

1 Geoffrey D. Strommer, *pro hac vice pending (Lead Counsel)*

Cari L. Baermann, *pro hac vice pending*

2 Hobbs, Straus, Dean & Walker, LLP

215 SW Washington St., Suite 200

3 Portland, OR 97204

4 [gstrommer@hobbsstraus.com](mailto:gstrommer@hobbsstraus.com)

[cbaermann@hobbsstraus.com](mailto:cbaermann@hobbsstraus.com)

5 Phone: (503) 242-1745

Fax: (503) 242-1072

6 Jerry C. Straus, *pro hac vice pending*

7 Lisa M. Meissner, *pro hac vice pending*

Riley F. Plumer, *pro hac vice pending*

8 Hobbs, Straus, Dean, & Walker, LLP

1899 L Street NW, Suite 1200

9 Washington, DC 20036

10 [jstraus@hobbsstraus.com](mailto:jstraus@hobbsstraus.com)

[lmeissner@hobbsstraus.com](mailto:lmeissner@hobbsstraus.com)

11 [rplumer@hobbsstraus.com](mailto:rplumer@hobbsstraus.com)

Phone: (202) 822-8282

12 Fax: (202) 296-8834

13 T. Roe Frazer II, *pro hac vice*

FRAZER PLC

14 30 Burton Hills Blvd., Suite 450

Nashville, TN 37215

15 [roe@frazer.law](mailto:roe@frazer.law)

Phone: (615) 647-6464

16 Fax: (866) 314-2466

17 J. Nixon Daniel, III, *pro hac vice*

18 W. Lee Elebash, *pro hac vice*

Beggs & Lane, RLLP

19 501 Commendencia Street

Pensacola, FL 32502

20 [JND@beggslane.com](mailto:JND@beggslane.com)

[wle@beggslane.com](mailto:wle@beggslane.com)

21 Phone: (850) 469-3306

22 Fax: (850) 469-3331

23 *Attorneys for Saint Regis Mohawk Tribe*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SAINT REGIS MOHAWK TRIBE,

Plaintiff,

vs.

JUUL LABS, INC.; ALTRIA GROUP,  
INC.; ALTRIA CLIENT SERVICES LLC;  
ALTRIA GROUP DISTRIBUTION  
COMPANY; NU MARK LLC; PHILIP  
MORRIS USA, INC.; AND JOHN DOES 1-  
100, INCLUSIVE,

Defendants.

MDL Member Case No. \_\_\_\_\_

MDL Case No. 3:19-02913-WHO

Filed Pursuant to Direct Filing Order

Honorable William H. Orrick

COMPLAINT

DEMAND FOR JURY TRIAL

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## I. INTRODUCTION

1. Plaintiff Saint Regis Mohawk Tribe (“Tribe”), a federally recognized sovereign Indian tribe located within the State of New York, brings this action for the wrongful actions and conduct in the marketing and sale of e-cigarettes to American Indian minors by and against Defendants JUUL Labs, Inc. (JUUL); Altria Group, Inc.; Altria Client Services LLC; Altria Group Distribution Company (collectively “Altria Defendants”); Nu Mark LLC; Philip Morris USA, Inc.; and John Does 1-100.

2. Defendants have knowingly or negligently marketed and promoted JUUL products and have knowingly or negligently manufactured and distributed JUUL products within the Tribe and geographic areas controlled and occupied by the Tribe and its members in a manner that foreseeably injured, and continues to gravely injure, the Tribe and its members by creating an “epidemic” (the “JUUL epidemic”) involving severe medical problems primarily caused by the use of JUUL products.

3. The social and economic costs of the JUUL epidemic brought upon by Defendants are logically and predictably shouldered by governments. This includes the Tribe’s Tribal government, which is responsible for the protection of public health and safety within the Tribe’s jurisdiction, for providing essential services to its members, and for generating governmental revenues through economic development. The ability of the Tribe’s Tribal government, to carry out these essential functions has been, and continues to be, profoundly threatened by the JUUL epidemic that Defendants’ actions have created.

4. While the damage it has caused is widespread, the JUUL epidemic disproportionately impacts American Indian communities and young members of Indian tribes across the United States. The Centers for Disease Control and Prevention (CDC) reported that

1 smoking rates among American Indian and Alaska Natives are the highest in the country  
2 compared to all other racial and ethnic groups.<sup>1</sup> The CDC has also reported that more than 20%  
3 of American Indian and Alaska Native middle and high school students have used tobacco  
4 products, with e-cigarettes the most commonly used product among this group.<sup>2</sup> The effects of  
5 the crisis created by Defendants is exacerbated by numerous factors that are specific to  
6 American Indian communities such as the effect of historical trauma, high rates of poverty,  
7 deficient health care services and lack of adequate housing, all of which make tribal  
8 communities particularly susceptible to health and social problems.<sup>3</sup>

9  
10 5. JUUL has also specifically and deceptively targeted and exploited American  
11 Indian communities with its highly addictive and damaging products. It has sought to  
12 implement “switching programs” and sales partnerships with numerous tribes by directly  
13 seeking to take advantage of a vulnerable American Indian population with its deceptive and  
14 misleading sales and marketing practices.<sup>4</sup>

15 6. Defendants, through their actions, have fueled the JUUL epidemic for their own  
16 financial gain, causing Indian tribes across the United States, and the geographic area  
17 surrounding the Tribe in particular, to be flooded with JUUL products, and creating an  
18 environment where these products and their abuse are rampant. Such diversion and abuse were  
19 entirely foreseeable results of Defendants’ actions in intentionally creating a market for  
20

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21 <sup>1</sup> *American Indians/Alaska Natives and Tobacco Use*, Ctrs. For Disease Control & Prevention  
22 <https://www.cdc.gov/tobacco/disparities/american-indians/index.htm> (last visited June 14, 2020).

23 <sup>2</sup> Satomi Odani et al., *Racial/Ethnic Disparities in Tobacco Product Use Among Middle and*  
24 *High School Students – United States, 2014-2017*, MMWR Morb Mortal Wkly Rep. (Aug. 31,  
2018), [https://www.cdc.gov/mmwr/volumes/67/wr/mm6734a3.htm?s\\_cid=mm6734a3\\_w](https://www.cdc.gov/mmwr/volumes/67/wr/mm6734a3.htm?s_cid=mm6734a3_w).

25 <sup>3</sup> Jamie Ducharme, *‘It’s Insidious’: How Juul Pitched E-Cigs to Native American Tribes*, Time  
(Feb. 6, 2020, 11:38 AM), <https://time.com/5778534/juul-native-american-tribes/>.

26 <sup>4</sup> *Id.*

1 dangerously addictive JUUL products through, in part, concealing the risks of addiction and  
2 shipping massive quantities of such products throughout the United States without taking  
3 reasonable and necessary steps to prevent diversion and misuse. All of the Defendants in this  
4 action thus share responsibility for creating and perpetuating the JUUL epidemic.

5         7. Defendants have caused foreseeable damages to the Tribe, including the costs of  
6 providing: (1) health care services and treatment for young members of the Tribe; (2)  
7 prevention and early intervention programs designed to curb the use of JUUL products among  
8 its youth and underage members; and (3) law enforcement and public safety relating to the use  
9 of JUUL products within the Tribe. The Tribe has also suffered substantial damages due to the  
10 lost productivity of tribal members, increased administrative costs, lost opportunities for tribal  
11 community growth and self-determination, and relating to its ability to govern itself, its  
12 members, and territory as a direct result of Defendants' acts and omissions. These damages  
13 have been suffered and continue to be suffered directly by the Tribe.

14         8. The Tribe brings this action in its proprietary capacity and under its *parens*  
15 *patriae* authority in the public to protect the health, safety, and welfare of the members of the  
16 Tribe and the nonmember inhabitants of its lands. The Tribe is not asserting claims that belong  
17 to individual members of the Tribe, nor seeking to recover on behalf of individual members  
18 based on individual personal harm. Instead, the Tribe is seeking damages for harm caused to  
19 the Tribe as a tribal entity with sovereign status, including recovery of the funds that the Tribe  
20 has already expended and must expend in the future to address the conduct described in this  
21 Complaint that would otherwise be available to provide for the health and welfare of its  
22 members.  
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1           9.       The Tribe seeks injunctive relief, abatement, and damages arising out of the  
2 injuries to its members, property, and employees caused by Defendants' wrongful conduct in  
3 the marketing and sale of its JUUL products.

## 4                                   **II.       JURISDICTION AND VENUE**

5           10.       The Tribe brings this action in *In re JUUL Labs, Inc., Marketing, Sales*  
6 *Practices, and Products Liability Litigation*, Case No. 19-md-02913-WHO and files directly in  
7 the U.S. District Court for the Northern District of California as permitted by Amended Case  
8 Management Order No. 3, ECF No. 651 (June 8, 2020). In the absence of direct filing, the  
9 Tribe would have filed this Complaint in U.S. District Court for the Northern District of New  
10 York.

11           11.       This Court has subject matter jurisdiction over this action because the Tribe  
12 brings a federal cause of action that raises federal question jurisdiction pursuant to 28 U.S.C.  
13 § 1331. The Court also has supplemental jurisdiction over the Tribe's state law claims pursuant  
14 to 28 U.S.C. § 1367 because the state law claims are part of the same case or controversy.

15           12.       This Court has personal jurisdiction over each Defendant because JUUL is  
16 headquartered and does business in the State of California; each Defendant has purposefully  
17 availed itself of the privilege of exploiting forum-based business opportunities, including by  
18 promoting, marketing, and the sale of the products at issue in this lawsuit; and because the  
19 exercise of personal jurisdiction is consistent with Section 410.10 of the California Code of  
20 Civil Procedure. This Court also has personal jurisdiction over all Defendants under 18 U.S.C.  
21 § 1964(c).

13. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein arose in this District and Defendants are subject to personal jurisdiction in this District.

