

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

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

Court File No.: 27-CV-19-19888
The Honorable Laurie J. Miller

Plaintiff,

vs.

JUUL LABS, INC., a Delaware corporation
f/k/a PAX LABS, INC. f/k/a PLOOM PRODUCTS,
INC.; ALTRIA GROUP, INC. f/k/a PHILIP
MORRIS COMPANIES, INC.; PHILIP MORRIS
USA INC. f/k/a PHILIP MORRIS INC.; ALTRIA
CLIENT SERVICES LLC; ALTRIA GROUP
DISTRIBUTION COMPANY; ALTRIA
ENTERPRISES LLC,

FIRST AMENDED COMPLAINT

Defendants.

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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 and its partners have 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-resources/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. 82.

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. 44; see also *infra*, fns. 118-122.

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, however, did not act alone. By 2017, it had collaborated with tobacco conglomerate Altria Group, Inc. (“Altria”) to extend the reach of its products, especially to youth. Altria, who acted independently and through its subsidiaries, Philip Morris USA Inc., Altria Client Services LLC, Altria Group Distribution Company, and Altria Enterprises LLC (hereinafter referred together with Altria as, “Altria Defendants”), performed distribution, marketing, promotion, and sales, among other services for JUUL and JUUL’s products. Altria Defendants performed these services, despite knowing that JUUL’s device and marketing were inherently appealing to youth, that a youth vaping crisis had reached epidemic proportions, and that JUUL was issuing deceptive, misleading, and fraudulent messaging in connection with the sales of its products, including within Minnesota. These services, which were performed in Minnesota, increased JUUL’s market share, and expanded the youth vaping epidemic in Minnesota and throughout the country.

21. 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 Likewise, Altria’s claim that its investment in JUUL gave it “an unprecedented opportunity to share [its] experience in underage tobacco prevention with JUUL,”²⁹ is also false and misleading. As evidenced by marketing materials and internal admissions from their own employees, it is

²⁷ See *infra*, fn. 154 and accompanying text.

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

²⁹ Howard A. Willard, Altria to Congress (Oct. 14, 2019), <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/Altria-Response-to-October-1-2019-Senate-Letter.pdf>.

obvious that JUUL and the Altria Defendants (hereinafter referred to collectively as “Defendants”) purposely, intentionally, and unlawfully directed JUUL’s e-cigarette advertising model to youth and to those who did not regularly smoke cigarettes. And, had Altria actually intended to limit JUUL’s youth appeal, it would have insisted JUUL utilize Altria’s self-described “experience” in the area—but it did not.

22. 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.”³⁰

23. Federal authorities agree. Investigations into JUUL began in 2018, and the FDA, the Federal Trade Commission, federal prosecutors, and Congress continue to investigate JUUL and Altria.³¹ Under tremendous pressure from investigators, in October 2019, JUUL pulled its fruit-flavored products.³² Menthol, however, still remains for sale.

24. In addition to designing and marketing JUUL’s products to appeal to youth, Defendants also failed to institute adequate controls to verify the age of JUUL’s purchasers, in violation of Minnesota law. JUUL deliberately turned a blind eye to the fact that JUUL’s 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

³⁰ 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>.

³¹ 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/>.

³² 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/>.

of harmful products flowed into the hands of underage Minnesotans.

25. Essentially, JUUL—with substantial, material, and knowing assistance from Altria Defendants—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. Defendants aggressively marketed that product to Minnesota youth, most of whom had never smoked cigarettes and otherwise would never have become addicted to nicotine.

26. Despite the State’s historic, hard-fought battles to curb youth tobacco use, Defendants have caused the problem to re-emerge. Defendants’ 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 Defendants’ intentional, wrongful, and illegal actions and to hold them accountable.

PARTIES

27. 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.

28. 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. 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.

29. Defendant Altria Group, Inc., (“Altria”) is a Virginia corporation, having its principal place of business in Richmond, Virginia. Altria is one of the world’s largest producers and marketers of tobacco products, manufacturing and selling combustible cigarettes for more than a century.

30. Defendant Philip Morris USA Inc. (“Philip Morris”) is a wholly owned subsidiary of Altria. Philip Morris is also a Virginia corporation that has its principal place of business in Richmond, Virginia. Philip Morris is engaged in the manufacture and sale of cigarettes in the United States. Philip Morris is the largest cigarette company in the United States.

31. Defendant Altria Client Services LLC (“ALCS”) is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County, Virginia. ALCS provides Altria and its companies with services in many areas including marketing, packaging design and innovation, product development, safety, health, and environmental affairs.

32. Defendant Altria Group Distribution Company (“AGDC”) is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County, Virginia. AGDC provides sales, distribution, and consumer engagement services to Altria’s tobacco companies.

33. Defendant Altria Enterprises LLC (“AE”) is a Virginia corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Richmond, Virginia. AE provides various support services to Altria and its tobacco companies.

JURISDICTION

34. 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.

35. This Court has personal jurisdiction over JUUL, Altria, Philip Morris, ALCS, AGDC, and AE because they purposefully and knowingly transacted business in Minnesota and with Minnesota residents, and have committed acts inside and outside of Minnesota causing injury to the Minnesota public, including Minnesota youth, in violation of Minnesota law.

36. Defendants' marketing, distribution, promotional, and sales activities have specifically targeted Minnesota consumers, including Minnesota youth, in retail stores and on the internet.

VENUE

37. Venue in Hennepin County is proper under Minnesota Statutes, section 542.09 because the cause of action arose, in part, in Hennepin County. Defendants have done business in Hennepin County, and Defendants' unlawful acts have affected Hennepin County residents, among others.

FACTS

A. The "Traditional" Tobacco Industry

38. Leading up to and throughout most of the 1990s, the tobacco industry—including Altria—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).

39. Early on, the tobacco industry focused on the research and development of optimally addictive chemical formulations.³³ For example, in 1986, a report by tobacco

³³ Rabinoff, *et al.*, *Pharmacological and Chemical Effects of Cigarette Additives*, *Am J Public Health*. 2007 November; 97(11): 1981–1991.

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.³⁴

40. 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.



41. Tobacco cartoon figures such as Joe Camel and Willie the KOOL Penguin, which appealed to an even younger demographic, became household names.

³⁴ 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.



42. 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.”³⁵ It is no surprise, then, that in addition to youth marketing, the industry designed its products specifically to entice and addict youth.

43. 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.”³⁶

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

³⁵ 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.

³⁶ 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/>.

known fact that teenagers like sweet products. Honey might be considered.”³⁷

45. 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.³⁸

46. 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.

47. 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 2000.³⁹

B. The Emergence of E-Cigarettes

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

³⁷ 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>.

³⁸ Sedgefield Idea Sessions 790606-790607. June 8, 1979. Bates No. 81513681/3691, <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf>.

³⁹ See *supra*, fn. 3.

tobacco, snus, and snuff) most e-cigarette products derive their nicotine from the tobacco plant, and are therefore tobacco products. *See* Minn. Stat. § 297F.01.⁴⁰

49. 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.⁴¹

50. 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.

51. 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.”

52. E-cigarette manufacturers, including Defendants, 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].”⁴² And, according to the Surgeon General, “the evidence supporting the effectiveness of e-cigarettes as an aid for quitting conventional cigarettes remains extremely weak for

⁴⁰ *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. 60 (defining e-cigarettes as a “tobacco product.”).

⁴¹ 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>.

⁴² *See supra*, fn. 5.

adults and untested and nonexistent among youth.”⁴³

53. 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.⁴⁴

C. E-Cigarettes Are Dangerous

54. 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.⁴⁵ Nicotine is the third most addictive substance after heroin and cocaine.⁴⁶

55. Almost immediately following inhalation, nicotine can affect blood pressure, pulse rate, and blood vessel constriction.⁴⁷

56. 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.⁴⁸ Nicotine use is also associated with type 2 diabetes.⁴⁹

57. 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

⁴³ 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).

⁴⁴ Surgeon General, *Know the Risks, E-cigarettes and Young People*, <https://e-cigarettes.surgeongeneral.gov/getthefacts.html>.

⁴⁵ *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>.

⁴⁶ 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>.

⁴⁷ Mishra, *et al.*, *Harmful effects of nicotine*, *Indian J Med Paediatr Oncol.* 2015 Jan-Mar; 36(1): 24–31.

⁴⁸ *Id.*

⁴⁹ 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.⁵⁰ Indeed, e-cigarettes deliver a myriad of toxins, such as acrolein, acetaldehyde and formaldehyde.⁵¹

58. A preliminary study presented at the 2018 annual meeting of the American Chemical Society even found that vaping could damage DNA.⁵² 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.⁵³

59. 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.”⁵⁴

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

61. 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.”⁵⁶

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

⁵⁰ 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/>.

⁵¹ 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>.

⁵² *E-cigarettes can damage DNA*, Medical Xpress, MEDICAL PRESS (Aug. 20, 2018), <https://medicalxpress.com/news/2018-08-e-cigarettes-dna.html>.

⁵³ *Id.*

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ *See supra*, fn. 50.

from e-cigarette use.⁵⁷

63. 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.”⁵⁸

64. 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.”⁵⁹

65. 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.⁶⁰

66. 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.⁶¹

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

⁵⁷ 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>.

⁵⁸ National Academies of Sciences, Engineering, and Medicine, *Public Health Consequences of E-Cigarettes* (Jan. 23, 2018), <https://www.ncbi.nlm.nih.gov/books/NBK507163/>.

⁵⁹ *Id.* at 401.

⁶⁰ Minn. Department of Health, *E-cigarettes and Vaping*, <https://www.health.state.mn.us/communities/tobacco/ecigarettes/index.html>.

⁶¹ *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.”⁶² Members of Congress have recently urged the FDA to investigate these allegations.⁶³

68. 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.⁶⁴

69. 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.”⁶⁵

70. 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.⁶⁶ Of these, about 61% reported using nicotine-containing products; 13% reported exclusive use of nicotine-containing

⁶² *Siddharth Breja v. Juul Labs, Inc.*, 3:19-cv-07148 (Dkt. 1) (N.D. Cal, Oct. 29, 2019).

⁶³ 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/pr-ess-releases/pallone-urges-fda-to-investigate-allegations-that-juul-knowingly-sold>.

⁶⁴ 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>.

⁶⁵ *See infra*, fn. 298.

⁶⁶ 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.⁶⁷

71. As of December 2019, three Minnesotans had died, and 125 Minnesotans had been sickened with vaping related lung injuries.⁶⁸

D. E-Cigarettes Are Especially Dangerous to Youth

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

73. 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.⁶⁹

74. 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.⁷⁰

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

⁶⁷ *Id.*

⁶⁸ Minn. Department of Health, *Vaping-Associated Lung Injuries* (Oct. 16, 2019), <https://www.health.state.mn.us/diseases/lunginjuries/index.html>.

⁶⁹ *See supra*, fn. 18.

⁷⁰ *See infra*, fn. 296.

to other substances, and/or antisocial personality disorder.⁷¹

76. 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.⁷²

77. 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.⁷³

78. 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.

79. 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.⁷⁴

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

⁷¹ 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>.

⁷² 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.

⁷³ 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.

⁷⁴ *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.⁷⁵

81. 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.”⁷⁶ The same is true for e-cigarettes.

82. 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.

83. 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.⁷⁷ However, current use among high school students is at 27.5% and rising.⁷⁸ And, as of late 2019, over 5 million middle and high school students were users of e-cigarettes,⁷⁹ an alarming increase of nearly three million students in two years.⁸⁰ Sadly, however, there is no FDA-approved nicotine treatment program or product available for those under 18.⁸¹

⁷⁵ Minn. Department of Health, *Tobacco use and Asthma*, https://www.health.state.mn.us/communities/tobacco/data/docs/0201_tobacco_asthma.pdf.

⁷⁶ 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.

⁷⁷ *See infra*, fn. 121.

⁷⁸ 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>.

⁷⁹ *Id.*

⁸⁰ 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>.

⁸¹ 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

84. 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.

85. 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.⁸²

86. 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.

87. A single JUUL pod contains between 59-66 mg/ml of nicotine, an enormous quantity of nicotine by any measure.⁸³ In fact, these levels are three times higher than the

⁸² Montoya, *Pax Labs: Origins With James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/>.

⁸³ 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."⁸⁴

88. 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.

89. 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.⁸⁵

90. 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).⁸⁶ 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).⁸⁷ 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

⁸⁴ 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>.

⁸⁵ 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.

⁸⁶ 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>.

⁸⁷ *Id.*

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

91. 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."⁸⁸

92. 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%.⁸⁹

93. 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.

94. 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.

