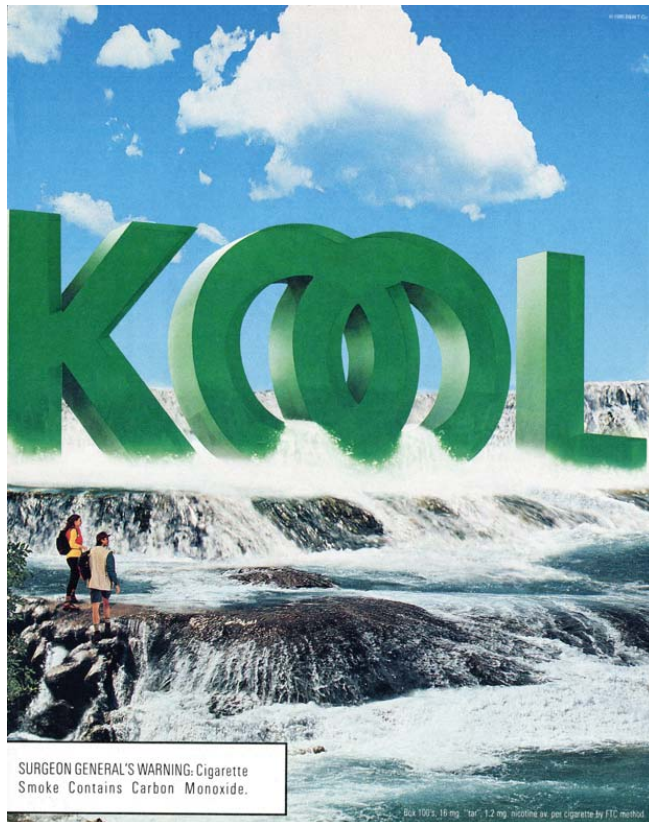
Advertisement 23 (Food and relaxation)



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.

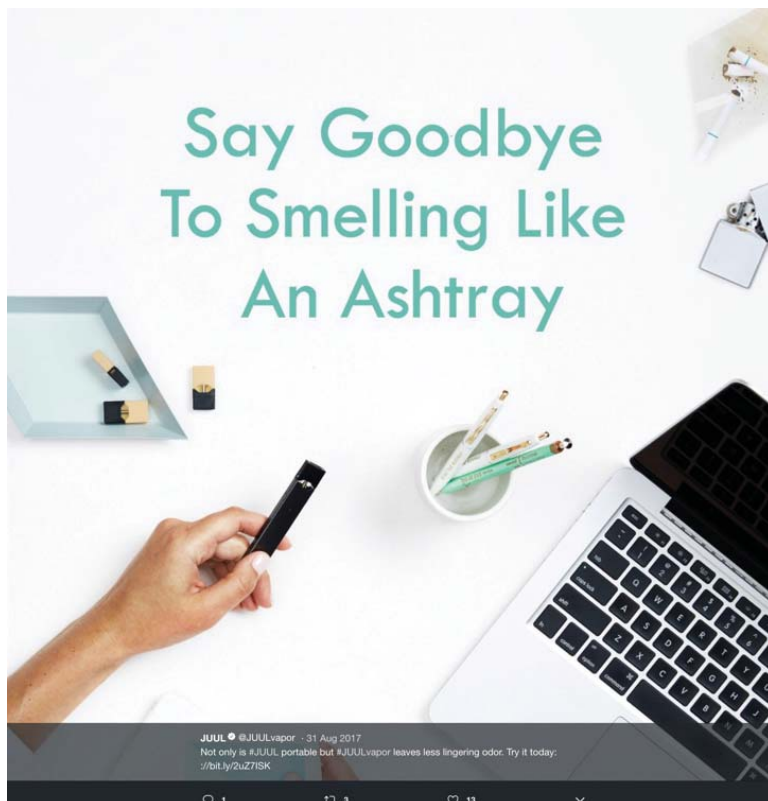
NOT A COUGH IN A CARLOAD

O.G.s ARE LIKE HONEY TO YOUR THROAT

CELLOPHANE WRAPPED

NO "ARTIFICIAL FLAVORS" TO TAINT THE BREATH...OR SCRATCH THE THROAT

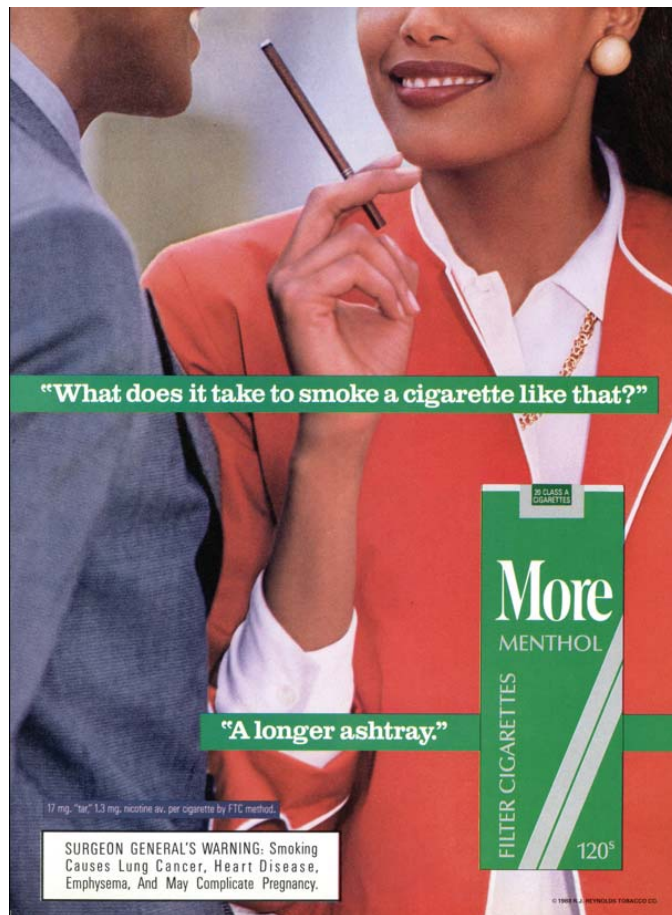
Advertisement 28 (Reduced Smell)