### III. PARTIES

### A. The Plaintiff

14. The Tribe is a federally recognized sovereign Indian tribe which maintains a government-to-government relationship with the United States and whose governing body is recognized by the Secretary of the Interior. *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5465 (Jan. 30, 2020). The Tribe is governed by its own laws. The Tribe exercises sovereign powers of self-governance and jurisdiction over the Tribe’s Reservation located in Franklin and St. Lawrence counties in the State of New York. The Tribe’s Reservation was set aside for the Tribe in the 1796 Treaty with the Seven Nations of Canada.

15. There are approximately 16,600 enrolled members of the Tribe, living in both the United States and Canada. Approximately 7,900 members of the Tribe reside on the Tribe's Reservation in the State of New York.

16. The Tribe's Tribal Council is the duly elected and recognized government of the Tribe that exercises the inherent governmental authority on behalf of the health, safety, education, and welfare of the Tribe and its members. The Tribal Council is responsible for setting policy and making decisions on behalf of the Tribe and its members. The Tribal



1 Council oversees the operation of the Tribe's Tribal government and assures quality programs  
2 and services are made available to its tribal members.

3 17. The Tribe provides a wide range of government services and programs, including  
4 public safety and police services; education; a fire department; a tribal court; a health clinic and  
5 various treatment programs; community and family services, including vocational  
6 rehabilitation, disabilities services, a domestic violence/sexual assault shelter, and family-  
7 centered advocacy; various social services, including adult and child protective services, child  
8 support enforcement services, foster care and adoption, Indian child welfare services, a group  
9 home, and preventative services; economic development; planning and infrastructure; and other  
10 programs and services.  
11

12 18. The Tribe owns and operates three businesses: the Akwesasne Mohawk Casino,  
13 Mohawk Networks, and Akwesasne TV.

14 19. The Tribe has inherent sovereignty to take appropriate action to deal with any  
15 unlawful conduct that takes place on, or has a direct impact on, land that constitutes Indian  
16 Country within the Tribe's territory. Federal law recognizes the Tribe's authority over its  
17 members and territory, specifically the authority to promote the autonomy and the health and  
18 welfare of the Tribe and its members. Defendants engaged in activities and conduct that took  
19 place on or had a direct impact on land that constitutes Indian Country within the Tribe's  
20 territory. The design, marketing, and false and misleading statements about Defendants'  
21 products into the State of New York and onto the Tribe's lands and surrounding areas created  
22 the JUUL epidemic, which resulted in a foreseeable crisis and significant harm to the Tribe and  
23 its members.  
24  
25  
26

1           20.     The Tribe maintains systematic support for the purpose of providing its youth  
2 with the opportunity to succeed or be challenged in their education. The Tribe's system of  
3 support seeks to identify and respond to youth in need of support for emotional or behavioral  
4 challenges and to youth in need of specialized, individualized behavior support, as well as  
5 provide its youth with positive behavioral practices that promote social progress and emotional  
6 health, collaboration with families, community support, and the system of health and human  
7 services. In connection with this effort, the Tribe provides professional support and  
8 development assistance to all staff.  
9

10           21.     In response to the public health concerns associated with Defendants' conduct,  
11 the Tribe has been required to take action to protect the health, safety, education, and welfare of  
12 the Tribe and its members, including banning the sale of flavored e-cigarette products and  
13 increasing the minimum age to purchase all products associated with e-cigarettes to 21 years of  
14 age.<sup>5</sup>

15           22.     Members of the Tribe affected by Defendants' conduct described in this  
16 Complaint live on the Tribe's reservation, as well as throughout the State of New York.

17           23.     The Tribe has standing to recover damages incurred as a result of Defendants'  
18 actions and omissions.  
19

## 20           **B. The Defendants**

21           24.     Defendant JUUL is a Delaware corporation, having its principal place of  
22 business in San Francisco, California. JUUL originally operated under the name PAX Labs,  
23 Inc. In 2017, it was renamed JUUL Labs, Inc. JUUL manufactures, designs, sells, markets,  
24

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25 <sup>5</sup> Saint Regis Mohawk Tribe, *Tribe Increases Minimum Purchase Age for Vaping Devices and*  
26 *Bans Flavored Products*, <https://www.srmt-nsn.gov/news/2019/tribe-increases-minimum-purchase-age-for-vaping-devices-and-bans-flavored-products> (last visited June 2, 2020).

1 promotes, and distributes JUUL e-cigarettes, JUULpods, and accessories throughout the State  
2 of New York and the Tribe's land that constitutes Indian Country within the Tribe's territory.

3 25. Defendant Altria Group, Inc. is a Virginia corporation having its principal place  
4 of business in Richmond, Virginia. Altria is one of the world's largest producers and marketers  
5 of tobacco products. On December 20, 2018, Altria purchased a 35% stake in JUUL.

6 26. Defendant Altria Client Services LLC is a Virginia corporation and wholly  
7 owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County,  
8 Virginia. Altria Client Services LLC provides Altria Group, Inc. and its companies with  
9 services in many areas including digital marketing; packaging design & innovation; product  
10 development; and safety, health, and environmental affairs. On September 25, 2019, the former  
11 senior vice president and chief growth officer of Altria Client Services LLC K.C. Crosthwaite,  
12 became the new chief executive of JUUL.

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

18 28. Defendant Nu Mark LLC is a Virginia corporation and wholly owned subsidiary  
19 of Altria Group, Inc. with its principal place of business in Richmond, Virginia. Nu Mark LLC  
20 was engaged in the manufacture and sale of Altria's electronic vapor products. Shortly before  
21 Altria purchased a 35% stake in JUUL in December 2018, Altria Group, Inc. announced that Nu  
22 Mark LLC would be discontinuing the production and sale of all e-vapor products.

24 29. Defendant, Philip Morris USA, Inc. ("Philip Morris"), is a wholly owned  
25 subsidiary of Altria. Philip Morris is also a Virginia corporation that has its principal place of  
26

1 business in Richmond, Virginia. Philip Morris is engaged in the manufacture and sale of  
2 cigarettes in the United States. Philip Morris is the largest cigarette company in the United  
3 States. Marlboro, the principal cigarette brand of Philip Morris, has been the largest selling  
4 cigarette brand in the United States for over 40 years.

5 30. The Tribe presently lacks information sufficient to specifically identify the true  
6 names or capacities, whether individual, corporate, or otherwise, of the Defendants sued herein  
7 under the fictitious names John Does 1 through 100 inclusive. The Tribe will amend this  
8 Complaint to show their true names and capacities if and when they are ascertained. The Tribe  
9 is informed and believes, and on such information and belief alleges, that each of the  
10 Defendants named as a John Doe is responsible in some manner for the events and occurrences  
11 alleged in this Complaint and is liable for the relief sought herein.  
12

#### 13 IV. FACTUAL ALLEGATIONS

##### 14 A. The Youth Vaping Epidemic and the Rise of JUUL

15 31. One of the great public health success stories over the past decade has been a  
16 reduction in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from  
17 28% in 2000 to 7.6% in 2017.<sup>6</sup> This success has been the result of years of litigation and strict  
18 regulation. It is also due to the widespread and mainstream public health message that smoking  
19 kills people—a message that Big Tobacco can no longer dispute or contradict.  
20  
21  
22

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23 <sup>6</sup> *Examining JUUL's Role in the Youth Nicotine Epidemic: Part I, Hearing Before the*  
24 *Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th  
25 Cong. (2019) (statement of Meredith Berkman, Parents Against Vaping E-cigarettes),  
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Berkman-PAVe%20Testimony.pdf>.  
26

32. This incredible progress towards eliminating youth tobacco and nicotine use has now largely been reversed due to e-cigarettes and vaping. Between 2011 and 2015, e-cigarette use among high school and middle school students increased 900%.<sup>7</sup> Between 2017 and 2018, e-cigarette use increased 78% among high school students, from 11.7% of high school students in 2017 to 20.8% of high school students in 2018.<sup>8</sup> Among middle school students, e-cigarette use increased 48% between 2017 and 2018.<sup>9</sup> In 2018, 4.9 million middle and high school students used tobacco products, with 3.6 million using e-cigarettes.<sup>10</sup> Between 2017 and 2018, the number of youth e-cigarette users increased by 1.5 million.<sup>11</sup>

33. In 2019, an estimated 27.5% of high school students and 10.5% of middle school students reported current e-cigarette use. Among current e-cigarette users, an estimated 34.2% of high school students and 18% of middle school students reported frequent use. An estimated 21.4% of current e-cigarette users in high school and 8.8% of users in middle school reported daily e-cigarette use.<sup>12</sup>

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<sup>7</sup> Jerome Adams, Ctrs. for Disease Control & Prevention, *Surgeon General's Advisory on E-cigarette Use Among Youth* (2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Food & Drug Admin., *2018 NYTS Data: A startling rise in youth e-cigarette use*, <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use> (last updated May 4, 2020).

<sup>10</sup> *Id.*

<sup>11</sup> Ctrs. for Disease Control and Prevention, *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason* (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

<sup>12</sup> Cullen, Ph.D., Gentzke, Ph.D., et al., *e-Cigarette Use Among Youth in the United States, 2019* 322(21) JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265> (last visited May 29, 2020).

34. According to the CDC Director Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing youth tobacco use. It’s putting a new generation at risk for nicotine addiction.”<sup>13</sup> The U.S. Food and Drug Administration (FDA) Commissioner Scott Gottlieb described the above statistics as “astonishing” and both the FDA and the U.S. Surgeon General have appropriately characterized youth vaping as an “epidemic.”<sup>14</sup> The National Institute on Drug Abuse found that the 2018 spike in nicotine vaping was the largest for any substance recorded in 44 years, and Alex Azar, Secretary of the U.S. Department of Health and Human Services, declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”<sup>15</sup>

35. Teenage vaping is rampant on the Tribe’s reservation and other lands, as well as in the State of New York. Now, with the current COVID-19 pandemic in the United States, teenage vapers are much more susceptible to the Coronavirus than other teenagers due to vaping damage to the lungs of these teenagers. “Young adults and teens who vape will not only

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<sup>13</sup> *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019, 9:50 PM), [https://m.cnn.com/en/article/h\\_b4cf0b92fd821251a4ae48df9b717145](https://m.cnn.com/en/article/h_b4cf0b92fd821251a4ae48df9b717145).