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

⁸⁸ *Id.*

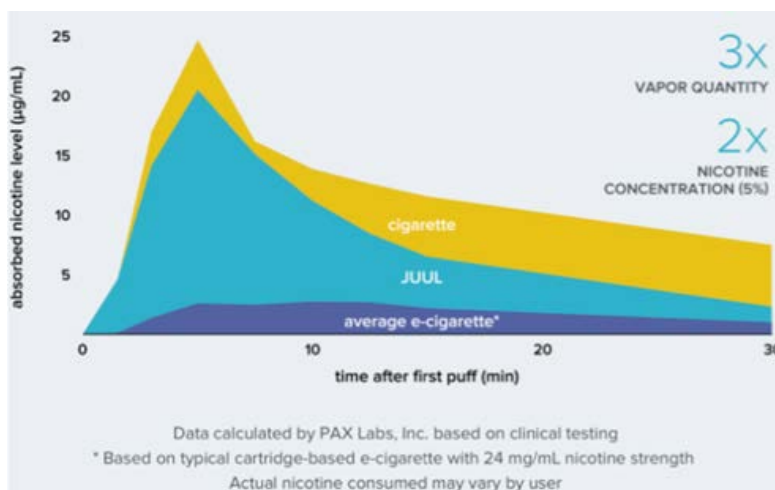
⁸⁹ *Id.*

⁹⁰ 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.”⁹¹ JUUL contains between 59-66 mg/ml of nicotine.⁹² 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),⁹³ one pod contains an amount of nicotine equal to at least 1.72 packs of cigarettes (34.4 cigarettes).

96. 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.⁹⁴

97. 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:



⁹¹ Pulvers, *et al.*, *Tobacco Consumption and Toxicant Exposure of Cigarette Smokers Using Electronic Cigarettes*, *Nicotine & Tobacco Research*, 2018, 206-214.

⁹² *See supra*, Omaiye, fn. 83.

⁹³ *See infra*, fn. 145.

⁹⁴ U.S. Patent 9,215,895 B2 (Dec. 22, 2015) (‘895 Patent).

98. 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.⁹⁵

99. 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.⁹⁶ 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.”⁹⁷

100. 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.”⁹⁸

101. 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

⁹⁵ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, REUTERS (Nov. 5, 2019), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

⁹⁶ *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>.

⁹⁷ *See infra*, fn. 112.

⁹⁸ *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.

102. 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.⁹⁹

103. 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’¹⁰⁰

104. The misrepresentations nevertheless worked—among Minnesota adult smokers, “trying to quit cigarettes” is cited as a primary reason for e-cigarette use.¹⁰¹

105. 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.¹⁰²

106. And, according to the Minnesota Department of Health and the FDA, there is no evidence that JUUL's products are effective in helping smokers quit cigarettes.¹⁰³ Many other

⁹⁹ 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>.

¹⁰⁰ Natisha Tiku, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette*, THE VERGE (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

¹⁰¹ *See infra*, fn. 122.

¹⁰² *See infra*, fns. 298-299.

¹⁰³ *See supra*, fns. 5, 43; *see infra*, fn. 299.

studies have similarly found that e-cigarettes are not effective at helping users quit cigarettes.¹⁰⁴

107. 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.

108. 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."¹⁰⁵ Even JUUL users who never smoked cigarettes prior to JUUL have now turned to cigarettes to quit JUUL.

109. 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's products.

F. JUUL's Targeting of Youth

110. 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.

¹⁰⁴ 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).

¹⁰⁵ 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.

111. 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.

112. 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.

113. 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.

114. 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.

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

JUUL's revenues increased almost 800% from 2017-2018.¹⁰⁶ Heading into 2019, JUUL had cornered a 76% market share on the entire e-cigarette retail market.¹⁰⁷

1. JUUL's Youth-Oriented Physical Design

116. 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."¹⁰⁸



117. 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.¹⁰⁹

¹⁰⁶ 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/>.

¹⁰⁷ 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.

¹⁰⁸ Fraga, JA, *The Dangers of Juuling*, National Center for Health Research, <http://www.center4research.org/the-dangers-of-juuling/>.

¹⁰⁹ *Pop Culture Collection Skin Compatible With JUUL*, MightySkins.com, <https://mightyskins.com/collections/pax-juul-skins/products/paxjuul-par-pop-culture?variant=13841933107259>.



118. 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.”¹¹⁰

119. 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,¹¹¹ and, upon information and belief, used this experience to imitate a product and design with which children were familiar and comfortable.

120. 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.”¹¹²

¹¹⁰ See *supra*, fn. 11.

¹¹¹ 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>.

¹¹² David Pierce, *This Might Just Be The First Great E-Cig*, WIRED (Apr. 21, 2015), <https://www.wired.com/2015/04/pax-juul-ecig/>.

121. 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.’”¹¹³

122. 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.

123. “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.”¹¹⁴ 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.”¹¹⁵



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

¹¹³ See *supra*, fn. 2.

¹¹⁴ See *supra*, fn. 108.

¹¹⁵ 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.¹¹⁶

2. JUUL’s Youth-Oriented Flavors

125. 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.¹¹⁷



126. A recent study conducted by the FDA determined that 96.1% of 12 to 17 year-olds new users started with a flavored product.¹¹⁸ 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-

¹¹⁶ 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>.

¹¹⁷ *Stanford University Research Into the Impact of Tobacco Advertising*, http://tobacco.stanford.edu/tobacco_main/images_body.php?token1=fm_pods_img36073.php.

¹¹⁸ 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.”¹¹⁹ And, according to the Public Health Law Center, “[y]outh are attracted to flavors.”¹²⁰

127. 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.¹²¹ Flavors are consistently considered a risk factor for youth initiation.¹²²

128. 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.¹²³ A 2018 study determined that 63% of past 30-day JUUL users ages 15 to 24 do not know that all JUUL’s products always contain nicotine.¹²⁴ 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.”¹²⁵

129. 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.”¹²⁶

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

¹¹⁹ *Id.*

¹²⁰ *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>.

¹²¹ 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>.

¹²² 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>.

¹²³ 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>.

¹²⁴ 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>.

¹²⁵ *See supra*, fn. 18.

¹²⁶ *See supra*, fn. 115.

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

131. 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 unexperienced users.

132. 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.

133. 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.¹²⁷

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

¹²⁷ See *supra*, fn. 95, 108.

to four pods of JUUL's e-juice¹²⁸ (equal to over four to five packs of cigarettes) a day.

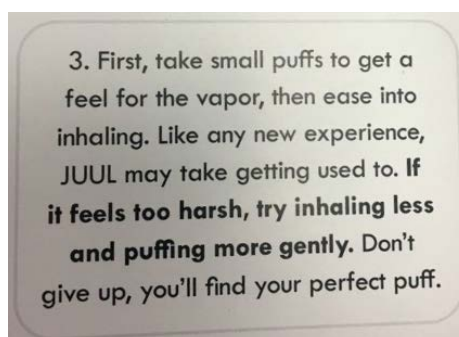
135. At the same time that JUUL's aerosol was smoother and more tolerable, it also delivered more nicotine to the average user.

136. 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.

137. 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.

138. 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.

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



140. 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

¹²⁸ 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."¹²⁹

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

141. 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.¹³⁰

142. 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.¹³¹

143. 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.¹³²

144. 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

¹²⁹ See *supra*, fn. 36.

¹³⁰ See *supra*, fn. 82.

¹³¹ 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>.

¹³² 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.¹³³ Early on, two prominent tobacco researchers warned JUUL’s founders and a high-level JUUL scientist of the risks of JUUL abuse by youth.¹³⁴

145. 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.¹³⁵

146. 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.¹³⁶ 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.¹³⁷

147. 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

¹³³ 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/>.

¹³⁴ *See supra*, fn. 95.

¹³⁵ *Id.*

¹³⁶ 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>.

¹³⁷ *See supra*, fn. 22 at 6.

peers.¹³⁸



148. 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.



149. 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.

¹³⁸ *Id.*

150. JUUL’s Vaporized campaign featured models in their 20s whose “poses were often evocative of behaviors more characteristic of underage teens than mature adults.”¹³⁹



151. 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.”¹⁴⁰ 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.¹⁴¹

152. A cornerstone of JUUL’s marketing effort also involved the recruitment and use of influencers to increase brand awareness and promote sales.¹⁴² 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

¹³⁹ See *supra*, fn. 22 at 7.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² 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.”¹⁴³

153. 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.

154. 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.¹⁴⁴

155. JUUL’s social media campaign was incredibly successful. By the end of 2017, there had been more than 150,000 JUUL-related “tweets.”¹⁴⁵ 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.¹⁴⁶ A study of JUUL’s official Twitter account found that *45% of its followers were between the ages of 13 and*

¹⁴³ See *supra*, fn. 24.

¹⁴⁴ 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-ap-pealed-to-teens-2018-7>.

¹⁴⁵ 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>.

¹⁴⁶ See *supra*, fn. 22 at 19.

17, and only 20% were 21 and older.¹⁴⁷

156. 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.”¹⁴⁸ It has been referred to as the “new teen bible.”¹⁴⁹

157. 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.”¹⁵⁰ Ultimately, JUUL’s marketing efforts were so successful that “juuling,” (the act of smoking a JUUL), became a commonly used verb.¹⁵¹

158. 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.

159. 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 cigarette advertisements—and found them highly similar in targeting youth.¹⁵²

¹⁴⁷ 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.

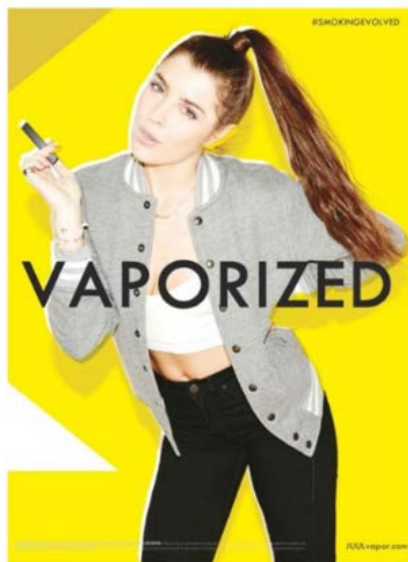
¹⁴⁸ *See supra*, fn. 22 at 16.

¹⁴⁹ *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>.

¹⁵⁰ *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.

¹⁵¹ Angelica LaVito, *Popular e-cigarette Juul’s sales have surged almost 800 percent over the past year*, CNBC (Jul. 2, 2018), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

¹⁵² *See supra*, fn. 22 at 27-33.





160. 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."¹⁵³

5. JUUL's In-Person Marketing at Schools

161. 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*.

162. 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.¹⁵⁴ The report detailed a JUUL division, which the company audaciously called "Youth Prevention and Education."¹⁵⁵

163. This "Youth Prevention and Education" division sought out schools where it could present its programming.¹⁵⁶ JUUL paid schools at least \$10,000 for access to students, under the guise of offering nicotine prevention programs.¹⁵⁷ No parents or teachers were allowed in the room, ostensibly to enable the students to feel comfortable talking freely.

164. Once in the classroom, however, JUUL's message was that its products were

¹⁵³ Kate Keller, *Ads for E-Cigarettes Today Hearken 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/>.

¹⁵⁴ 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>.

¹⁵⁵ *Id.* at 1.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

“totally safe.”¹⁵⁸ The presenters even demonstrated to the kids how to use a JUUL.¹⁵⁹ JUUL also provided the children snacks and established the right to collect student information from the sessions.¹⁶⁰

165. 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.¹⁶¹

166. 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 e-cigarettes”¹⁶² The youth were to attend the program for as long as ten weeks.¹⁶³

167. 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.”¹⁶⁴

168. As the Subcommittee observed, in adopting these in school marketing programs, “JUUL’s ‘efforts seemed to duplicate’ the ‘youth education’ programs formerly used by

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 2.

¹⁶¹ 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>.

¹⁶² *See supra*, fn. 154 at 4.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 5.

traditional cigarette makers.”¹⁶⁵ Youth Prevention and Education Director for JUUL, Julie Henderson also met with former members of Philip Morris’ “youth education” team.¹⁶⁶ JUUL’s “Youth Prevention and Education” team even acknowledged the similarity between its programming and that of Big Tobacco.¹⁶⁷ 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.¹⁶⁸

169. 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.¹⁶⁹ One of these witnesses further testified, “I believe the presenter was sending mixed messages by saying 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.”¹⁷⁰

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

170. 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

¹⁶⁵ *Id.* at 2.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 5.

¹⁶⁹ Representative Krishnamoorthi Examines JUUL’s Marketing Strategy (Jul. 26, 2019), <https://www.youtube.com/watch?v=gnwBL7ycWEY&feature=youtu.be>.

¹⁷⁰ *Id.*

to identify and reject underage users, JUUL buried its head in the sand while it made billions.

171. 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.

172. 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.

173. Upon information and belief, it appears one way that underage purchasers could get JUUL's 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.

174. Upon information and belief, JUUL was also aware that underage users were also able to obtain devices through JUUL's one-year warranty policy.¹⁷¹ 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.¹⁷²

175. 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.

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

177. 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.

178. Additionally, upon information and belief, JUUL's email subscription list was

¹⁷¹ Kavuluru, *et al.*, *On the popularity of the USB flash drive-shaped electronic cigarette*, Juul (2019) 28 Tobacco Control 110, 111.

¹⁷² The "Subreddit" <https://www.reddit.com/r/UnderageJuul/>, was banned from Reddit in January 2018.

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.

179. 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.

180. 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.

181. 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.

182. 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.

183. 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. Altria Substantially Contributed to JUUL's Use Among Youth

184. While JUUL was the main architect of its device, its chemical formulation, and its initial youth-focused marketing practices, by 2017 it was no longer working alone. Recognizing that the creation of a massive new market for JUUL could be accelerated with the support of a cigarette conglomerate, by the spring of 2017, JUUL and Altria had commenced more formal

discussions toward a potential acquisition or partnership.¹⁷³ Upon information and belief, these discussions involved the direct and indirect exchange of material information concerning a variety of topics regarding JUUL and the e-cigarette market.

