

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

STATE OF MINNESOTA, by its Attorney General,
Keith Ellison,

Plaintiff,

vs.

JUUL LABS, INC., a Delaware corporation
f/k/a PAX LABS, INC. f/k/a PLOOM PRODUCTS,
INC.,

Defendant.

Court File No.: _____

COMPLAINT

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PARTIES	7
JURISDICTION	8
VENUE	8
FACTS	8
A. The “Traditional” Tobacco Industry	8
B. The Emergence of E-Cigarettes	11
C. E-Cigarettes Are Dangerous	13
D. E-Cigarettes Are Especially Dangerous to Youth	17
E. JUUL’s Dangerous and Deceptive Nicotine Potency	20
F. JUUL’s Targeting of Youth	26
1. JUUL’s Youth-Oriented Physical Design	28
2. JUUL’s Youth-Oriented Flavors	31
3. JUUL’s Unique Chemical Formula	33
4. JUUL’s Multi-Faceted Youth-Marketing Campaign	35
5. JUUL’s In-Person Marketing at Schools	43
6. JUUL’s Dangerous and Careless Approach to Age Verification	46
G. JUUL’s Pervasive Actions, Statements, and Omissions Violated Minnesota Law	49
H. JUUL’s Marketing Plan Worked in Minnesota	50
I. JUUL Has Caused a Public Health Epidemic	53
J. JUUL’s “Action Plan” Is Insufficient	59
CLAIMS FOR RELIEF	61
COUNT I: CONSUMER FRAUD	61
COUNT II: DECEPTIVE TRADE PRACTICES	64
COUNT III: UNLAWFUL TRADE PRACTICES	68
COUNT IV: FALSE STATEMENT IN ADVERTISEMENT	70
COUNT V: PUBLIC NUISANCE	73
COUNT VI: NEGLIGENCE & NEGLIGENCE PER SE	75
COUNT VII: UNJUST ENRICHMENT	77
RELIEF	78
JURY DEMAND	79

INTRODUCTION

1. Twenty years after the State of Minnesota entered into its historic settlement with Big Tobacco, and Minnesota Attorney General Hubert H. Humphrey III famously proclaimed, “the tobacco industry has surrendered,”¹ Minnesota is again facing a tobacco addiction epidemic.² JUUL’s e-cigarettes’ youth-focused chemical formulas, flavors, design, and marketing efforts, coupled with its deceptive sales practices, have created an addiction crisis.

2. A 2017 survey revealed that new and regular tobacco use among Minnesota high school students increased for the first time in seventeen years, fueled by a nearly 50% jump in e-cigarette use.³

3. The same survey revealed that at least one in five Minnesota high school students use e-cigarettes, which are now the most commonly used tobacco products among teens.⁴ Among Minnesota students, e-cigarette use is five times cigarette use.⁵ The rise has prompted Governor Walz to recently warn that “[v]aping is a public health crisis for young Minnesotans, and it is critical that we act now to bring the rate down.”⁶

4. Young adults⁷ are similarly addicted. A 2018 survey revealed that more than one

¹ Pam Belluck, *Tobacco Companies Settle a Suit With Minnesota for \$6.5 Billion*, NYTIMES (May 9, 1998), <https://www.nytimes.com/1998/05/09/us/tobacco-companies-settle-a-suit-with-minnesota-for-6.5-billion.html>.

² Erin Golden, *Minnesota schools battle ‘epidemic’ of teen vaping*, STARTRIBUNE (Sept. 15, 2018), <http://www.startribune.com/minnesota-schools-battle-epidemic-of-teen-vaping/493390151/>.

³ Minn. Department of Health, *New survey shows Minnesota youth tobacco use rising for the first time in 17 years* (Feb. 15, 2018), <https://www.health.state.mn.us/news/pressrel/2018/youthtob021518.html>.

⁴ Minn. Department of Health, *Teens and Tobacco in Minnesota: Highlights from the 2017 Minnesota Youth Tobacco Survey*, https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen_tobacco17.pdf.

⁵ Minn. Department of Health, *E-cigarettes and Vaping*, <https://www.health.state.mn.us/ecigarettes>.

⁶ Minn. Department of Health, *Student survey shows vaping rates up sharply* (Oct. 2, 2019), <https://www.health.state.mn.us/news/pressrel/2019/survey100219.html>.

⁷ For purposes of this Complaint, “young adults” are defined as all youth between the ages of eighteen and twenty-four.

in five young adults in Minnesota currently use e-cigarettes, which is double the rate last seen in 2014.⁸ Of these e-cigarette smokers, almost three out of four had never smoked cigarettes before.

5. The rapid rise in e-cigarette use among Minnesota youth⁹ only appears to be accelerating, especially among our youngest. A recent October 2019 survey revealed that, since 2016, vaping had *doubled* among Minnesota eighth graders and increased 54% among Minnesota eleventh graders.¹⁰ School administrators, educators, and parents have simply become overwhelmed by the influx of these new smoking technologies in their schools, classrooms, and homes.¹¹

6. The national data is equally alarming. A 2018 study found that e-cigarette products are so powerfully addictive that they have led to the “largest ever recorded [increase in substance abuse] in the past 43 years for any adolescent substance use outcome in the U.S.”¹² This makes sense, given that JUUL, which by 2019 had cornered over 75% of the retail market,¹³ manufactures products that are more addictive than cigarettes and most major e-cigarette products on the market.

7. Sadly, it is apparent that the rapid uptake of e-cigarettes such as JUUL has quickly reversed Minnesota’s and the nation’s progress on curbing youth tobacco use. It is clear

⁸ Minn. Department of Health, *Data Highlights from the 2018 Minnesota Adult Tobacco Survey* (Feb. 26, 2019), <https://www.health.state.mn.us/communities/tobacco/data/docs/mats2018datahighlights.pdf>.

⁹ For purposes of this Complaint, “youth” are defined as all individuals twenty-four years old or younger.

¹⁰ *See supra*, fn. 6.

¹¹ Jordyn Brown, *Into the cloud: Area teens aren’t immune to e-cigarette epidemic*, SAINT CLOUD TIMES (Dec. 28, 2018), <https://www.sctimes.com/story/news/local/2018/12/28/st-cloud-vaping-epidemic-juul-e-cigarette-tips-parents/2121631002/>.

¹² *Vaping Surges: Largest Year-to-Year Increase in Substance Use Ever Recorded in the U.S. for 10th and 12th Grade Students*, U of M Institute for Social Research (Dec. 17, 2018), <https://isr.umich.edu/news-events/news-releases/national-adolescent-drug-trends-in-2018/>.

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

that JUUL has turned a generation of youth into addicts.

8. This reversal is both staggering and frightening, especially given that nicotine is extremely harmful to children¹⁴ and young adults and, according to the U.S. Surgeon General as well as the Minnesota Department of Health, can negatively impact learning, memory, and attention.¹⁵

9. As one Minnesota Health Coordinator has observed, nicotine initiation during childhood poses serious, permanent damage, and because the “brain isn’t developed until you’re 25,” it can be compared to weaving “a thread in the blanket that becomes your child’s brain.”¹⁶

10. Studies have also shown that young adult e-cigarette users are four times more likely to become cigarette smokers and that nicotine exposure can cause adolescents to become addicted to other drugs.¹⁷ The effect is almost immediate—symptoms of nicotine addiction can appear within only a few days or weeks after nicotine initiation.¹⁸

11. Minnesota’s State epidemiologist and medical director has noted that “health harms emerging from the current epidemic of youth vaping in Minnesota continue to increase.”¹⁹ The Food and Drug Administration (FDA) has also warned that youth vaping, spurred in large

¹⁴ For purposes of this Complaint, “children” are defined as all youth seventeen years old and younger.

¹⁵ Minn. Department of Health, *Minnesota identifies severe lung injury cases among teens who reported vaping* (Aug. 13, 2019), <https://www.health.state.mn.us/news/pressrel/2019/vaping081319.html>; *see also* Centers for Disease Control, *Surgeon General’s Advisory on E-cigarette Use Among Youth*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html.

¹⁶ *See supra*, fn. 11.

¹⁷ Primack *et al.*, *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, *Am J Med.* 2018 Apr;131(4):443.e1-443.e9; Truth Initiative, *Using e-cigarettes increased likelihood of using cigarettes among youth, study finds*, (Oct. 18, 2018), <https://truthinitiative.org/research-resource/s/emerging-tobacco-products/using-e-cigarettes-increases-likelihood-using>.

¹⁸ Minn. Department of Health, *Health Advisory: Nicotine and the Escalating Risk of Addiction For Youth*, <https://www.health.state.mn.us/communities/tobacco/nicotine/docs/2018addictionadvisory.pdf>.

¹⁹ Jeremy Olson, *Teen lung diseases linked to vaping, Minnesota Health Department reports*, STARTRIBUNE (Aug. 13, 2019), <http://www.startribune.com/teen-lung-diseases-linked-to-vaping-minnesota-health-department-reports/539981162/>.

part by JUUL, has become a crisis of epidemic proportions.²⁰

12. JUUL, whose rise to dominance in the e-cigarette market has directly correlated with the massive increase in e-cigarette use among youth, has played a central role in the epidemic. Armed with a youth-oriented design and taste, a highly addictive but easy-to-smoke and less harsh substance, a concealable and inconspicuous device, and an aggressive youth-directed marketing campaign which included various music/movie themed “launch parties,” JUUL quickly rose from a relatively obscure startup in 2015, to a company valued at \$38 billion by early 2019.

13. Heading into 2019, JUUL had managed to corner 75% of the e-cigarette retail market, up from 24% in 2017.²¹ In doing so, JUUL successfully created an image that its use was edgy, cool, fun, and pleasurable, both physically and emotionally, “faithfully recapitulat[ing] the playbook [used by] traditional cigarette marketers” fifty years earlier.²²

14. But JUUL’s similarities to tobacco marketing are far from coincidental—JUUL’s own co-founder explained that before he launched JUUL, he studied the Big Tobacco playbook in detail.²³

15. JUUL’s strategies, which JUUL internally recognized were “eerily similar” to those implemented by Big Tobacco, were multi-faceted. Realizing that it could not compete with the well-funded e-cigarette manufacturers, JUUL turned its marketing eye toward the youth,

²⁰ U.S. Food and Drug Administration, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use* (Sept. 12, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-address-epidemic-youth-e-cigarette-use>.

²¹ Truth Initiative, *Behind the Explosive Growth of JUUL* (Jan. 3, 2019), <https://truthinitiative.org/news/behind-explosive-growth-juul>.

²² Jackler *et al.*, *JUUL Advertising Over its First Three Years on the Market, Stanford Research into the Impact of Tobacco Advertising*, Stanford University School of Medicine (Jan. 31, 2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

²³ See *infra*, fn. 81.

which it correctly perceived to be a relatively untapped and lucrative market.²⁴

16. JUUL's e-cigarette device was intentionally designed to appear sleek and modern and to look like a USB memory drive that is easily concealed and used, even in plain sight. JUUL also engaged in savvy chemical engineering techniques that enable its products to deliver ultra-high doses of extremely addictive nicotine, often imperceptibly to new and inexperienced nicotine users. JUUL's products are particularly appealing (and addictive) to inexperienced users because of the highly acidic formula. This formula delivers massive quantities of nicotine to the bloodstream but is less harsh than cigarettes or other e-cigarettes on the market.

17. Perhaps most tellingly, JUUL offered a variety of fruit and dessert-like flavors, in addition to its mint and menthol flavors, which appealed to young and inexperienced smokers. Given the pervasive scientific studies on this topic, JUUL was undoubtedly aware that 68% of high school students who used e-cigarettes prefer flavored e-juices.²⁵

18. After intentionally creating a product which it knew would be tremendously appealing and highly addictive to youth, JUUL engaged in a vast, targeted, and highly effective marketing campaign to expand the total market for its products.²⁶ JUUL intentionally chose youth-friendly social media platforms to peddle its products, using colorful images, young models, as well as youth-oriented designs and slogans. It paid youth-oriented online "influencers" and "affiliates" to pose with its product and to create buzz among youth. It also distributed its messages broadly across social media via various youth-directed hashtags, such as #vaporized, #LightsCameraVapor, #mangomonday, and #fruitfriday.

²⁴ Committee on Oversight and Reform, *New Documents Show JUUL Deliberately Targeted Children to Become the Nation's Largest Seller of E-Cigarettes* (Jul. 25, 2018), <https://oversight.house.gov/news/press-releases/new-documents-show-juul-deliberately-targeted-children-to-become-the-nation-s>.

²⁵ See *infra*, fn. 43; see also *infra*, fns. 117-121.

²⁶ See *supra*, fn. 22.

19. Shockingly, a Congressional investigation in 2019 also revealed that JUUL infiltrated schools and after-school programs and represented to students that its products were safe to use.²⁷

20. JUUL's self-serving statements that its corporate mission is and was to help experienced smokers wean themselves from cigarettes is false and misleading.²⁸ As evidenced by its own marketing materials and internal admissions from its own employees, it is obvious that JUUL purposely, intentionally, and unlawfully directed its e-cigarette advertising model to youth and to those who did not regularly smoke cigarettes.

21. As one regulatory expert noted in connection with JUUL's marketing tactics: "[i]f you were serious about not attracting teens, you wouldn't make products that seem inherently appealing to children."²⁹

22. Federal authorities agree. Investigations into JUUL began in 2018, and the FDA, the Federal Trade Commission, federal prosecutors, and Congress continue to investigate JUUL.³⁰ Under tremendous pressure from investigators, in October 2019, JUUL pulled its fruit-flavored products.³¹ Menthol, however, still remains for sale.

23. In addition to designing and marketing its products to appeal to youth, JUUL also

²⁷ See *infra*, fn. 153 and accompanying text.

²⁸ JUUL, *Our Mission*, <https://www.juul.com/mission-values>.

²⁹ Will Yakowicz, *Why Juul, the Most Popular E-Cig on the Market, Is in Trouble*, INC. (May 11, 2018), <https://www.inc.com/will-yakowicz/juul-has-a-problem-its-too-cool.html>.

³⁰ See, e.g., Jennifer Maloney, *Federal Prosecutors Conducting Criminal Probe of Juul*, THE WALL STREET JOURNAL (Sept. 25, 2019), <https://www.wsj.com/articles/federal-prosecutors-conducting-criminal-probe-of-juul-11569268759?mod=e2tw>; Devin Coldewey, *FDA says JUUL 'ignored the law' and warns it may take action*, TECHCRUNCH (Sept. 9, 2019), <https://techcrunch.com/2019/09/09/fda-says-juul-ignored-the-law-and-warns-it-may-take-action/>.

³¹ Gabrielle Fonrouge, *Juul halts sale of flavored products nationwide pending FDA review*, NYPOST (Oct. 17, 2019), <https://nypost.com/2019/10/17/juul-immediately-halts-sale-of-flavored-products-nationwide-pending-fda-review/>.

failed to institute adequate controls to verify the age of its online purchasers, in violation of Minnesota law. JUUL deliberately turned a blind eye to the fact that its controls were not working and that it was including non-age verified individuals on its email list. Concerned that a more thorough age verification process would create friction with its users, and out of fear that it would lose leads, JUUL looked the other way while millions of dollars' worth of harmful products flowed into the hands of underage Minnesotans.

24. Essentially, JUUL created the perfect storm—a highly addictive drug, sweet to the taste, gentle on the throat, fun to smoke, “cool,” easy to obtain, and easy to hide. JUUL aggressively marketed that product to Minnesota youth, most of whom had never smoked cigarettes and otherwise would never have become addicted to nicotine.

25. Despite the State's historic, hard-fought battles to curb youth tobacco use, JUUL has caused the problem to re-emerge. JUUL's unconscionable actions are unfair, deceptive, and illegal under Minnesota law. They also constitute a public nuisance that has caused great harm to Minnesota, its residents, and especially to its youth. The Attorney General brings this action on behalf of the State in an effort to put a stop to JUUL's intentional, wrongful, and illegal actions and to hold JUUL accountable.

PARTIES

26. Keith Ellison, Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8; the Unlawful Trade Practices Act, Minnesota Statutes, sections 325D.09–16; the Uniform Deceptive Trade Practices Act, Minnesota Statutes, sections 325D.43–.48; the False Statement in Advertisement Act, Minnesota Statutes, sections 325F.67; and the Prevention of Consumer Fraud Act, Minnesota Statutes, sections 325F.68–70; and has common law authority, including *parens patriae* authority, to bring this action to enforce Minnesota's laws, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm

arising out of—and provide full relief for—violations of Minnesota’s laws.