<sup>14</sup> Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use doesn’t slow*, CNBC (Nov. 16, 2018, 8:16 AM), <https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html>; Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation, new enforcement*, USA Today (Sept. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/09/12/fda-%20scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/> (last updated Sept. 23, 2018).

<sup>15</sup> Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

1 be at increased risk for COVID-19 infection, but intensity of presentation will be worse[.] . . .  
 2 Vaping causes interstitial lung disease and is additive to any toxicity from the virus. This is  
 3 already reflected by the higher mortality in VZV Pneumonitis, encountered in smokers.”<sup>16</sup>

4 36. A major cause of the vaping epidemic and its consequences to teenagers are the  
 5 activities of JUUL Labs, Inc., the maker of the JUUL e-cigarette. JUUL entered the e-cigarette  
 6 market in 2015 and controls a substantial majority of that market, as high as 76%.<sup>17</sup> Over a  
 7 million JUUL e-cigarettes were sold between 2015 and 2017.<sup>18</sup> JUULs are available at over  
 8 12,000 retail stores and online.<sup>19</sup> In 2017, JUUL generated over \$224 million in retail sales, a  
 9 621% year-over-year increase.<sup>20</sup> By June 2018, sales had skyrocketed another 783%, reaching  
 10 \$942.6 million.<sup>21</sup> The e-cigarette category as a whole grew 97% to \$1.96 billion in the same  
 11

14 <sup>16</sup> Dave Campbell, M.D., *Vaping: One of the Best Ways to Trash Your Lungs and Maybe Die if*  
 15 *You Catch Coronavirus*, MSNBC (Mar. 21, 2020, 1:45 PM), [http://www.msnbc.com/morning-](http://www.msnbc.com/morning-joe/vaping-one-the-best-ways-trash-your-lungs-and-maybe-die-if-you-catch-coronavirus)  
 16 [joe/vaping-one-the-best-ways-trash-your-lungs-and-maybe-die-if-you-catch-coronavirus](http://www.msnbc.com/morning-joe/vaping-one-the-best-ways-trash-your-lungs-and-maybe-die-if-you-catch-coronavirus) (last  
 updated Mar. 21, 2020).

17 <sup>17</sup> Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem J. (Jan. 8,  
 17 2019), [https://www.journalnow.com/business/juul-ends-2018-with-76-percent-market-](https://www.journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html#:~:text=Juul%20Labs%20Inc.'s%20dominance,maker%20as%20a%20major%20investor)  
 18 [share/article\\_6f50f427-19ec-50be-8b0c-](https://www.journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html#:~:text=Juul%20Labs%20Inc.'s%20dominance,maker%20as%20a%20major%20investor)  
 19 [d3df18d08759.html#:~:text=Juul%20Labs%20Inc.'s%20dominance,maker%20as%20a%20major%20investor](https://www.journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html#:~:text=Juul%20Labs%20Inc.'s%20dominance,maker%20as%20a%20major%20investor).

20 <sup>18</sup> Melia Robinson, *How a startup behind the 'iPhone of vaporizers' reinvented the e-cigarette*  
 21 *and generated \$224 million in sales in a year*, Bus. Insider (Nov. 21, 2017),  
<https://www.businessinsider.sg/juul-e-cigarette-one-million-units-sold-2017-11>.

22 <sup>19</sup> *Id.*

23 <sup>20</sup> *Id.*

24 <sup>21</sup> *Id.*

25 <sup>21</sup> Angelica LaVito, *Popular e-cigarette Juul's sales have surged almost 800 percent over the*  
 26 *past year*, CNBC Health & Sci., (July 2, 2018, 2:33 PM),  
<https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>  
 (last updated Sept. 11, 2018).

1 period, largely based on JUUL's market success.<sup>22</sup> JUUL's dominance of the e-cigarette  
2 market has been so rapid, and so complete, that the act of vaping is now referred to as  
3 "JUULing."

4 37. JUUL's market dominance has attracted the attention and alarm of government  
5 regulators, including the FDA, the U.S. Surgeon General, and the CDC. On April 24, 2018, the  
6 FDA sent a letter to JUUL expressing concern about the popularity of its products among youth  
7 and demanding that JUUL produce documents regarding its marketing practices.<sup>23</sup> On  
8 September 12, 2018, the FDA sent letters to JUUL and other e-cigarette manufacturers putting  
9 them on notice that their products were being used by youth at disturbing rates.<sup>24</sup> In September  
10 2018, the FDA raided JUUL's headquarters and seized more than a thousand documents  
11 relating to the company's sales and marketing practices.<sup>25</sup> As of October 2019, the FDA, the  
12 Federal Trade Commission, multiple state attorneys general, and the U.S. House of  
13 Representatives Committee on Oversight and Reform had all commenced investigations into  
14 JUUL's role in the youth vaping epidemic and whether JUUL's marketing practices  
15 purposefully targeted youth.  
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20 <sup>22</sup> *Id.*

21 <sup>23</sup> Matthew Holman, U.S. Food & Drug Admin., *Letter from Director of Office of Science,*  
22 *Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc.* (Apr. 24, 2018),  
<https://www.fda.gov/media/112339/download>.

23 <sup>24</sup> Scott Gottlieb, U.S. Food & Drug Admin., *Letter from Commissioner of Food and Drugs to*  
24 *Kevin Burns at JUUL Labs, Inc.* (Sept. 12, 2018),  
<https://www.fda.gov/media/119669/download>.

25 <sup>25</sup> Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of*  
26 *headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.



38. The decline of cigarette use and the rise of JUUL is far from a coincidence. The company was founded by Adam Bowen and James Monsees, both product designers by education and experience. Bowen and Monsees met in Stanford University's famed graduate product design program, where the first iteration of JUUL was their final project.<sup>26</sup> Monsees has described the cigarette as "the most successful consumer product of all time . . . an amazing product."<sup>27</sup>

39. Years of litigation, regulation, and education by public health advocates, the medical community, and elected officials against Big Tobacco had severely tarnished the popularity of cigarettes. Monsees and Bowen thus set out to "deliver[] solutions that refresh the magic and luxury of the tobacco category."<sup>28</sup> Monsees saw "a huge opportunity for products that speak directly to those consumers who aren't perfectly aligned with traditional tobacco products."<sup>29</sup> Seeking to recreate the lost "ritual and elegance that smoking once exemplified," Monsees set out to re-design the cigarette "to meet the needs of people who want to enjoy tobacco but don't self-identify with—or don't necessarily want to be associated with—cigarettes."<sup>30</sup> In essence, the objective of JUUL was to build a newer, more attractive

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<sup>26</sup> Julia Belluz, *The Vape Company Juul Said It Doesn't Target Teens. Its Early Ads Tell a Different Story*, Vox (Jan. 25, 2019, 9:10 AM), <https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-marketing>.

<sup>27</sup> Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited May 30, 2020).

<sup>28</sup> *Onboardly Interview with Ploom Cofounder and CEO James Monsees*, Pax.com (Apr. 30, 2014), <https://web.archive.org/web/20160307151834/http://onboardly.com/entrepreneur-interviews/an-interview-with-james-monsees/>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

1 cigarette—one that could deliver nicotine and addict a new generation of smokers. By design, a  
 2 cornerstone of the product’s commercial success is its addictive nature that compels those who  
 3 use these products to keep buying and using them.

4 40. JUUL, in many ways, has all the markings of Silicon Valley success: staggering  
 5 profit margins, meteoric growth, and status as a cultural phenomenon. This Silicon Valley-  
 6 savvy company used the framework and ideology of startup culture to catapult itself to success  
 7 by every metric in the startup industry. In 2018, JUUL’s gross profit margins were 70%<sup>31</sup> and it  
 8 represented 76.1% of the national e-cigarette market.<sup>32</sup> It shattered previous records for  
 9 reaching decacorn status by reaching valuation of over \$10 billion in a matter of months, or four  
 10 times faster than Facebook.<sup>33</sup> This all came just three years after its product launch.

12 41. JUUL’s staggering commercial success did not come from a blank slate. Under  
 13 the Master Settlement Agreement between Big Tobacco and the States, the public has access to  
 14 hundreds of thousands of Big Tobacco’s internal documents. In creating JUUL, Monsees and  
 15 Bowen carefully studied the marketing strategies, advertisements, and product design of Big  
 16 Tobacco. As Monsees candidly acknowledged, the internal tobacco documents “became a very  
 17 intriguing space for us to investigate because we had so much information that you wouldn’t  
 18  
 19

20 <sup>31</sup> Dan Primack, *Scoop: The Numbers Behind Juul’s Investor Appeal*, Axios (July 2, 2018),  
 21 <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

22 <sup>32</sup> Robert K. Jackler, et al., Stanford Res. into the Impact of Tobacco Advert., *JUUL Advertising*  
 23 *Over Its First Three Years on the Market* (2019) (“JUUL Advertising”),  
 24 [http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf) at 2.