185. Altria has been one of the world's largest tobacco companies for over a century. Philip Morris USA Inc., a wholly-owned subsidiary of Altria, is the largest cigarette manufacturer and marketer in the United States. The company is the manufacturer of Marlboro, the most popular and most advertised cigarette brand in the United States for over forty years. Marlboro is, and has been, the most popular and influential cigarette brand amongst teenagers.¹⁷⁴

186. Facing the threat of declining cigarette sales and the failures of its own e-cigarette products, Altria realized the necessity of partnering with JUUL. For decades, Altria had dominated the tobacco market. While Altria attempted to replicate JUUL's wildly successful strategies with its own e-cigarette products, it failed to come close to JUUL's perfect blend of youth appeal. To Altria, JUUL represented a generation of "replacement smokers" that it had thus far failed to reach.

187. Altria knew that JUUL's success was a result of its deliberate youth-appeal as well as its false and misleading misrepresentations. Nevertheless, by 2017, the Defendants were engaging in confidential coordination, discussions, and exchange of material information with the intent to maintain and expand the number of nicotine-addicted e-cigarette users.¹⁷⁵ Anticipating a future deal with JUUL, the Altria Defendants acquired additional "shelf space"—under the guise that it would be used for its own e-cigarette products—and purchased large vape

¹⁷³ See *supra*, fn. 29.

¹⁷⁴ *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* (2012), <https://www.ncbi.nlm.nih.gov/books/n/surgtobyouth/pdf/>.

¹⁷⁵ See *supra*, fn. 29.

retail chain stores which allowed it unfettered access to sale volumes and patterns of JUUL's products.¹⁷⁶ Defendants also coordinated through at least one industry group, as well as a savvy third-party global public strategy firm.

188. Defendants' back-channel coordination ultimately culminated in a December 2018 deal in which Altria paid \$12.8 billion for a 35% stake in JUUL.¹⁷⁷ As part of the deal, the Altria Defendants forged even greater significant, systemic links with JUUL to provide marketing, distribution, sales, advertising, regulatory, and lobbying services, among other services.¹⁷⁸ In carrying out these services for JUUL, the Altria Defendants greatly expanded JUUL's reach, including to minors. The Altria Defendants also directly disseminated, and helped JUUL disseminate, messaging—through direct mailings, and cigarette pack onserts and inserts—that it knew or should have known was false and misleading. Perhaps most impactful was the Altria Defendants' endowment to JUUL of highly visible "shelf space" for JUUL's products,¹⁷⁹ despite the fact that it is well-established that exposure to products on this shelf space increased likelihood of youth tobacco use.

189. The Altria Defendants' wide range of material assistance contributed to expanding JUUL's market reach and its misleading messaging, especially to minors. The Altria Defendants expanded JUUL's reach through unlawful, deceptive and fraudulent means, and, absent their conduct, the vaping epidemic would have not been as widespread and prevalent amongst Minnesota youth.

¹⁷⁶ See *infra*, fn. 195 and fn. 244.

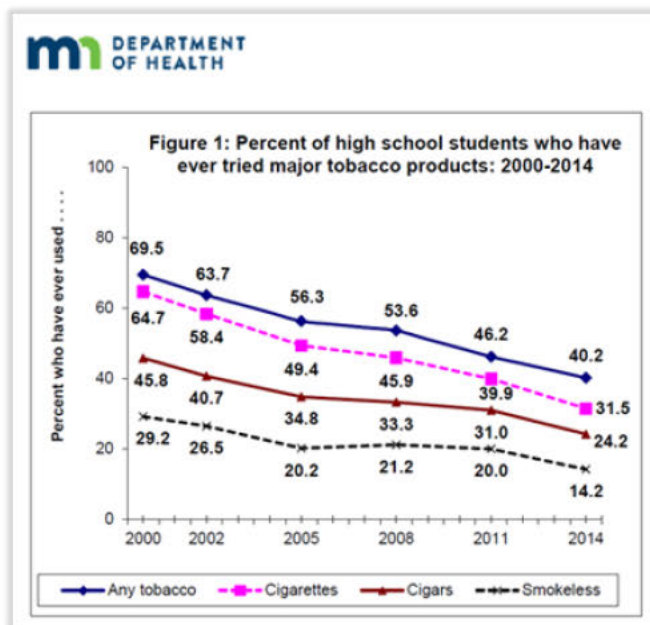
¹⁷⁷ See *infra*, fn. 204.

¹⁷⁸ See *supra*, fn. 29 and *infra*, fn. 206.

¹⁷⁹ See *infra*, fn. 244.

1. Altria Failed to Corner the E-cigarette Market

190. Cigarette use has steadily declined in the United States over the past twenty years, especially amongst youth. By 2014 (the same year as Altria's foray into the e-cigarette market), cigarette use amongst Minnesota high school students had declined by over 50% since 2000:¹⁸⁰



191. This decrease in cigarette use was reflected in Altria's dwindling cigarette sales. From 2010 to 2013, the total volume of cigarettes sold within the U.S. declined at a compounded annual rate of 3.5%.¹⁸¹ Altria itself estimated that the cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023.¹⁸²

192. Recognizing that a decline in cigarette use, including with youth, represented an

¹⁸⁰ Minn. Department of Health, *Teens and Tobacco in Minnesota, 2014 Update Executive Summary* (Nov. 2014), <https://www.health.state.mn.us/data/mchs/surveys/tobacco/docs/teentobaccoexecsumml10614.pdf>.

¹⁸¹ Rupert Hargreaves, *Tobacco is Still an Extremely Profitable Business, and This Won't Change Soon*, THE MOTLEY FOOL (April 8, 2014), <https://www.fool.com/investing/general/2014/04/08/tobacco-is-still-an-extremely-profitable-busines-2.aspx>.

¹⁸² Altria's Fourth-Quarter 2018 Earnings Conference Call (Jan. 31, 2019), <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

existential threat, Altria set its eyes on the growing e-cigarette market.

193. In 2013, Altria, through its subsidiary, Nu Mark LLC, began its foray into the e-cigarette market. Altria's first e-cigarette, "MarkTen," as with many of the first generation e-cigarettes, was a "cigalike," meaning, that it was designed to mimic the look and feel of a typical combustion cigarette.

194. Straight away, Altria was determined to become the dominant player in the industry, spending \$35 million on advertising for MarkTen in 2014 alone, surpassing the then industry leader, blu, which spent \$30 million on advertising for its electronic vaping products that same year.¹⁸³ Altria also deployed its extensive distribution network, reaching 60,000 stores in a month.¹⁸⁴ As Altria's then-CEO Marty Barrington stated at the time of MarkTen's launch: "[w]e are the market leader today and we will continue to be."¹⁸⁵

195. It was also immediately apparent that Altria saw the e-cigarette market as an opportunity to once again deploy its youth-oriented marketing tactics it had honed over the preceding decades but had vowed to abandon. For example, Altria capitalized on Disney's best-selling animated musical in 2014, "Frozen," and its highly popular hit song, "Let It Go," by using the phrase, "Let It Glow" as the tagline for its MarkTen products.¹⁸⁶ Public health advocates took notice, observing that the campaign played off Disney's animated film.¹⁸⁷

196. As Truth Initiative warned in 2015 with regard to MarkTen advertisements:

¹⁸³ Cantrell, *et al.*, *Rapid increase in e-cigarette advertising spending as Altria's MarkTen enters the marketplace*. *Tob Control*. 2016;25(e1):e16-e18. doi:10.1136/tobaccocontrol-2015-052532.

¹⁸⁴ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, *Convenience Store News* (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

¹⁸⁵ *Id.*

¹⁸⁶ Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, *NYTIMES* (June 17, 2014), <https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

¹⁸⁷ *Id.*

“some ads included young adults having fun while using the product – a common element seen in other major e-cigarette brand advertisements.”¹⁸⁸

197. In an attempt to expand its market reach, Altria also spent over \$110 million acquiring other e-cigarette companies. In 2014, Altria acquired Green Smoke, Inc., another company popular amongst youth, whose e-cigarettes were sold in flavors including “Vanilla Dreams” and “Smooth Chocolate.”¹⁸⁹

198. Despite Altria’s best efforts, sales lagged. Its MarkTen product managed to achieve only 13.7% market share in 2017. Meanwhile, sales of JUUL, which had by that time been only on the market for a year and a half, were soaring, with a 40% market share.¹⁹⁰

199. Desperate to reinvigorate its e-cigarette footprint, in 2017, Altria released its first JUUL-like, pod-based products: the “MarkTen Elite” and “Apex.”¹⁹¹ The MarkTen Elite was “a pod-based product with a premium, sleek battery design,” equipped with the “convenience of prefilled, magnetic click pods.”¹⁹² The MarkTen product “offer[ed] a variety of flavorful liquids in a modern, discrete device format.”¹⁹³ Flavors included “Strawberry Brulee,” “Glacier Mint,”

¹⁸⁸ *Rapid increase in e-cigarette ad spending in 2014*, Truth Initiative (Jan. 22, 2020), <https://truthinitiative.org/research-resources/tobacco-industry-marketing/rapid-increase-e-cigarette-ad-spending-2014>.

¹⁸⁹ Mike Esterl, *Altria Expands in E-Cigarettes With Green Smoke*, WALL STREET JOURNAL (Feb. 3, 2014), <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>; Gary Roberson, *The Burning Question: Will Smokers Switch to Electronic Cigarettes?* <https://www.virginiabusiness.com/article/the-burning-question1/>.

¹⁹⁰ Richard Craver, *Vuse falls further behind Juul on e-cig sales*, WINSTON-SALEM JOURNAL (Dec. 14, 2017), https://journalnow.com/business/vuse-falls-further-behind-juul-on-e-cig-sales/article_ed14c6bc-5421-5806-9d32-bba0e8f86571.html.

¹⁹¹ Remarks by Marty Barrington, Altria Group, Inc. (Nov. 2, 2017), <https://www.sec.gov/Archives/edgar/data/764180/000076418017000131/exhibit991-2017investorday.htm>.

¹⁹² Angel Abcede, *Altria Introducing Closed Vapor System*, <https://www.cspdailynews.com/tobacco/altria-introducing-closed-vapor-system>.

¹⁹³ *Id.*

“Apple Cider,” and “Hazelnut Cream.”¹⁹⁴

200. And, in an attempt to gather sales data on other e-cigarette products—including JUUL—in November 2017, Altria acquired a minority interest in Avail Vapor (“Avail”).¹⁹⁵ Avail is a chain of more than 100 high-end vaping retail stores selling e-cigarette products. This acquisition gave Altria years of unfettered access to sale volumes and patterns of JUUL’s products, which, by that time, had sold one million units, boasting 621% growth in year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.¹⁹⁶

201. Despite Altria’s best efforts, its e-cigarette sales lagged even further. In the four-week period ending November 17, 2018, Altria represented just 4.3% of the e-cigarette market.¹⁹⁷ JUUL, in contrast, accounted for nearly 75% of the e-cigarette market during the same period.¹⁹⁸

202. Altria’s dwindling cigarette and e-cigarette sales were not its only challenge. As with other e-cigarette companies at the time, Altria was under scrutiny by the FDA. On September 12, 2018, the FDA sent a letter to then CEO Howard Willard, expressing the “disturbing trend of ENDS use by minors,” and “request[ing] that . . . [it] . . . take prompt action to address the rate of youth use of MarkTen products.”¹⁹⁹

¹⁹⁴ Campaign for Tobacco Free Kids, TobaccoFreeKids.org, https://www.tobaccofreekids.org/assets/images/content/2018_07_18_New_Ecigs_Post_Juul.pdf.

¹⁹⁵ Rich Duprey, *Is Altria Trying to Corner the E-Cig Market?*, THE MOTLEY FOOL (Jan. 7, 2018), <https://www.fool.com/investing/2018/01/07/is-altria-trying-to-corner-the-e-cig-market.aspx>.

¹⁹⁶ Melia Robinson, *How a startup behind the 'iPhone of vaporizers' reinvented the e-cigarette and generated \$224 million in sales in a year*, Business Insider (Nov. 21, 2017), <https://www.businessinsider.com/juul-e-cigarette-one-million-units-sold-2017-11>.

¹⁹⁷ Dana Mattioli, *et al.*, *Altria in Talks to Take Significant Minority Stake in Juul Labs* (Nov. 28, 2018), https://www.wsj.com/articles/altria-in-talks-to-take-significant-minority-stake-in-juul-labs-sources-1543438776?mod=hp_lead_pos3.

¹⁹⁸ *Id.*

¹⁹⁹ FDA to Howard A. Willard III, Altria (Sept. 12, 2018), <https://www.fda.gov/media/119666/download>.

203. On October 25, 2018, Altria announced it would withdraw its pod-based products, and that it would discontinue all flavors other than mint, menthol, and tobacco for its cigalike products.²⁰⁰

204. Importantly, Altria acknowledged that pod-based products and flavors contribute to youth e-cigarette use. On a call to investors, Willard admitted that:

[T]he driver of the recent increase we think is pod-based products and flavored products and so we thought that the two actions that we took addressed the drivers of the increased youth usage here in the short run.²⁰¹

205. In a response letter to the FDA the same day (later posted to Altria's website), Altria restated:

Based on the publicly available information from FDA and others, **we believe that pod-based products significantly contribute to the rise in youth use of e-vapor products . . . We believe underage use of e-vapor products is further compounded by flavors in these products that go beyond traditional tobacco flavors.**²⁰²

206. Thus, by at least 2018, Altria had disclaimed the use of flavors and pod-based products, and had acknowledged the contribution of both to the rise in youth e-cigarette use.