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/2uZ7f9K

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)



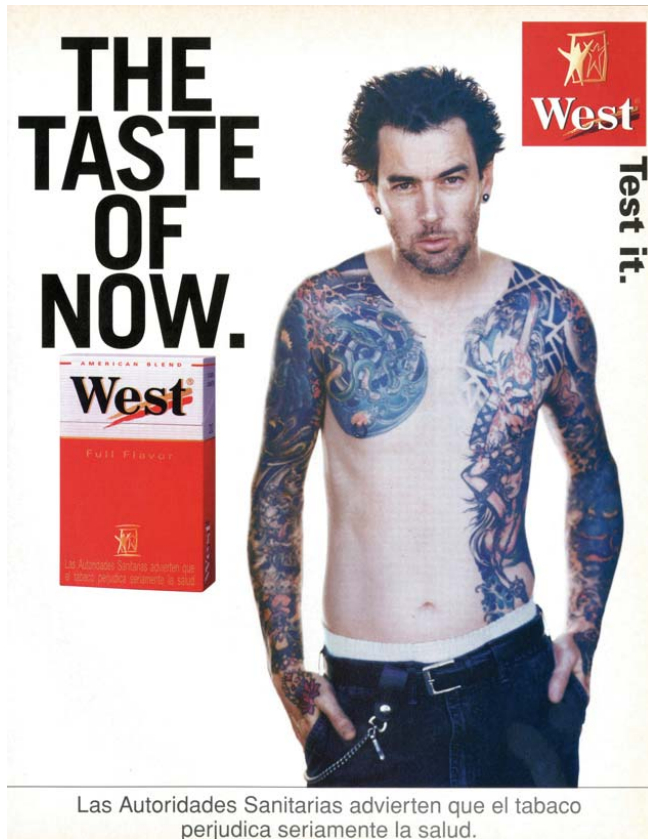
Advertisement 35 (Style & Romance)



Advertisement 36 (Style & Romance)



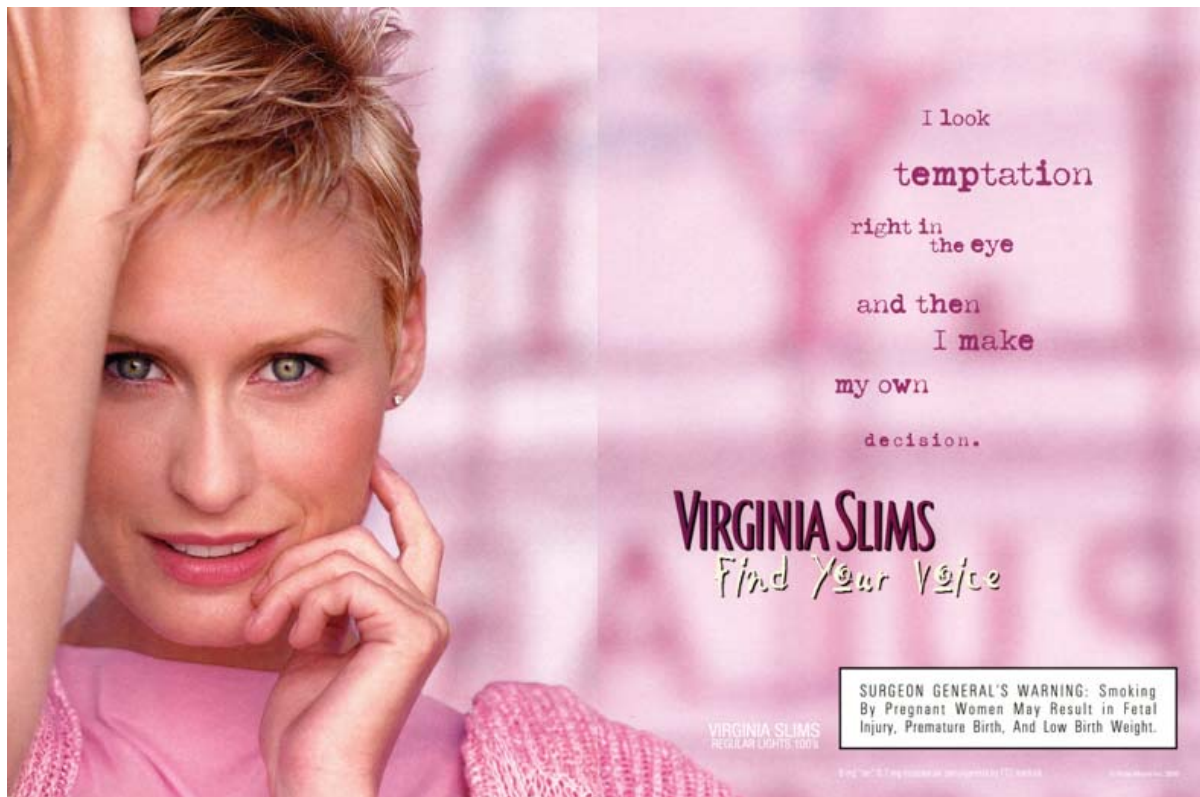
Advertisement 37 (Rebellion)