25 <sup>33</sup> Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo!  
 26 Fin. (Oct. 9, 2019), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

1 normally be able to get in most industries. And we were able to catch up, right, to a huge, huge  
2 industry in no time. And then we started building prototypes.”<sup>34</sup>

3 42. Some of the Big Tobacco records that Monsees and Bowen reviewed showed  
4 documents on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while  
5 minimizing the “throat hit” that may potentially deter new smokers. Other records relate to  
6 tobacco industry market strategies and advertisements designed to lure non-smoking youth.  
7 Monsees and Bowen were able to take advantage of an extensive online tobacco advertising  
8 research database maintained by the Stanford Research into the Impact of Tobacco Advertising  
9 (SRITA), an inter-disciplinary research group devoted to researching the promotional activities  
10 of the tobacco industry. SRITA’s database contains approximately 50,000 original tobacco  
11 advertisements. According to Monsees, JUUL’s advertising was informed by traditional  
12 tobacco advertisements, and SRITA in particular had been very useful to JUUL.<sup>35</sup>

14 43. Put simply, the marketing and product design of the JUUL e-cigarette, and its  
15 incredible commercial success, are based upon tactics and strategies originally developed by  
16 Big Tobacco. As set forth below, while Big Tobacco was prohibited from employing these  
17 tactics and strategies to market traditional cigarettes by virtue of the Master Settlement  
18 Agreement and subsequent regulations, nothing in that settlement prevented JUUL from doing  
19 so.  
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24 <sup>34</sup> Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground,  
25 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited  
26 May 30, 2020).

<sup>35</sup> JUUL Advertising at 27.

**B. Big Tobacco and E-Cigarettes**

44. While JUUL revolutionized and dominated the e-cigarette market, it did not create the first one. Prior to JUUL, Big Tobacco—including Altria—was also heavily involved in the manufacture and promotion of e-cigarettes. Altria has been one of the biggest losers in the fight against smoking. Altria estimates that the cigarette industry declined by -4% in 2017 and by -4.5% in 2018. For 2019 through 2023, Altria estimated the average annual U.S. cigarette industry volume decline is (or would be) -4% to -5%.<sup>36</sup> Altria later revised this estimate in the second quarter of 2019 to 4-6%, in light of efforts to increase the legal age for cigarette smoking to 21.<sup>37</sup>

45. In the face of these declining profits, Altria turned to e-cigarettes, along with other “non-combustible products,” to “enhance” its business platform.<sup>38</sup> Altria boasted to shareholders that it “aspire[d] to be the U.S. leader in authorized, non-combustible, reduced-risk products.”<sup>39</sup>

<sup>36</sup> Altria, *Presentation for Altria’s Fourth-Quarter 2018 Earnings Conference Call* 6 (Jan. 31, 2019), <http://investor.altria.com/Cache/IRCache/3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5.PDF?O=PDF&T=&Y=&D=&FID=3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5&iid=4087349>.

<sup>37</sup> *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019), <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

<sup>38</sup> Altria, *Presentation for Altria’s Second-Quarter 2019 Earnings Conference Call* 24 (July 30, 2019), <http://investor.altria.com/Cache/IRCache/cbf69f8f-c60c-52e3-0a5c-c9c76833c670.PDF?O=PDF&T=&Y=&D=&FID=cbf69f8f-c60c-52e3-0a5c-c9c76833c670&iid=4087349>.

<sup>39</sup> Altria, *Presentation for Annual Meeting of Shareholders* 11 (May 17, 2018), <http://investor.altria.com/Cache/IRCache/2ead25b7-a790-f74f-51a6-4c5e2194d3b2.PDF?O=PDF&T=&Y=&D=&FID=2ead25b7-a790-f74f-51a6-4c5e2194d3b2&iid=4087349>.

1           46. In early 2014, Altria entered the e-cigarette market with its own e-cigarette  
2 product sold under the brand MarkTen.<sup>40</sup> Following a phased roll-out of MarkTen in Indiana  
3 and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive  
4 marketing campaign, eclipsing the advertising expenditures for Imperial Tobacco's e-vapor  
5 product, blu.<sup>41</sup>

6           47. E-cigarette advertising spending for 2014 totaled \$88.1 million, a 52% increase  
7 from 2013.<sup>42</sup> Of that \$88.1 million spent in 2014, nearly 40% was Altria's MarkTen campaign,  
8 at \$35 million.<sup>43</sup>

9           48. Altria's MarkTen advertising tag line, "Let It Glow," was criticized by public  
10 health advocates for playing off Disney's popular children's movie "Frozen" and its hit song  
11 "Let it Go."<sup>44</sup>

12           49. Even the then-president of R.J. Reynolds Vapor Company, Stephanie Cordisco,  
13 criticized Altria for irresponsible marketing, calling this tag line "terrible" and saying that the  
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17 <sup>40</sup> Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen*  
18 *enters the marketplace*, 25 Tobacco Control e16 (2016),  
<https://pubmed.ncbi.nlm.nih.gov/26530219/>.

19 <sup>41</sup> *Id.*; John Reid Blackwell, *Decision to expand e-cigarette sales and acquire Green Smoke*  
20 *may indicate more optimism about 'e-vapor' category*, Richmond Times-Dispatch (Feb. 20,  
21 2014), [https://www.richmond.com/markten-to-roll-out-in-2q/article\\_f1dcaa85-ccdf-577b-8b48-d1e05c0cf14b.html](https://www.richmond.com/markten-to-roll-out-in-2q/article_f1dcaa85-ccdf-577b-8b48-d1e05c0cf14b.html).

22 <sup>42</sup> Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen*  
23 *enters the marketplace*, 25 Tobacco Control e16 (2016),  
<https://pubmed.ncbi.nlm.nih.gov/26530219/>.

24 <sup>43</sup> *Id.*

25 <sup>44</sup> Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. Times (June 17, 2014),  
<https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

1 companies “running the most irresponsible campaigns are the ones who know better.”<sup>45</sup> At the  
2 time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were  
3 using “exactly the same themes we saw work with kids in the U.S. for decades with  
4 cigarettes.”<sup>46</sup>

5 50. Although free samples of tobacco products are prohibited under the terms of the  
6 Tobacco Master Settlement Agreement as well as FDA regulations issued in 2010, Altria took  
7 advantage of the grey area in the regulation of e-cigarettes and distributed coupons for free  
8 sample nicotine cartridges as part of its MarkTen launch. (The FDA has since issued finalized  
9 guidance clarifying the scope of the ban on distributing free samples or coupons for e-cigarettes  
10 or components, and it has now banned such distribution).  
11

12 51. Altria also took full advantage of its distribution network, reaching 60,000 stores  
13 in a month.<sup>47</sup> In Arizona, for example, Altria’s distribution network allowed MarkTen to  
14 achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO  
15 Marty Barrington’s statements on an earnings call.<sup>48</sup> Altria was clear in its intent to dominate  
16 the e-cigarette market as it has the traditional cigarette one: “We are the market leader today  
17 and we will continue to be,” Barrington told investors.<sup>49</sup>  
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20 <sup>45</sup> *Id.*

21 <sup>46</sup> *Id.*

22 <sup>47</sup> Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store  
News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

23 <sup>48</sup> Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall Street J. (Feb. 19, 2014,  
24 12:57 PM), <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>.

25 <sup>49</sup> Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July  
26 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

52. Altria began acquiring small companies in the vaping industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were designed as “battery-powered devices that turn nicotine-laced liquid into vapor.”<sup>50</sup> In 2017, Altria acquired a vaping product called Cync, from Vape Forward. Cync is a small vapor device that uses prefilled pods, similar to the ones offered by JUUL. It also made a minority investment in Avail Vapor, one of the largest vape store chains in the U.S., which also produces and sells its own branded e-liquids for so-called open-system devices, which are refillable.<sup>51</sup>

53. In February 2018, Altria announced that it would enter the closed-tank market with the MarkTen Elite: “a pod-based product with a premium, sleek battery design” and having the “convenience of pre-filled, magnetic click pods.” At an analyst conference in February 2018, former Altria chief Marty Barrington boasted that the Elite’s pods held more than twice as much liquid as JUUL’s.<sup>52</sup>

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

55. Because e-cigarettes are subject to more relaxed regulation than cigarettes, Altria was able to market its products in ways it could not have done for traditional tobacco products. Altria marketed its e-cigarettes in flavors that would appeal to youth: Strawberry Brulee, Apple Cider, Hazelnut Cream, Spiced Fruit, Piña Colada, Glacier Mint, and Mardi Gras (apparently a

<sup>50</sup> Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall Street J. (Feb. 19, 2014, 12:57 PM), <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>.

<sup>51</sup> Timothy S. Donahue, *At the Forefront*, Tobacco Rep. (Dec. 1, 2017), <https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

<sup>52</sup> Marty Barrington, *Remarks by Marty Barrington, Altria Group, Inc.’s (Altria) Chairman, Chief Executive Officer (CEO) and President, and other members of Altria’s senior management team*, US SEC (Feb. 21, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000076418018000020/exhibit992-2018cagnyremarks.htm>.

1 mixed berry flavor). Most of these flavors were marketed with the Elite and Apex products,  
2 Altria's "pod" e-cigarettes.

3 56. Altria's push to gain the youth market gained the attention of the FDA. On  
4 September 12, 2018, the FDA sent a warning letter to Altria requesting that Altria respond with  
5 a "detailed plan" to address and mitigate the widespread use of its e-cigarette products by  
6 minors.<sup>53</sup> Due to the "epidemic rate of increase in youth use" of e-cigarettes, the FDA had  
7 recently conducted an "enforcement blitz" of retailers nationwide and confirmed that Altria's  
8 MarkTen products were often being sold to minors. The FDA did not mince words, telling  
9 Altria that "[t]his is unacceptable, both legally and as a matter of public health." The FDA  
10 warned Altria that it has a responsibility to ensure minors are not getting access to its products  
11 and that it was "crucial" that manufacturers like Altria take steps to prevent youth from using its  
12 products. First and foremost, the FDA asked Altria to "take prompt action to address the rate of  
13 youth use of MarkTen products." The FDA suggested that Altria could revise its current  
14 marketing practices, eliminate online sales, and remove flavored products from the market. The  
15 FDA's expectation and motivation was clear: "steps must be taken to protect the nation's young  
16 people."<sup>54</sup>

17  
18 57. On October 25, 2018, Altria responded to the FDA, claiming to have "serious  
19 concerns" about youth access to e-vapor products.<sup>55</sup> It admitted that the use of e-cigarettes by  
20 youth had risen to "epidemic levels." In response, Altria agreed to remove its pod-based e-  
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23 <sup>53</sup> Scott Gottlieb, *Letter to Altria Client Services*, U.S. Food & Drug Admin., (Sept. 12, 2018),  
<https://www.fda.gov/media/119666/download>.