207. But Altria's motivation for removing its products was anything but altruistic. For over a year, JUUL and Altria had been negotiating a potential acquisition—which included a non-negotiable condition that Altria pull its e-vapor products from the market. It has since been reported by the Wall Street Journal that Altria “pulled its e-cigarettes off the market” not out of concern for the youth nicotine addiction epidemic JUUL created, but because a non-compete was

²⁰⁰ Howard Willard III, Altria to FDA (Oct. 25, 2018), <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

²⁰¹ Altria Q3 2018 Earnings Conference Call Transcript (Oct. 25, 2018), <https://www.fool.com/earnings/call-transcripts/2018/10/25/altria-group-inc-mo-q3-2018-earnings-conference-ca.aspx>.

²⁰² See *supra*, fn. 200.

a “part of its deal with JUUL.”²⁰³

208. In short, Altria removed its products from the market only to commit its substantial resources to protect and expand JUUL’s market share, which, as Altria and JUUL both know, relies heavily on youth.

2. Altria and JUUL Joined Forces to Expand JUUL’s Market Domination

209. At the same time Altria was acknowledging that pod-based and flavored products contribute to the rise of youth vaping, it was weeks away from announcing a \$12.8 billion, 35% stake in JUUL—the leader of pod-based and flavored e-cigarette products. The blockbuster December 2018 transaction between the two companies was the largest equity investment in United States history and valued JUUL at roughly \$38 billion, more than double JUUL’s reported value less than seven months earlier.²⁰⁴

210. As part of the December 2018 deal, the companies entered into a Purchase Agreement, a Services Agreement, a Relationship Agreement, a Voting Agreement, and an Intellectual Property License Agreement. Under the terms of the Agreements, the Altria Defendants would assist JUUL with the sales, marketing, promotion, and distribution of JUUL’s products by providing JUUL access to retail shelf space, assisting JUUL in reaching consumers by providing JUUL with direct access to Altria’s databases and the use of cigarette pack inserts, and by providing logistics and distribution assistance.²⁰⁵ The deal also entitled Altria to appoint

²⁰³ Jennifer Maloney, *JLI Hires Another Top Altria Executive*, WALL STREET JOURNAL (Oct. 1, 2019), <https://www.wsj.com/articles/juul-hires-another-top-altria-executive-11569971306>.

²⁰⁴ Liana B. Baker, *Altria nears Juul stake deal, valuing it at \$38 billion*, REUTERS (Dec. 19, 2018), <https://www.reuters.com/article/us-juul-altria-group-m-a/altria-nears-juul-stake-deal-valuing-it-at-38-billion-sources-idUSKCN1OI2CC>.

²⁰⁵ *JUUL Labs Issues Statement About Altria Minority Investment and Service Agreements*, CISION, PR NEWswire (Dec. 20, 2018), <https://www.prnewswire.com/news-releases/juul-labs-issues-statement-about-altria-minority-investment-and-service-agreements-300769518.html>.

one third of the directors on JUUL's board, and as discussed above, required Altria to remove its own pod-based products from the market.²⁰⁶

211. But the coordination, back-channel communication, and information exchange had been ongoing for years. By the fall of 2017, the Altria Defendants and JUUL had agreed to and had taken coordinated actions to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base. According to Howard Willard, Altria's CEO, Altria first contacted JUUL about a commercial relationship in early 2017, with "confidential discussions" beginning in the spring of 2017.²⁰⁷

212. The Altria Defendants knew that with cigarette smoking on the decline, and sales of its e-cigarette products being increasingly dwarfed by JUUL, their best bet for maintaining revenues was to partner with JUUL to maintain or increase the number of users hooked on JUUL, whose young customer base represented a generation of "replacement smokers" that the Altria Defendants had thus far failed to reach.

213. The Altria Defendants recognized that JUUL, a younger, fresher, tech-oriented, social-media-savvy company was far better at targeting youth and making its products "cool" than the Altria Defendants and other Big Tobacco companies at the time. It was clear that JUUL—who over the past four years, had increasingly dominated the e-cigarette market—had achieved the perfect blend of youth-marketing and youth-oriented chemical formula.

214. JUUL, in turn, recognized that it faced existential threats from regulatory and congressional scrutiny, and public outrage over the growing vaping epidemic. It knew that the Altria Defendants had decades of experience in the field, and that it could further expand its

²⁰⁶ Olivia Zaleski, *et al.*, *Altria Invests \$12.8 Billion in E-Cigarette Maker Juul*, Bloomberg (Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/altria-invests-12-8-billion-in-e-cigarette-maker-juul-labs>.

²⁰⁷ *See supra*, fn. 29 at 3.

access to consumers, including youth, using the Altria Defendants' massive marketing and distribution infrastructure, channels, and know-how.

215. The hypocrisy of Altria publicly denouncing youth e-cigarette use—while privately negotiating a deal with JUUL—is striking. By March 2018, multiple national news outlets reported youth were using the pod-based, flavored JUUL device with alarming frequency, posting about “juuling” in school restrooms on social media, and boasting about using the device in classrooms given JUUL’s discreet design.²⁰⁸ JUUL’s device was, by far, the most popular e-cigarette device amongst youth, and Altria knew it.

216. Altria also knew, through its century-plus of tobacco experience, data received from JUUL, publicly available data, and its own due diligence, that all of JUUL’s statements were deceptive, false, and misleading.

217. Moreover, Altria would not have made such a large investment in JUUL if it did not intend to grow JUUL’s already enormous market even more. In fact, Altria said as much when it announced its investment, explaining that its investment in JUUL “enhances future growth prospects.”²⁰⁹ And on a December 20, 2018 conference call Willard reaffirmed, “We believe the investment in Juul represents the fastest and most sustainable opportunity to generate the most significant income in the e-vapor category.”²¹⁰

²⁰⁸ *Why 'juuling' has become a nightmare for school administrators*, nbcnews (March 26, 2018), <https://www.nbcnews.com/health/kids-health/why-juuling-has-become-nightmare-school-administrators-n860106>; Angus Chen, *Teenagers Embrace JUUL, Saying It's Discreet Enough To Vape In Class* (Dec. 4, 2017), <https://www.npr.org/sections/health-shots/2017/12/04/568273801/teenagers-embrace-juul-saying-its-discreet-enough-to-vape-in-class>; John Hafner, *Juuling is popular with teens, but doctor sees a 'good chance' that it leads to smoking*, USAToday (March 28, 2018), <https://www.usatoday.com/story/money/nation-now/2017/10/31/juul-e-cigs-controversial-vaping-device-popular-school-campuses/818325001/>.

²⁰⁹ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BUSINESSWIRE (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

²¹⁰ Melissa Kress, *Altria Takes 'Significant Action' to Prepare for Its Future*, Csnnews (Dec. 21, 2018), <https://csnnews.com/altria-takes-significant-action-prepare-its-future>.

218. As the president of the Campaign for Tobacco-Free Kids observed upon announcement of the deal, “Altria has no interest in seriously reducing the number of people who smoke cigarettes.”²¹¹

219. Then-FDA Commissioner Scott Gottlieb has also observed Altria’s hypocrisy:

[I]t concerned me that a company that affirmed what we believe, which is that the pod-based flavored products are driving the youth use, and went so far as to take their product off the market and publicly make that statement . . . [t]hen made a substantial investment that [] also guaranteed that they were going to expand the market share of the leading pod-based flavored products that’s being used by children.²¹²

220. Commissioner Gottlieb further stated:

I assume it’s just a business decision they made to withdraw a product that didn’t have good market penetration and go on to make an investment in a similar product that did have the market penetration.²¹³

221. The December 2018 deal gained immediate attention by the FDA and Federal Trade Commission (FTC). On February 6, 2019, Commissioner Gottlieb wrote Altria condemning it for its “newly announced plans with JUUL [that] contradict the commitments you made to the FDA” in a prior meeting and in Willard’s October 25, 2018 letter to the FDA.²¹⁴ Defendants’ conduct also prompted the Federal Trade Commission to sue JUUL and Altria on April 1, 2020 alleging antitrust violations and seeking to unwind the JUUL/Altria transaction.²¹⁵

²¹¹ Sheila Kaplan, *et al.*, *Juul Closes Deal with Tobacco Giant Altria* (Dec 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

²¹² *The Brookings Institution Falk Auditorium a Conversation With FDA Commissioner Scott Gottlieb on His Tenure And Policy Reforms* (March 19, 2019), https://www.brookings.edu/wp-content/uploads/2019/03/es_20190319_gottlieb_fda_transcript.pdf.

²¹³ *Id.*

²¹⁴ Letter from Scott Gottlieb, FDA to Howard Willard, Altria (Feb. 6, 2019), <https://www.fda.gov/media/122589/download>.

²¹⁵ *FTC Sues to Unwind Altria’s \$12.8 Billion Investment in Competitor JUUL*, Federal Trade Commission (April 1, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul>.

222. Internally, JUUL employees were bemoaning JUUL's "deal with the devil," unsettled by the fact that they were now in business with Big Tobacco.²¹⁶ Though the terms of the deal had not yet been announced, the Altria Defendants were poised to employ one of the largest, and most sophisticated distribution, promotional, sales, and marketing network in the world with a single goal—expand JUUL's market reach at all costs.

3. The Altria Defendants Expanded JUUL's Reach with Their Vast Distribution and Sales Network

223. The Altria Defendants were fully aware that JUUL's products were being deliberately marketed and sold to minors. They were also fully aware of all JUUL's false, fraudulent, misleading, and deceptive statements with regard to topics including, but not limited to, JUUL's nicotine content, absorption rates, addictiveness, cessation efficacy, youth appeal, youth-focused marketing tactics, and the relative safety of JUUL's products. After all, the Altria Defendants had spent decades as one of the world's largest tobacco conglomerates, and were most familiar with youth marketing strategies and tobacco-related science.

224. Despite this knowledge, the Altria Defendants leveraged their enormous distribution and sales networks, vastly extending JUUL's market penetration and the reach of JUUL's misrepresentations and deceptions, including to Minnesota youth.

225. According to Altria CEO Howard A. Willard, Altria Defendants provided JUUL with the following distribution services: "Piloting a distribution program to provide long haul freight, warehouse storage and last mile freight services."²¹⁷ These and other distribution services provided by the Altria Defendants proved invaluable to JUUL.

²¹⁶ Catie Keck, *Juul Employees Are Reportedly Pissed About Possible Deal With Maker of Marlboro*, Gizmodo (Dec. 1, 2018), <https://gizmodo.com/juul-employees-are-reportedly-pissed-about-possible-dea-1830788754>.

²¹⁷ *See supra*, fn. 29 at 13.

226. As CEO Willard emphasized on a December 20, 2018 call: “we expect our strong distribution infrastructure to help accelerate [JUUL’s] financial performance.”²¹⁸

227. The Altria Defendants supplemented its wide distribution network with its robust sales force. These services included:

Leveraging Altria’s field sales force to address out-of-stocks, close distribution gaps within retail accounts, and provide services such as limited initiative selling, hanging signs, light product merchandising, and surveys of a subset of the retail stores that Altria calls upon.²¹⁹

228. Just prior to the Altria Defendants’ acquisition, JUUL’s products were present in 90,000 retail outlets in the United States.²²⁰ Altria, in comparison, reaches 230,000 outlets in the United States.²²¹

229. At the same time, the Altria Defendants turned a blind eye to continued sales of flavored products most popular among youth. Specifically, in November 2018, JUUL confirmed that it would begin to stop orders from retailers for certain flavored JUUL pods that JUUL was aware were particularly popular among younger users. Yet, as late as November 2019, retail stores continued to sell flavored JUUL pods.²²²

230. On November 4, 2019, VICE Magazine reported that when it visited more than twenty stores in New York City, all but two of the stores selling JUUL’s products had at least one of the discontinued flavors available in stores, including Mango.²²³ Stores reported that

²¹⁸ See *supra*, fn. 210.

²¹⁹ See *supra*, fn. 29 at 13.

²²⁰ Juul Labs Action Plan (Nov. 13, 2018), <https://www.juullabs.com/juul-labs-action-plan/>.

²²¹ See *supra*, fn. 210.

²²² Hannah Smothers, *JUUL’s ‘Banned’ Flavors Are Still Absolutely Available in New York City*, VICE (Nov. 4, 2019), https://www.vice.com/en_us/article/xwepnj/juul-pod-banned-flavors-still-available-in-new-york-city.

²²³ *Id.*

when sales representatives visited, most did not mention the clearly displayed flavors.²²⁴

231. Upon information and belief, this also occurred in stores in Minnesota. In fact, flavored JUUL products, including “Fruit Medley” were available in retail stores through January 2020.

4. The Altria Defendants Expanded JUUL’s Reach with Their Vast Promotional and Marketing Network

232. The Altria Defendants also provided services “related to direct marketing.”²²⁵ These services, which greatly extended JUUL’s reach, included messaging that the Altria Defendants knew was false and misleading.