27. Defendant JUUL Labs, Inc. (JUUL) is a foreign corporation, incorporated in the State of Delaware, with its principal place of business in San Francisco, California.

28. JUUL manufactures, promotes, markets, and distributes its electronic nicotine delivery system (“e-cigarette”) products in Minnesota and throughout the United States. At all relevant times, JUUL has been engaged in trade or commerce in the State of Minnesota.

JURISDICTION

29. This Court has subject matter jurisdiction over this action pursuant to Minnesota Statutes, sections 8.01, 8.31, 8.32, 325D.15, 325D.45, 325F.67, 325F.70, and common law.

30. This Court has personal jurisdiction over JUUL because JUUL purposefully and knowingly transacted business in Minnesota and with Minnesota residents, and has committed acts inside and outside of Minnesota causing injury to the Minnesota public, including Minnesota youth, in violation of Minnesota law.

31. JUUL’s marketing activities have specifically targeted Minnesota consumers, including Minnesota youth, in retail stores and on the internet.

VENUE

32. Venue in Hennepin County is proper under Minnesota Statutes, section 542.09 because the cause of action arose, in part, in Hennepin County. JUUL has done business in Hennepin County, and JUUL’s unlawful acts have affected Hennepin County residents, among others.

FACTS

A. The “Traditional” Tobacco Industry

33. Leading up to and throughout most of the 1990s, the tobacco industry frequently promoted, marketed, and sold highly addictive nicotine-containing cigarettes as a gateway to a

glamorous, glitzy, and sometimes even healthy lifestyle. Of course, the cigarette industry was well aware of nicotine's addictive power, which it euphemistically referred to as "satisfaction" (a term that appears repeatedly in JUUL's '895 patent).

34. Early on, the tobacco industry focused on the research and development of optimally addictive chemical formulations.³² For example, in 1986, a report by tobacco conglomerate R.J. Reynolds described its campaign to target 18 to 24 year-old men "by increasing the smoothness and masking the harshness and irritation of tobacco smoke." And, when Philip Morris figured out the addictive power of certain additives, it named its new formulation "Super Juice" and added it to its Merit brand cigarettes.³³

35. The tobacco industry was also aware of how important it was to snare kids before they aged beyond the window of opportunity. Marketing and advertising for many brands were directly geared towards youth.



36. Tobacco cartoon figures such as Joe Camel and Willie the KOOL Penguin, which

³² Rabinoff *et al.*, *Pharmacological and Chemical Effects of Cigarette Additives*, Am J Public Health. 2007 November; 97(11): 1981–1991.

³³ Alpert *et al.*, *A study of pyrazines in cigarettes and how additives might be used to enhance tobacco addiction*, Tob Control 2016;25:444–450. doi:10.1136/tobaccocontrol-2014-051943.

appealed to an even younger demographic, became household names.



37. One internal memo from Lorillard, a tobacco conglomerate involved in the tobacco litigation in the 1990s, puts it succinctly: “the base of our business is the high school student.”³⁴ It is no surprise, then, that in addition to youth marketing, the industry designed its products specifically to entice and addict youth.

38. 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, the Assistant Chief of Research & Development frankly observed that “[r]ealistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market.”³⁵

39. Cigarette companies were also aware that youth would be more likely to use

³⁴ T.L. Achey to Curtis Judge, *Product Information* (internal Lorillard Tobacco Company memo) (Aug. 1978), https://www.greensboro.com/lorillard-documents-revealing-documents-discuss-nicotine-levels-and-marketing-to/article_e9ea1b61-4c1d-588a-a283-404922f70c59.html.

³⁵ Claude Teague, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market*, (internal RJR memo) (Feb. 2, 1973), <https://www.washingtonpost.com/archive/local/1995/10/04/1973-cigarette-company-memo-proposed-new-brands-for-teens/eaf66416-3939-4c5f-9fbf-1db1897673ab/>.

flavored products. A 1972 internal memorandum from Brown & Williamson, another tobacco company from the early tobacco litigation, is revealing. The memo observed that “[i]t’s a well known fact that teenagers like sweet products. Honey might be considered.”³⁶

40. Similarly, a 1979 Lorillard memorandum found “younger” customers would be “attracted to products with less tobacco taste,” and suggested investigating the “possibility of borrowing switching study data from the company which produces ‘Life Savers’ as a basis for determining which flavors enjoy the widest appeal” among youth.³⁷

41. Eventually, the truth came out. Led by Attorney General Hubert H. Humphrey III, litigation against the tobacco industry in Minnesota culminated in a Settlement Agreement in May 1998. The Agreement included significant restrictions on cigarette marketing, including forbidding cigarette manufacturers from targeting youth. The tobacco companies also agreed to disclose more documents and information on their activities.

42. Beginning in the late 1990s, the marketing restrictions in the Settlement Agreement, combined with a variety of intensive public and private efforts—including public-education campaigns, public health initiatives, and workplace policies—led to a steep decline in tobacco use among the public as a whole, including youth. By 2017, the prevalence of high school student smoking in Minnesota had declined by approximately 70% from 2000.³⁸

B. The Emergence of E-Cigarettes

43. In the decades following Minnesota’s Settlement Agreement with the tobacco industry, technological advances made e-cigarettes commercially viable. And, in recent years,

³⁶ Brown & Williamson official A.J. Mellman, (1983) Tobacco Industry Quotes on Nicotine Addiction, <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf>.

³⁷ Sedgefield Idea Sessions 790606-790607. June 8, 1979. Bates No. 81513681/3691, <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf>.

³⁸ See *supra*, fn. 3.

especially since 2015, companies offering e-cigarettes have effectively moved into the void left by the decline of traditional tobacco. Like traditional tobacco products (e.g. cigarettes, chewing tobacco, snus, and snuff) most e-cigarette products derive their nicotine from the tobacco plant, and are therefore tobacco products. *See* Minn. Stat. § 297F.01.³⁹

44. An e-cigarette, also known as a “vaporizer,” is a battery-operated device typically comprised of a mouthpiece or cartridge, a tank, pod, or other repository for e-liquid or e-juice, a heating element, a rechargeable battery, and electronic circuits. As the user inhales on the mouthpiece, a sensor activates a heating element that vaporizes the e-juice, which is typically comprised of nicotine, flavorings, propylene glycol, vegetable glycerin, and other ingredients.⁴⁰

45. Most importantly, e-cigarettes are designed to deliver nicotine. When the e-liquid is heated, it is aerosolized and inhaled, delivering nicotine through aerosol droplets to the user.

46. E-cigarettes are designed and sold in a variety of shapes and designs. While some are designed to look like conventional cigarettes, others have sleeker, more modern-looking designs that resemble everyday items such as USB memory drives. The use of such products is commonly referred to as “vaping,” “vaporizing,” and most popularly, “JUULing.”

47. E-cigarette manufacturers, including JUUL, have historically marketed themselves as an effective way to quit cigarettes. However, according to the Minnesota Department of Health, “e-cigarettes . . . are not proved to help people quit [conventional cigarettes].”⁴¹ And, according to the Surgeon General, “the evidence supporting the effectiveness

³⁹ *See also* National Institute on Drug Abuse, *Electronic Cigarettes (E-cigarettes)* (Sept. 2019), <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>; *infra*, fn. 59 (defining e-cigarettes as a “tobacco product.”).

⁴⁰ FDA, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)* (Sept. 12, 2019), <https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends>.

⁴¹ *See supra*, fn. 5.

of e-cigarettes as an aid for quitting conventional cigarettes remains extremely weak for adults and untested and nonexistent among youth.”⁴²

48. E-cigarettes are a \$2.5 billion business in the United States. As of 2014, the e-cigarette industry spent \$125 million a year to advertise their products.⁴³

C. E-Cigarettes Are Dangerous

49. E-cigarettes, like cigarettes, are intended to deliver nicotine to the user. Nicotine is highly-addictive. Studies have shown that nicotine and opioids act on the same pathways of the human brain.⁴⁴ Nicotine is the third most addictive substance after heroin and cocaine.⁴⁵

50. Almost immediately following inhalation, nicotine can affect blood pressure, pulse rate, and blood vessel constriction.⁴⁶

51. In addition to being tremendously addictive, nicotine is also well known to have serious and harmful systemic side effects. Many studies have consistently demonstrated its carcinogenic potential on the heart, reproductive system, lung, and kidneys.⁴⁷ Nicotine use is also associated with type 2 diabetes.⁴⁸

52. But nicotine is not the only harmful substance in e-cigarettes. Many of the chemicals in cigarettes, in addition to nicotine, that have been proven harmful to health, are also

⁴² Surgeon General, *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf (citations omitted).

⁴³ Surgeon General, *Know the Risks, E-cigarettes and Young People*, <https://e-cigarettes.surgeongeneral.gov/getthefacts.html>.

⁴⁴ *Opiate And Nicotine Have Surprisingly Similar Effect On Brain's Reward System*, SCIENCE DAILY (Feb. 19, 2008), <https://www.sciencedaily.com/releases/2008/02/080212171131.htm>.

⁴⁵ Eric Bowman, *The five most addictive substances in the world*, CNN (Jun. 8, 2019), <https://www.cnn.com/2019/01/02/health/most-addictive-substances-partner/index.html>.

⁴⁶ Mishra *et al.*, *Harmful effects of nicotine*, Indian J Med Paediatr Oncol. 2015 Jan-Mar; 36(1): 24–31.

⁴⁷ *Id.*

⁴⁸ Willi, *et al.*, *Active smoking and the risk of type 2 diabetes: a systematic review and meta-analysis*. JAMA 2007;298:2654–2664.

present in e-cigarettes.⁴⁹ Indeed, e-cigarettes deliver a myriad of toxins, such as acrolein, acetaldehyde and formaldehyde.⁵⁰

53. A preliminary study presented at the 2018 annual meeting of the American Chemical Society even found that vaping could damage DNA.⁵¹ The study found three DNA-damaging compounds—formaldehyde, acrolein and methylglyoxal—whose levels increased in the saliva after vaping. Compared with people who do not vape, four of the five e-cigarette users showed increased DNA damage related to acrolein exposure.⁵²

54. A recent October 2019 study funded by the National Institutes of Health linked vaping to cancer in mice. In the study, researchers found that e-cigarette vapor caused DNA damage in the lungs and bladder and “inhibits DNA repair in lung tissues.”⁵³

55. Another 2019 study found that e-cigarette users developed some of the same molecular changes in oral tissue that cause cancer in cigarette smokers.⁵⁴

56. These findings are consistent with those of the FDA, which since 2009 has warned that e-cigarettes contain “detectable levels of known carcinogens and toxic chemicals to which users could be exposed.”⁵⁵

57. And, in April 2019, the FDA announced a public safety concern about seizures

⁴⁹ Laura Gottschalk, *et al.*, *Is Vaping Safer than Smoking Cigarettes?*, National Center for Health Research (2019), <http://www.center4research.org/vaping-safer-smoking-cigarettes-2/>.

⁵⁰ American Lung Association, *The Impact of E-Cigarettes on the Lung*, <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>.

⁵¹ *E-cigarettes can damage DNA*, Medical Xpress, MEDICAL PRESS (Aug. 20, 2018), <https://medicalxpress.com/news/2018-08-e-cigarettes-dna.html>.

⁵² *Id.*

⁵³ Tang, *et al.*, *Electronic-cigarette smoke induces lung adenocarcinoma and bladder urothelial hyperplasia in mice*, *Proc Natl Acad Sci U S A*. doi: 10.1073/pnas.1911321116.

⁵⁴ Tomassi, *et al.*, *Deregulation of Biologically Significant Genes and Associated Molecular Pathways in the Oral Epithelium of Electronic Cigarette Users*, *Int. J. Mol. Sci.* 2019, 20, 738; doi:10.3390/ijms20030738.

⁵⁵ *See supra*, fn. 49.

from e-cigarette use.⁵⁶

58. In a 2018 comprehensive survey of existing literature, the National Academies of Science, Engineering & Medicine concluded that “[t]here is conclusive evidence that in addition to nicotine, most e-cigarette products contain and emit numerous potentially toxic substances.”⁵⁷

59. The survey also concluded that “[t]here is substantial evidence that some chemicals present in e-cigarette aerosols (e.g., formaldehyde, acrolein) are capable of causing DNA damage and mutagenesis,” supporting “the biological plausibility that long-term exposure to e-cigarette aerosols could increase risk of cancer and adverse reproductive outcomes.”⁵⁸

60. According to the Minnesota Department of Health, exposure to e-cigarette aerosols harms both children and adults with breathing problems, such as asthma, and increases their risk of severe asthma attacks. Minnesota children with asthma who are exposed to e-cigarette aerosols were found to more likely report symptoms, such as coughing, wheezing, shortness of breath, or chest pain than those who were not exposed.⁵⁹

61. The American Heart Association (AHA) cautions against the use of e-cigarettes, stating that e-cigarettes containing nicotine are tobacco products that should be subject to all laws that apply to tobacco products.⁶⁰

62. Contamination of e-liquids is also a serious risk. Former senior vice president of

⁵⁶ FDA, *Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults* (Apr. 10, 2019), <https://www.fda.gov/tobacco-products/ctp-newsroom/some-e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults>.

⁵⁷ National Academies of Sciences, Engineering, and Medicine, *Public Health Consequences of E-Cigarettes* (Jan. 23, 2018), <https://www.ncbi.nlm.nih.gov/books/NBK507163/>.

⁵⁸ *Id.* at 401.

⁵⁹ Minn. Department of Health, *E-cigarettes and Vaping*, <https://www.health.state.mn.us/communities/tobacco/ecigarettes/index.html>.

⁶⁰ AHA *e-cigarette policy emphasizes caution when using devices to quit smoking*, AHA NEWS ARCHIVE, <https://news.heart.org/aha-e-cigarette-policy-emphasizes-caution-when-using-devices-to-quit-smoking/>.

JUUL, Siddharth Breja, recently stated that JUUL shipped at least a million contaminated mint-flavored pods (a highly popular flavor among youth) in early 2019, but failed to tell customers or issue a recall. Breja stated that then-CEO Kevin Burns shot down the idea of a recall, stating, “[h]alf our customers are drunk and vaping like mo-fo’s, who the fuck is going to notice the quality of our pods.”⁶¹ Members of Congress have recently urged the FDA to investigate these allegations.⁶²

63. JUUL was also aware that its products could be altered or modified to allow for more powerful usage or for use with illicit substances. There are many YouTube videos which demonstrate some of these techniques.⁶³

64. Despite the clear scientific consensus that JUUL is not safe, JUUL nevertheless misrepresented, without adequate evidence, that its products are a safe alternative to cigarettes. According to the FDA, “JUUL explicitly and/or implicitly has represented that JUUL products are free of a substance, have a reduced level of or exposure to a substance, and/or that JUUL products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products.”⁶⁴

65. As of December 2019, at least forty-seven people had died from vaping, while 2,290 others had become sickened or hospitalized with lung issues.⁶⁵ Of these, about 61% reported using nicotine-containing products; 13% reported exclusive use of nicotine-containing

⁶¹ *Siddharth Breja v. Juul Labs, Inc.* 3:19-cv-07148 (Dkt. 1) (N.D. Cal., Oct. 29, 2019).

⁶² House Committee On Energy and Commerce, *Pallone Urges FDA to Investigate Allegations that JUUL Knowingly Sold Contaminated E-Cigarette Pods* (Nov 14, 2019), <https://energycommerce.house.gov/newsroom/press-releases/pallone-urges-fda-to-investigate-allegations-that-juul-knowingly-sold>.

⁶³ Huang, *et al.*, *Vaping versus JUULing: How the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market.* (2018) Tob. Control 1–10, <https://doi.org/10.1136/tobaccocontrol-2018-054382>.

⁶⁴ *See infra*, fn. 201.

⁶⁵ Centers for Disease Control and Prevention, *Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping* (Nov. 5, 2019), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.

products.⁶⁶

66. As of December 2019, three Minnesotans had died, and 125 Minnesotans had been sickened with vaping related lung injuries.⁶⁷

D. E-Cigarettes Are Especially Dangerous to Youth

67. Nicotine and other compounds delivered in e-cigarettes present increased dangers to youth, most of whom have not used tobacco products before.