Advertisement 38 (Rebellion)



Advertisement 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 gentler
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-destroying 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 Elegant 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. Below her are two packs of Philip Morris cigarettes, labeled 'KING SIZE' and 'REGULAR'. The background is a light, textured yellow. The text is arranged in a formal, serif font, with some words in italics and underlines for emphasis.

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 +\$28

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 JUUL device in her right hand. To her right is a white JUUL starter kit box. The background is a vibrant, textured purple and pink. The text is in a clean, sans-serif font, with the JUUL logo in a large, bold, white font at the top left.

Advertisement 45 (Style & Beauty)



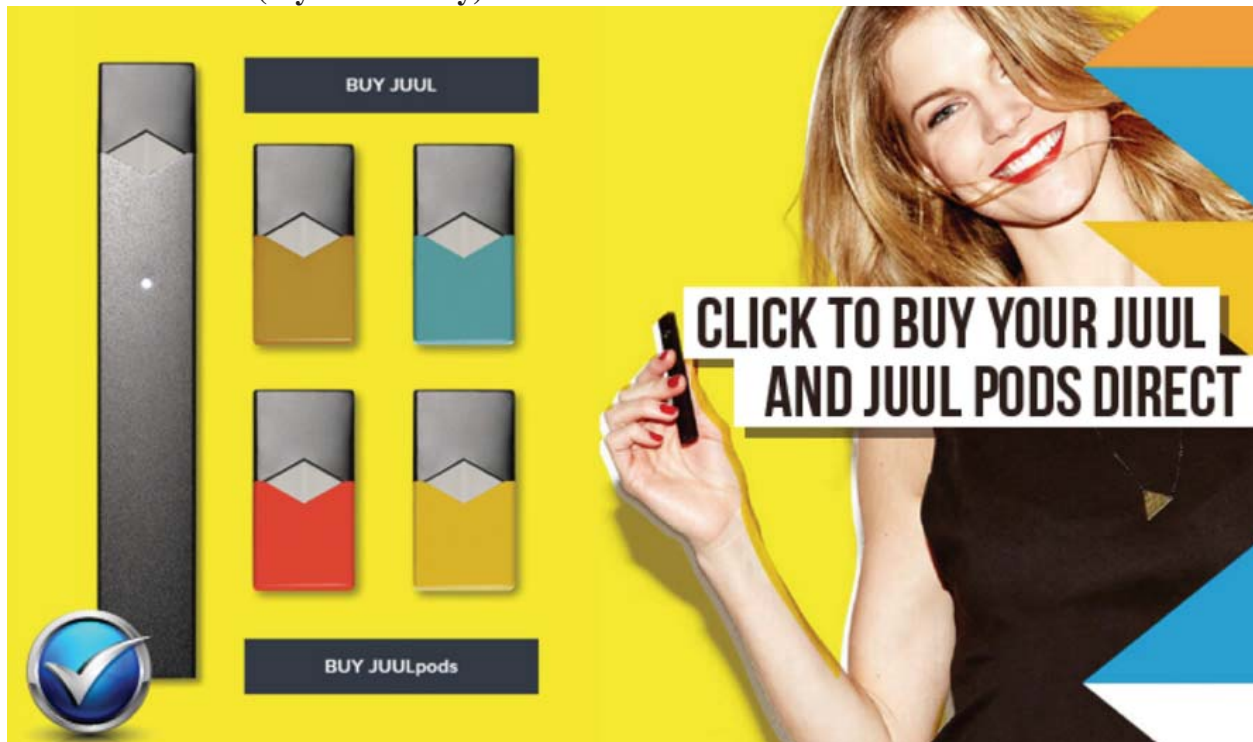
Advertisement 46 (Style & Beauty)