233. In carrying out these services, the Altria Defendants agreed to include product inserts for JUUL’s products on its cigarette packs. The inserts contained advertisements, promotions, and coupons for “JUUL starter kits.”



234. These inserts and onserts had the potential to, and in fact did, immensely expand JUUL’s reach, especially among youth—and Altria knew this.

²²⁴ *Id.*

²²⁵ *See supra*, fn. 29.

235. Through its decades of tobacco market research, Altria was aware that “[p]ack design serves a critical role in tobacco marketing, particularly as other channels are restricted.”²²⁶ In fact, “[t]he package is the last and most critical link in an integrated chain of promotional communications,”²²⁷ which is especially true with youth.²²⁸

236. As Philip Morris executive Mark Hult stated in 1994 with respect to the growing restrictions of tobacco advertisements: “Our final communication vehicle with our smoker is the pack itself. In the absence of any other marketing messages, our packaging . . . is the sole communicator of our brand essence. Put another way—when you don’t have anything else—our packaging is our marketing”²²⁹

237. The Altria Defendants also assisted JUUL in targeting consumers, including Minnesota consumers, by direct mail and email.

238. These mail and email promotions contained the same types of coupons and promotions contained on cigarette inserts and onserts discussed above.

239. As the Altria Defendants were aware through decades of tobacco research, youth are especially vulnerable to coupons and promotions. Youth, as with other vulnerable groups, are more likely to be exposed to coupons.²³⁰ And, exposure to coupons is associated with greater intention to purchase cigarettes, higher susceptibility to smoking among youth who had never

²²⁶ Lisa Henriksen, *Comprehensive tobacco marketing restrictions: promotion, packaging, price and place*, *Tob Control*. 2012 Mar;21(2):147–153.

²²⁷ *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* (2012), <https://www.ncbi.nlm.nih.gov/books/NBK99238/>.

²²⁸ David Hammond, *et al.*, *The effect of cigarette branding and plain packaging on female youth in the United Kingdom*, *J Adolesc Health*. 2013;52(2):151-157. doi:10.1016/j.jadohealth.2012.06.003.

²²⁹ Andrew A. Strasser, *et al.*, *Cigarette Marketing and Packaging*, *Virtual Mentor*. 2013;15(4):332-338.

²³⁰ Shyanika W. Rose, *et al.*, *Adolescent tobacco coupon receipt, vulnerability characteristics and subsequent tobacco use: analysis of PATH Study, Waves 1 and 2*, *Tob Control*. 2018 Jul;27(E1):e50–e56.

smoked, and lower confidence about quitting among youth who already smoke.²³¹

240. The Altria Defendants further extended the reach of these promotions and advertisements by leveraging, and providing JUUL access to Altria's enormous tobacco consumer database.²³²

241. Upon information and belief, the Altria Defendants' database contained mail and email addresses of Minnesota consumers, including underage Minnesota consumers.

242. Finally, the Altria Defendants worked with JUUL to promote JUUL's false and misleading "Make the Switch" marketing campaign. Announced less than a month after Altria's investment in JUUL, "Make the Switch" featured radio and television ads with former smokers discussing "how JUUL helped them quit smoking,"²³³ coupons on Marlboro packages saying "Make the Switch," social media ads featuring the slogan, and other forms of media containing similar representations.

243. The "Make the Switch" campaign however, falsely and deceptively implies that JUUL is safer than traditional cigarettes, or that it is an effective method to quit smoking cigarettes or to stop nicotine use. As discussed above, the JUUL device delivers far more nicotine into the bloodstream than the average e-cigarette and cigarette. There is also a lack of evidence supporting JUUL as an effective method to quit smoking cigarettes, or as safer than cigarettes. Moreover, non-smokers who use JUUL's products have a significant likelihood of later using traditional cigarettes. Therefore, dissemination of these and similar statements by the

²³¹ Tessmann GK, *et al.*, *Exposure to tobacco coupons among U.S. middle and high school students*. *Am J Prev Med*. 2014;47(2):S61-S68. doi:10.1016/j.amepre.2014.05.001.

²³² *See supra*, fn. 29 at 13.

²³³ Angelica LaVito, *JLI combats criticism with new TV ad campaign featuring adult smokers who quit after switching to e-cigarettes*, CNBC (Jan. 8, 2019), <https://www.cnbc.com/2019/01/07/juul-highlights-smokers-switching-to-e-cigarettes-in-ad-campaign.html>.

Altria Defendants was false, misleading, and deceptive.

244. Statements by JUUL itself reveal that the campaign was based on a lie and that JUUL was not intended to be an effective method to quit smoking cigarettes. As a JUUL employee admitted when JUUL launched, “we’re not trying to design a cessation product at all . . . anything about health is not on our mind.”²³⁴

245. The FDA has publicly criticized the “Make the Switch” campaign and other efforts by Defendants to depict JUUL as a smoking cessation device. In late 2019, the FDA issued a letter to JUUL detailing its concern that “parts of the ‘Make the Switch’ campaign” may also falsely convey “that switching to JUUL is a safer alternative to cigarettes.”²³⁵

5. The Altria Defendants Marketed JUUL’s Products in Highly Visible Retail Locations

246. The Altria Defendants also provided JUUL with essential “fixture services.”²³⁶ As part of these services, the Altria Defendants relinquished certain of its previously acquired and prominent retail “shelf space” and “header space” to make way for JUUL’s products.

247. This ensured that JUUL’s products would be placed and maintained where youth are most likely to see them—on the so called “power wall”²³⁷ behind the cash register—and next to Marlboros, the most iconic, popular brand of cigarettes among underage users.

248. On these “power walls,” JUUL kits and pods were deliberately and prominently arranged with the intention of attracting attention through the use of a variety of materials, eye-catching illumination, and elegant color arrangements.

²³⁴ See *supra*, fn. 100.

²³⁵ See *infra*, fns. 298-299.

²³⁶ See *supra*, fn. 29 at 11.

²³⁷ See *infra*, fn. 240.

249. As the Defendants are aware, studies consistently find significant associations between exposure to point of sale (“POS”) tobacco advertising and promotions and product displays on the one hand, with smoking initiation, susceptibility to smoking, or intentions to smoke among youth on the other hand.²³⁸

250. Displays of packages in retail outlets, especially on “power walls,” have high visibility among youth and help to establish brand imagery and social norms at an early age.²³⁹

251. This is also true with regard to vaping. At least one study has determined that adolescents who view advertising for tobacco products on the tobacco “power wall” in convenience stores report being more willing to try vaping products in the future compared to peers who visited a store where the tobacco power wall was hidden.²⁴⁰

252. Studies have shown that the availability of POS promotions increases the likelihood that youth will move from experimentation to regular tobacco use.²⁴¹

253. It has also been determined that adolescents who frequently (i.e., more than twice a week) visit stores where cigarettes are widely advertised are more likely to start smoking than

²³⁸ Henriksen L., *et al.*, *Effects on youth of exposure to retail tobacco advertising*. *Journal of Applied Social Psychology*. 2002;32(9):1771-89; Mackintosh AM, *et al.*, *The association between point-of-sale displays and youth smoking susceptibility*. *Nicotine & tobacco research: official journal of the Society for Research on Nicotine and Tobacco*. 2012;14(5):616-20; Scheffels J., Lavik R., *Out of sight, out of mind? Removal of point-of-sale tobacco displays in Norway*. *Tob Control*. 2012. Epub 2012/06/09. doi: 10.1136/tobaccocontrol-2011-050341; Slater SJ, *et al.*, *The impact of retail cigarette marketing practices on youth smoking uptake*. *Archives of Pediatric and Adolescent Medicine*. 2007;161/5/440 [pii]10.1001/archpedi.161.5.440; McNeill A., Lewis S., *et al.*, *Evaluation of the removal of point-of-sale tobacco displays in Ireland*. *Tob Control*. 2011;20(2):137-43. doi: 10.1136/tc.2010.038141.

²³⁹ *The Tobacco Industry's Influences on the Use of Tobacco Among Youth* (2012), <https://www.ncbi.nlm.nih.gov/books/NBK99238/>.

²⁴⁰ Michael Stephen Dunbar, *et al.*, *Exposure to the Tobacco Power Wall Increases Adolescents' Willingness to Use E-cigarettes in the Future*, *Nicotine & Tobacco Research* (2018), doi: 10.1093/ntn/nty112.

²⁴¹ Slater SJ, *et al.*, *The impact of retail cigarette marketing practices on youth smoking uptake*. *Archives of Pediatric and Adolescent Medicine*, doi: 161/5/440 [pii]10.1001/archpedi.161.5.440.

adolescents who visit such stores less frequently.²⁴² The Altria Defendants were intimately familiar with all of this research.

254. Additionally, as part of their “fixture services” the Altria Defendants also offered in-store support for JUUL’s products, in order to maintain and ensure optimal point of sale and product placement. These services supplemented and helped enhance an already highly visible JUUL product.

255. To be sure, the Altria Defendants’ plan to display JUUL in the most highly visible locations was formulated long before the Defendants’ deal was finalized. In 2018, and in anticipation of a deal with JUUL, the Altria Defendants launched a major campaign, spending approximately \$100 million to secure additional shelf-space.²⁴³ The Altria Defendants’ payments for shelf space were under the guise that it would be used for its own e-cigarettes, and were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.”²⁴⁴

256. The Altria Defendants, however, had no intention of maintaining this shelf-space for their own products. The Altria Defendants had no need for two years of prominent shelf space, as sales of the original MarkTen were actively being scaled back, and there were no true plans for a wide launch of the MarkTen Elite.

257. Indeed, the short-lived 2018 launch of the MarkTen Elite put that product in only

²⁴² Paynter J., Edwards R., *et al.*, *Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: A cross-sectional study*. Tobacco Control. 2009 Aug;18(4):268-74; Henriksen L., *et al.*, *A longitudinal study of exposure to retail cigarette advertising and smoking initiation*. Pediatrics. 2010 July 19;103:7.

²⁴³ *See infra*, fn. 244.

²⁴⁴ Jennifer Maloney, *et al.*, *Altria-JLI Deal Is Stuck in Antitrust Review*, Wall St. J. (Jan. 17, 2020), <https://www.wsj.com/articles/altria-juul-deal-is-stuck-in-antitrust-review-11579257002>.

25,000 stores.²⁴⁵ In contrast, the 2014 launch of the original MarkTen saw the MarkTen reaching 60,000 stores in the first month in the western United States alone.²⁴⁶

258. The Altria Defendants' purchase of shelf space in 2018 and subsequent provision of that space to JUUL shows how the Defendants were coordinating even before Altria announced its investment in JUUL.

259. Since the deal was inked in December 2018, the Altria Defendants' actions have clearly helped JUUL maintain, if not expand, its market share—a market share that, based on Altria's own October 25, 2018 letter to the FDA, was gained by employing marketing and advertising practices that contributed to youth vaping.²⁴⁷ Altria's Second Quarter 2019 Earnings Call reported that JUUL continued to grow in the first half of 2019, from a 33% category share in 2018 to 48% by the second quarter 2019.²⁴⁸ At the time, JUUL's expected revenue for 2019 was \$3.4 billion, nearly triple what it was in 2018.²⁴⁹

6. The Altria Defendants Provided JUUL with Public Relations, Regulatory, and Lobbying Support

260. The Altria Defendants also brought public relations, regulatory, and lobbying muscle to the table. The Defendants knew these services would play an important role in staving off regulation, legal restrictions, and public criticism while they unlawfully and deceptively peddled JUUL's products to youth, including to Minnesota youth.

²⁴⁵ Sheila Kaplan, *Altria to Stop Selling Some E-Cigarette Brands That Appeal to Youths*, NYTIMES (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/health/altria-vaping-ecigarettes.html>.

²⁴⁶ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

²⁴⁷ See *supra*, fn. 29.

²⁴⁸ *Altria Group Inc. (MO) Q2 2019 Earnings Call Transcript*, <https://www.fool.com/earnings/call-transcripts/2019/07/30/altria-group-inc-mo-q2-2019-earnings-call-transcri.aspx>.

²⁴⁹ Olivia Zaleski, *et al.*, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, BLOOMBERG (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

261. Altria's December 2018 investment occurred amidst mounting federal, public relations, and regulatory scrutiny against JUUL, and other e-cigarette manufacturers. Only eight months prior, the FDA had sent an official request to JUUL for documents "to better understand the reportedly high rates of youth use and the particular youth appeal of these products."²⁵⁰

262. Then, in September 2018, FDA Commissioner Dr. Gottlieb issued its most forceful rebuke of JUUL, stating that it was "now on notice by the FDA of how [its] products are being used by youth at disturbing rates."²⁵¹ Commissioner Gottlieb further threatened to remove flavors from the market and to accelerate the PMTA submission deadline, which at that time was scheduled for August 2022.²⁵²

263. Given the increased scrutiny and threats to the most profitable segments of their business, Defendants recognized JUUL would need a more sophisticated approach to navigate the increasingly hostile landscape. Altria's acquisition brought its decades of experience, connections, and savvy to the table. The deal enabled Altria to deploy its government, regulatory, lobbying, public relations, and consulting services on behalf of JUUL.

264. But even before the deal, the Altria Defendants were using their public relations expertise to assist and coordinate with JUUL in a vast disinformation campaign. By April 2018, the Defendants were working with Mercury LLC ("Mercury"), a global public strategy firm with several notable tobacco industry clients.