68. According to the Minnesota Department of Health:

Youth exposed to nicotine are at higher risk for addiction than are adults because youth brains are still forming and making permanent connections. Studies show that symptoms of nicotine addiction can appear among youth within only a few days or weeks after smoking initiation. The use of nicotine in e-cigarettes—nearly all of which contain nicotine—and other tobacco products primes the adolescent brain for addiction. This could have significant public health consequences, including potentially increasing the risk for youth of future addiction.⁶⁸

69. The Surgeon General, in its recent “Advisory on E-cigarette Use Among Youth,” has similarly warned that:

Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.⁶⁹

70. Studies show that adolescent tobacco use is associated with risk of developing mental health problems such as major depressive disorder, agoraphobia, panic disorder, addiction

⁶⁶ *Id.*

⁶⁷ Minn. Department of Health, *Vaping-Associated Lung Injuries* (Oct. 16, 2019), <https://www.health.state.mn.us/diseases/lunginjuries/index.html>.

⁶⁸ *See supra*, fn. 18.

⁶⁹ *See infra*, fn. 199.

to other substances, and/or antisocial personality disorder.⁷⁰

71. Separate studies have also found that nicotine exposure during adolescence and young adulthood leads to reduced activity in the prefrontal cortex of the brain, an area critical for cognitive behavior and decision-making, leading to increased sensitivity to other drugs and greater impulsivity.⁷¹

72. In 2016, the American Academy of Pediatrics issued a comprehensive report, “Nicotine and Tobacco as Substances of Abuse in Children and Adolescents,” reconfirming that nicotine is an extremely addictive substance to which the rapidly developing brains of children are particularly susceptible, and further held that long-term exposure is linked with an increased risk of heart disease, stroke, osteoporosis, and infertility, as well as oral, esophageal, and pancreatic cancers.⁷²

73. The report also stated that children are especially likely to become nicotine dependent, with the youngest children most at risk. The report noted that an estimated two-thirds of children who smoke in the sixth grade become regular smokers by adulthood and that 90% of adult smokers started smoking before they turned 18 years old.

74. Unsurprisingly, young adults who use e-cigarettes are more than four times as likely to start smoking traditional cigarettes within 18 months of e-cigarette initiation.⁷³

75. Most recently, the Health Department has warned that Minnesota high school

⁷⁰ Goriounova, *Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function*, Cold Spring Harb Perspect Med. (Dec. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069>.

⁷¹ Musso F *et al.*, *Smoking impacts on prefrontal attentional network function in young adult brains*, Psychopharmacology (Berl). 2007 Mar;191(1):159-69. Epub 2006.

⁷² Siqueira, *Nicotine and Tobacco as Substances of Abuse in Children and Adolescents*, Pediatrics. 2017 Jan;139(1). pii: e20163436. doi: 10.1542/peds.2016-3436.

⁷³ See *supra*, fn. 17.

students who have asthma are more likely to vape than their peers, which is concerning, given that these individuals are more likely to experience worsening symptoms, poor asthma control, and an increased need for medical management.⁷⁴

76. As the pioneer tobacco researcher Michael Russell said in 1971, “[t]here is little doubt that if it were not for the nicotine in tobacco smoke, people would be little more inclined to smoke than they are to blow bubbles or light sparklers.”⁷⁵ The same is true for e-cigarettes.

77. E-cigarettes confer absolutely no benefit upon the user aside from the novelty of “blowing smoke.” Like all novelties, the popularity of e-cigarettes would wane quickly but for their propensity to addict.

78. While makers of e-cigarettes claim that its products are for adult smokers, fewer than four percent of U.S. adults ages 25-66 use e-cigarettes.⁷⁶ However, current use among high school students is at 27.5% and rising.⁷⁷ And, as of late 2019, over 5 million middle and high school students were users of e-cigarettes,⁷⁸ an alarming increase of nearly three million students in two years.⁷⁹ Sadly, however, there is no FDA-approved nicotine treatment program or product available for those under 18.⁸⁰

⁷⁴ Minn. Department of Health, *Tobacco use and Asthma*, https://www.health.state.mn.us/communities/tobacco/data/docs/0201_tobacco_asthma.pdf.

⁷⁵ Robert N. Proctor, *The Golden Holocaust* at 25 (Univ. of Cal. Press 2011), http://cpcca.com.ar/tool_box/books/Robert_N._Proctor_Golden_Holocaust_Origins_of_the_Cigarette_Catastrophe_and_the_Case_for_Abolition.pdf.

⁷⁶ See *infra*, fn. 120.

⁷⁷ U.S. Food & Drug Administration, *Youth Tobacco Use: Results from the National Youth Tobacco Survey* (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey#1>.

⁷⁸ *Id.*

⁷⁹ Cullen *et al.*, *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018*, CDC (Nov. 16, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6745a5-H.pdf>.

⁸⁰ U.S. Food & Drug Administration, *Want to Quit Smoking? FDA-Approved Products Can Help*, <https://www.fda.gov/consumers/consumer-updates/want-quit-smoking-fda-approved-products-can-help>.

E. JUUL's Dangerous and Deceptive Nicotine Potency

79. JUUL's predecessor—Pax Labs, Inc.—was a moderately successful e-cigarette company mostly known for its loose-leaf cannabis vaporizers. By 2015, it had developed ambitions to enter the highly profitable, albeit significantly saturated, e-cigarette market then dominated by Big Tobacco.

80. While the barriers to entry were relatively low, JUUL knew it could not compete with the marketing budgets of Big Tobacco. To succeed, JUUL needed an angle. JUUL's co-founder James Monsees explained that before launching its products, JUUL studied and attempted to replicate Big Tobacco's highly successful strategies — strategies which were eventually barred by the MSA:

One of the results [of the 1998 Big Tobacco Settlement] was that a lot of tobacco industry documentation was mandated to become public It became a very intriguing space for us to investigate because we had so much information that you wouldn't normally be able to get in most industries. And we were able to catch up, right, to a huge, huge industry in no time. And then we started building prototypes.⁸¹

81. Taking a page from Big Tobacco's playbook, JUUL designed a device which would enable faster and more potent delivery of nicotine, often imperceptibly to the user. At the same time, it engaged in deceptive and misleading marketing and advertising which sought to obfuscate the true nicotine content of its products, and to promote JUUL as a safe alternative to cigarettes.

82. A single JUUL pod contains between 59-66 mg/ml of nicotine, an enormous quantity of nicotine by any measure.⁸² In fact, these levels are three times higher than the

⁸¹ Montoya, *Pax Labs: Origins With James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

⁸² Omaiye, E., *et al*, *High-Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations*, Chem. Res. Toxicol. 2019, 32, 1058-1069 (2019); *see also* Pankow, J., *et al*., *Benzene formation in electronic cigarettes*, (2017) PLoS ONE: 12(3):e0173055 (reporting 61.6 mg/ml of nicotine in JUUL).

allowable nicotine limit in the European Union for e-cigarettes; therefore, JUUL's "5%" nicotine concentration pods are banned in the E.U. and in the United Kingdom. Israel has also banned imports and sales of JUUL, observing that "a product that contains a concentration of nicotine that is almost three times the level permitted in the European Union constitutes a danger to public health and justifies immediate and authoritative steps to prevent it from entering the Israeli market."⁸³

83. Recognizing, perhaps, that the nicotine concentration in its pods were tremendously high, JUUL sought to obfuscate the true nicotine concentration of its pods through a variety of methods.

84. JUUL states in its advertising and packaging that its products are "5%" strength but they do so in a manner that understates their nicotine concentration.⁸⁴

85. Before JUUL's emergence on the market, most e-cigarette manufacturers measured their nicotine concentration by volume, in other words, the number of milligrams (mg) of nicotine per milliliter (mL) of liquid in an e-liquid container (mg/mL).⁸⁵ However, JUUL was one of the first to implement a measuring system by weight—where it measured the number of milligrams (mg) of nicotine per milligrams (mg) of liquid in an e-liquid container (mg/mg).⁸⁶ Because the concentration of nicotine by weight is less than by volume, JUUL was able to give the deceptive impression that its concentration is weaker than typical industry practice would

⁸³ Ronny Linder, *JUUL Warns it Will Fight Israel Over Its Potential Ban on ECigarettes*, HAARETZ (Jun. 3, 2018), <https://www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058>.

⁸⁴ JUUL introduced a 3% strength pod in August 2018 after escalating scrutiny into its marketing practices. However, the 5% strength pod was the only type available from 2015-2018.

⁸⁵ Hanae Armitage, *5 Questions: Robert Jackler says Juul spurs 'nicotine arms race'*, STANFORD MEDICINE (Feb. 6, 2019), <https://med.stanford.edu/news/all-news/2019/02/5-questions-robert-jackler-says-juul-spurs-nicotine-arms-race.html>.

⁸⁶ *Id.*

ordinarily reflect. JUUL, however, does not clarify its measurement system on its packaging or in its advertisements.

86. Had JUUL used standard industry practice, namely, measuring nicotine concentration by volume, as opposed to weight, JUUL's "5%" pods would have measured out at least a 5.9% nicotine concentration as opposed to 5%. As Robert Jackler, MD, professor and chair of otolaryngology at Stanford University opines, JUUL's "inconsistency in labeling the nicotine concentration is likely to mislead consumers."⁸⁷

87. JUUL's 5.9% nicotine concentration, measured by volume, is much higher than e-cigarettes on the market prior to JUUL. Prior to JUUL, the average cigarette concentration was 1% to 2%.⁸⁸

88. JUUL continues to advertise its "5%" nicotine strength despite its knowledge that its representations are likely to mislead customers, especially those who are young and inexperienced.

89. JUUL has also issued false and misleading statements when comparing the nicotine content in its pods to the average content of cigarettes. Though JUUL represents that one of its pods is equivalent to the nicotine content of one pack of cigarettes, JUUL's pod is actually equivalent to the nicotine content of at least 1.72 packs of cigarettes.

90. For example, according to JUUL, its "5%" pods contain an amount of nicotine equal to a pack of cigarettes (20 cigarettes), or 200 puffs.⁸⁹ But this is wrong. One milliliter of 24

⁸⁷ *Id.*

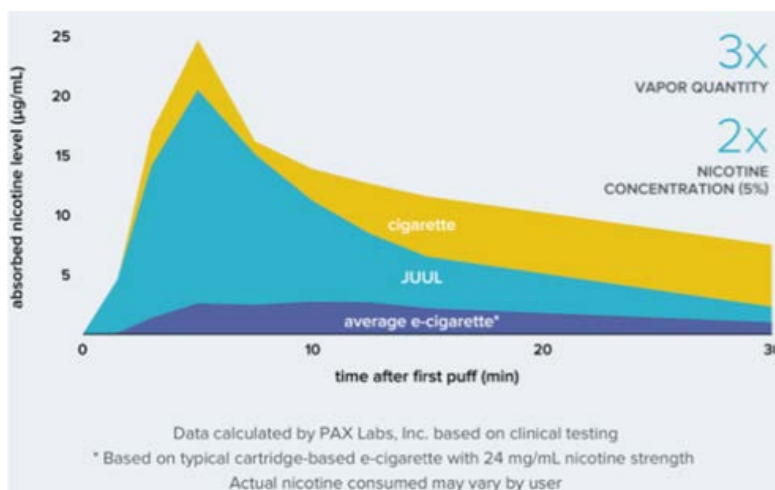
⁸⁸ *Id.*

⁸⁹ Truth Initiative, *6 important facts about JUUL* (Apr. 20, 2018), <https://truthinitiative.org/news/6-important-facts-about-juul>.

mg/ml e-liquid “corresponds to one pack of cigarettes.”⁹⁰ JUUL contains between 59-66 mg/ml of nicotine.⁹¹ Thus, one milliliter of JUUL e-liquid would be equivalent, at the very least, to 2.46 packs of cigarettes. Because a JUUL pod contains 0.7 milliliters of e-liquid (rather than one milliliter),⁹² one pod contains an amount of nicotine equal to at least 1.72 packs of cigarettes (34.4 cigarettes).

91. In addition to the sheer amount of nicotine, JUUL also is more efficient at delivering that nicotine into the bloodstream than cigarettes and other e-cigarettes. JUUL’s own patent observed that its 4% benzoic acid concentration together with a 5% concentration of nicotine salts causes nicotine levels in a user’s bloodstream to be around 30% higher than if the consumer had smoked a cigarette.⁹³

92. JUUL, however, has failed to communicate this to its customers. In fact, JUUL has stated the opposite. JUUL specifically provided graphs, in various marketing materials, which depict JUUL as delivering less nicotine to the blood than a cigarette:



⁹⁰ Pulvers, *et al*, *Tobacco Consumption and Toxicant Exposure of Cigarette Smokers Using Electronic Cigarettes*, *Nicotine & Tobacco Research*, 2018, 206-214.

⁹¹ See *supra*, Omaiye, fn. 82.

⁹² See *infra*, fn. 144.

⁹³ U.S. Patent 9,215,895 B2 (Dec. 22, 2015) ('895 Patent).

93. In 2014, after JUUL recognized internally that the nicotine delivery of its products to a user was enormous, JUUL applied for a patent for a specific feature that would alert users or disable the device after a certain nicotine threshold had been reached. According to a former JUUL scientist, “[o]ne idea was to shut down the device for a half-hour or more after a certain number of puffs The concern stemmed in part from the fact that a Juul – unlike a cigarette – never burns out.” The company, however, never provided any such feature with its products.⁹⁴

94. Perhaps most importantly, JUUL’s benzoic acid concentration (44.8 mg/ml) makes the inhaled aerosol less harsh, thereby enabling the user to inhale more nicotine for longer periods and enabling a smoother vaping experience.⁹⁵ As JUUL engineer Art Atkins observed in connection with the chemicals used in JUUL:

“In the tobacco plant, there are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes it . . .” He pauses. “I’ve got to choose the words carefully here: Appropriate for inhalation.” Steve Christensen, a design engineer, pipes in. “Smoother,” he says. Atkins goes with that. “Yeah, it’s smoother.”⁹⁶

95. As industry observers recognized, “[e]ssentially, [JUUL] shot down two birds with a single stone, creating one of the strongest e-liquids that can be enjoyed without suffering cough fits.”⁹⁷

96. All of these dangerous features are compounded by the fact that users can consistently vape indoors throughout the entire day. Unlike a single cigarette, which extinguishes

⁹⁴ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, REUTERS (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

⁹⁵ *Id.*; *Vaping pods Produce High Nicotine Levels in Young Users*, NIH National Cancer Institute (Oct. 5, 2018), <https://www.cancer.gov/news-events/cancer-currents-blog/2018/youth-vaping-high-nicotine-levels>.

⁹⁶ *See infra*, fn. 111.

⁹⁷ *Nicotine Salts – A Big, Fat Fad or The Next Hit Thing?*, VAPING DAILY, <https://vapingdaily.com/what-is-vaping/nicotine-salts/>.

after a few minutes, a single pod can last all day. A user can literally vape an entire pod in one sitting, completely uninterrupted; the equivalent of at least 1.72 packs of cigarettes.

97. But aside from misrepresenting the nicotine quantities, concentration, and absorption rate of its products, JUUL also misrepresented, without adequate evidence, that its products were effective in helping users quit cigarettes. In fact, JUUL has an entire division within its company dedicated to pitching payers, providers, self-insured employers, and the public sector on this purported benefit of its products.⁹⁸

98. These convenient (but unsupported) misrepresentations are also belied by JUUL's own admissions. As JUUL engineer Art Atkins explained in March 2015, "[w]e don't think a lot about addiction here because we're not trying to design a cessation product at all," he said, later noting 'anything about health is not on our mind'⁹⁹

99. The misrepresentations nevertheless worked—among Minnesota adult smokers, "trying to quit cigarettes" is cited as a primary reason for e-cigarette use.¹⁰⁰

100. However, as the FDA observed in a September 2019 warning letter to JUUL, it is unlawful for JUUL to represent that its products are effective in helping users quit cigarettes and that its products were a safer alternative to cigarettes.¹⁰¹

101. And, according to the Minnesota Department of Health and the FDA, there is no evidence that JUUL products are effective in helping smokers quit cigarettes.¹⁰² Many other

⁹⁸ Angelica LaVito *et al.*, *Juul is pitching its e-cigarette as an anti-smoking tool to employers and insurers*, CNBC (Mar. 7, 2019), <https://www.cnbc.com/2019/03/07/juul-e-cigarette-maker-pitches-employers-insurers.html>.

⁹⁹ Natisha Tikun, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette*, THE VERGE (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

¹⁰⁰ *See infra*, fn. 121.

¹⁰¹ *See infra*, fns. 201-202.

¹⁰² *See supra*, fns. 5, 42; *see infra*, fn. 202.

studies have similarly found that e-cigarettes are not effective at helping users quit cigarettes.¹⁰³

102. Rather, JUUL's products are significantly more addicting than cigarettes because they contain more nicotine and also deliver more nicotine to the bloodstream. JUUL sought to downplay this fact through deceptive and misleading misrepresentations, advertisements, and measurement methods.