24 <sup>54</sup> *Id.*

25 <sup>55</sup> Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, Altria (Oct. 25, 2018),  
26 <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>.



1 cigarettes from the market and stop selling any flavored traditional e-cigarettes other than  
2 tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly available information  
3 from FDA and others, we believe pod-based products significantly contribute to the rise in  
4 youth use of e-vapor products. Although we do not believe we have a current issue with youth  
5 access to or use of our pod-based products, we do not want to risk contributing to the issue.”<sup>56</sup>  
6 Altria’s letter went on to disclaim a number of practices that it associated with marketing to  
7 youth that were key components of JUUL’s marketing strategy. Altria specifically identified  
8 the use of flavors that go beyond traditional tobacco flavors, digitally advertising on websites  
9 with a large percentage of youth visitors, using social media to promote the brand, allowing  
10 online purchases and promotional sign-ups without age verification, advertising e-cigarettes on  
11 billboards, advertising with models who appear to be under 25 years old, distributing branded  
12 merchandise, and paying celebrities or other third parties to market or use a particular brand’s  
13 e-cigarette. Altria also claimed to support “banning vaping in schools” in order to reduce  
14 “social access.” Altria ended the letter by committing to “reverse the current use trend among  
15 youth.”<sup>57</sup>  
16

17 58. Less than two months later Altria changed its tune. On December 20, 2018,  
18 Altria announced that it would be making a \$12.8 billion dollar investment in JUUL, the biggest  
19 equity investment in United States history.<sup>58</sup> The deal gave Altria a 35% stake in JUUL.  
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23 <sup>56</sup> *Id.*

24 <sup>57</sup> *Id.*

25 <sup>58</sup> Cromwell Schubarth, *Vaping Unicorn Juul Opens Lab in Mountain View Amid Furor in S.F.*,  
26 Silicon Valley Bus. J. (Feb. 5, 2019), <https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html>.

### C. JUUL and Altria Join Forces to Protect JUUL's Market Share

59. By the fall of 2018 JUUL was under intense scrutiny. A group of eleven United States senators wrote JUUL's CEO, Kevin Burns, a letter in April 2018 declaring that the JUUL device and JUULpods "are undermining our nation's efforts to reduce tobacco use among youth and putting an entire new generation of children at risk of nicotine addiction and other health consequences."<sup>59</sup> Less than a week later, then FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against JUUL in particular.<sup>60</sup> At the same time, the FDA sent JUUL a request for documents relating to marketing, product design, and public health impact.<sup>61</sup> In July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JUUL regarding marketing and sale to minors.<sup>62</sup> In September 2018, FDA Commissioner Gottlieb called youth vaping an "epidemic" and sent letters to JUUL, Altria, and other e-cigarette manufacturers demanding a plan to reduce youth use.<sup>63</sup> Then, in September 2018, as alleged above, the FDA raided JUUL's

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<sup>59</sup> Letter from Richard Durbin et al., U.S. Senate, to Kevin Burns, CEO, JUUL (Apr. 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

<sup>60</sup> Scott Gottlieb, U.S. Food & Drug Admin., *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>.

<sup>61</sup> *Id.*

<sup>62</sup> Press Release, Office of Att'y Gen. Maura Healey, "AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to Minors" (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

<sup>63</sup> See U.S. Food & Drug Admin., CTP Letters to Industry, <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

headquarters and seized more than a thousand documents relating to JUUL's sales and marketing practices.<sup>64</sup>

60. On November 13, 2018, JUUL responded with an "Action Plan" declaring its intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors on the JUUL website to adults age 21 and over, and shut down its social media accounts.<sup>65</sup>

61. As the pressure on JUUL intensified, Altria stepped in to assist. Despite the clear criticism of JUUL's conduct in its October 25th letter to the FDA, Altria announced its \$12.8 billion investment in JUUL on December 20, 2018.<sup>66</sup> Altria characterized its investment as one intended to "accelerate harm reduction and drive growth."<sup>67</sup> In an investor presentation in 2019, Altria described JUUL as having a "unique" and "compelling" product.<sup>68</sup>

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<sup>64</sup> Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

<sup>65</sup> *Juul Labs Action Plan*, JUUL Labs Newsroom (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

<sup>66</sup> *Atria 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>.

<sup>67</sup> *Id.*

<sup>68</sup> Howard Willard, Altria, *Remarks of Chairman and CEO at 2019 CAGNY Investor Presentation* (Feb. 20, 2019), <http://investor.altria.com/Cache/IRCache/5847584a-8e53-e0a3-f166-7d5bc7bfe495.PDF?O=PDF&T=&Y=&D=&FID=5847584a-8e53-e0a3-f166-7d5bc7bfe495&iid=4087349>.

1           62. But as the president of the Campaign for Tobacco-Free Kids observed upon  
2 announcement of the deal, “Altria has no interest in seriously reducing the number of people  
3 who smoke cigarettes.”<sup>69</sup>

4           63. Altria would not have made such an investment if it did not intend to grow  
5 JUUL’s already enormous market even more. This is confirmed by Altria’s statement when  
6 announcing its investment, explaining that its investment in JUUL “enhances future growth  
7 prospects” and committing to applying “its logistics and distribution experience to help JUUL  
8 expand its reach and efficiency[.]”<sup>70</sup> Since the deal was inked in December 2018, Altria’s  
9 actions have clearly helped JUUL maintain, if not expand, its market share—a market share  
10 that, based on Altria’s own October 25, 2018 letter to the FDA, it believes was gained by  
11 employing marketing and advertising practices that contributed to youth vaping. Altria’s  
12 Second Quarter 2019 Earnings Call reported that JUUL continued to grow in the first half of  
13 2019, from a 33% category share in 2018 to 48% by the second quarter 2019. JUUL’s expected  
14 revenue for 2019 is \$3.4 billion, nearly triple what it was in 2018.<sup>71</sup>

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16           64. From JUUL’s beginnings, Altria had “followed JUUL’s journey rather  
17 closely.”<sup>72</sup> Altria Chairman and CEO Howard Willard said that for years his company  
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19 <sup>69</sup> Shiela Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. Times (Dec.  
20 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

21 <sup>70</sup> *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction*  
22 *and Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL>.

23 <sup>71</sup> Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite*  
24 *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>.

25 <sup>72</sup> Howard Willard, *Remarks of Chairman and CEO at 2019 CAGNY Investor Presentation*,  
26 Altria (Feb. 20, 2019), <http://investor.altria.com/Cache/IRCache/5847584a-8e53-e0a3-f166->

1 “watched JUUL carefully to see if it had staying power.”<sup>73</sup> Altria decided it did. As Willard  
 2 explained: “During 2018, we concluded that JUUL had not only become the retail share leader  
 3 in the U.S. e-vapor category, but that no other brand was close to it in share or future growth  
 4 potential.”<sup>74</sup> This was enough for Altria, one of the world’s largest producers and marketers of  
 5 tobacco products, to call JUUL’s alleged smoking cessation device a “terrific product” and take  
 6 a 35% stake in the company with its \$12.8 billion investment.<sup>75</sup> With this investment, Altria  
 7 now owns both the number one youth initiation cigarette in the United States (the Marlboro  
 8 cigarette) and the number one youth initiation e-cigarette in the United States, JUUL.  
 9

10 65. Notwithstanding Altria’s statements to the FDA just two months previously  
 11 about its concerns that JUUL was marketing and advertising its products in a way that  
 12 contributed to the youth vaping epidemic, Willard stated that the deal would allow Altria to  
 13 “work[] with JUUL to accelerate its mission.”<sup>76</sup> Altria committed to applying “its logistics and  
 14 distribution experience to help JUUL expand its reach and efficiency” and offering JUUL the  
 15 support of “Altria’s sales organization, which covers approximately 230,000 retail locations.”<sup>77</sup>  
 16 It also gave JUUL access to its “premier” retail shelf space while allowing it to continue to sell  
 17 its flavored products online and provided JUUL with access to the databases of all of Altria’s  
 18  
 19

20 7d5bc7bfe495.PDF?O=PDF&T=&Y=&D=&FID=5847584a-8e53-e0a3-f166-  
 21 7d5bc7bfe495&iid=4087349 at 4.

22 <sup>73</sup> *Id.*

23 <sup>74</sup> *Id.*

24 <sup>75</sup> *Id.*

25 <sup>76</sup> *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*  
 26 *Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

<sup>77</sup> *Id.*

1 companies.<sup>78</sup> According to Willard, Altria was “excited to support JUUL’s highly-talented  
2 team and offer [Altria’s] best-in-class services to build on their tremendous success.”<sup>79</sup> Altria  
3 admitted that minors were using JUUL products and that “underage use of e-cigarette product is  
4 a problem.” Nevertheless, it stated that it believed its investment in JUUL “strengthens its  
5 financial profile and enhances future growth prospects.”<sup>80</sup>

6 66. Altria’s decision to prioritize profits without regard to the dangers of youth  
7 vaping did not go unnoticed. On February 6, 2019, former FDA Commissioner Scott Gottlieb,  
8 sent Altria another letter “regarding representations” made by Altria acknowledging that it “has  
9 an obligation to take action to help address the mounting epidemic of youth addiction to tobacco  
10 products.”<sup>81</sup> Commissioner Gottlieb told Altria that its recent purchase of a 35% ownership of  
11 JUUL “contradict[s] the commitments you made to the FDA.”<sup>82</sup> The FDA demanded Altria be  
12 prepared to explain itself regarding its “plans to stop marketing e-cigarettes and to address the  
13 crisis of youth use of e-cigarettes.”<sup>83</sup> Commissioner Gottlieb told Altria that “deeply  
14 concerning data” shows that “youth use of JUUL represents a significant proportion of overall  
15 use of e-cigarette products by children” and despite any steps the companies had taken to  
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21 <sup>78</sup> *Id.*

22 <sup>79</sup> *Id.*

23 <sup>80</sup> *Id.*

24 <sup>81</sup> Letter from Scott Gottlieb, U.S. Food & Drug Admin., to Howard Willard, CEO, Altria (Feb. 6, 2019), <https://www.fda.gov/media/122589/download>.