²⁵⁰ *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes* (Apr. 23, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention>.

²⁵¹ *Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use* (Sept. 11, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-address-epidemic-youth-e-cigarette-use>.

²⁵² *Id.*

265. Stephen Aaron, one of Mercury’s managing directors, describes his role as “help[ing] clients nuance complex issues to deliver effective messages amid intense national debates to move the public in support of client agendas.”²⁵³

266. Mercury filed a lobbying registration on behalf of Defendant ALCS, effective April 1, 2018, identifying “tobacco product regulations” as the specific issue.²⁵⁴ Upon information and belief, the Defendants conspired with Mercury to engage in a disinformation campaign to push back against negative press coverage of youth usage of e-cigarettes, including JUUL’s products.

267. Using its vast regulatory experiences, the Altria Defendants also assisted in shielding the popular mint flavor from regulation—all because it knew that a deal with JUUL was imminent, and that mint flavors were popular amongst youth. JUUL also brought on board key regulatory and scientific personnel from Altria, including Joe Murillo, a 24-year career Altria executive, who became JUUL’s chief regulatory officer in October 2019.²⁵⁵

268. Through various letters, press releases, and communications to the FDA, investors, and the general public, including the State of Minnesota, Defendants engaged in a vast misinformation campaign to downplay the risk of the mint flavor.

269. For example, in an October 25, 2018 letter to the FDA—less than two months before it announced its minority acquisition of JUUL—Altria characterized mint as a tobacco product that was targeted to adult smokers.²⁵⁶ Altria also issued the misleading statement that

²⁵³ Stephen Aaron, Managing Director, Mercury LLC, <http://www.mercuryllc.com/experts/stephen-aaron>.

²⁵⁴ Kevin McCauley, *Altria Taps Mercury for Tobacco Regulation Work*, O’Dwyer’s (June 4, 2018), <https://www.odwyerpr.com/story/public/10754/2018-06-04/altria-taps-mercury-for-tobacco-regulation-work.html>.

²⁵⁵ Jennifer Maloney, *JLI Hires Another Top Altria Executive*, Wall St. J. (Oct. 1, 2019), <https://www.wsj.com/articles/juul-hires-another-top-altriaexecutive-11569971306>.

²⁵⁶ *See supra*, fn. 200.

mint was a “traditional tobacco flavor.”²⁵⁷

270. Defendants, however, knew through their own research and publicly available data that youth prefer mint flavor over tobacco flavors. The importance of Defendants’ lobbying efforts to keep mint available is underscored by JUUL’s then-CEO’s statement to his employees: “You need to have an IQ of 5 to know that when customers don’t find mango they buy mint.”²⁵⁸

271. The Altria Defendants’ statements and actions aided mint in remaining available to youth for many months, furthering the efforts to maintain and expand the number of nicotine-addicted e-cigarette users in order to ensure a steady and growing customer base. As former New York City Mayor Mike Bloomberg stated: “JUUL’s decision to keep mint- and menthol-flavored e-cigarettes on the shelves is a page right out of the tobacco playbook.”²⁵⁹

272. The scheme succeeded in saving mint JUUL pods, as well as each Defendant’s bottom line. In fact, the sale of mint JUUL pods rose from one third of JUUL’s sales in September 2018 to approximately two thirds in February 2019.²⁶⁰

273. The Altria Defendants also utilized their lobbying expertise to help preserve the valuable youth market—including the mint market—that it bought into with its \$12.8 billion investment. It is well known that the Altria Defendants “ha[ve] a potent lobbying network in

²⁵⁷ *Id.*

²⁵⁸ Sheila Kaplan, *et al.*, *Juul Knowingly Sold Tainted Nicotine Pods, Former Executive Say*, NYTIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/10/30/health/juul-pods-contaminated.html>.

²⁵⁹ Allison Aubrey, *Juul Suspends Sales of Flavored Vapes And Signs Settlement To Stop Marketing To Youth*, npr, <https://www.npr.org/sections/health-shots/2019/10/17/771098368/juul-suspends-sales-of-flavored-vapes-and-signs-settlement-to-stop-marketing-to->.

²⁶⁰ Angelica LaVito, *Former JUUL Executive Sues Over Retaliation, Claims Company Knowingly Sold Tainted Nicotine Pods*, <https://www.cnn.com/2019/10/30/former-juul-executive-sues-over-retaliation-claims-company-knowingly-sold-tainted-pods.html>.

Washington [D.C.] and around the country.”²⁶¹ Soon after Altria’s investment, the Altria Defendants put this network to work, engaging in lobbying efforts to ensure more people, including nonsmokers and youth, could gain access to and become addicted to JUUL and its flavored products.

274. According to the New York Times, Dr. Gottlieb criticized the lobbying activities, stating in a meeting with Altria and JUUL:

We have taken your meetings, returned your calls and I had personally met with you more times than I met with any other regulated company, and yet you still tried to go around us to the Hill and White House and undermine our public health efforts . . . I was trying to curb the illegal use by kids of your product and you are fighting me on it.²⁶²

275. And while an Altria spokesman has denied that Altria fulfilled any contractual lobbying services for JUUL, he admitted that he did not know what informal advice and conversations Altria has had with JUUL about lobbying efforts. As Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and JLI begins.”²⁶³

276. Since the Defendants joined forces, JUUL’s spending on lobbying has risen significantly. JUUL spent \$4.28 million on lobbying in 2019, compared to \$1.64 million in 2018.²⁶⁴ JUUL’s latest star hire is Martha Coakley, the former attorney general of Massachusetts.²⁶⁵

²⁶¹ Shelia Kaplan, *In Washington, JLI Vows to Curb Youth Vaping. Its Lobbying in States Runs Counter to That Pledge.*, NYTIMES (Apr. 28, 2019), <https://www.nytimes.com/2019/04/28/health/juul-lobbying-states-ecigarettes.html>.

²⁶² Julie Creswell, *et al.*, *How Juul Hooked a Generation on Nicotine*, NYTIMES (Nov. 24, 2019), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

²⁶³ *See supra*, fn. 261.

²⁶⁴ Client Profile: JUUL Labs, Center for Responsive Politics, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000070920>.

²⁶⁵ *See supra*, fn. 261.

277. In January 2020, Altria revised its services agreement with JUUL, and will no longer provide marketing and retail distribution for JUUL as the companies had originally agreed. The damage, however, has been done.

278. Before making its investment, Altria knew that JUUL's meteoric growth came from young, nonsmoking customers. The Altria Defendants' decision to prioritize profits over youth safety and to provide JUUL with key services including distribution, sales, promotion, marketing, regulatory, lobbying, and public relations services, has dramatically extended JUUL's market reach to youth, including within Minnesota. Together, Defendants have hooked an entire new generation on nicotine.

H. Defendants' Pervasive Actions, Statements, and Omissions Violated Minnesota Law

279. As discussed herein, Defendants flouted their duties under Minnesota law. They engaged in a vast, targeted, and effective marketing campaign to sell highly addictive and harmful products to Minnesota youth.

280. Defendants also failed to disclose material facts, which if disclosed, could have helped avert the current Minnesota vaping epidemic. Special circumstances existed that triggered Defendants' duty to disclose material facts to the Minnesota consumers to whom it marketed and sold e-cigarette products. As described above and throughout this Complaint, Defendants 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's products have a significant likelihood of later using traditional cigarettes;
- m. shipments of JUUL's products had been contaminated and sold to consumers; and
- n. JUUL's products may be altered or modified, which can potentially cause further harm.

281. Moreover, the nature of the representations that Defendants made to Minnesota consumers to whom it marketed, advertised, and/or sold JUUL's products were not sufficient to prevent its representations from being deceptive and misleading. Among other things, Defendants stated, or caused statements to be disseminated 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.

282. Additionally, Altria Defendants, acting individually and in concert, knowingly provided encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful and tortious acts, misrepresentations, deceptions, frauds, and omissions. At all times, the Altria Defendants and JUUL were aware that these wrongful and tortious acts were in fact unlawful and tortious.

I. Defendants' Marketing Plan Worked in Minnesota

283. There is overwhelming evidence that Defendants' multi-faceted and deceptive marketing scheme to induce youth to get hooked on JUUL's products worked. Aside from the dramatic increase in youth nicotine use that coincided with JUUL's marketing efforts—and the Altria Defendants' substantial assistance—the Minnesota Department of Health has specifically determined that increased vaping rates among children is a direct result of e-cigarette marketing.

284. 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.”²⁶⁶ 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.”²⁶⁷

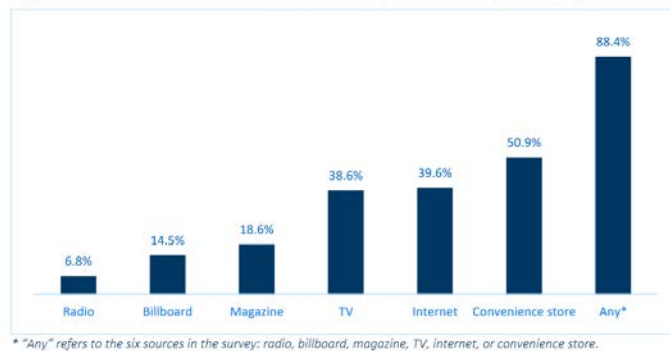
285. The underlying data is shocking. In 2017, nearly *nine out of ten* students in Minnesota encountered promotions or advertising for e-cigarettes in the past 30 days.²⁶⁸

²⁶⁶ Minn. Department of Health, *Which Minnesota Teens Try Vaping?* (Nov. 2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/0102whichteensvape.pdf>.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

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



286. 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 exposed to e-cigarette advertising when they were online or in stores.²⁶⁹



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

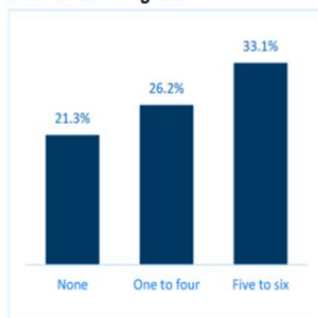
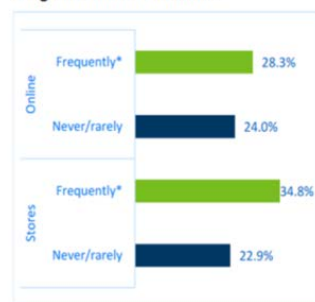


Figure 5. Percent of students that tried e-cigarettes, by how often encountered e-cig ads online or in stores



* Sometimes, most of the time, or always

287. 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.²⁷⁰

²⁶⁹ *Id.*

²⁷⁰ 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*

288. Studies have also determined, similar to the Health Department's conclusions, that exposure to e-cigarette advertising increased the probability of use among students.²⁷¹ The ability of students to recall e-cigarette advertising is associated with both susceptibility and actual use.²⁷² And, exposure to digital e-cigarette advertising was associated with lower perceived harm.²⁷³

289. And, as discussed above, youth exposure to pack designs,²⁷⁴ coupons and promotions,²⁷⁵ and POS advertising (including on "power walls")²⁷⁶ all have significant associations to youth initiation of tobacco products, including vaping products.

J. Defendants Have Caused a Public Health Epidemic

290. The consequences of Defendants' 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.²⁷⁷ At least one in five Minnesota high school students now use e-cigarettes.²⁷⁸

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.

²⁷¹ Mantey, *et al.*, *E-Cigarette Marketing Exposure is Associated with E-Cigarette Use Among US Youth.*, J Adolesc Health. 2016;58:686-90.

²⁷² Nicksic, *et al.*, *Recall of E-cigarette Advertisements and Adolescent E-cigarette Use.* Tob Regul Sci. 2017; 3:210- 221.

²⁷³ 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.

²⁷⁴ *See supra*, fns. 227-228.

²⁷⁵ *See supra*, fns. 230-231.

²⁷⁶ *See supra*, fns. 238-242.

²⁷⁷ *See supra*, fn. 4.

²⁷⁸ *Id.*



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

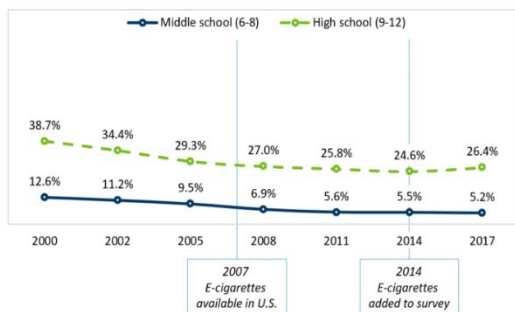
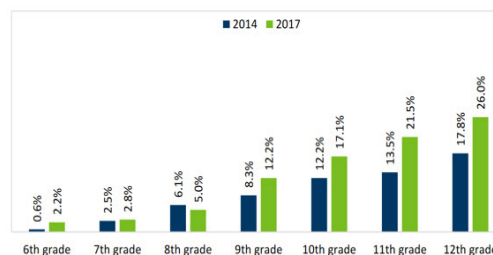


Figure 4. Percent of students who used e-cigarettes in the past 30 days, by grade, 2014-2017.



291. Using the 2017 survey's statistics, this means that 55,097 out of the 286,967²⁷⁹ Minnesota high school students in the State have vaped in the past 30 days.