103. In order to quit JUUL, at least one user has resorted to "filling her own Juul pods with a lower-percentage vape fluid, steadily decreasing it until it was just 1%, and then nicotine-free. Others, ironically, are now using cigarettes to quit the Juul they bought to quit cigarettes."¹⁰⁴ Even JUUL users who never smoked cigarettes prior to JUUL have now turned to cigarettes to quit JUUL.

104. JUUL has been aware of the enormous quantities of nicotine delivered to its customer's bloodstream. JUUL has also been aware of the harmful, and addictive qualities of nicotine and the potential for young and inexperienced user to become extremely addicted to its products. Nevertheless, JUUL has misrepresented, understated, and obfuscated the nicotine potency and increased risks of addiction resulting from the use of JUUL products.

F. JUUL's Targeting of Youth

105. JUUL's main target, however, was the nation's youth. JUUL's e-cigarette device was intentionally designed to have a sleek, modern design that looks like a USB memory drive.

¹⁰³ Adkison *et al.*, *Electronic nicotine delivery systems: International tobacco control four-country survey*, American Journal of Preventive Medicine, 44(3):207-215 (2013); Grana *et al.*, *A longitudinal analysis of electronic cigarette use and smoking cessation*, JAMA Internal Medicine, 2014;174(5):812-813 (2014); Choi *et al.*, *Response to Letter to the Editor Regarding "Beliefs and Experimentation with Electronic Cigarettes: A Prospective Analysis Among Young Adults."* American Journal of Preventive Medicine, 46 (6): e58-359 (2014); Vickerman *et al.*, *Use of electronic cigarettes among state tobacco cessation quitline callers*, Nicotine Tob. Res., 15 (10): 1787-1791 (2013).

¹⁰⁴ Kari Paul, *Breaking up with my Juul: why quitting vaping is harder than quitting cigarettes*, THE GUARDIAN (Oct. 10, 2019), <https://www.theguardian.com/society/2019/oct/10/breaking-up-with-my-juul-why-quitting-vaping-is-harder-than-quitting-cigarettes>.

It is small enough to fit in a fist or a pocket, and, unlike other products on the market, it bears little resemblance to a traditional cigarette. It can easily be vaped, without notice, in public. And, its battery can be charged by simply plugging it in to a computer's USB port, making it easily concealable even in plain sight.

106. And as discussed, JUUL engaged in savvy chemical engineering techniques that delivered ultra-high doses of extremely addictive nicotine, often imperceptibly to new or inexperienced nicotine users. Previous formulations of e-cigarette ingredients had a perceived "harshness," that, while not unwelcome to seasoned cigarette smokers who were trying to quit smoking, could deter new or inexperienced users.

107. Another way JUUL targeted youth was to offer a variety of fruit and dessert-like flavors which appeal to young and inexperienced smokers. While JUUL announced in November 2018, under tremendous pressure from federal regulators, that it would no longer fill retail orders for these flavors, until October 2019, it continued to allow online purchases of many of these flavors through its website, including mango, mint, and cucumber. It still continues to sell menthol flavored pods.

108. After intentionally creating a product that it knew would be tremendously appealing to inexperienced users, JUUL engaged in a vast, targeted, and highly effective marketing campaign to expand the total market for its products, specifically targeting young and underage users. JUUL also marketed its products in schools through in-person programs funded by JUUL and attended by its employees or designees.

109. And, knowing that its sales were being bolstered by underage purchasers, JUUL took an overly lenient and careless approach to age-verification of its online orders.

110. As a result of these calculated business and operations decisions, JUUL thrived.

JUUL's revenues increased almost 800% from 2017-2018.¹⁰⁵ Heading into 2019, JUUL had cornered a 76% market share on the entire e-cigarette retail market.¹⁰⁶

1. JUUL's Youth-Oriented Physical Design

111. Every aspect of JUUL's physical design was created to appeal to youth users. The JUUL is completely suction-operated, contains only two active parts, and has no settings or controls, making it simple to use. Indeed, "[o]ne of the reasons it is so popular among youth is that it is so easy to use—no prior experience or knowledge required. All they have to do to intake nicotine is to put a juul to their mouth and inhale."¹⁰⁷



112. JUUL users can also customize the appearance of the device with unique colors and patterns. Devices can be customized with wraps or skins, similar to cell phone cases that come in popular colors and patterns, an obviously attractive way for younger users to express themselves.¹⁰⁸

¹⁰⁵ David Dayen, *How Vaping Giant Juul Explains Everything That's Wrong With Our World*, THEINTERCEPT (Dec. 27, 2018), <https://theintercept.com/2018/12/27/juul-vaping-industry-regulation/>.

¹⁰⁶ Richard Craver, *Juul ends 2018 with 76 percent market share*, WINSTON-SALEM JOURNAL, (Jan. 8, 2019) https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

¹⁰⁷ Fraga, JA, *The Dangers of Juuling*, National Center for Health Research, <http://www.center4research.org/the-dangers-of-juuling/>.

¹⁰⁸ *Pop Culture Collection Skin Compatible With JUUL*, MightySkins.com, <https://mightyskins.com/collections/pax-juul-skins/products/paxjuul-par-pop-culture?variant=13841933107259>.



113. JUUL has been coined the “iPhone of e-cigarettes.” As one Minnesota health coordinator observed: “[y]ou know when you get an iPhone and it’s a very structured, concrete box? . . . It looks nice; It’s very sleek and classic. If you look at the JUUL packaging, it’s very similar.”¹⁰⁹

114. But, as with JUUL’s similarities to Big Tobacco’s marketing, JUUL’s similarities to Apple products were not coincidental. JUUL’s co-founder Adam Bowen worked as a design engineer at Apple,¹¹⁰ and, upon information and belief, used this experience to imitate a product and design with which children were familiar and comfortable.

115. JUUL also has a movement-sensing “party mode” feature, where the JUUL device lights up in a rainbow of colors when it is waved around. Obviously, this has tremendous youth appeal, but as the company itself has observed, is completely meaningless from a functionality standpoint. JUUL’s Chief Product Officer observed that JUUL’s “party mode” is “completely pointless. But it’s fun.”¹¹¹

¹⁰⁹ See *supra*, fn. 11.

¹¹⁰ Belluz, *Juul, the vape device teens are getting hooked on*, explained, VOX (Dec. 20, 2018), <https://www.vox.com/science-and-health/2018/5/1/17286638/juul-vaping-e-cigarette>.

¹¹¹ David Pierce, *This Might Just Be The First Great E-Cig*, WIRED (Apr. 21, 2015), <https://www.wired.com/2015/04/pax-juul-ecig/>.

116. Fun for some perhaps, but definitely not for Minnesota school administrators, teachers, and parents. According to the Star Tribune, Minnesota schools are amidst a “vaping epidemic.” As the Star Tribune observed, “[o]ne of the most popular vaping devices, the flash-drive-sized Juul, can be lit up with a rainbow of colors in what users call ‘party mode.’”¹¹²

117. Most importantly, however, the device is easy to conceal and use. It can easily be hidden and used in a wide variety of settings, such as in the classroom, school restroom, or home, making it especially attractive to children. It can also easily be concealed in a user’s fist, making a drag from the device, even in the classroom setting, appear as an innocuous yawn or cough.

118. “Teachers and school administrators across the nation are finding students juuling when their backs are turned: Students can take a hit, blow the small, odorless puff of smoke into their jacket or backpack, and continue their school work in a matter of seconds.”¹¹³ As the Minnesota Commissioner of Health, Jan Malcolm, reported to the Minnesota State Legislature this year, the popular JUUL is “sleek and concealable and often used in schools by students.”¹¹⁴



119. And, as reported by NBC News on March 26, 2018:

¹¹² See *supra*, fn. 2.

¹¹³ See *supra*, fn. 107.

¹¹⁴ Minn. Department of Health, *Tobacco Use Prevention Report to the Minnesota Legislature* (Jan. 22, 2019), <https://www.health.state.mn.us/communities/tobacco/data/docs/2019tobacco.pdf>.

The students wait eagerly for their teachers to turn their backs. That's their cue to reach quietly for a small, sleek device they can easily conceal in their palms They take a hit, sucking on the device as they would a cigarette. Then, "they blow into their backpacks . . . or into their sweater when the teacher isn't looking" . . . The vapor cloud is so small and dissipates so quickly that teachers are usually none the wiser . . . The odor Juuls produce is subtle and could easily be mistaken for a lotion or body spray.¹¹⁵

2. JUUL's Youth-Oriented Flavors

120. Aside for the look and feel of the JUUL device, JUUL intentionally marketed its liquid pods in a variety of flavors (also reflected by the flavor insert's color) to be specifically attractive to youth. Flavors advertised and sold included mint, cucumber, mango, crème brûlée, and fruit medley. JUUL has also registered other flavors with the FDA including peanut and jam, apple crumble, apple cran, peach ginger tea, cinnamon snap, and spicy watermelon.¹¹⁶



121. A recent study conducted by the FDA determined that 96.1% of 12 to 17 year-olds new users started with a flavored product.¹¹⁷ Additionally, the FDA found that 97% of 12 to 17 year-old users had used a flavored e-cigarette in the past month and that 70.3% of them use e-

¹¹⁵ Anna B. Ibarra, *Why JUULing has become a nightmare for school administrators*, NBC NEWS (Mar. 26, 2018), <https://www.nbcnews.com/health/kids-health/why-juuling-has-become-nightmare-school-administrators-n860106>.

¹¹⁶ *Stanford University Research Into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_main/images_body.php?token1=fm_pods_img36073.php.

¹¹⁷ FDA, *Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance*, (Mar. 13, 2019) <https://www.fda.gov/media/121384/download>.

cigarettes “because they come in flavors I like.”¹¹⁸ And, according to the Public Health Law Center, “[y]outh are attracted to flavors.”¹¹⁹

122. A study that included middle and high school students found that 43% of young people who have used e-cigarettes tried them because of appealing flavors.¹²⁰ Flavors are consistently considered a risk factor for youth initiation.¹²¹

123. But because of the variety of youth-friendly flavors, a large percentage of youth do not even know that they are using a nicotine product.¹²² A 2018 study determined that 63% of past 30-day JUUL users ages 15 to 24 do not know that all JUUL products always contain nicotine.¹²³ And as the Minnesota Department of Health has observed, “[m]any youth incorrectly perceive that e-cigarettes are not addictive and are easier to quit compared to cigarettes.”¹²⁴

124. The Minnesota Commissioner of Health, Jan Malcolm, has also reported to the Minnesota State Legislature this year that “[m]any [e-cigarettes] are fruit and candy flavored, and we know flavored tobacco products appeal to youth. They are also widely available online and in stores where youth frequently shop.”¹²⁵

125. As discussed above, at JUUL’s inception, it was well-known that flavored e-

¹¹⁸ *Id.*

¹¹⁹ *What’s the Hype? JUUL Electronic Cigarette’s Popularity with Youth & Young Adults*, Public Health Law Center (Apr. 26, 2018), <https://www.publichealthlawcenter.org/sites/default/files/JUUL-Webinar-Slides-Apr262018.pdf>.

¹²⁰ Truth Initiative, *E-cigarettes: Facts, stats and regulations*, (Jul. 19, 2018), <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>.

¹²¹ Boyle *et al.*, *Who is using and why: Prevalence and perceptions of using and not using electronic cigarettes in a statewide survey of adults*, Addictive Behaviors Reports (2019), doi: <https://doi.org/10.1016/j.abrep.2019.100227>.

¹²² Madeline Farber, *Some teens who vape nicotine don’t realize they’re ingesting the chemical, study suggests*, FOXNEWS (Apr. 24, 2019) <https://www.foxnews.com/health/teens-vape-nicotine-study>.

¹²³ Willett, *et al.*, *Recognition, use and perceptions of JUUL among youth and young adults* Tob Control. 2019 Jan;28(1):115-116, <https://www.ncbi.nlm.nih.gov/pubmed/29669749>.

¹²⁴ *See supra*, fn. 18.

¹²⁵ *See supra*, fn. 114.

juices have a differential appeal to youth. The JUUL founders undoubtedly were aware, through their Big Tobacco research, that flavors are key to hooking youth to nicotine products such as JUUL. JUUL capitalized on this fact to hook an entirely new generation of youth tobacco users.

3. JUUL's Unique Chemical Formula

126. JUUL's immediate success was also in part due to savvy but deceptive chemical engineering techniques that delivered ultra-high doses of extremely addictive nicotine, often imperceptibly to new and inexperienced users.

127. Before JUUL came to market, the majority of e-cigarettes used an alkaline aerosol to deliver nicotine. This meant that nicotine was to be largely delivered in its freebase form through the membranes of the mouth and throat. This alkaline (or basic) aerosol also had a perceived "harshness." While this phenomenon was not unwelcomed (or even noticeable) to seasoned cigarette smokers, it could nevertheless deter "learners," as Claude Teague at R.J. Reynolds noted with respect to cigarettes decades before JUUL was introduced.

128. In order to enhance its appeal to new users, JUUL increased the acidity of its formula in its e-liquids by adding benzoic acid. Benzoic acid causes the product to be less harsh, and therefore less intimidating to new users. This diminished harshness also permitted a virtually unlimited number of puffs. Given JUUL's smooth, acidic aerosol delivery, users are capable of "hitting" a JUUL device far more frequently than a normal person could tolerate with a conventional combustion cigarette; and this would be particularly true for inexperienced users unfamiliar with daily cigarette smoking.¹²⁶

129. Indeed, it has been reported that some youth in Minnesota go through about three

¹²⁶ See *supra*, fn. 94, 107.

to four pods of JUUL's e-juice¹²⁷ (equal to over four to five packs of cigarettes) a day.

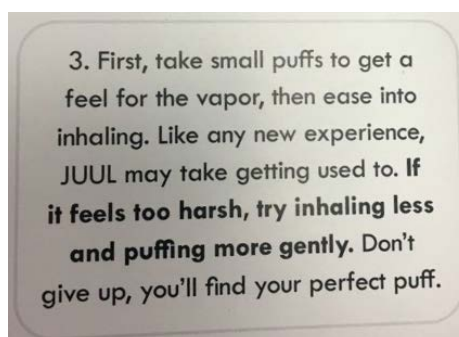
130. At the same time that JUUL's aerosol was smoother and more tolerable, it also delivered more nicotine to the average user.

131. As discussed above, JUUL is significantly more efficient at delivering nicotine into the bloodstream than other electronic or tobacco cigarettes. While JUUL's predecessors almost exclusively used freebase nicotine, JUUL uses nicotine salts. As a result, JUUL delivers higher peak nicotine than cigarettes.

132. In addition, the aerosolization of nicotine salts tends to be less visible and odiferous than its freebase counterparts, enabling students to use it covertly while at school.

133. In other words, JUUL sells products that contain relatively low amounts of throat-irritating freebase nicotine, which is attractive to inexperienced users, but that also contain and deliver far higher concentrations of nicotine than cigarettes and other e-cigarettes.

134. Any argument that JUUL's formula was not intended for young and inexperienced smokers is dispelled by JUUL's own instructions for use:



135. Big Tobacco was equally aware of how important it was to use a formulation which would be attractive and hook “new” smokers. Claude Teague of R.J. Reynolds authored one memo in which he frankly observed that “learning smokers” have a low tolerance for throat

¹²⁷ See *supra*, fn. 11.

irritation so the company's cigarettes should be "as bland as possible," and he specifically recommended an acidic smoke "by holding pH down, probably below 6."¹²⁸

4. JUUL's Multi-Faceted Youth-Marketing Campaign

136. In 2015, after designing a product that it knew would be appealing and would addict younger users, JUUL implemented a vast, multi-faceted marketing campaign aimed at America's youth, modeled after Big Tobacco. As discussed, JUUL's own co-founder James Monsees has explained that before launching its products, JUUL studied the Big Tobacco playbook in detail.¹²⁹

137. And, in crafting their marketing strategies, the JUUL co-founders utilized a Stanford University repository of tobacco advertising imagery. In 2018, when Monsees met Dr. Robert Jackler, head investigator for The Stanford University Research into the Impact of Tobacco Advertising ("SRITA"), he thanked Dr. Jackler for the database and expressed that the images were very helpful as they designed JUUL's advertising.¹³⁰

138. Monsees, in a 2013 TED talk, explained his desire to replicate Big Tobacco's successes:

Smoking is also sexy. So, let's say, uh, Marilyn Monroe and her cigarette holder or James Dean who was cool as hell. Or just think about the presence and the intellect of Albert Einstein with his pipe or the political aspirations of Winston Churchill that you can just tell through his personality. Smoking exudes personality.¹³¹

139. Experts in the field quickly took note of JUUL's similarities to Big Tobacco marketing. As JUUL's promotional offensive was beginning in June 2015, JUUL was being

¹²⁸ See *supra*, fn. 35.