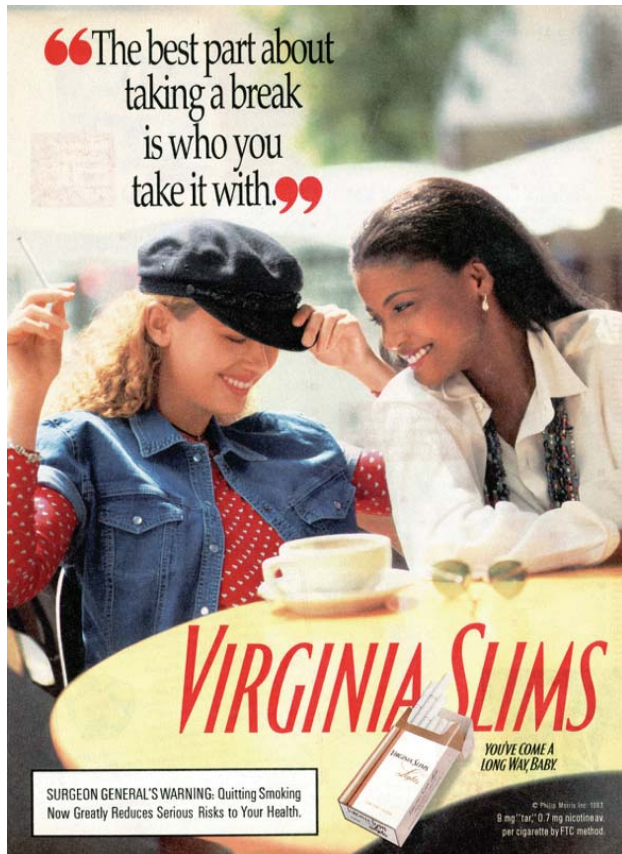
Advertisement 47 (Style & Beauty)



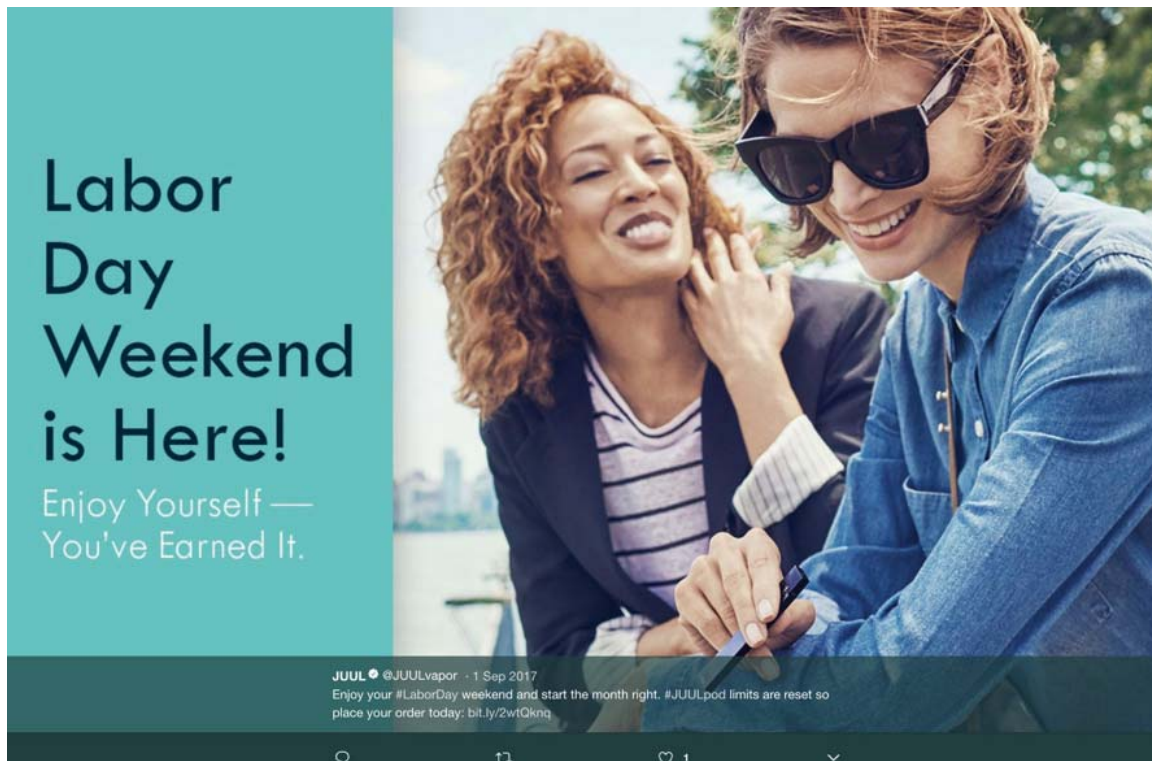
Advertisement 48 (Style & Beauty)