292. 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:

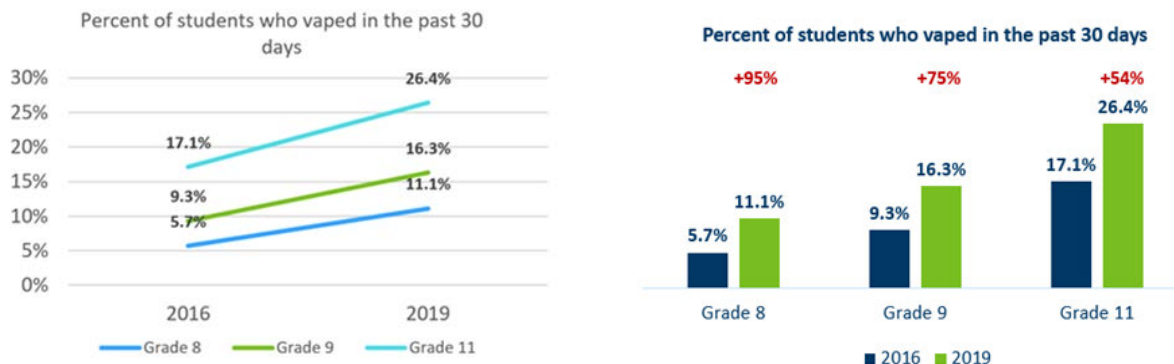
The survey instrument was developed before JUUL became popular and does not mention JUUL or juuling. Students may not have included JUUL when answering questions about e-cigarettes. As a result, the 2017 MYTS may underestimate e-cigarette use among Minnesota teens.²⁸⁰

293. 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

²⁷⁹ Minn. Department of Education, *Minnesota Education Statistics Summary* (Oct. 2019), <https://w20.education.state.mn.us/MDEAnalytics/Summary.jsp>.

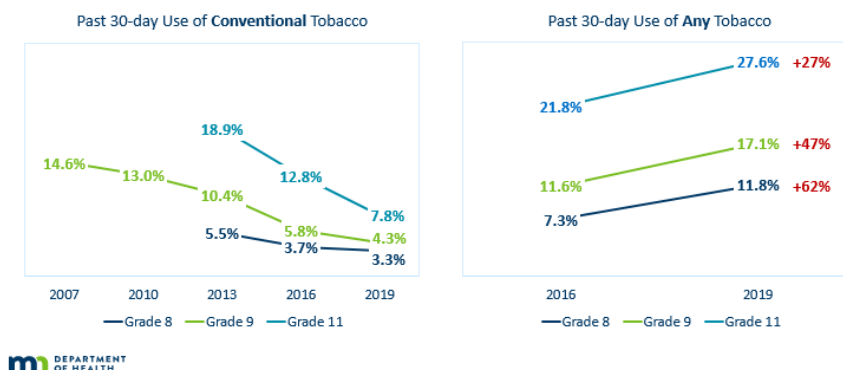
²⁸⁰ Minn. Department of Health, *Teen Vaping Initiation in Minnesota* (Oct. 2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/0101vapinginitiation.pdf>.

eleventh graders and *has nearly doubled among eighth graders since 2016.*²⁸¹



294. Moreover, the study revealed that three out of four eleventh graders do not perceive e-cigarettes as dangerous.²⁸²

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



296. 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.²⁸³ E-cigarette use among this age group has nearly doubled from 2014 (12.8%) to 2018 (21.9%) and now exceeds cigarette use.

²⁸¹ See *supra*, fn. 6.

²⁸² *Id.*

²⁸³ See *supra*, fn. 8.

297. 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).

298. 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.²⁸⁴

299. As discussed above, nicotine “can negatively impact learning, memory, and attention” for younger users.²⁸⁵ 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.²⁸⁶

300. 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 development, and early priming for addiction.”²⁸⁷ 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

²⁸⁴ 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).

²⁸⁵ *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>.

²⁸⁶ *See supra*, fn. 11.

²⁸⁷ *Id.*

attention.”²⁸⁸

301. Minnesota youth are also being increasingly treated for various conditions related to their use of e-cigarettes.²⁸⁹ 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.”²⁹⁰

302. 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.

303. 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.²⁹¹

304. 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.

305. 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

²⁸⁸ See *supra*, fn. 3.

²⁸⁹ 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/>.

²⁹⁰ 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>.

²⁹¹ See *supra*, fn. 11.

“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.”²⁹²

306. 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.²⁹³

307. 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.²⁹⁴ These statistics are both staggering and scary, and prompted then FDA commissioner Dr. Scott Gottlieb to state that “[t]hese data shock my conscience.”²⁹⁵

308. 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

²⁹² See *supra*, fn. 2.

²⁹³ See *supra*, fn. 285.

²⁹⁴ 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>.

²⁹⁵ 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-proposed-new-steps-protect-youth-preventing-access>.

great concern. We must take action now to protect the health of our nation’s young people.”²⁹⁶

309. 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.”²⁹⁷

310. 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.²⁹⁸

311. That same day, the FDA also sent a letter to the company expressing concern, and 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.²⁹⁹

²⁹⁶ 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.

²⁹⁷ See *supra*, Coldeway, fn. 31.

²⁹⁸ *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>.

²⁹⁹ *FDA Letter to JUUL Lab, Inc.* (Sept. 9, 2019), <https://www.fda.gov/media/130859/download>.

312. 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.³⁰⁰ 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.³⁰¹ Meanwhile, New York, Washington, Rhode Island, Massachusetts, and Michigan have imposed bans on sales of flavored e-liquids.³⁰²

K. JUUL's "Action Plan" Is Insufficient

313. 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.³⁰³

314. JUUL's new policy entails the use of only adult models who are former smokers who have successfully switched to JUUL.³⁰⁴ 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.

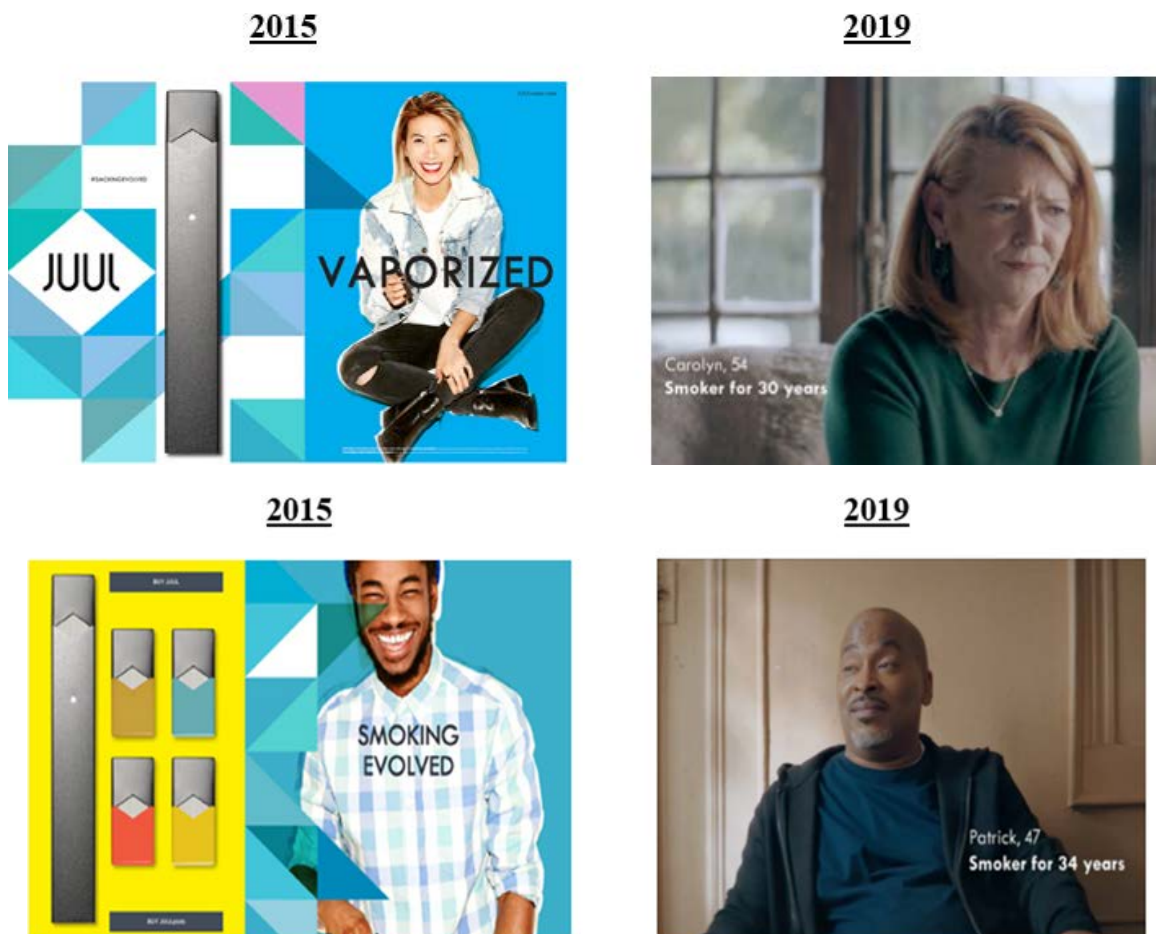
³⁰⁰ See *supra*, fn. 31.

³⁰¹ Angelica Lavito, *Lawmakers urge FDA to immediately pull Juul, other e-cigarettes from the market*, CNBC (Sept. 20, 2019), <https://www.cnn.com/2019/09/20/lawmakers-urge-fda-to-pull-juul-other-e-cigarettes-from-the-market.html>.

³⁰² 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/>.

³⁰³ 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>.

³⁰⁴ 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>.



315. 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.

316. 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.

317. Ultimately, JUUL could still reverse these policies at any day, and at any time. Further, 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.

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

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

320. And, while, as discussed above, Altria and its subsidiaries have voluntarily discontinued many of the services they initially provided JUUL, the damage is already done, and further, there is nothing is stopping them from reinitiating many of these services.

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

CLAIMS FOR RELIEF

COUNT I: CONSUMER FRAUD (All Defendants)

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

323. 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.

324. 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.

325. Defendants are “person[s]” within the meaning of this statute. *See* Minn. Stat.

§ 325F.68, subd. 3.

326. Defendants 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 JUUL’s 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 JUUL’s 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 JUUL’s products is equivalent to the nicotine content in one pack of cigarettes;
- g. misrepresenting the absorbed nicotine level for the use of JUUL’s products; and
- h. selling JUUL’s products online to underage Minnesotans in violation of Minnesota law.

327. Defendants also repeatedly violated Minnesota Statutes, section 325F.69, subd. 1, by omitting material information in the course of marketing and selling JUUL’s 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 JUUL’s 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 they were aware that youth were a primary consumer of JUUL's products;
 - j. failing to sufficiently disclose that they were aware that children were purchasing JUUL's 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's products have a significant likelihood of later using traditional cigarettes;
 - n. failing to sufficiently disclose that shipments of JUUL's products had been contaminated and sold to consumers; and
 - o. failing to sufficiently disclose that JUUL's products may be altered or modified, which can potentially cause further harm.
328. Additionally, Altria Defendants, acting individually and in concert, knowingly

lent encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, the Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

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

330. 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 Defendants, directly or indirectly, for goods and services that they otherwise would not have purchased thereby causing them harm. Defendants have created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

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

332. Defendants' 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
(All Defendants)

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

334. 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.

335. Defendants are “person[s]” within the meaning of this statute. *See* Minn. Stat. § 645.44, subd. 7.

336. In the course of its business, vocation, or occupation, Defendants have repeatedly violated Minnesota Statutes, section 325D.44, subd. 1, by engaging in the deceptive trade practices described in this Complaint. Defendants’ 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.

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

338. Defendants represented that JUUL’s products had sponsorships, approvals, characteristics, ingredients, uses, benefits, and quantities that they did not have by, among other things, stating, without evidence, that JUUL’s products were effective at helping users quit cigarettes and that JUUL’s products were a safe alternative to cigarettes; representing that JUUL’s products were appropriate for youth; representing that a pod had the equivalent nicotine

content to one pack of cigarettes and that JUUL's 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 JUUL's products had been contaminated and that JUUL's products could be altered or modified.

339. Defendants represented that JUUL's products were of a certain standard, quality, or grade, when they were not by, among other things, stating, without evidence, that JUUL's products were effective at helping users quit cigarettes and that JUUL's products were a safe alternative to cigarettes; stating that a pod had the equivalent nicotine content to one pack of cigarettes; stating that JUUL's 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 JUUL's products had been contaminated and that JUUL's products could be altered or modified.

340. Defendants advertised goods or services with intent not to sell them as advertised by, among other things, advertising JUUL's 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 JUUL's 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 JUUL's 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 JUUL's products had been contaminated and that JUUL's products could be altered or modified.

341. Defendants further engaged in conduct that created a likelihood of confusion or misunderstanding about JUUL's 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. Defendants 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.