¹²⁹ See *supra*, fn. 81.

¹³⁰ July 24, 2019 Dr. Jackler Congressional testimony before the House Committee on Oversight and Reform, <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-i>.

¹³¹ James Monsees, *Smoking deconstructed*, TEDxBussels, <https://www.youtube.com/watch?v=gJU99RyjDTs>.

cautioned that its campaign amounted to “irresponsible marketing” that would inevitably appeal to younger users.¹³² Early on, two prominent tobacco researchers warned JUUL’s founders and a high-level JUUL scientist of the risks of JUUL abuse by youth.¹³³

140. A select number of JUUL employees were also uncomfortable with JUUL’s marketing strategies. Interviewing a JUUL manager, Reuters recently reported that:

[T]he first signs that Juul had a strong appeal to young people came almost immediately after the sleek device went on sale in 2015 “Clearly, people internally had an issue with it But a lot of people had no problem with 500 percent year-over-year growth.” Company leaders also clearly understood the long-term benefit of young users on its bottom line It was well-known that young customers were “the most profitable segment in the history of the tobacco industry” because research shows that nicotine users who start as teenagers are the most likely to become lifelong addicts.¹³⁴

141. It was immediately apparent, however, that JUUL had no plans to modify its youth-oriented marketing strategy or to act on leading experts’ warnings regarding JUUL’s youth-appeal.¹³⁵ As it launched its products in June 2015, JUUL threw 25 music/movie themed “launch parties,” the purpose of which was to introduce JUUL to the youth marketplace. JUUL’s launch parties, which were always free, featured youth-oriented rock and pop bands and an unlimited supply of free samples.¹³⁶

142. The focus of these launch parties was to entice youthful influencers to accept gifts of JUUL’s products, to try out its various flavors, and then to popularize its products among their

¹³² Declan Harty, *Juul Hopes to Reinvent e-Cigarette Ads with ‘Vaporized’ Campaign*, AD.AGE (Jun. 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-ecigarette-ads-campaign/299142/>.

¹³³ *See supra*, fn. 94.

¹³⁴ *Id.*

¹³⁵ Matt Richtel *et al.*, *Did Juul Lure Teenagers and Get ‘Customers for Life’?* NYTIMES (Aug. 27, 2018), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

¹³⁶ *See supra*, fn. 22 at 6.

peers.¹³⁷



143. At the launch parties, guests were encouraged to take photos and post them on social media accounts using the hashtag #LightsCameraVapor. JUUL also posted images from the parties on its social media accounts.



144. Simultaneously, JUUL launched its Vaporized campaign, which focused on the uninitiated youth. JUUL's Vaporized campaign consisted of social media posts filled with attractive young models socializing, dancing, and flirtatiously sharing the flash-drive shaped device.

¹³⁷ *Id.*

145. JUUL's Vaporized campaign featured models in their 20s whose "poses were often evocative of behaviors more characteristic of underage teens than mature adults."¹³⁸



146. JUUL's creative agency "Cult Collective" described its marketing strategy: "We created ridiculous enthusiasm for the hashtag 'Vaporized,' and deployed rich experiential activations and a brand sponsorship strategy that aligned perfectly with those we knew would be our best customers."¹³⁹ Based upon subsequent sales trends, it is clear that this imagery especially resonated with youth who aspire to emulate these trendsetters. The net effect of the initial campaign was to establish a notably youth-oriented brand identity for JUUL.¹⁴⁰

147. A cornerstone of JUUL's marketing effort also involved the recruitment and use of influencers to increase brand awareness and promote sales.¹⁴¹ According to a 2019 Congressional report:

JUUL used a sophisticated and high-cost "influencer" program to promote online marketing to youth specifically to "curate and identify 280 influencers in LA/NY to seed JUUL product" and to secure social media "buzzmakers" with "a minimum

¹³⁸ See *supra*, fn. 22 at 7.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ 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/#146a2e7614f9>.

of 30,000 followers,” to attend launch events and to develop “influencer engagement efforts to establish a network of creatives to leverage as loyalists for JUUL.”¹⁴²

148. In disseminating these marketing materials and in promoting various “influencers,” JUUL chose to focus almost exclusively on youth-oriented social media sites such as YouTube, Twitter, and Instagram. This is unsurprising, given that advertisers tailor their advertising to the media channels most relevant to the age ranges they intend to target. JUUL also utilized broadly relatable hashtags that further extended its market reach.

149. According to Matthew Myers, the president of the nonprofit Campaign for Tobacco Free Kids, JUUL’s decision to put the bulk of its ads on social media rather than magazines, billboards, or TV also meant that adults and federal regulators were less likely to see the ads and flag potential issues.¹⁴³

150. JUUL’s social media campaign was incredibly successful. By the end of 2017, there had been more than 150,000 JUUL-related “tweets.”¹⁴⁴ As of November 2018, JUUL had 77,600 Instagram followers, 19,700 Twitter followers, and 10,280 Facebook followers, all of which are dwarfed by the multitudes of YouTube videos, eleven of which have more than 1,000,000 views and over a hundred others of which have over 100,000 views.¹⁴⁵ A study of JUUL’s official Twitter account found that *45% of its followers were between the ages of 13 and*

¹⁴² See *supra*, fn. 24.

¹⁴³ Erin Brodwin, *Silicon Valley e-cig startup Juul ‘threw a really great party’ to launch its devices, which experts say deliberately targeted youth*, (Sept. 4, 2018) <https://www.businessinsider.com/juul-e-cig-startup-marketing-appealed-to-teens-2018-7>.

¹⁴⁴ Huang *et al.*, *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the U.S. retail e-cigarette market*, Tobacco Control, Vol. 28, Issue 2, (2019), <https://tobaccocontrol.bmj.com/content/28/2/146>.

¹⁴⁵ See *supra*, fn. 22 at 19.

17, and only 20% were 21 and older.¹⁴⁶

151. And while JUUL generally avoided newspapers, billboards, radio, and television, in favor of social media—it chose *VICE* magazine to launch its advertising campaign. *VICE* magazine is a glossy pop culture focused publication, which markets itself to advertisers as the “#1 youth media company.”¹⁴⁷ It has been referred to as the “new teen bible.”¹⁴⁸

152. It is clear that “[t]hese advertisements clearly resonated with a younger demographic, school age teens, which seek to emulate the cool and trendy look of playful twenty something models.”¹⁴⁹ Ultimately, JUUL’s marketing efforts were so successful that “juuling,” (the act of smoking a JUUL), became a commonly used verb.¹⁵⁰

153. Notably, however, for much of the time JUUL was on the market, none of its advertisements or social media posts contained the word “nicotine” or warned of nicotine’s highly addictive properties.

154. While the advertisements were targeted at the young, ultimately, the underlying tactics were developed years earlier by Big Tobacco. SRITA has documented the entire line of JUUL advertising—including dozens of comparisons between JUUL and historical tobacco

¹⁴⁶ Sidani *et al.*, *I wake up and hit the JUUL: Analyzing Twitter for JUUL nicotine effects and dependence*, *Drug Alcohol Depend.* 2019 Aug 30;204:107500. doi: 10.1016/j.drugalcdep.2019.06.005.

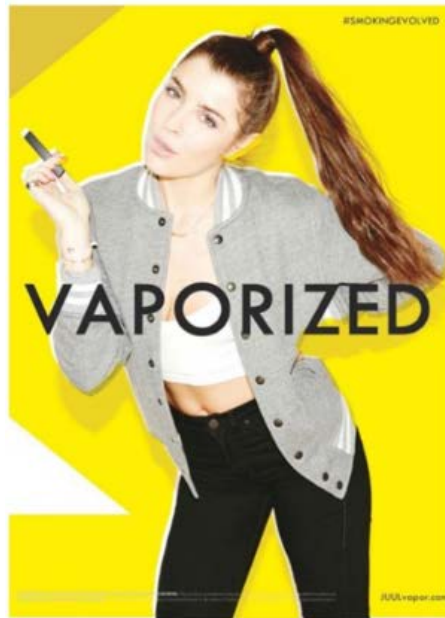
¹⁴⁷ *See supra*, fn. 22 at 16.

¹⁴⁸ *The Vice Squad: How ‘Vice’ magazine became the new teen bible*, INDEPENDENT (Jul. 2008), <https://www.independent.co.uk/news/media/the-vice-squad-how-vice-magazine-became-the-new-teen-bible-876351.html>.

¹⁴⁹ *Stanford University Research Into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st655.php&token1=fm_pods_img35520.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=Vaporized.

¹⁵⁰ Angelica LaVito, *Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year*, *CNBC* (Jul. 2, 2018), <https://www.cnn.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

cigarette advertisements—and found them highly similar in targeting youth.¹⁵¹



¹⁵¹ See *supra*, fn. 22 at 27-33.





155. As Dr. Robert Jackler of SRITA concluded, in comparing JUUL’s marketing strategy with Big Tobacco: “[v]ery clearly, they do the same damn thing today as they did then. The messaging is very subtle, very carefully crafted. They target, in the same way, adolescents.”¹⁵²

5. JUUL’s In-Person Marketing at Schools

156. JUUL’s marketing campaign did not stop with influencers, affiliates, social media and *VICE* magazine ads. Shockingly, JUUL representatives also marketed its products *in-person at schools*.

157. In July 2019, the Congressional Subcommittee on Economic and Consumer Policy released a report outlining a months-long investigation in the company’s marketing practices.¹⁵³ The report detailed a JUUL division, which the company audaciously called “Youth

¹⁵² Kate Keller, *Ads for E-Cigarettes Today Harken Back to the Banned Tricks of Big Tobacco*, Smithsonian.com (Apr. 11, 2018) <https://www.smithsonianmag.com/history/electronic-cigarettes-millennial-appeal-ushers-next-generation-nicotine-addicts-180968747/>.

¹⁵³ Supplemental Congressional Memorandum From Democratic Members of the Subcommittee on Economic and Consumer Policy Memorandum (Jul. 25, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.

Prevention and Education.”¹⁵⁴

158. This “Youth Prevention and Education” division sought out schools where it could present its programming.¹⁵⁵ JUUL paid schools at least \$10,000 for access to students, under the guise of offering nicotine prevention programs.¹⁵⁶ No parents or teachers were allowed in the room, ostensibly to enable the students to feel comfortable talking freely.

159. Once in the classroom, however, JUUL’s message was that its products were “totally safe.”¹⁵⁷ The presenters even demonstrated to the kids how to use a JUUL.¹⁵⁸ JUUL also provided the children snacks and established the right to collect student information from the sessions.¹⁵⁹

160. In April 2018, based on reports of JUUL’s questionable in-school marketing tactics, the Minnesota Department of Health, in conjunction with the Minnesota Department of Education, sent a letter to school administrators a warning:

The Centers for Disease Control and Prevention reports that JUUL representatives are contacting schools to offer a “youth tobacco prevention curriculum” and funding. If your school is approached, we strongly recommend that schools and districts reject these offers. These tobacco industry programs are not evidence-based or effective in preventing youth tobacco use.¹⁶⁰

161. JUUL also targeted youth in out-of-school programs. The Subcommittee report identifies one example wherein JUUL paid \$89,000 to a police department to allow it to host a program targeting “youth, aged 12-17, who face suspension from school for using

¹⁵⁴ *Id.* at 1.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 2.

¹⁶⁰ Letter to Schools from Minnesota’s Health and Education Departments (Apr. 27, 2018), <https://www.health.state.mn.us/communities/tobacco/ecigarettes/docs/schoolletter.pdf>.

e-cigarettes”¹⁶¹ The youth were to attend the program for as long as ten weeks.¹⁶²

162. In another example, JUUL paid \$134,000 to establish a summer camp for grades 3 through 12, purportedly to help “student-participants create a personal ‘healthy lifestyle plan’” and to “engag[e] low-income youth at risk of making poor health decisions.”¹⁶³

163. As the Subcommittee observed, in adopting these in school marketing programs, “JUUL’s ‘efforts seemed to duplicate’ the ‘youth education’ programs formerly used by traditional cigarette makers.”¹⁶⁴ Youth Prevention and Education Director for JUUL, Julie Henderson also met with former members of Philip Morris’ “youth education” team.¹⁶⁵ JUUL’s “Youth Prevention and Education” team even acknowledged the similarity between its programming and that of Big Tobacco.¹⁶⁶ With regards to JUUL’s out of school programs, the Subcommittee released an internal JUUL document stating that its programs were “eerily similar” to those previously used by large cigarette makers, and even internal executives raised concerns about its work in schools.¹⁶⁷

164. In a series of related hearings organized by the Subcommittee, two teenagers testified under oath that a JUUL representative repeatedly told a ninth-grade classroom that the company’s e-cigarette was “totally safe” before showing underage students the device.¹⁶⁸ One of these witnesses further testified, “I believe the presenter was sending mixed messages by saying

¹⁶¹ See *supra*, fn. 153 at 4.

¹⁶² *Id.*

¹⁶³ *Id.* at 5.

¹⁶⁴ *Id.* at 2.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 5.

¹⁶⁸ Representative Krishnamoorthi Examines JUUL’s Marketing Strategy (Jul. 26, 2019), <https://www.youtube.com/watch?v=gnwBL7ycWEY&feature=youtu.be>.

JUUL was ‘totally safe’ and following up every totally safe statement with ‘but we don’t want you as customers’ I believe that the presenter was playing on the rebellious side of teens . . . where when teens are told not to do something, they are more likely to do it.”¹⁶⁹

6. JUUL’s Dangerous and Careless Approach to Age Verification

165. After creating and marketing a product that was geared towards youth, JUUL implemented an age-verification method that was designed and maintained to allow some underage users to easily purchase its products. Rather than invest in widely available techniques to identify and reject underage users, JUUL buried its head in the sand while it made billions.

166. In fact, upon information and belief, JUUL’s customer service head admitted that JUUL employees were directed to avoid digging around looking for evidence of underage purchases, thereby demonstrating willful blindness to Minnesota’s prohibition on sale of “tobacco-related devices, or electronic delivery devices to a person under the age of 18.” Minn. Stat. § 609.685, subd. 1a.

167. Upon information and belief, JUUL was also negligent in its duty to correctly verify its customers’ ages. To order a JUUL product online, customers merely had to furnish their date of birth, address, and last four digits of their social security number. JUUL then provides this information to a third-party verification system for cross-reference. JUUL claims that it rejects a purchase if the information does not match up to the third-party verification. However, until at least 2018, JUUL regularly allowed customers under the age of 18 to purchase its products online. Although JUUL knew that its system allowed such purchases, it failed to implement new measures out of fear of creating friction with users and generating negative press.

¹⁶⁹ *Id.*

168. Upon information and belief, it appears one way that underage purchasers could get JUUL products was through gaps in JUUL's processes. For example, JUUL apparently does not require that the information provided match up entirely with the information from the third-party verification system. Additionally, the company would often approve purchases even if the user inputted a date of birth which reflected an illegal age as long as some other person of legal age was registered with the same public records information. This allowed, for example, underage purchasers who have the same name as their of-age parent or grandparent to purchase JUUL's products. JUUL also allows customers several tries to submit their information, even if the customer has previously failed to enter the correct information.

169. Upon information and belief, JUUL was also aware that underage users were also able to obtain devices through JUUL's one-year warranty policy.¹⁷⁰ For much of the time this policy existed, underage users simply entered the serial numbers of products purchased by other, of-age customers. These users were not required to go through another round of age-verification. An online forum on Reddit, "UnderageJuul," saw significant trade in these serial numbers.¹⁷¹

170. Upon information and belief, JUUL also allowed underage purchases by failing, at certain points, to check day and month of birth as part of its age verification process. Instead, JUUL only checked the year of birth, potentially allowing tens of thousands of underage users to purchase tobacco products.

171. Upon information and belief, JUUL was warned of these deficiencies by third-parties. For example, Veratad, a company hired by JUUL to conduct its third-party age-verification process, advised the company that minors were attempting to buy its products more

¹⁷⁰ Kavuluru, *et al.* *On the popularity of the USB flash drive-shaped electronic cigarette*, Juul (2019) 28 Tobacco Control 110, 111.

¹⁷¹ The "Subreddit" <https://www.reddit.com/r/UnderageJuul/>, was banned from Reddit in January 2018.

than other online vendors of similar products. Veratad also advised the company about the grandfather/father/son loophole.