25 <sup>82</sup> *Id.*

26 <sup>83</sup> *Id.*

1 address the issue he “ha[d] no reason to believe these youth patterns of use are abating in the  
2 near term, and they certainly do not appear to be reversing.”<sup>84</sup>

3 67. The companies met with Gottlieb in March 2019 in a meeting the Commissioner  
4 described as “difficult.”<sup>85</sup> Gottlieb “did not come away with any evidence that public health  
5 concerns drove Altria’s decision to invest in JUUL, and instead sa[id] it looks like a business  
6 decision.”<sup>86</sup> Just a few weeks later, Gottlieb resigned his position.

7 68. As mentioned above, Altria’s investment in JUUL is not only a financial  
8 contribution. Altria is working to actively help run JUUL’s operations and expand JUUL’s  
9 sales. Altria’s investment brings legal and regulatory benefits to JUUL by helping with patent  
10 infringement battles and consumer health claims and by helping to navigate the regulatory  
11 waters and FDA pressure. Altria also brings lobbying muscle. In addition, Altria’s  
12 arrangement with JUUL gives JUUL greater access to retail. JUUL has been in 90,000 U.S.  
13 retail outlets, while Altria reaches 230,000 U.S. outlets. Altria brings its logistic and  
14 distribution experience. Importantly, Altria gives JUUL access to shelf space—and not just  
15 shelf space, but space near Altria products and retail displays. The arrangement allows JUUL’s  
16 tobacco and menthol-based products to receive prominent placement alongside a top-rated  
17 brand of combustible cigarettes.  
18

19 69. Altria is closely intertwined with JUUL. Not only does Altria’s investment also  
20 allow it to appoint a third of JUUL’s board, but in September 2019 JUUL’s CEO resigned to be  
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22  
23 <sup>84</sup> *Id.*

24 <sup>85</sup> Kate Rooney and Angelica LaVito, *Altria shares fall after FDA’s Gottlieb describes ‘difficult’*  
25 *meeting on Juul*, CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

26 <sup>86</sup> *Id.*

replaced by a career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as the vice president and chief growth officer of Altria Client Services LLC, overseeing the company's work including digital marketing; packaging design & innovation; product development; and safety, health, and environmental affairs. Crosthwaite is a career Altria executive who knows Big Tobacco's playbook all too well, having previously served as the president and CEO of Philip Morris USA, the vice president and general manager at Marlboro, and the vice president of strategy and business development at Altria Client Services LLC.

70. This arrangement was profitable for both companies. JUUL employees received \$2 billion in bonuses which, split among the company's 1,500 employees was approximately \$1.3 million per employee,<sup>87</sup> and Altria received millions of teen customers.

71. JUUL claims its mission is to "improve the lives of the world's one billion adult smokers by eliminating cigarettes"<sup>88</sup> and its advertising now encourages "making the switch."<sup>89</sup> Similarly, Altria's CEO Howard Willard claimed that it invested in JUUL to help "switching adult smokers" and to "reduce harm."<sup>90</sup> But JUUL does not have FDA approval as a cessation device. This may be because, as one company engineer said: "We don't think a lot about

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<sup>87</sup> Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

<sup>88</sup> *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>.

<sup>89</sup> Lyndsey Cambridge, *Thornton's Budgens links with Juul offer smoking cessation service*, The Grocer (Sept. 9 2019), <https://www.thegrocer.co.uk/health/thorntons-budgens-links-with-juul-to-offer-smoking-cessation-service/597359.article>.

<sup>90</sup> *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>.



1 addiction here because we're not trying to design a cessation product at all[.] . . . anything about  
2 health is not on our mind.”<sup>91</sup>

3 72. JUUL also does not have authority or any basis to claim that its product is  
4 healthier than cigarettes. On September 9, 2019, the FDA warned JUUL that has it violated  
5 federal law by making unauthorized representations that JUUL products are safer than  
6 cigarettes.<sup>92</sup>

7 73. Moreover, even if JUUL were to obtain FDA approval as a legitimate smoking  
8 cessation device, this has no impact on—and certainly does not excuse—the Defendants’ past  
9 and present conduct that targets youth. Regardless of the potential health benefits to chain  
10 smokers from switching to vaping from smoking, there is no benefit to young people from  
11 starting to vape.  
12

13 74. To be clear, a key part of revenue growth like JUUL’s is addicting youth to  
14 nicotine, as the tobacco industry has long known. Beginning in the 1950s, JUUL’s now  
15 corporate affiliate Philip Morris intentionally marketed cigarettes to young people under the age  
16 of 21 to recruit “replacement smokers” to ensure the economic future of the tobacco industry.<sup>93</sup>  
17 Philip Morris knew that youth smoking was essential to the tobacco industry’s success and  
18 longevity, as an internal Philip Morris document makes clear: “It is important to know as much  
19  
20

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21 <sup>91</sup> Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-*  
22 *Cigarette*, The Verge (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

23 <sup>92</sup> *Warning Letter to JUUL Labs, Inc.*, U.S. Food & Drug Admin., (Sept. 9, 2019),  
24 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

25 <sup>93</sup> Amended Final Opinion at 972, ECF. No. 5750, *U.S. v. Philip Morris*, No. 99-cv-2496  
26 (D.D.C. Sept. 8, 2006).

as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer and the overwhelming majority of smokers first begin to smoke while still in their teens.”<sup>94</sup> For this reason tobacco companies focused on the 14-24 year-old age group, because “younger adult smokers have been the critical factor in the growth” of tobacco companies and the 14-18 year-old group was an increasing segment of the smoking population.<sup>95</sup> As the Vice-President of Marketing at R.J. Reynolds Tobacco Company (RJR) explained in 1974, the “young adult market . . . represent[s] tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.”<sup>96</sup> RJR’s now-infamous Joe Camel “ambassador of Cool” advertising campaign, which ran from 1988 through 1997, exemplifies the importance the tobacco industry placed on hooking young smokers early.<sup>97</sup>

#### **D. The Secret to JUUL’s Success: Hooking Kids**

75. It is clear that JUUL, like Philip Morris and RJR before it, targeted youth as a key business demographic. A recent study showed that 15-17 year-olds are *16 times* more likely to use JUUL than 25-34 year-olds.<sup>98</sup>

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<sup>94</sup> *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids 1 (May 14, 2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

<sup>95</sup> *Id.* at 2.

<sup>96</sup> C.A. Tucker, *Marketing Plans Presentation to RJR B of D*, Truth Tobacco Industry Documents, U. of S.F. (Sept. 30, 1974), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=ypmw0091> at 2.

<sup>97</sup> *Joe Camel: Character of the Year Advertisement*, Stanford U. Res. into the Impact of Tobacco Advert. (1990), [http://tobacco.stanford.edu/tobacco\\_main/images.php?token2=fm\\_st138.php&token1=fm\\_img4072.php&theme](http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.php&token1=fm_img4072.php&theme).

<sup>98</sup> Joyce Frieden, *Vaping Companies Marketing to Teens, House Panel Told*, MedPage Today (July 24, 2019), <https://www.medpagetoday.com/primarycare/smoking/81210>.

76. Indeed, JUUL was well aware from the beginning that its products would appeal to youth. A former JUUL manager, who spoke to *The New York Times* on the condition that his name not be used, said that within months of JUUL's 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company's website than they could individually use—sometimes 10 or more devices at a time. “First, they just knew it was being bought for resale,” said the former senior manager, who was briefed on the company's business strategy. “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”<sup>99</sup>

77. This “suspicion” has been studied by researchers, who estimated that over 44 percent of JUUL's Twitter account was being followed by underage youth.<sup>100</sup>

78. Because of Big Tobacco's demonstrated effectiveness at addicting youth to nicotine, cigarette manufacturers, under the Master Settlement Agreement and subsequent regulations, must operate under tight restrictions regarding their advertising and marketing activities. By way of example, cigarette companies may not: use outdoor advertising such as billboards; sponsor events; give free samples; pay any person to “use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package . . . in any . . . ‘Media;’”<sup>101</sup>

<sup>99</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?* N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

<sup>100</sup> Annice Kim et al., *Estimated Ages of JUUL Twitter Followers*, JAMA Network (May 20, 2019), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2733855>.

<sup>101</sup> *Master Settlement Agreement* 17 (Nov. 1998), <https://publichealthlawcenter.org/sites/default/files/resources/master-settlement-agreement.pdf>.

1 pay any third party to conduct any activity which the tobacco manufacturer is prohibited from  
 2 doing<sup>102</sup>; or sell “flavored” cigarettes.<sup>103</sup>

3 79. All of these above activities were prohibited because of their effectiveness at  
 4 appealing to youth. As described below, all of these activities figured prominently in JUUL’s  
 5 marketing campaign.

6 80. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford  
 7 University School of Medicine and principal investigator for SRITA, JUUL’s initial marketing  
 8 was “patently youth oriented.”<sup>104</sup> The JUUL’s 2015 ad campaign, called “Vaporized” was  
 9 designed to create a “cult-like following.”<sup>105</sup> Its imagery featured a vivid color scheme and  
 10 models in their twenties in poses that researchers note are evocative of behaviors more  
 11 characteristic of underage teens than mature adults.<sup>106</sup> Dr. Jackler and his colleagues found it  
 12 “clear that this imagery resonated with underage teens who aspire to emulate these trendsetting  
 13 young adults.”<sup>107</sup>

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19 <sup>102</sup> *Id.* at 18.

20 <sup>103</sup> Family Smoking Prevention and Tobacco Control and Federal Retirement Reform Act, Pub.  
 21 L. No. 111-31, § 907, 123 Stat 1776, 1799 (2009).