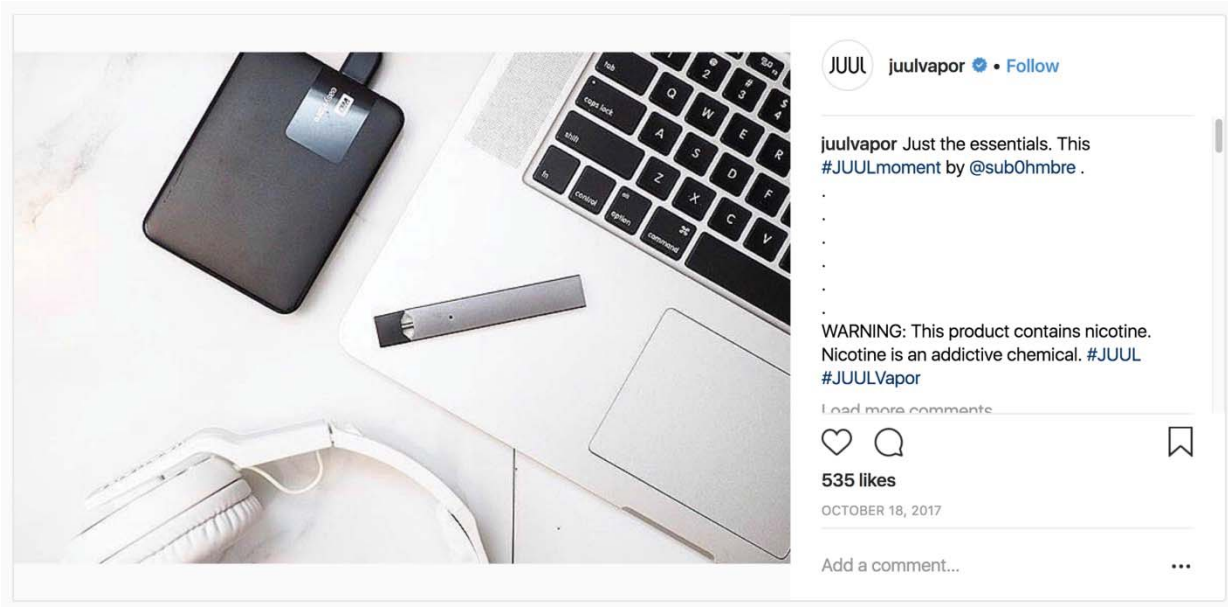
Advertisement 49 (Belonging)



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



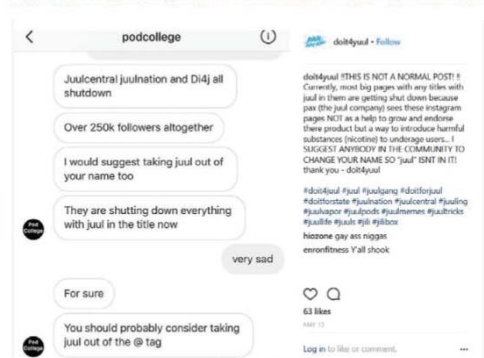
<https://www.instagram.com/p/BaaUZ1OFbOI/>