172. Upon information and belief, JUUL was also internally fully aware of these gaps. In 2018, a JUUL director advised upper-level management that he had conducted an experiment that allowed him to bypass certain age-related restrictions on the website. And, there was also significant internal discussion in JUUL regarding the rampant warranty abuse by underage purchasers.

173. Additionally, upon information and belief, JUUL's email subscription list was never age-restricted and, until recently, users who failed the age verification requirements on JUUL's purchase page were nevertheless added to JUUL's emailing list and emailed a coupon for a discount on a Starter Kit.

174. Upon information and belief, internal JUUL data shows that only 40-50% of email addresses in its database matched with users who are over 21. And while an internal JUUL manager acknowledged that at least 30% of its email subscribers were non-verified, JUUL decided that it should keep sending these emails at the risk of losing leads.

175. Upon information and belief, JUUL was also concerned that some follow-up verification process on these emails would be a red flag for the press.

176. Upon information and belief, JUUL also used these emails to distribute surveys. Because JUUL's emails were not age-restricted, neither were the surveys, potentially enabling JUUL to collect data from minors. JUUL paid customers, including minors, up to \$30 to complete some surveys.

177. Despite warnings from parents, school administrators, public health officials, and third-party consultants that its verification system is insufficient, upon information and belief,

JUUL continues to use the system that it knows to be ineffective and unlawful.

178. And, upon information and belief, until at least 2018, JUUL did not limit its underage marketing emails which included discounts, surveys, and other materials.

G. JUUL's Pervasive Actions, Statements, and Omissions Violated Minnesota Law

179. As discussed herein, JUUL flouted its duties under Minnesota law. It engaged in a vast, targeted, and effective marketing campaign to sell its highly addictive and harmful products to Minnesota youth.

180. It also failed to disclose material facts, which if disclosed, could have helped avert the current Minnesota vaping epidemic. Special circumstances existed that triggered JUUL's duty to disclose material facts to the Minnesota consumers to whom it marketed and sold its e-cigarette products. As described above and throughout this Complaint, JUUL had special knowledge not possessed by Minnesota consumers that:

- a. JUUL's nicotine salt formulation delivers extremely potent doses of nicotine;
- b. JUUL's products contain a higher nicotine content than cigarettes and other e-cigarettes;
- c. JUUL's products enable users to become addicted quicker to nicotine than with cigarettes and other e-cigarettes;
- d. JUUL's chemical formula is less harsh than cigarettes and other e-cigarettes so the user, especially those who are inexperienced, can vape at a higher volume and frequency;
- e. JUUL's chemical formula is absorbed more efficiently and rapidly into the bloodstream than cigarettes and other e-cigarettes;
- f. JUUL's products contain harmful chemicals;
- g. there are significant adverse health effects of using JUUL's products;
- h. youth are a primary consumer of JUUL's products;
- i. children were purchasing JUUL's products through its website;
- j. JUUL was not compliant with Minnesota law with respect to its online sales of

its e-cigarette products to underage Minnesotans;

- k. there is a lack of evidence supporting JUUL as an effective method to quit smoking cigarettes;
- l. non-smokers who use JUUL products have a significant likelihood of later using traditional cigarettes;
- m. shipments of JUUL products had been contaminated and sold to consumers; and
- n. JUUL products may be altered or modified, which can potentially cause further harm.

181. Moreover, the nature of the representations that JUUL made to Minnesota consumers to whom it marketed, advertised, and/or sold its e-cigarette products were not sufficient to prevent its representations from being deceptive and misleading. Among other things, JUUL stated that:

- a. JUUL's products are appropriate for youth, that they would make them "cool," that they would relax them, that they were "safe," and that they were non-addictive;
- b. JUUL is a safe alternative to cigarettes;
- c. JUUL is effective in helping users quit cigarettes;
- d. JUUL pods were a certain strength when the standard industry practice for nicotine measurement would have achieved a much higher strength;
- e. JUUL's nicotine content is equivalent to the nicotine content of one pack of cigarettes;
- f. JUUL's absorbed nicotine level is less than cigarettes and other e-cigarettes; and
- g. JUUL sold its products in compliance with Minnesota law.

H. JUUL's Marketing Plan Worked in Minnesota

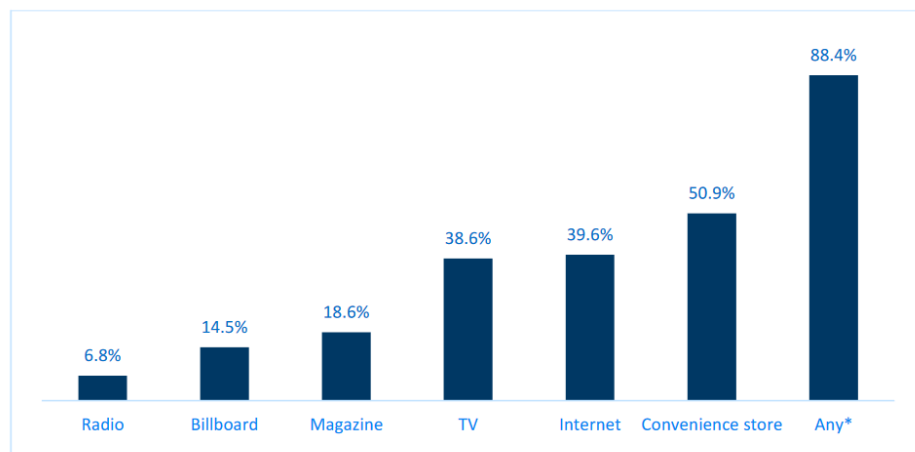
182. There is overwhelming evidence that JUUL's multi-faceted and deceptive marketing scheme to induce youth to get hooked on its products worked. Aside from the dramatic increase in youth nicotine use that coincided with JUUL's marketing efforts, the

Minnesota Department of Health has specifically determined that increased vaping rates among children is a direct result of e-cigarette marketing.

183. The Minnesota Health Department issued a report in November 2018, stating that “research confirms that exposure to manufacturers’ ads can increase interest in using e-cigarettes.”¹⁷² The Health Department further observed that “[c]orrelational studies show that teens who report extensive exposure to e-cigarette ads are more likely to vape.”¹⁷³

184. The underlying data is shocking. In 2017, nearly *nine out of ten* students in Minnesota encountered promotions or advertising for e-cigarettes in the past 30 days.¹⁷⁴

Figure 3. Percent of students that reported seeing an ad for e-cigarettes, by source of ad



* “Any” refers to the six sources in the survey: radio, billboard, magazine, TV, internet, or convenience store.

185. Moreover, the Health Department concluded that students who viewed advertising for e-cigarettes were far more likely to have tried e-cigarettes than those who did not. The more media channels the students were exposed to advertisements on, the more likely they were to have tried e-cigarettes. Likewise, more students had tried vaping if they had been frequently

¹⁷² Minn. Department of Health, *Which Minnesota Teens Try Vaping?* (Nov. 2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/0102whichteensvape.pdf>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

exposed to e-cigarette advertising when they were online or in stores.¹⁷⁵



Figure 4. Percent of students that tried e-cigarettes, by number of channels encountered e-cig ads.

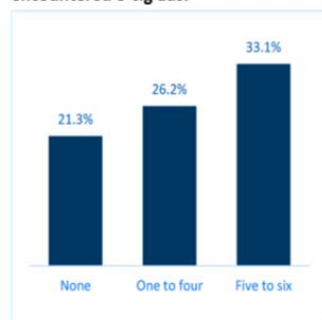
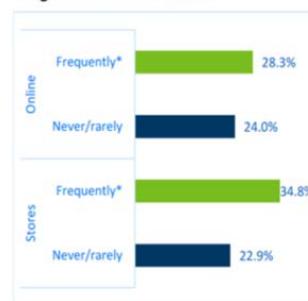


Figure 5. Percent of students that tried e-cigarettes, by how often encountered e-cig ads online or in stores



* Sometimes, most of the time, or always

186. The Health Department's conclusions are corroborated by other scientific research that shows that exposure to e-cigarette advertising on social networking sites among youth who had never used e-cigarettes increases the likelihood of subsequent e-cigarette use.¹⁷⁶

187. Studies have also determined, similar to the Health Department's conclusions, that exposure to e-cigarette advertising increased the probability of use among students.¹⁷⁷ The ability of students to recall e-cigarette advertising is associated with both susceptibility and actual use.¹⁷⁸ And, exposure to digital e-cigarette advertising was associated with lower perceived harm.¹⁷⁹

¹⁷⁵ *Id.*

¹⁷⁶ Camenga *et al.*, *E-cigarette advertising exposure in e-cigarette naïve adolescents and subsequent e-cigarette use: A longitudinal cohort study*. *Addict Behav.* 2018;81:78-83; Pokhrel *et al.*, *Social media e-cigarette exposure and e-cigarette expectancies and use among young adults*. *Addict Behav.* 2018;78:51-58; Dai *et al.*, *Exposure to Advertisements and Susceptibility to Electronic Cigarette Use Among Youth*. *J Adolesc Health.* 2016; 59: 620-626.

¹⁷⁷ Mantey, *et al.*, *E-Cigarette Marketing Exposure is Associated with E-Cigarette Use Among US Youth.*, *J Adolesc Health.* 2016;58:686-90.

¹⁷⁸ Nicksic, *et. al.*, *Recall of E-cigarette Advertisements and Adolescent E-cigarette Use*. *Tob Regul Sci.* 2017; 3:210- 221.

¹⁷⁹ Reinhold *et al.*, *Associations of Attitudes towards electronic cigarettes with advertisement exposure and social determinants: a cross sectional study*. *Tob Induc Dis.* 2017. 13;15:13.

I. JUUL Has Caused a Public Health Epidemic

188. The consequences of JUUL's activities in Minnesota and around the country cannot be overstated. A 2017 study was first to reveal that among young Minnesotans, new and regular nicotine use had increased for the first time in 17 years, fueled by a 50% jump in e-cigarette use.¹⁸⁰ At least one in five Minnesota high school students now use e-cigarettes.¹⁸¹



Figure 2. Percent of students who used a tobacco product in the past 30 days: 2000-2017.

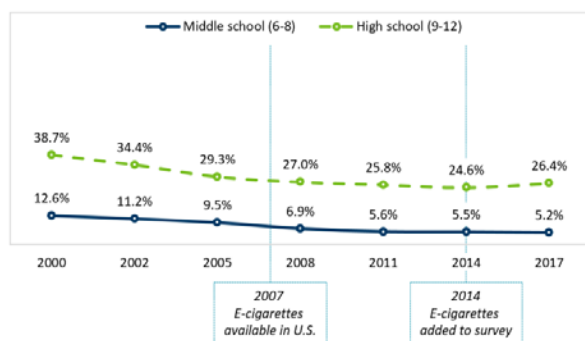
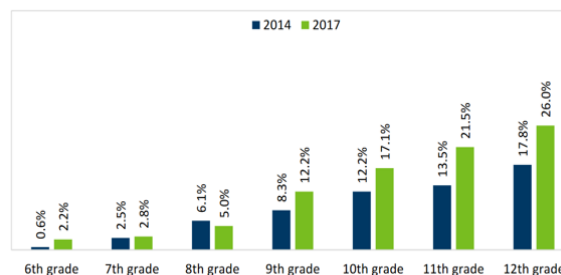


Figure 4. Percent of students who used e-cigarettes in the past 30 days, by grade, 2014-2017.



189. Using the 2017 survey's statistics, this means that 55,097 out of the 286,967¹⁸² Minnesota high school students in the State have vaped in the past 30 days.

190. More recent data suggests that number may be significantly higher. For example, a recent publication by the Minnesota Department of Health states in connection with the 2017 survey estimates:

The survey instrument was developed before JUUL became popular and does not mention JUUL or juuling. Students may not have included JUUL when answering questions about e-cigarettes. As a result, the 2017 MYTS may underestimate e-

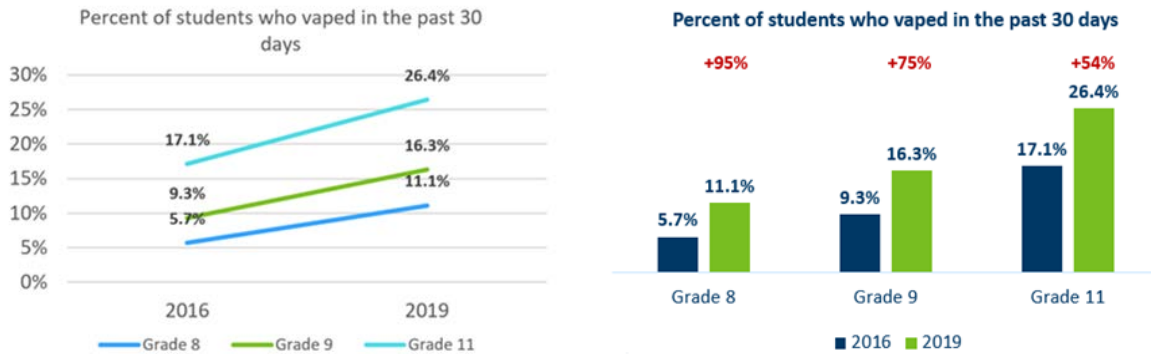
¹⁸⁰ See *supra*, fn. 4.

¹⁸¹ *Id.*

¹⁸² Minn. Department of Education, *Minnesota Education Statistics Summary* (Oct. 2019), <https://w20.education.state.mn.us/MDEAnalytics/Summary.jsp>.

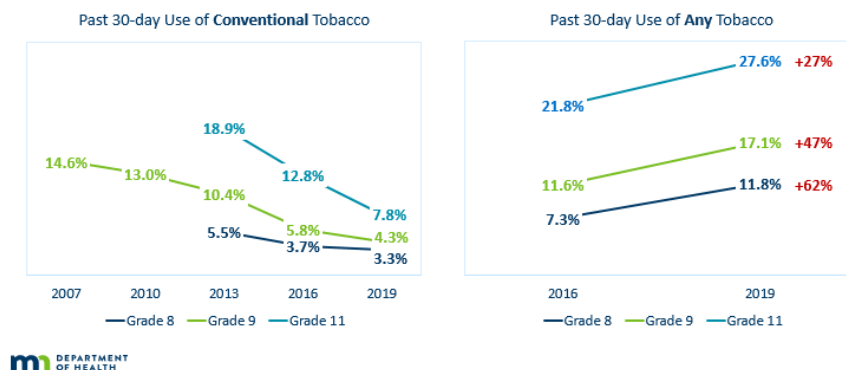
cigarette use among Minnesota teens.¹⁸³

191. And, a recent October 2019 survey conducted by the Minnesota Department of Health determined that 26.4% of 11th graders, 16.3% of 9th graders, and 11.1% of 8th graders now vape, a stunning increase from the 2016 numbers. Vaping has increased by 54% among eleventh graders and *has nearly doubled among eighth graders* since 2016.¹⁸⁴



192. Moreover, the study revealed that three out of four eleventh graders do not perceive e-cigarettes as dangerous.¹⁸⁵

193. It is clear now that the vaping industry has erased years of progress in lowering teen tobacco use in Minnesota.



¹⁸³ Minn. Department of Health, *Teen Vaping Initiation in Minnesota* (Oct. 2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/0101vapinginitiation.pdf>.

¹⁸⁴ *See supra*, fn. 6.

¹⁸⁵ *Id.*

194. Young adults in Minnesota are similarly addicted. More than one in five of young adults in Minnesota (ages 18 to 24) currently use e-cigarettes.¹⁸⁶ E-cigarette use among this age group has nearly doubled from 2014 (12.8%) to 2018 (21.9%) and now exceeds cigarette use.

195. But, as with children, these are not individuals who were previously hooked on nicotine. Roughly *three out of four young adult e-cigarette users never smoked cigarettes*, an almost 150% increase since 2014 (72.6% in 2018 from 30.4% in 2014).

196. The increasing trend towards e-cigarette use in Minnesota is particularly concerning given that use of e-cigarettes among youth is predictive of later use of other tobacco products. Indeed, a recent meta-analysis showed that youth aged 12 to 17 who used e-cigarettes in the past month were more likely to smoke conventional cigarettes in the future than those who had not used e-cigarettes.¹⁸⁷

197. As discussed above, nicotine “can negatively impact learning, memory, and attention” for younger users.¹⁸⁸ One Minnesota Health Coordinator has also observed that:

Your brain isn’t developed until you’re 25, so if you’re starting this at 15, your brain still has 10 years essentially to develop . . . And if you’re changing the chemical balance and all this other stuff, you’re doing serious brain damage to your brain and you don’t even know it . . . It’s a thread in the blanket that becomes your child’s brain . . . You’ve woven that thread into their chemical makeup.¹⁸⁹

198. And a Minnesota public health specialist has warned that e-cigarette use also “includes development of diseases like popcorn lung, long-term impacts on youth brain

¹⁸⁶ See *supra*, fn. 8.