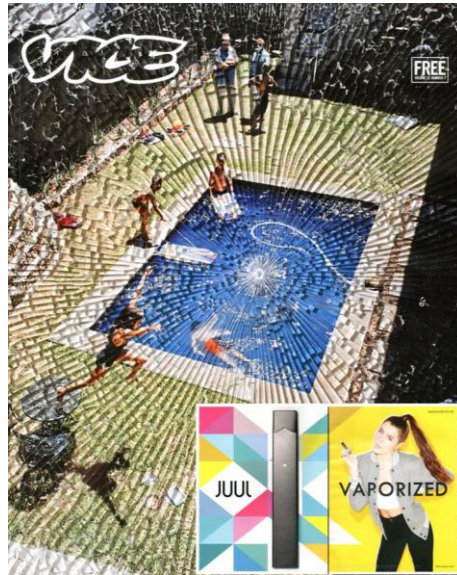
22 <sup>104</sup> Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony of Robert*  
 23 *Jackler before the House Subcommittee on Economic and Consumer Policy* (July 24, 2019),  
[https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf)  
[Testimony.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf) (“Jackler Testimony”) at 2.

24 <sup>105</sup> *Id.* at 4.

25 <sup>106</sup> JUUL Advertising at 7.

26 <sup>107</sup> *Id.*

81. Tobacco advertisers have long understood that teens are attracted to such imagery. The Vaporized campaign was featured on the front page of VICE magazine, which claims to be “the #1 youth media company in the world.”<sup>108</sup>



82. In the summer of 2015, an animated series of Vaporized billboards with the campaign’s youth-appealing imagery were displayed in New York’s Times Square.<sup>109</sup>

83. Over the first year after JUUL launched its ad campaign in June 2015, it held a series of at least 50 highly stylized parties, typically with rock music entertainment, in cities across the United States.<sup>110</sup> Thousands of young people were given free nicotine-filled JUULpods (appropriately named “JUUL starter kits”), and JUUL posted photos of various young people enthusiastically puffing on JUULs across their social media channels.<sup>111</sup> JUUL also featured popular stars such as Katy Perry holding a JUUL at the Golden Globes.<sup>112</sup>

<sup>108</sup> Jackler Testimony at 5.

<sup>109</sup> *Id.*

<sup>110</sup> JUUL Advertising at 27.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 14.

1           84. JUUL knew these images would be successful in achieving this result because it  
2 intentionally crafted them to mimic specific traditional tobacco advertisements that Big  
3 Tobacco had used to target teens. In fact, many of JUUL's ads are nearly identical to old  
4 cigarette ads that were designed to get teens to smoke. Like its Big Tobacco predecessors, the  
5 focus of JUUL's initial marketing was on colorful ad campaigns using eye-catching designs and  
6 youth-oriented imagery with themes of being cool, carefree, stylish, attractive, sexy, and  
7 popular—unusual themes and images if one's objective is to promote an adult's only smoking  
8 cessation device.  
9

10           85. JUUL used Big Tobacco's advertising imagery but coupled it with a modern,  
11 state-of-the-art marketing campaign designed to target youth. It relied heavily on social media,  
12 crafting a powerful online presence which persists even after JUUL deleted its accounts in the  
13 face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the  
14 most popular social media site among teens.<sup>113</sup> JUUL cultivated hashtags, allowing the  
15 company to blend its ads in with a wide range of user content, increasing exposure while  
16 concealing the commercial nature of the content.<sup>114</sup> JUUL then used hashtags to reinforce the  
17 themes it crafted in its product design, like #style, #technology, #smart, and #gadget.<sup>115</sup>  
18 JUUL's hashtags attracted an enormous community of youthful posts on a wide array of  
19 subjects. According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and  
20 numerous Instagram hashtags contain the JUUL brand name.<sup>116</sup> Even after JUUL halted its  
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22  
23 <sup>113</sup> JUUL Advertising at 34.

24 <sup>114</sup> *Id.*

25 <sup>115</sup> *Id.* at 4.

26 <sup>116</sup> Jackler Testimony at 10.

own social media posts in November 2018, viral peer-to-peer promotion among teens insured continued corporate and product visibility among youth.<sup>117</sup> In fact, community posts about JUUL increased after JUUL itself quit using social media in the fall of 2018. Prior to November 2018, over a quarter of a million posts appeared.<sup>118</sup> In the eight months *after* JUUL halted its promotional postings, the rate of community postings increased significantly, resulting in the number of posts doubling to over half a million.<sup>119</sup>

86. JUUL also paid social media influencers to post photos of themselves with JUUL devices and to use the hashtags that it was cultivating.<sup>120</sup> JUUL entered a contract with an advertising agency specifically to identify and recruit social media influencers that had at least 30,000 followers to, according to an internal JUUL email, “establish a network of creatives to leverage as loyalists” for the JUUL brand.<sup>121</sup> One such influencer was Christina Zayas, whom JUUL paid \$1,000 for just one blog post and one Instagram post in the fall of 2017.<sup>122</sup>

87. JUUL instituted an “affiliate program” to recruit those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL

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<sup>117</sup> *Id.* at 11.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> JUUL Advertising.

<sup>121</sup> Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, *Forbes* (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#47785ce533e2>.

<sup>122</sup> Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, *CNN Health* (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

1 products.<sup>123</sup> It even recruited JUUL users to act as part of their marketing team by asking users  
 2 to “refer a friend and get a discount.”<sup>124</sup>

3 88. Such tactics masked what were in fact JUUL advertisements as user content,  
 4 further increasing exposure and ultimately solidifying the company in teen pop culture as a  
 5 form of cultural currency. JUUL’s strategy was so successful in embedding its products into  
 6 pop culture that it entered the vernacular as a verb. The JUUL device and the term “juuling”  
 7 are so pervasive that JUUL effectively eliminated not only competitors, but also any potentially  
 8 alarming terms like “smoking” or “e-cigarette” which could alert users of the true nature of the  
 9 device or activity. A recent study found that 63% of adolescent JUUL users did not know that  
 10 JUULpods contain nicotine.<sup>125</sup> This has worked to JUUL’s advantage and was in fact a  
 11 deliberate part of its strategy. In the first year after its launch, not one of JUUL’s 171  
 12 promotional emails said anything about nicotine content,<sup>126</sup> and it did not include nicotine  
 13 warnings on the JUUL packaging until August 2018 when it was forced to do so.  
 14

15 89. The design of JUUL’s product is also acutely attractive to youth. Unlike most of  
 16 its predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and  
 17 seems like the latest tech invention. This is not surprising given the founders’ Silicon Valley  
 18 product design education and training. The evocation of technology makes the JUUL device  
 19 familiar and desirable to the younger tech-savvy generation, particularly teenagers. The JUUL  
 20

21  
 22 <sup>123</sup> Jackler Testimony at 9-10.

23 <sup>124</sup> Jackler Testimony at 9.

24 <sup>125</sup> *Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence*  
 25 *Remains Low*, Truth Initiative (Apr. 18, 2018),  
[https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-](https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf)  
[Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf](https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf).

26 <sup>126</sup> JUUL Advertising at 25.



1 device even has features reminiscent of youth-oriented tech culture and gaming, like “secret”  
2 features users can unlock such as making the indicator light flash rainbow colors in “party  
3 mode.” JUUL has been so successful in emulating technology that the small, rectangular  
4 devices are often mistaken for—or passed off as—flash drives.

5 90. The ability to conceal a JUUL is also part of the appeal for adolescents. The  
6 devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and  
7 simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it  
8 possible to covertly use a JUUL behind a turned back, which has become a trend in many  
9 schools. Finding new ways to hide the ever-concealable JUUL has spawned products designed  
10 just for that purpose, such as apparel that allows the wearer to use the device while it is  
11 concealed in the drawstring of a hoodie or the strap of a backpack.<sup>127</sup>

13 91. JUUL also created special flavors that make its addictive, high-tech device even  
14 more attractive to adolescents. Tobacco companies have known for decades that flavored  
15 products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum  
16 entitled: “Youth Cigarette – New Concepts,” specifically noted the “well-known fact that  
17 teenagers like sweet products.”<sup>128</sup> A 1979 Lorillard memorandum concluded that younger  
18 customers would be “attracted to products with ‘less tobacco taste,’” and even proposed  
19 borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the  
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22 <sup>127</sup> Evie Blad, ‘Juuling’ and Teenagers: 3 Things Principals and Teachers Need to Know, Educ.  
23 Wk. (July 18, 2018), [https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-](https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html)  
24 [things-principals-and.html](https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html).

25 <sup>128</sup> K. M. Cummings et al., *Marketing to America’s Youth: Evidence From Corporate*  
26 *Documents*, BMJ Journals, (Mar. 1, 2002),  
[https://tobaccocontrol.bmj.com/content/11/suppl\\_1/i5.info](https://tobaccocontrol.bmj.com/content/11/suppl_1/i5.info).

1 widest appeal among youth.<sup>129</sup> According to 2004 data, 17-year-old smokers were more than  
 2 three times likely as those over 25 to smoke flavored cigarettes and viewed flavored cigarettes  
 3 as safer.<sup>130</sup> For this reason, in 2009, the FDA banned flavored cigarettes pursuant to its new  
 4 authority under the Family Smoking Prevention and Tobacco Control Act of 2009. In  
 5 announcing the ban, FDA Commissioner Dr. Margaret Hamburg declared that “flavored  
 6 cigarettes are a gateway for many children and young adults to become regular smokers.”<sup>131</sup>

7  
 8 92. There is no reason to believe that flavors play any different role with respect to  
 9 e-cigarettes and youth. In fact, a 2017 study of the cigarette flavor ban found that the ban was  
 10 effective in lowering the number of smokers and the amount smoked by smokers, though it was  
 11 associated with an increased use of menthol cigarettes (the only flavor still available).<sup>132</sup>

12 According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored  
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 14  
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 16  
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18 <sup>129</sup> Laurie Halverson & Kathy Sheran, *Big Tobacco Lurks Behind E-Cigarettes*, Star Tribune  
 19 (Apr. 10, 2014, 6:40 PM), [https://www.startribune.com/big-tobacco-lurks-behind-e-](https://www.startribune.com/big-tobacco-lurks-behind-e-cigarettes/254821801/)  
[cigarettes/254821801/](https://www.startribune.com/big-tobacco-lurks-behind-e-cigarettes/254821801/).