https://www.instagram.com/p/BYbB907I_VZ/?taken-by=juulcentral



https://www.instagram.com/p/Bb9_zcAAmsP/?taken-by=juulnation



Advertisement 55



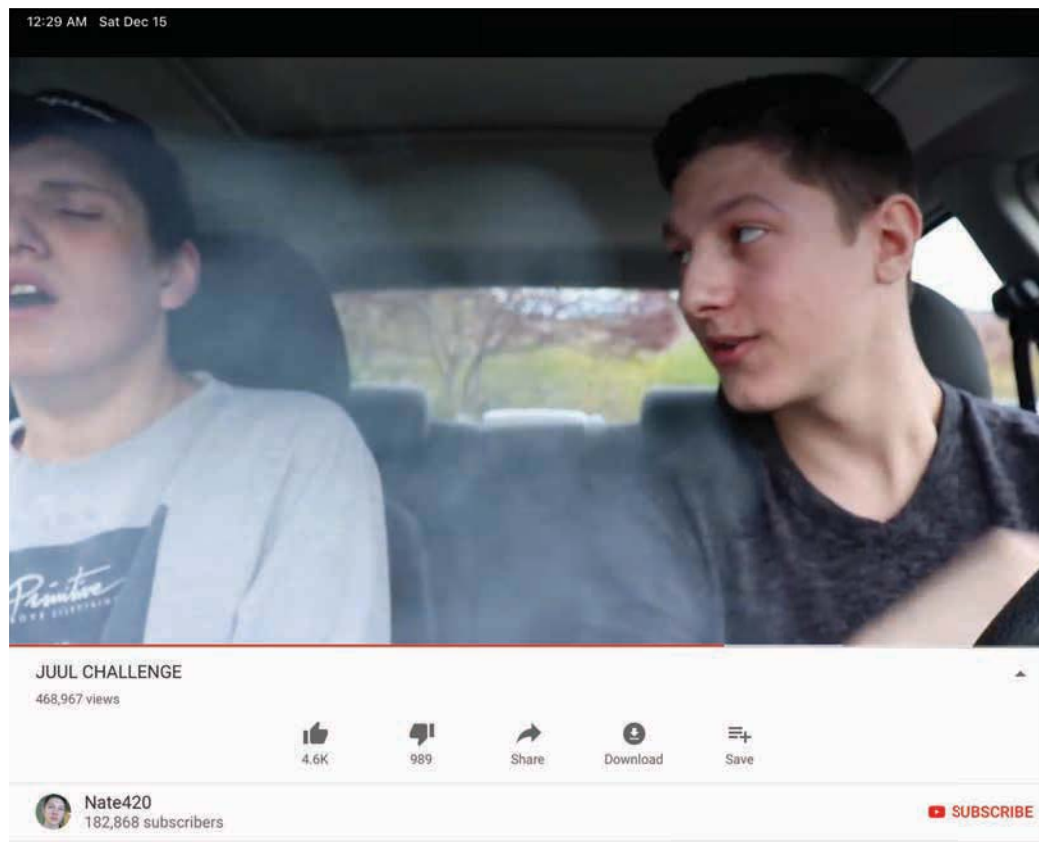
Advertisement 54



Advertisement 55



Advertisement 56



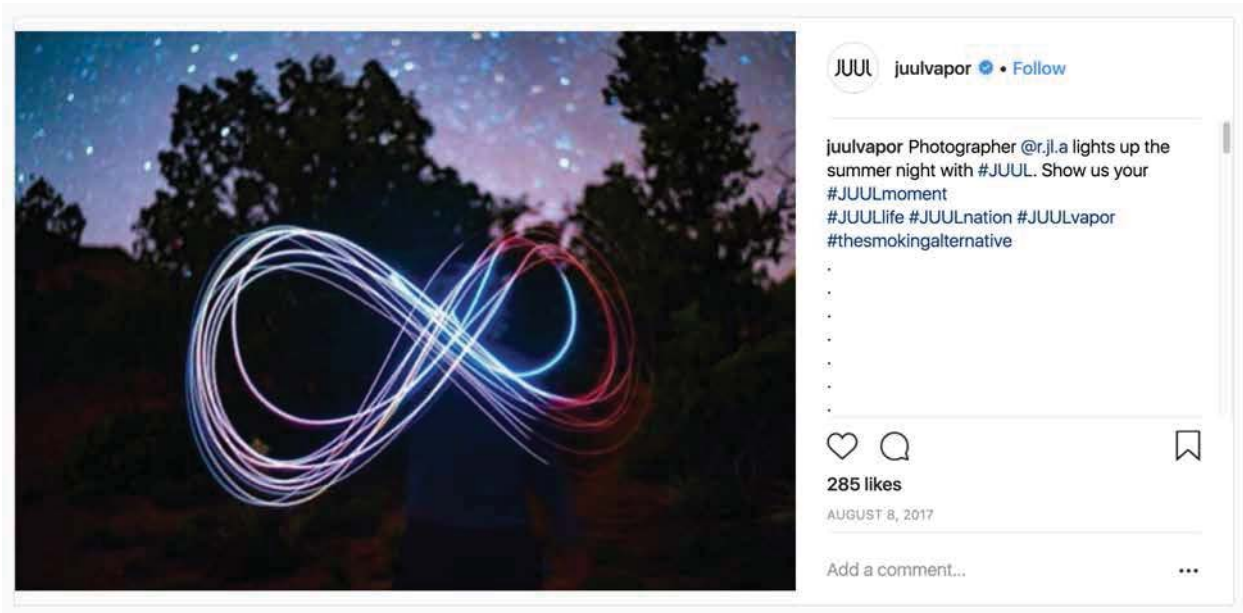
Advertisement 57



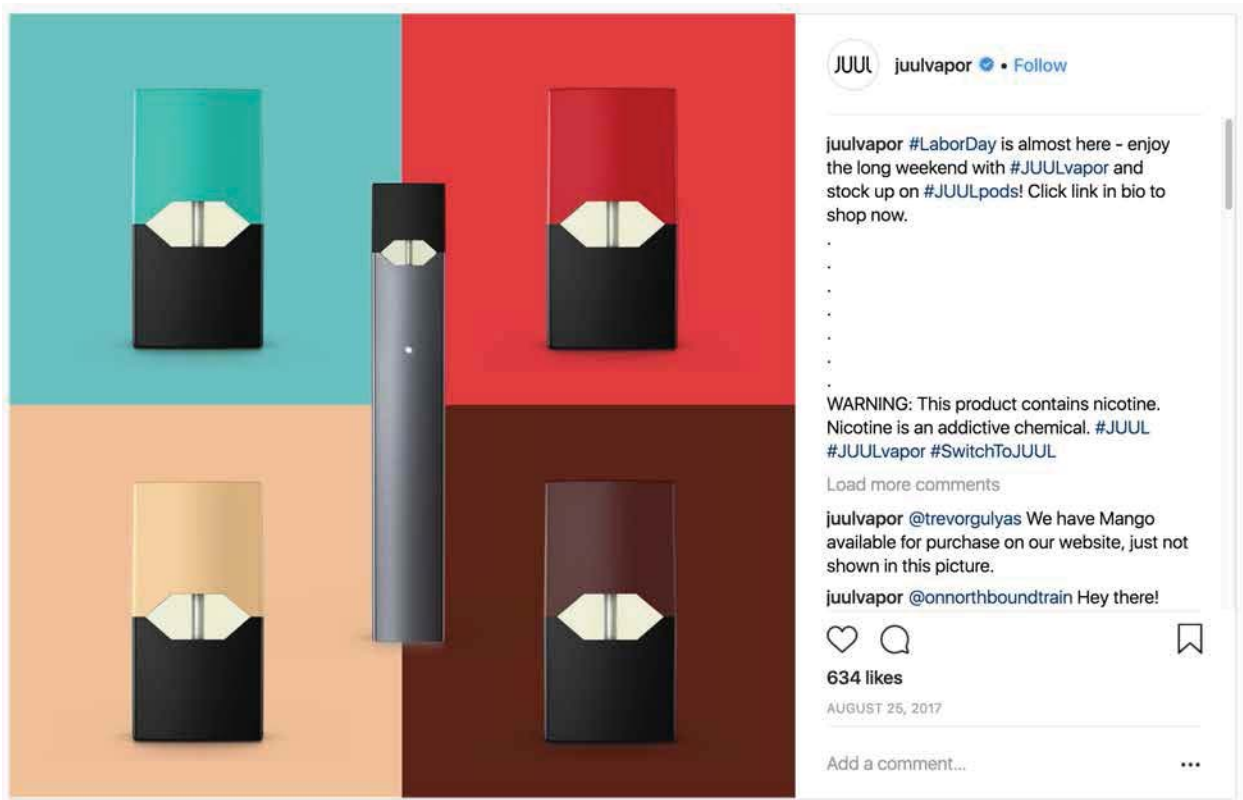
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Advertisement 59