¹⁸⁷ Watkins, et al., *Association of noncigarette tobacco product use with future cigarette smoking among youth in the Population Assessment of Tobacco and Health (PATH) Study*, 2013-2015. JAMA Pediatr 172(2), 181-187 (2018).

¹⁸⁸ Letter from Minnesota Department of Health and Minnesota Department of Education to School Administrators (Apr. 27, 2018), <https://www.documentcloud.org/documents/4449514-MDE-MDH-Letter-to-Schools.html>.

¹⁸⁹ See *supra*, fn. 11.

development, and early priming for addiction.”¹⁹⁰ The Medical Director with the Twin Cities Medical Society has similarly observed that “[e]-cigarette use is especially dangerous for youth It provides a platform for illicit drugs and for nicotine, which we know is highly addictive and can harm brain development as teens grow, impairing learning, memory and attention.”¹⁹¹

199. Minnesota youth are also being increasingly treated for various conditions related to their use of e-cigarettes.¹⁹² Minnesota’s State epidemiologist and Health Department’s medical director has noted that “health harms emerging from the current epidemic of youth vaping in Minnesota continue to increase.”¹⁹³

200. Youth vaping and its attendant harms impact the State’s public health programs, since 40% of the children in the State receive their health care through Minnesota’s public health care programs.

201. Minnesota schools have also been overwhelmed by the epidemic. Educators are attempting to deal with vaping in classrooms, bathrooms, and at extracurricular activities. One Minnesota educator has observed that:

[S]tudents will also hold their hands up to their face as if double-gripping a pen, but really they’re vaping in class So a lot of staff won’t let them put their hands by their mouth anymore Because if they’re wearing a sweatshirt, they can easily put it down the sleeve and vape in the class, and we’ve had that happening in our schools.¹⁹⁴

¹⁹⁰ *Id.*

¹⁹¹ *See supra*, fn. 3.

¹⁹² Lena H. Sun *et al.*, *Mystery lung illness linked to vaping. Health officials investigating nearly 100 possible cases* (Aug. 16, 2019), <https://www.washingtonpost.com/health/2019/08/16/mystery-lung-illness-linked-vaping-health-officials-investigating-nearly-possible-cases/>.

¹⁹³ Minn. Department of Health, *Minnesota identifies severe lung injury cases among teens who reported vaping* (Aug. 13, 2019), <https://www.health.state.mn.us/news/pressrel/2019/vaping081319.html>.

¹⁹⁴ *See supra*, fn. 11.

202. In an attempt to get their arms around the problem, many Minnesota school districts have begun to create classes, train teachers, and utilize consultants and counselors to try to eliminate some students' misconceptions about vaping.

203. Ultimately, there is only so much these schools can currently do to curb the problem. The dean of students at one of Minnesota's largest high schools stated that schools are "seeing more of it, and I don't know if they have the staff and resources to chase it all down They do their best."¹⁹⁵

204. In response to the crisis, the Minnesota Department of Health and the Department of Education have sent a rare, joint letter to school districts across the State, warning them of the dangers of e-cigarettes and vaping products. Citing JUUL as the predominant variety of e-cigarettes, the letter explains how e-cigarettes have led to the first increase in teen tobacco use in nearly two decades and urges schools to alert parents and increase awareness (and education) about the products.¹⁹⁶

205. The epidemic, however, is not limited to Minnesota. Virtually every state in the country is dealing with the massive rise of e-cigarette use among youth, including JUUL's products. The FDA reports that in 2018, 3.6 million middle and high school students regularly vape, and since 2017, this dangerous trend rose nearly 80% in high school students and nearly 50% in middle school students.¹⁹⁷ These statistics are both staggering and scary, and prompted then FDA commissioner Dr. Scott Gottlieb to state that "[t]hese data shock my conscience."¹⁹⁸

¹⁹⁵ See *supra*, fn. 2.

¹⁹⁶ See *supra*, fn. 188.

¹⁹⁷ FDA News Release, *Results from 2018 National Youth Tobacco Survey show dramatic increase in e-cigarette use among youth over past year* (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/results-2018-national-youth-tobacco-survey-show-dramatic-increase-e-cigarette-use-among-youth-over>.

¹⁹⁸ FDA News Release, *Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes* (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-on-proposed-new-steps-protect-youth-preventing-access-flavored-tobacco-products-banning-menthol-cigarettes>.

206. Acknowledging that we now face an “epidemic of youth e-cigarette use,” the U.S. Surgeon General similarly stated, “[t]he recent surge in e-cigarette use among youth, which has been fueled by new types of e-cigarettes that have recently entered the market, is a cause for great concern. We must take action now to protect the health of our nation’s young people.”¹⁹⁹

207. On the heels of this realization—that youth who never smoked, and who should never smoke, were addicted to vaping and particularly to JUULing in startling and ever-increasing numbers—then FDA Commissioner Dr. Scott Gottlieb announced that he was creating a Youth Tobacco Prevention Plan aimed at stopping the dramatic rise in the use of e-cigarette and tobacco products among youth. Acting FDA Commissioner Ned Sharpless has similarly emphasized that “JUUL has ignored the law, and very concerningly, has made some of these statements in school to our nation’s youth.”²⁰⁰

208. Most recently, the FDA rebuked JUUL for its marketing efforts. In September 2019, the FDA issued a warning letter to JUUL stating that its investigation had revealed that JUUL engaged in labeling, advertising, and/or other activities directed to consumers, including youth, in which JUUL unlawfully represented that JUUL products are free of a substance, have a reduced level of or exposure to a substance, and/or that JUUL products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products.²⁰¹

209. That same day, the FDA also sent a letter to the company expressing concern, and

/www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access.

¹⁹⁹ CDC, *Surgeon General’s Advisory on E-cigarette Use Among Youth*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory/index.html.

²⁰⁰ See *supra*, Coldeway, fn. 30.

²⁰¹ *FDA Warning Letter to JUUL Lab, Inc.* (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

requesting more information, about several issues raised in the recent Congressional hearing regarding JUUL's outreach and marketing practices, including those targeted at students, Native American tribes, health insurers and employers.²⁰²

210. The FDA is not alone. As of September 2019, California federal prosecutors, the FTC, and several state attorneys general were investigating JUUL's marketing practices.²⁰³ As a result of the epidemic, members of Congress have recently pushed the FDA to remove all pod and cartridge based e-cigarettes until the FDA can review their safety.²⁰⁴ Meanwhile, New York, Washington, Rhode Island, Massachusetts, and Michigan have imposed bans on sales of flavored e-liquids.²⁰⁵

J. JUUL's "Action Plan" Is Insufficient

211. In June 2018, under significant pressure from various government agencies and regulators, public interest groups, and the medical community, JUUL announced a new Marketing and Social Media Policy. And, in September 2019, the CEO of JUUL announced that he was resigning in the face of deadly vaping-related illnesses and the youth vaping epidemic sweeping the country.²⁰⁶

212. JUUL's new policy entails the use of only adult models who are former smokers

²⁰² *FDA Letter to JUUL Lab, Inc.* (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

²⁰³ *See supra*, fn. 30.

²⁰⁴ Angelica Lavito, *Lawmakers urge FDA to immediately pull Juul, other e-cigarettes from the market*, CNBC (Sept. 20, 2019), <https://www.cnbc.com/2019/09/20/lawmakers-urge-fda-to-pull-juul-other-e-cigarettes-from-the-market.html>.

²⁰⁵ Jamie Ducharme, *As the Number of Vaping-Related Deaths Climbs, These States Have Implemented E-Cigarette Bans*, TIME (Sept. 27, 2019), <https://time.com/5685936/state-vaping-bans/>.

²⁰⁶ Jennifer Maloney, *Juul CEO Exits; Altria, Philip Morris End Talks in Vaping Fallout*, THE WALL STREET JOURNAL (Sept. 25, 2019), <https://www.wsj.com/articles/juul-ceo-kevin-burns-to-step-down-11569411372>.

who have successfully switched to JUUL.²⁰⁷ However, JUUL's new focus and imagery serves to highlight the egregious nature of its earlier advertising campaigns and overstates the efficacy of JUUL as a tool to quit smoking.



213. In November 2018, JUUL also stated that it would begin to stop orders from retailers for certain flavors that JUUL was aware were particularly popular among younger users. However, JUUL did not recall any of those products and until October 2019 still offered them for sale online. JUUL continues to sell its menthol flavored pods.

²⁰⁷ Janine Woolf, *E-Cig Maker Juul Won't Tempt Instagrammers With Models Anymore*, BLOOMBERG (Jun. 14, 2018), <https://www.bloomberg.com/news/articles/2018-06-14/e-cig-maker-juul-won-t-tempt-instagrammers-with-models-anymore>.

214. JUUL has also promised to strengthen its age verification process for online orders, and that it would be limiting all online customers to 15 packages per month and 10 devices per year. It has stopped using its Facebook and Instagram accounts, though it has continued its activity on Twitter.

215. Ultimately, JUUL could still reverse these policies at any day, and at any time. For example, JUUL still has not modified its promotional activities in connection with its misleading nicotine content and also has not engaged in a campaign to deter younger smokers from buying or smoking its products.

216. Similarly, JUUL has not claimed any willingness to finance any addiction prevention or treatment measures for those already addicted to its products.

217. And, there is no way to completely ensure that JUUL has fully and adequately modified its age-verification process for online orders.

218. In short, JUUL's deceptive marketing has already affected Minnesotans, its products continue to damage and addict Minnesotans, including our youth, its supposedly corrective actions are inadequate, and there is no indication that JUUL has any plans to undo the tremendous harm it has already caused.

CLAIMS FOR RELIEF

COUNT I: CONSUMER FRAUD

219. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

220. Minnesota Statutes, section 325F.69, subdivision 1, provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

221. The term “merchandise” within the meaning of Minnesota Statutes, section 325F.69 includes goods, such as e-cigarettes and other vaping accessories. *See* Minn. Stat. § 325F.68, subd. 2.

222. JUUL is a “person” within the meaning of this statute. *See* Minn. Stat. § 325F.68, subd. 3.

223. JUUL repeatedly violated Minnesota Statutes, section 325F.69, subd. 1, by engaging in the deceptive and fraudulent practices described in this Complaint, with the intent that others rely thereon in connection with the marketing and sales of its e-cigarette products.

These practices include, but are not limited to:

- a. engaging in a deceptive and misleading advertising campaign which was directed primarily to youth, most of whom had never smoked cigarettes before;
- b. misleading and deceiving children and young adults into believing its products were appropriate for their age range, including through the use of flavors, device design, and chemical formulation, that they would make them “cool,” that they would relax them, that they were “safe,” and that they were non-addictive;
- c. misrepresenting that JUUL is a safe alternative to cigarettes;
- d. misrepresenting that JUUL is effective in helping users quit cigarettes;
- e. misrepresenting that its pods were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength;
- f. misrepresenting that the nicotine content in its products is equivalent to the nicotine content in one pack of cigarettes;
- g. misrepresenting the absorbed nicotine level for the use of JUUL products; and
- h. selling its products online to underage Minnesotans in violation of Minnesota law.

224. JUUL also repeatedly violated Minnesota Statutes, section 325F.69, subd. 1, by omitting material information in the course of marketing and selling JUUL products such that its

failures to sufficiently disclose such material information constituted deceptive and fraudulent practices committed with the intent that others rely thereon in connection with the sale of its products. Those failures to disclose and omissions include, but are not limited to:

- a. failing to sufficiently disclose that JUUL's products contain nicotine;
- b. failing to sufficiently disclose that JUUL's nicotine salt formulation delivers extremely potent doses of nicotine;
- c. failing to sufficiently disclose that JUUL's products contain a higher nicotine content than cigarettes and other e-cigarettes;
- d. failing to sufficiently disclose that JUUL's products enable users to become addicted quicker to nicotine than with cigarettes and other e-cigarettes;
- e. failing to sufficiently disclose that JUUL's chemical formula is less harsh than cigarettes and other e-cigarettes so the user, especially those who are inexperienced, can vape at a higher volume and frequency;
- f. failing to sufficiently disclose that JUUL's chemical formula is absorbed more efficiently and rapidly into the bloodstream than cigarettes and other e-cigarettes;
- g. failing to sufficiently disclose the harmful chemicals contained in JUUL's products;
- h. failing to sufficiently disclose the adverse health effects of using JUUL's products;
- i. failing to sufficiently disclose that it was aware that youth were a primary consumer of its products;
- j. failing to sufficiently disclose that it was aware that children were purchasing its products through its website;
- k. failing to sufficiently disclose that JUUL was not compliant with Minnesota law with respect to its online sales of its e-cigarette products to underage Minnesotans;
- l. failing to sufficiently disclose the lack of evidence supporting JUUL as an effective method to quit smoking cigarettes;
- m. failing to sufficiently disclose that non-smokers who use JUUL products have a significant likelihood of later using traditional cigarettes;
- n. failing to sufficiently disclose that shipments of its products had been

contaminated and sold to consumers; and

- o. failing to sufficiently disclose that its products may be altered or modified, which can potentially cause further harm.

225. Given the nature and quality of the representations JUUL made, the actual and special knowledge it had, and the other circumstances described in this Complaint, JUUL had a duty to sufficiently disclose all material facts to potential customers in connection with its marketing and sale of its e-cigarette products to Minnesotans. However, the company failed to disclose this material information in violation of Minnesota Statutes, section 325F.69, subd. 1.

226. Due to the deceptive and fraudulent conduct, representations, and material omissions described in this Complaint, Minnesotans, including children and young adults, have made payments to JUUL for goods and services that they otherwise would not have purchased thereby causing them harm. JUUL has created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

227. There is a causal nexus between JUUL's deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State and its residents.

228. JUUL's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes, section 325F.69.

COUNT II: DECEPTIVE TRADE PRACTICES

229. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

230. Minnesota Statutes, section 325D.44, subdivision 1, reads in pertinent part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: . . . (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or services have sponsorship, approval,

characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; . . . (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; [or] . . . (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

231. JUUL is a “person” within the meaning of this statute. *See* Minn. Stat. § 645.44, subd. 7.

232. In the course of its business, vocation, or occupation, JUUL has repeatedly violated Minnesota Statutes, section 325D.44, subd. 1, by engaging in the deceptive trade practices described in this Complaint. JUUL’s deceptive acts and practices have the tendency or capacity to deceive and/or mislead the State and its residents and therefore, constitute multiple, separate deceptive trade practices.

233. As alleged herein, JUUL caused a likelihood of confusion or misunderstanding regarding the sponsorship, approval, or certification of its products by, among other things, stating, without evidence, that its products were effective at helping users quit cigarettes and that its products were a safe alternative to cigarettes.

234. JUUL represented that its products had sponsorships, approvals, characteristics, ingredients, uses, benefits, and quantities that they did not have by, among other things, stating, without evidence, that its products were effective at helping users quit cigarettes and that its products were a safe alternative to cigarettes; representing that its products were appropriate for youth; representing that a pod had the equivalent nicotine content to one pack of cigarettes and that its pods were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength; and failing to disclose that a certain number of its products had been contaminated and that its products could be altered

or modified.

235. JUUL represented that its products were of a certain standard, quality, or grade, when they were not by, among other things, stating, without evidence, that its products were effective at helping users quit cigarettes and that its products were a safe alternative to cigarettes; stating that a pod had the equivalent nicotine content to one pack of cigarettes; stating that its pods were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength; and failing to disclose that a certain number of its products had been contaminated and that its products could be altered or modified.

236. JUUL advertised goods or services with intent not to sell them as advertised by, among other things, advertising its products, without evidence, as effective in helping users quit cigarettes and as a safe alternative to cigarettes; engaging in targeted advertising that deceived Minnesota youth into thinking its products were appropriate for their age range and that they were safe when they were not; advertising that a JUUL pod had the equivalent nicotine content to one pack of cigarettes; advertising that its products were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength; and failing to disclose that a certain number of its products had been contaminated and that its products could be altered or modified.

237. JUUL further engaged in conduct that created a likelihood of confusion or misunderstanding about its products by, among other things, engaging in a vast marketing campaign directed at youth which represented that JUUL's products were appropriate for youth, that they would relax them, that they were safe, and that they were non-addictive. JUUL also deceived parents, teachers, school administrators, legislators, and regulators into believing that JUUL was being marketed to experienced smokers, when in fact, the product was marketed

primarily to youth.