342. Defendants also repeatedly violated Minnesota Statutes, section 325D.44, subd. 1, by among other things, omitting material information in the course of marketing and selling JUUL's e-cigarette products that caused a likelihood of confusion or misunderstanding by failing to sufficiently disclose that JUUL's products were addictive; failing to sufficiently disclose that JUUL's products were more addictive than cigarettes or other e-cigarettes; failing to sufficiently disclose the true nicotine quantity of JUUL's products; failing to sufficiently disclose that JUUL's products were absorbed faster into the bloodstream than cigarettes and other e-cigarettes; failing to sufficiently disclose that JUUL's products were designed to be used by inexperienced users; failing to sufficiently disclose the lack of available evidence that JUUL's products were a safe alternative to cigarettes; failing to sufficiently disclose the lack of available evidence on the effectiveness of JUUL's products as tools to quit smoking; failing to sufficiently disclose that youth were a primary consumer of JUUL's products; failing to sufficiently disclose that JUUL 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 JUUL's products; failing to sufficiently disclose that some of JUUL's products had been contaminated; and failing to sufficiently disclose that JUUL's products could be altered or modified.

343. Additionally, Altria Defendants, acting individually and in concert, knowingly provided encouragement, substantial assistance, and otherwise aided and abetted, ratified,

commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, the Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

344. Defendants' deceptive trade practices have unlawfully caused a vaping epidemic in the State. Because of the nature of Defendants' 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.

345. Given the nature and quality of the representations Defendants made, the actual and special knowledge they had, and the other circumstances described in this Complaint, Defendants had a duty to sufficiently disclose all material facts to potential consumers in connection with their marketing and sale of JUUL's e-cigarette products to Minnesotans. Defendants' failure to disclose this material information constitutes additional deceptive trade practices in violation of Minnesota Statutes, section 325D.44, subd. 1.

346. 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 Defendants, directly or indirectly, for goods and services that they otherwise would not have purchased thereby causing them harm. Defendants have created a public health epidemic and a public nuisance in Minnesota, all while enriching themselves.

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

348. 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
(All Defendants)

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

350. 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.

351. Defendants are “person[s]” for purposes of this statute. *See* Minn. Stat. § 325D.10 (a).

352. JUUL’s e-cigarette products are “merchandise” for the purposes of this statute.

353. As alleged herein, Defendants have repeatedly violated Minnesota Statutes, section 325D.13 by knowingly misrepresenting, directly and/or indirectly, the true quality and ingredients of JUUL’s e-cigarette products. Among other things, Defendants misrepresented the nicotine content and potency of JUUL’s products as described in this Complaint, including by knowingly misrepresenting that JUUL’s pods had the nicotine content equivalent to one pack of cigarettes and knowingly misrepresenting that JUUL’s products were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength.

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

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

356. Defendants also repeatedly violated Minnesota Statutes, section 325D.13 in connection with the sale of JUUL's products by omitting material information such that they knowingly misrepresented, directly and/or indirectly, the true quality of JUUL's 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 JUUL's e-cigarette products; failing to sufficiently disclose that JUUL's 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. Defendants also failed to sufficiently disclose that some of JUUL's products had been contaminated and that JUUL's products could be altered or modified.

357. Additionally, Altria Defendants, acting individually and in concert, knowingly provided encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, all Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

358. Given the nature and quality of the representations Defendants made, the actual and special knowledge they had, and the other circumstances described in this Complaint, Defendants had a duty to sufficiently disclose all material facts to potential customers in connection with their marketing and sale of JUUL's e-cigarette products to Minnesotans. Defendants' failure to disclose this material information constitutes additional misrepresentations in violation of Minnesota Statutes, section 325D.13.

359. 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 Defendants, directly or indirectly, for goods and services that they otherwise would not have purchased thereby causing them harm. Defendants have created a public health epidemic and a public nuisance in Minnesota, all while enriching itself.

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

361. 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
(All Defendants)**

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

363. 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.

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

365. Defendants are "person[s]" and "corporation[s]" within the meaning of this statute.

366. As alleged herein, Defendants have 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.

367. Among other things, within advertisements throughout this State, Defendants, through their targeted marketing, misled and deceived children and young adults into thinking JUUL's 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.

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

369. Defendants 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 JUUL's 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 JUUL's 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.

370. Additionally, Altria Defendants, acting individually and in concert, knowingly provided encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, all Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

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

372. 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 Defendants, directly or indirectly, for goods and services that they otherwise would not have purchased thereby causing them harm. Defendants have created a public health

epidemic and a public nuisance in Minnesota, all while enriching themselves.

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

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

COUNT V: PUBLIC NUISANCE
(All Defendants)

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

376. 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.

377. 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.

378. Through the deceptive and unlawful conduct described throughout this Complaint, each Defendant 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.

379. As more fully alleged in the preceding Paragraphs of this Complaint, Defendants' intentional, calculated, and deliberately deceptive marketing strategy to deceive consumers about the nicotine in JUUL's 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.

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

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

382. Additionally, Altria Defendants, acting individually and in concert, knowingly lent encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, all Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

383. Defendants' conduct was, at the very least, a substantial factor in the youth vaping

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

384. Defendants' 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.

385. As a direct result of the public nuisance Defendants have 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 Defendants' 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.

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

387. Defendants' conduct in maintaining or permitting a public nuisance has openly, publicly, repeatedly, continuously, persistently, and intentionally violated Minnesota law, as described throughout this Complaint. Defendants' conduct cannot be adequately addressed or remedied by resort to criminal enforcement of any criminal statute. Defendants' widespread interference with the public health, safety, and welfare necessitates the State to seek injunctive

and all other appropriate equitable relief against Defendants in order to abate this public nuisance and remedy the resultant harm that has already occurred and will continue to occur.

388. 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, Defendants have 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
(All Defendants)**

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

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

391. Defendants owed a duty of reasonable care to ensure that JUUL’s products were not attractive to youth.

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

393. Defendants also breached their duties by engaging in a marketing campaign

which was inherently appealing to youth.

394. 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.

395. As articulated above, Defendants flouted their duties to not sell, or cause to be sold, JUUL’s tobacco and electronic nicotine delivery devices to children in the State of Minnesota.

396. Defendants’ breach of Minnesota Statutes, section 609.685, subd. 1a, is conclusive evidence of duty and breach.

397. Additionally, Altria Defendants, acting individually and in concert, knowingly lent encouragement, substantial assistance, and otherwise aided and abetted, ratified, commanded, and advised each other and JUUL with respect to these wrongful, fraudulent, tortious acts, deceptions, frauds, and omissions. At all times, all Altria Defendants were aware that these wrongful and tortious acts were in fact unlawful and tortious.

398. Minnesota children, which were harmed by Defendants’ 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.

399. Therefore, Defendants’ breach of Minnesota Statutes, section 609.685, subd. 1a, constitutes negligence per se for which Defendants are liable.

400. 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
(All Defendants)

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

402. As an expected and intended result of its conscious wrongdoing as set forth in this Complaint, Defendants have 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.

403. 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 Defendants' businesses.

404. Additionally, Minnesotans, including children and young adults, have made payments to Defendants, indirectly or directly, 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.

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

406. Because of their deceptive and unlawful actions, Defendants obtained enrichment that they would not otherwise have obtained. Because of the conduct, practices, actions, and material omissions described in this Complaint, Defendants obtained enrichment they would not otherwise have obtained. The enrichment was without justification and the State lacks an

adequate remedy provided by law.

COUNT VIII: CIVIL CONSPIRACY
(All Defendants)

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

408. Beginning at least as early as 2017, and continuing until the present day, Defendants entered into a conspiracy with the tortious, intentional, and unlawful purpose and effect of wrongfully increasing the number of users of JUUL's products, including youth users in Minnesota.

409. Defendants furthered their conspiracy by knowingly, intentionally, unlawfully, and tortiously agreeing and working to state or disseminate statements that JUUL's products are a safe alternative to cigarettes; that JUUL is effective in helping users quit cigarettes; that JUUL's pods were a certain strength when the standard industry practice for nicotine measurement at that time would have achieved a much higher strength; that the nicotine content in JUUL's products are equivalent to the nicotine content in one pack of cigarettes; and that the absorbed nicotine level for the use of JUUL's products was lower than it actually was.

410. Defendants also furthered their conspiracy through the knowing, intentional, unlawful, and tortious acts of agreeing and working to mislead and deceive children and young adults into believing JUUL's 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 JUUL's products would relax them, that they were "safe," and that they were non-addictive; engaging in a deceptive and misleading advertising campaign which was directed primarily to youth, most of whom had never smoked cigarettes before; and by selling JUUL's products to underage Minnesotans in violation of Minnesota law.

411. Defendants also furthered their conspiracy by knowingly, intentionally, unlawfully, and tortiously agreeing and working to omit or fail to sufficiently disclose the following material information: JUUL's products contain nicotine; JUUL's nicotine salt formulation delivers extremely potent doses of nicotine; JUUL's products contain a higher nicotine content than cigarettes and other e-cigarettes; JUUL's products enable users to become addicted to nicotine quicker than with cigarettes and other e-cigarettes; 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; JUUL's chemical formula is absorbed more efficiently and rapidly into the bloodstream than cigarettes and other e-cigarettes; the harmful chemicals contained in JUUL's products; the adverse health effects of using JUUL's products; Defendants were aware that youth were a primary consumer of JUUL's products; Defendants were aware that children were purchasing JUUL's products through JUUL's website; JUUL was not compliant with Minnesota law with respect to its online sales of its e-cigarette products to underage Minnesotans; the lack of evidence supporting JUUL as an effective method to quit smoking cigarettes; non-smokers who use JUUL's products have a significant likelihood of later using traditional cigarettes; shipments of JUUL's products had been contaminated and sold to consumers; JUUL's products may be altered or modified, which can potentially cause further harm.

412. Altria Defendants also furthered their conspiracy by intentionally, unlawfully, and tortiously agreeing and working to deceive Minnesota parents, teachers, school administrators, legislators, and regulators into believing that Altria Defendants were going to assist JUUL with youth prevention measures; that Altria Defendants had discontinued its own pod-based and flavored products out of a concern for youth use; that Altria Defendants' distribution, marketing,

sales, and promotional services conducted in Minnesota would not affect JUUL use by youth; that availability of the mint flavor did not affect youth use of JUUL's products; and that JUUL's products were being marketed to experienced smokers, when in fact, the products were marketed primarily to youth.

413. Defendants provided encouragement, substantial assistance, and otherwise aided and abetted each other with respect to all of these wrongful acts.

414. As a direct and proximate result of Defendants' unlawful conspiracy, Plaintiff has suffered and will continue to suffer substantial injuries and damages.

415. As a result of Defendants' conspiracy, Defendants are vicariously and jointly and severally liable with respect to each cause of action described above in Counts one through seven above.

RELIEF

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

1. Declaring that Defendants' conduct described in this Complaint constitutes a public nuisance, and permanently enjoining Defendants from continuing in the acts, practices, and conduct that created the nuisance;
2. Declaring that Defendants' acts described in this Complaint constitutes multiple, separate violations of Minnesota Statutes, sections 325D.13, 325D.44, 325F.67, and 325F.69;
3. Enjoining Defendants and their 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 Defendants to disclose, disseminate, and publish all research previously

conducted directly or indirectly by themselves and its respective agents, affiliates, servants, officers, directors, employees, and all persons acting in concert with them, that relates to the issue of vaping and health;

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

6. Ordering Defendants to fund clinical vaping cessation programs in the State of Minnesota, including programs appropriate for minors;

7. Ordering Defendants to take reasonable, necessary, and adequate affirmative steps to prevent the distribution and sale of JUUL's e-cigarette products to children under the age of 18;

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

9. Awarding judgment against Defendants 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 Defendants' unlawful conduct;

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

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

12. Ordering Defendants to disgorge all payments received as a result of its unlawful

conduct;

13. Awarding judgment against Defendants 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 10, 2020

THE STATE OF MINNESOTA

Keith Ellison
Attorney General
State of Minnesota

James W. Canaday (030234x)
Deputy Attorney General

By: /s/ Michael P. Goodwin
Michael P. Goodwin (0390244)
Assistant Attorney General

Jason Pleggenkuhle (0391772)
Megan J. McKenzie (0388081)
Assistant Attorneys General

445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2130
Telephone: (651) 757-1456
Fax: (651) 296-7438

michael.goodwin@ag.state.mn.us

ROBINS KAPLAN LLP

Tara D. Sutton (023199x)
Gary L. Wilson (0179012)
Munir R. Meghjee (0301437)
Holly H. Dolejsi (0390110)
Eric M. Lindenfeld (0398003)
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 349-8500
Fax: (612) 339-4181
TSutton@RobinsKaplan.com
GWilson@RobinsKaplan.com
MMeghjee@RobinsKaplan.com
HDolejsi@RobinsKaplan.com
ELindenfeld@RobinsKaplan.com

ZIMMERMAN REED LLP

Carolyn G. Anderson (275712)
June P. Hoidal (033330x)
David M. Cialkowski (0306526)
Charles R. Toomajian (0397879)
Alia M. Abdi (0399527)
Kimberly B. McNulty (0399110)
Rebecca A. Ireland (0393076)
1100 IDS Center, 80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 341-0400
Fax: (612) 341-0844
Carolyn.Anderson@zimmreed.com
June.Hoidal@zimmreed.com
David.Cialkowski@zimmreed.com
Charles.Toomajian@zimmreed.com
Alia.Abdi@zimmreed.com
Kimberly.McNulty@zimmreed.com
Rebecca.Ireland@zimmreed.com

ATTORNEYS FOR THE STATE OF
MINNESOTA

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 10, 2020.

/s/ Michael P. Goodwin
MICHAEL P. GOODWIN