Advertisement 60



Advertisement 61



JUUL juulvapor • Follow
New York, New York

juulvapor Ready to make the switch from cigarettes? We're coming to #NYC October 13th & 14th and we're giving you the chance to experience #JUUL for only \$1! See for yourself from 4-8pm both days at select locations. 21+ only. Click link in bio to learn more! #JUULNYC #JUULvapor

WARNING: This product contains nicotine. Nicotine is an addictive chemical. #JUUL #JUULvapor #SwitchToJUUL

View all 38 comments


manbuntrustfundofficial @mich_alicious

329 likes

OCTOBER 6, 2017

Add a comment...

Advertisement 62



JUUL juulvapor • Follow

juulvapor Nothing goes better with cooler mornings than staying inside and enjoying the simple satisfaction of #JUUL. Cozy up and have a #JUULmoment today. .

WARNING: This product contains nicotine. Nicotine is an addictive chemical. #JUULvapor

View all 45 comments

g.rayray Juul release a blue rasberry flav it's game over

lucascrea I love you guys

acizzzzle When is cool cucumber coming out ?

646 likes

OCTOBER 30, 2017

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 **JUUL**
September 18, 2017 · 

Back to Basics: Our JUUL Basic Kits (Device + USB Charger) have re-stocked so shop now: <http://bit.ly/2fg5sk4>





  17


20 Comments 2 Shares


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 **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>



 3

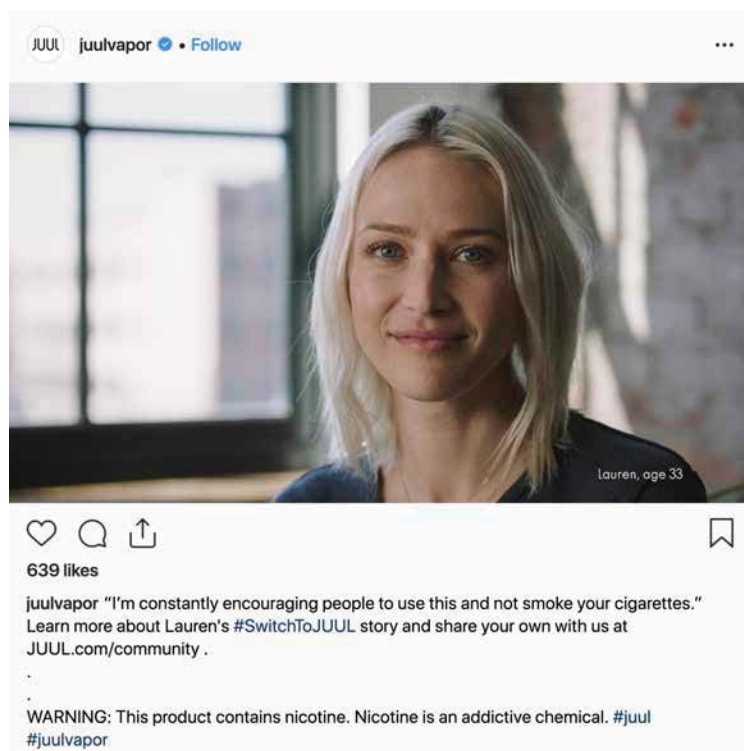
11 Comments

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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>

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Write a comment...
Press Enter to post.

Advertisement 71

 **JUUL**
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/>



 76 74 Comments 6 Shares


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Advertisement 72

 **JUUL**
December 6, 2017 · ⚙️

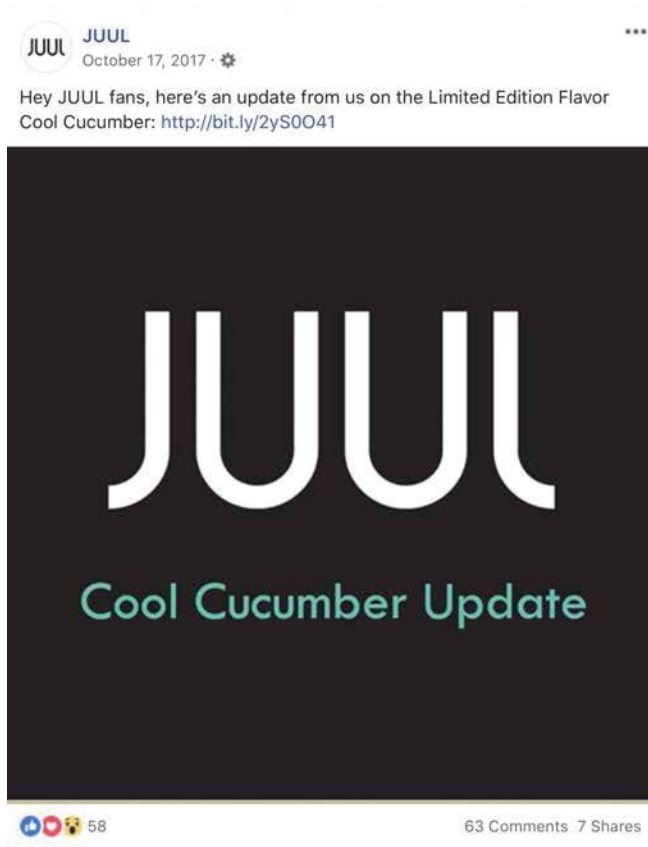
With the flavors of vanilla cake, silky custard and of course creme brul  e this JUULpod is the perfect evening treat. <http://bit.ly/2BCBZqS>