238. JUUL also repeatedly violated Minnesota Statutes, section 325D.44, subd. 1, by among other things, omitting material information in the course of marketing and selling its e-cigarette products that caused a likelihood of confusion or misunderstanding by failing to sufficiently disclose that its products were addictive; failing to sufficiently disclose that its products were more addictive than cigarettes or other e-cigarettes; failing to sufficiently disclose the true nicotine quantity of its products; failing to sufficiently disclose that its products were absorbed faster into the bloodstream than cigarettes and other e-cigarettes; failing to sufficiently disclose that its products were designed to be used by inexperienced users; failing to sufficiently disclose the lack of available evidence that its products were a safe alternative to cigarettes; failing to sufficiently disclose the lack of available evidence on the effectiveness of its products as tools to quit smoking; failing to sufficiently disclose that youth were a primary consumer of its products; failing to sufficiently disclose that it was not in compliance with Minnesota law relating to the sale of e-cigarette products to children; failing to sufficiently disclose the chemicals contained in its products; failing to sufficiently disclose that some of its products had been contaminated; and failing to sufficiently disclose that its products could be altered or modified.

239. JUUL's deceptive trade practices have unlawfully caused a vaping epidemic in the State. Because of the nature of JUUL's conduct, as well as the addictive qualities of nicotine that carry through a user's life, the State's and its residents' harms, and additional harms, will continue into the future absent relief.

240. Given the nature and quality of the representations JUUL made, the actual and special knowledge it had, and the other circumstances described in this Complaint, JUUL had a

duty to sufficiently disclose all material facts to potential consumers in connection with its marketing and sale of its e-cigarette products to Minnesotans. The company's failure to disclose this material information constitutes additional deceptive trade practices in violation of Minnesota Statutes, section 325D.44, subd. 1.

241. Due to the deceptive and fraudulent conduct, representations, and material omissions described in this Complaint, Minnesotans, including children and young adults, have made payments to JUUL for goods and services that they otherwise would not have purchased thereby causing them harm. JUUL has created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

242. There is a causal nexus between JUUL's deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State and its residents.

243. JUUL's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes, section 325D.44.

COUNT III: UNLAWFUL TRADE PRACTICES

244. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

245. Minnesota Statutes, section 325D.13 reads in pertinent part:

No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.

246. JUUL is a "person" for purposes of this statute. *See* Minn. Stat. § 325D.10 (a).

247. JUUL's e-cigarette products are "merchandise" for the purposes of this statute.

248. As alleged herein, JUUL has repeatedly violated Minnesota Statutes, section 325D.13 by knowingly misrepresenting, directly and/or indirectly, the true quality and

ingredients of its e-cigarette products. Among other things, JUUL misrepresented the nicotine content and potency of its products as described in this Complaint, including by knowingly misrepresenting that its pods had the nicotine content equivalent to one pack of cigarettes and knowingly misrepresenting that its products were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength.

249. JUUL also knowingly misrepresented the quality of its products by stating, without evidence, that its products were effective at helping users quit cigarettes and that its products were a safe alternative to cigarettes.

250. JUUL further engaged in a widespread misleading marketing campaign primarily targeted to children that gave the false impression that its products were appropriate for use by children and young adults, and that they were safe and non-addictive.

251. JUUL also repeatedly violated Minnesota Statutes, section 325D.13 in connection with the sale of its products by omitting material information such that it knowingly misrepresented, directly and/or indirectly, the true quality of its products, including by failing to sufficiently disclose that JUUL's chemical formula is less harsh than typical e-cigarettes so the customer, especially those who are inexperienced, can more easily vape at a higher volume and frequency; failing to sufficiently disclose the true nicotine content and actual potency of its e-cigarette products; failing to sufficiently disclose that its formula is absorbed more efficiently and rapidly into the bloodstream than a cigarette and the typical e-cigarette; and failing to sufficiently disclose that JUUL's products contain chemicals that are harmful to human health, especially to youth. JUUL also failed to sufficiently disclose that some of its products had been contaminated and that its products could be altered or modified.

252. Given the nature and quality of the representations JUUL made, the actual and

special knowledge it had, and the other circumstances described in this Complaint, JUUL had a duty to sufficiently disclose all material facts to potential customers in connection with its marketing and sale of its e-cigarette products to Minnesotans. The company's failure to disclose this material information constitutes additional misrepresentations in violation of Minnesota Statutes, section 325D.13.

253. Due to the deceptive and fraudulent conduct, representations, and material omissions described in this Complaint, Minnesotans, including children and young adults, have made payments to JUUL for goods and services that they otherwise would not have purchased thereby causing them harm. JUUL has created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

254. There is a causal nexus between JUUL's deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State and its residents.

255. JUUL's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes, section 325D.13.

COUNT IV: FALSE STATEMENT IN ADVERTISEMENT

256. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

257. Minnesota Statutes, section 325F.67 reads in pertinent part:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label,

price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

258. JUUL's products are "merchandise, securities, service, or anything offered . . . directly or indirectly, to the public" within the meaning of this statute.

259. JUUL is a "person" and "corporation" within the meaning of this statute.

260. As alleged herein, JUUL has repeatedly violated Minnesota Statutes, section 325F.67 by directly or indirectly making, publishing, disseminating, circulating, and/or placing before the public, in Minnesota, advertisements in print, radio, television, and/or online over the Internet which contained material assertions, representations, or statements of fact that are untrue, deceptive, or misleading.

261. Among other things, within advertisements throughout this State, JUUL, through its targeted marketing, misled and deceived children and young adults into thinking its products were appropriate for their age range, that they would make them "cool," that they would relax them, that they were safe, and that they were non-addictive.

262. JUUL also misrepresented or intended to deceive, within its advertisements in this State, that its products were a safe alternative to cigarettes; that its products were effective in helping users quit cigarettes; that its pods had the equivalent nicotine content to one pack of cigarettes; and that its products were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength.

263. JUUL also repeatedly violated Minnesota Statutes, section 325F.67 by directly or indirectly making, publishing, disseminating, circulating, and/or placing before the public, in

Minnesota, advertisements in print, radio, television, and/or online over the Internet which contained material assertions, representations, or statements of fact that are untrue, deceptive, or misleading by omitting material information and by, among other things, failing to disclose the true nicotine content and actual potency of its e-cigarette products; that JUUL was inappropriate for inexperienced smokers, especially youth; that JUUL's chemical formula is less harsh than typical e-cigarettes; that its formula is absorbed more efficiently and rapidly into the bloodstream than a cigarette and the typical e-cigarette; that JUUL was not compliant with Minnesota law in relation to its online sales of its e-cigarette products to underage Minnesotans; and that JUUL's products contain chemicals that are harmful to human health, especially to youth.

264. Given the nature and quality of the representations JUUL made in its advertisements, the actual and special knowledge it had, and the other circumstances described in this Complaint, JUUL had a duty to sufficiently disclose all material facts to potential customers in connection with its marketing and sale of its e-cigarette products to Minnesotans. The company's failure to disclose this material information constitutes additional false advertising in violation of Minnesota Statutes, section 325F.67.

265. Due to the deceptive and fraudulent conduct, representations, and material omissions described in this Complaint, Minnesotans, including children and young adults, have made payments to JUUL for goods and services that they otherwise would not have purchased thereby causing them harm. JUUL has created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

266. There is a causal nexus between JUUL's deceptive and fraudulent conduct, representations, and material omissions described in this Complaint and the harm incurred by the State and its residents.

267. JUUL's conduct, practices, actions, and material omissions described in this Complaint constitute multiple, separate violations of Minnesota Statutes, section 325F.67.

COUNT V: PUBLIC NUISANCE

268. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

269. Minnesota Statutes, section 609.74 provides, in relevant part:

Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor: (1) maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or . . . (3) is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.

270. The State, its residents, and its youth have a public right to be free from interference with the public safety, health, comfort, or repose. The State is empowered by equity and law to allege a claim, and seek redress for, a public nuisance. The State, in its capacity as a public litigant and as *parens patriae*, as well as a payor of public monies for costs incurred through its provision of public education, governmental health care programs, and government services, has an important and unique interest in protecting health and safety.

271. Through the deceptive and unlawful conduct described throughout this Complaint, JUUL has intentionally maintained or permitted, or was, at the very least a substantial factor in maintaining or permitting, a public nuisance that has annoyed, injured, and endangered—and will continue to unreasonably annoy, injure, and endanger—the common right of public health, comfort, or repose of considerable members of the public.

272. As more fully alleged in the preceding Paragraphs of this Complaint, JUUL's intentional, calculated, and deliberately deceptive marketing strategy to deceive consumers about the nicotine in its products and to target the youth has caused substantial and unreasonable

interference with the State and its community's public rights, including, but not limited to, the public's right to health, safety, welfare, peace, comfort, convenience, and ability to be free from disturbance and reasonable apprehension of danger to person or property.

273. Specifically, JUUL engaged in a calculated marketing campaign designed to promote its addictive products as a safe alternative to cigarettes and as an effective way to quit smoking when they were not. In doing so, JUUL also minimized, obscured, and misrepresented the true nicotine content and addictive qualities of its products.

274. JUUL also specifically targeted children and young adults by designing its products' shape and function, flavors, and chemical compositions to appeal to these age groups, with full knowledge that it would have such appeal; engaged in marketing strategies that it intended to entice children; failed to use adequate age-verification processes for its online sales; obscured the true nicotine potency of its e-cigarette products; and understated the strength of the nicotine in its products.

275. JUUL's conduct was, at the very least, a substantial factor in the youth vaping epidemic. JUUL's conduct was also, at the very least, a substantial factor in deceiving youth into believing its products were appropriate for its age range. Without JUUL's conduct, vaping would not be so widespread in the State. And, without JUUL's conduct there would not be a vaping epidemic among children and young adults, and the existing Minnesota vaping epidemic would have been avoided.

276. JUUL's conduct is widespread and persistent, and has created, is creating, and will likely continue to create substantial ongoing harm to the State, its residents, and its youth. The State has and will incur substantial costs from investigating, treating, policing, educating, and remediating the vaping epidemic.

277. As a direct result of the public nuisance JUUL has caused, the State and its residents have directly and proximately suffered harm, including, but not limited to, increased youth nicotine addiction rates; retrospective and prospective costs associated with reducing and preventing youth addiction; related healthcare and education costs; and lost past, current, and future productivity. As a direct result of JUUL's conduct, the State and its residents have also been forced to divert resources designated for other purposes to combat the influx of vaping in classrooms, schools, and homes.

278. JUUL's public nuisance has also erased many of the State's hard-won and expensive gains to control nicotine use among youth.

279. JUUL's conduct in maintaining or permitting a public nuisance has openly, publicly, repeatedly, continuously, persistently, and intentionally violated Minnesota law, as described throughout this Complaint. JUUL's conduct cannot be adequately addressed or remedied by resort to criminal enforcement of any criminal statute. JUUL's widespread interference with the public health, safety, and welfare necessitates the State to seek injunctive and all other appropriate equitable relief against JUUL in order to abate this public nuisance and remedy the resultant harm that has already occurred and will continue to occur.

280. In addition, Minnesota Statutes, section 325F.67 states that any act in violation of the section is "declared to be a public nuisance and may be enjoined as such." For reasons articulated above, JUUL has violated Minnesota Statutes, section 325F.67 through its deceptive advertisements and therefore its actions should be declared a public nuisance.

COUNT VI: NEGLIGENCE & NEGLIGENCE PER SE

281. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

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

283. JUUL owed a duty of reasonable care to ensure that its products were not attractive to youth.

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

285. JUUL also breached its duties by engaging in a marketing campaign which was inherently appealing to youth.

286. Additionally, it is unlawful to sell “tobacco-related devices, or electronic delivery devices to a person under the age of 18.” Minn. Stat. § 609.685, subd. 1a.

287. As articulated above, JUUL flouted its duty to not sell its tobacco and electronic nicotine delivery devices to children in the State of Minnesota.

288. JUUL’s breach of Minnesota Statutes, section 609.685, subd. 1a, is conclusive evidence of duty and breach.

289. Minnesota children, which were harmed by JUUL’s violations, are among those the legislature intended to protect. And, the harm to the Minnesotan children is of the type the legislature intended to prevent.

290. Therefore, JUUL’s breach of Minnesota Statutes, section 609.685, subd. 1a,

constitutes negligence per se for which JUUL is liable.

291. Each and every one of the above acts or omissions, together with others, or a combination of them, constituted negligence and negligence per se which were a proximate and direct cause of the occurrence which made the basis of this action and the State's damages.

COUNT VII: UNJUST ENRICHMENT

292. The State realleges and incorporates by reference the foregoing allegations as if fully set forth herein.

293. As an expected and intended result of its conscious wrongdoing as set forth in this Complaint, JUUL has profited and benefited enormously. The State has expended, and will continue to expend, substantial amounts of money in an effort to remedy or mitigate the societal harms caused by the increase in nicotine abuse, especially among children and young adults.

294. These expenditures include, but are not limited to, the provision of education services to educators and students, as well as the investigation into the health effects of vaping. These expenditures have helped sustain JUUL's businesses.

295. Additionally, Minnesotans, including children and young adults, have made payments to JUUL for goods and services that they otherwise would not have purchased or in amounts that they should not have been required to pay, thereby causing them harm.

296. Plaintiff and Minnesotan residents have conferred a benefit upon JUUL by paying for the cost of the harms caused by JUUL's improper and unlawful practices. JUUL knowingly accepted and retained such benefits. Further, JUUL has failed to pay for the consequences of its unlawful conduct.

297. Because of its deceptive and unlawful actions, JUUL obtained enrichment that it would not otherwise have obtained. Because of the conduct, practices, actions, and material omissions described in this Complaint, JUUL obtained enrichment it would not otherwise have

obtained. The enrichment was without justification and the State lacks an adequate remedy provided by law.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against JUUL, as follows:

1. Declaring that JUUL's conduct described in this Complaint constitutes a public nuisance, and permanently enjoining it from continuing in the acts, practices, and conduct that created the nuisance;
2. Declaring that JUUL's acts described in this Complaint constitutes multiple, separate violations of Minnesota Statutes, sections 325D.13, 325D.44, 325F.67, and 325F.69;
3. Enjoining JUUL and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with them from engaging in conduct in violation of Minnesota Statutes, sections 325D.13, 325D.44, 325F.67, and 325F.69;
4. Ordering JUUL to disclose, disseminate, and publish all research previously conducted directly or indirectly by themselves and its respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of vaping and health;
5. Ordering JUUL to fund a corrective public education campaign in Minnesota relating to the issue of vaping and health, administered and controlled by an independent, third party;
6. Ordering JUUL to fund clinical vaping cessation programs in the State of Minnesota, including programs appropriate for minors;
7. Ordering JUUL to take reasonable, necessary, and adequate affirmative steps to

prevent the distribution and sale of its e-cigarette products to children under the age of 18;

8. Awarding judgment against JUUL for maximum civil penalties pursuant to Minnesota Statutes, section 8.31, subd. 3, for each separate violation of Minnesota law;

9. Awarding judgment against JUUL for monetary relief pursuant to Minnesota Statutes, section 8.31, Minnesota common law, *parens patriae* doctrine, and the general equitable powers of this Court, to remedy the great harm and injury to the State resulting from JUUL's unlawful conduct;

10. Awarding judgment against JUUL for reimbursement of all the costs the State expended to control nicotine use among youth, to the extent that JUUL's misconduct has erased many of those hard-won and expensive gains;

11. Ordering JUUL to abate the public nuisance they have created, including by ordering judgment against JUUL in an amount necessary to abate the public nuisance;

12. Ordering JUUL to disgorge all payments received as a result of its unlawful conduct;

13. Awarding judgment against JUUL for restitution under the *parens patriae* doctrine, the equitable powers of the Court, Minnesota Statutes, section 8.31, and any other authority;

14. Awarding the State its costs, including costs of investigation, attorneys' fees, and expert consultant and expert witness fees, as authorized by Minnesota Statutes, section 8.31, subd. 3a; and

15. Granting such further relief as the Court deems appropriate and just.

JURY DEMAND

The State demands a jury trial for all issues pled herein triable by a jury.

Dated: December 4, 2019

THE STATE OF MINNESOTA

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**ATTORNEYS FOR THE STATE OF
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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions may be imposed pursuant to Minnesota Statutes, section 549.211.

Dated: December 4, 2019.

/s/ Michael P. Goodwin
MICHAEL P. GOODWIN