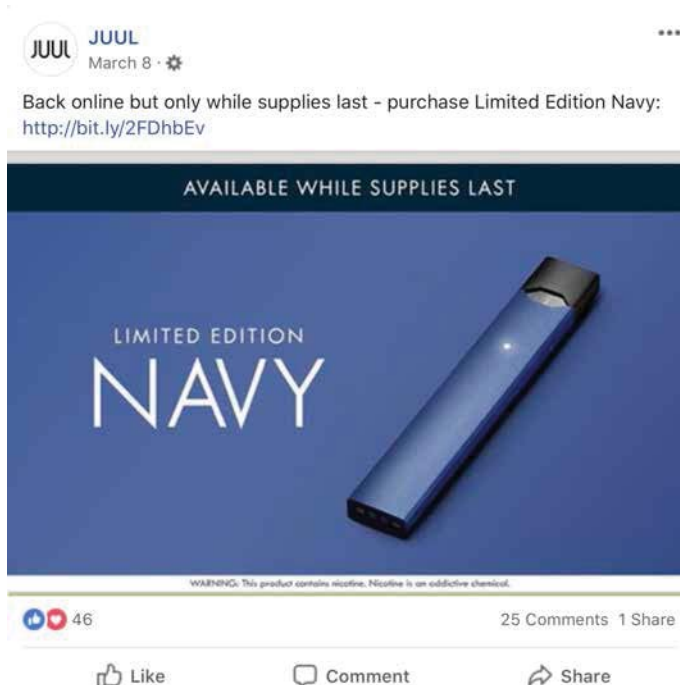
 20 13 Comments

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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!



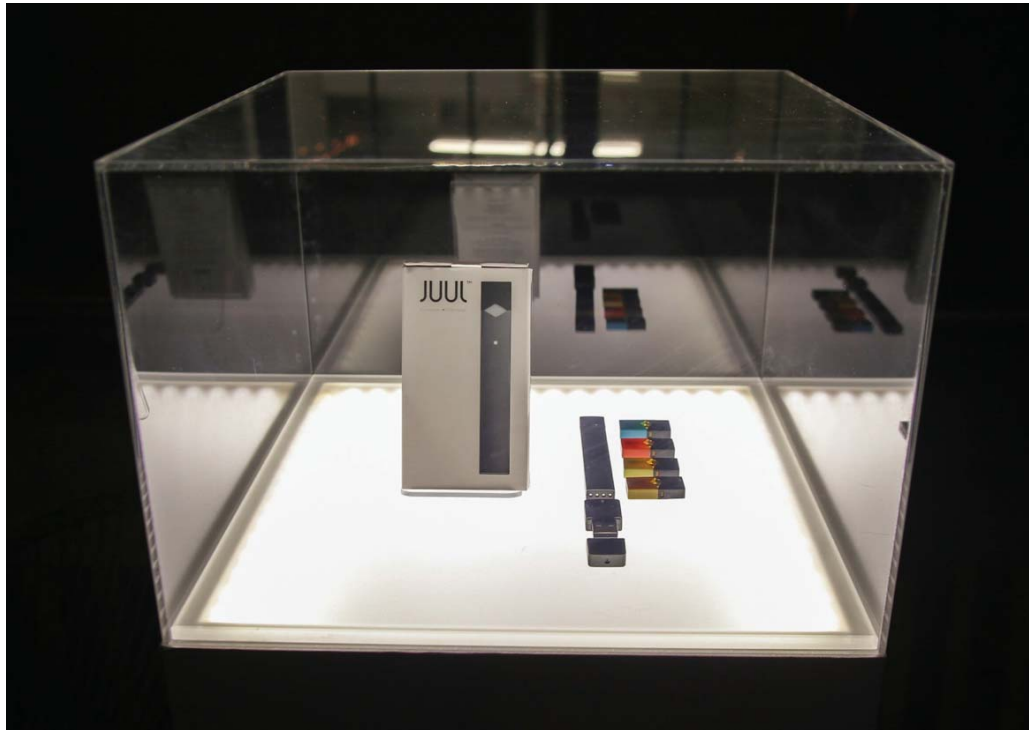
PORHOMME.COM

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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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

danocastillostudio O 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

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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 · 🌐

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