20 <sup>130</sup> Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22,  
 21 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

22 <sup>131</sup> *Id.*

23 <sup>132</sup> Stanton A. Glantz, PhD, *More evidence to support eliminating flavors to reduce youth*  
 24 *cigarette and e-cigarette use*, UCSF Ctr. for Tobacco Control Research and Educ. (Aug. 17,  
 25 2017), [https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-](https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use)  
[cigarette-and-e-cigarette-use](https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use); Charles J. Courtemanche, et al., *Influence of the Flavored*  
 26 *Cigarette Ban on Adolescent Tobacco Use*, 52(5) Am. J. Preventive Med. 3139 (Jan. 9, 2017);  
 MB. Harrell, et al., *Flavored e-cigarette use: Characterizing youth, young adult, and adult*  
*users*, 5 Preventive Med. Rep. 33 (Nov. 11, 2016).

varieties.<sup>133</sup> Studies also show that flavors motivate e-cigarette initiation among youth,<sup>134</sup> and that youth are much more likely to use flavored tobacco products than adults are.<sup>135</sup> In fact, in September 2019, the State of Michigan banned flavored e-cigarettes, a step the governor said was needed to protect young people from the potentially harmful effects of vaping. Governor Andrew Cuomo of New York announced that he would pursue emergency regulations to ban the sale of flavored e-cigarettes,<sup>136</sup> and Governor Jay Inslee of Washington State ordered the Washington State Department of Health to ban all flavored vapor products.<sup>137</sup> Despite JUUL's claims that its target market is adult smokers, the company entered the market with flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors were the reason countless adolescents started using JUUL products.

93. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers have found that some of the chemicals JUUL uses for flavor and perfume—

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<sup>133</sup> U.S. Dept. of Health and Human Services, *E-Cigarette Use Among Youth and Young Adults* (2016), <https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf>.

<sup>134</sup> Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb. 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25>.

<sup>135</sup> AC Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)*, 53 Am. J. of Preventative Med. 139 (2017), <https://pubmed.ncbi.nlm.nih.gov/28318902/>.

<sup>136</sup> Jesse McKinley & Christina Goldbaum, *New York Moves to Ban Flavored E-Cigarettes by Emergency Order*, N.Y. Times (Sept. 15, 2019), <https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-ios-share>.

<sup>137</sup> Gov. Jay Inslee, Exec. Order No. 19-03 Addressing the Vaping Use Public Health Crisis (Sept. 27, 2019), [https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery).

1 particularly in the Crème Brulee flavor—contain relatively high levels of acetals.<sup>138</sup> Acetals are  
 2 airway-irritating chemicals that may cause lung damage.<sup>139</sup> Dr. Robert Jackler said that test  
 3 results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of  
 4 evidence documenting toxicological effects of e-cig vapor . . . .”<sup>140</sup>

5 94. On November 19, 2019, the American Medical Association (AMA) called for  
 6 the total ban on all e-cigarette and vaping products that do not meet FDA approval as cessation  
 7 tools. Physicians, residents, and medical students from across the country voted to adopt  
 8 policies on AMA’s longtime efforts to prevent another generation from becoming dependent on  
 9 nicotine. As part of the request for a ban, AMA President Patrice A. Harris, M.D., M.A., said  
 10 “It’s simple – we must keep nicotine products out of the hands of young people and that’s why  
 11 we are calling for an immediate ban on all e-cigarette and vaping products from the market.  
 12 With the number of young people using e-cigarettes spiking it is not only critical that there is  
 13 research into nicotine addiction treatments for this population, but it is imperative that we  
 14 continue efforts to prevent youth from ever using nicotine.”<sup>141</sup>

#### 16 **E. The Cost of JUUL’s Success**

17 95. In addition to designing its devices to be particularly attractive to youth, JUUL  
 18 designed its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase  
 19

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21 <sup>138</sup> Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019),  
 22 [https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-](https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice)  
[discovered-in-vape-juice](https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice).

23 <sup>139</sup> *Id.*

24 <sup>140</sup> *Id.*

25 <sup>141</sup> Press Release, American Med. Ass’n, “AMA calls for total ban on all vaping products not  
 26 approved by FDA” (Nov. 19, 2019), [https://www.ama-assn.org/press-center/press-releases/ama-](https://www.ama-assn.org/press-center/press-releases/ama-calls-total-ban-all-vaping-products-not-approved-fda)  
[calls-total-ban-all-vaping-products-not-approved-fda](https://www.ama-assn.org/press-center/press-releases/ama-calls-total-ban-all-vaping-products-not-approved-fda).

1 nicotine, JUUL uses patented nicotine salts from which it makes liquid nicotine cartridges, or  
2 JUULpods.<sup>142</sup> Each JUULpod is, according to the company, the equivalent of a pack of  
3 cigarettes. Each pod contains an alarming amount of nicotine, with up to 59 mg per ml—an  
4 amount that is roughly three times the amount of nicotine that can be sold to consumers in the  
5 European Union in a JUULpod. On top of ramping up the amount of nicotine, JUULpods  
6 enabled the company to increase the rate and amount of nicotine delivery to the JUUL user,  
7 roughly doubling the concentration and nearly tripling the delivery speed of nicotine of the  
8 average e-cigarette.<sup>143</sup>

9  
10 96. Big Tobacco spent decades manipulating nicotine in order to foster and maintain  
11 addiction in their customers. RJR developed and patented nicotine salt additives, including  
12 nicotine benzoate, to increase nicotine delivery in cigarette smoke. The objective was to  
13 provide an additional “nicotine kick” based on increased nicotine absorption associated with  
14 lower pH. JUUL uses this very same concept for its market-dominating e-cigarettes. The  
15 company’s patent for its nicotine salts describes a process for combining benzoic acids with  
16 nicotine, a formulation that mimics the nicotine salt additive developed by RJR. JUUL’s use of  
17 benzoic acid and manipulation of pH affect the palatability of nicotine inhalation by reducing  
18 the “throat hit” that users experience when vaping. Indeed, this was the objective behind using  
19 nicotine salts (as compared to “free base nicotine” which has a higher pH). According to Ari  
20 Atkins, one of the inventors of the JUUL device, “[i]n the tobacco plant, there are these organic  
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22 <sup>142</sup> Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies*  
23 *Want In*, The Verge (Nov. 21, 2018), [https://www.theverge.com/2018/11/21/18105969/juul-](https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten)  
24 [vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten](https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten).

25 <sup>143</sup> *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019),  
26 [https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul)  
[nicotine-juul](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul).

1 acids that naturally occur. And they help stabilize the nicotine in such a way that makes it . . .  
2 I've got to choose the words carefully here: Appropriate for inhalation.”<sup>144</sup>

3 97. Because smokers are already accustomed to a certain level of harshness and  
4 throat hit, developing a product with low levels of harshness and minimal “throat hit” is only a  
5 critical concern if your goal is to appeal to non-smokers, for example, youth. Minimizing the  
6 harshness of nicotine also allows one to vape more frequently and for longer periods of time  
7 and masks the amount of nicotine being delivered by eliminating the unpleasant throat hit  
8 normally associated with large doses of nicotine. The harshness of freebase nicotine makes  
9 prolonged vaping difficult; the use of nicotine salts solves that problem. Put another way, the  
10 nicotine salt technology behind JUULpods makes JUUL “smoke” highly potent yet hardly  
11 perceptible.  
12

13 98. The increased nicotine exposure facilitated by the JUUL device has serious  
14 health consequences. The ease of use and “smoothness” strip away external inhibitors and  
15 enable extreme levels of unfettered use. Using JUUL’s own calculations, consuming two  
16 JUULpods in a day is the equivalent of consuming two to four packs of cigarettes a day. In this  
17 way, JUUL has not only created a new generation of e-cigarette smokers but has also pioneered  
18 a new style of smoking—vaping—that is more nicotine-saturated than ever before.  
19

20 99. Increased rates and duration of smoking lead to greater overall exposure to  
21 nicotine. Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets  
22 brain areas involved in emotional and cognitive processing, nicotine poses a particularly potent  
23 threat to the adolescent brain as it can “derange the normal course of brain maturation and have  
24

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25 <sup>144</sup> David Pierce, *This Might Just Be the First Great E-Cig*, Wired.com (Apr. 21, 2015),  
26 <https://www.wired.com/2015/04/pax-juul-ecig/>.

1 lasting consequences for cognitive ability, mental health, and even personality.”<sup>145</sup> Studies also  
 2 show that exposure to nicotine as a teen—even minimal exposure—biologically primes the  
 3 brain for addiction and greatly increases likelihood of dependence on nicotine as well as other  
 4 substances later in life.<sup>146</sup>

5 100. Exposure to nicotine during adolescence through young adulthood can disrupt the  
 6 formation of brain circuits that control attention and learning because the brain is not fully  
 7 developed until the mid-20s. Nicotine activates the limbic system more strongly in the  
 8 adolescent brain than in the adult brain, making addiction a significantly greater risk for youth  
 9 who use nicotine. Young people are also at risk for long-term effects of exposing their brains to  
 10 nicotine, including mood disorders and permanent lowering of impulse control.  
 11

12 101. Nicotine addiction is a serious injury recognized by the medical community in the  
 13 Diagnostic and Statistical Manual (DSM), categorized by “a problematic pattern of tobacco use,  
 14 leading to clinically significant impairment or distress.”<sup>147</sup>  
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 16  
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20 <sup>145</sup> Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of*  
 21 *Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function*, 2(12)  
 Cold Spring Harbor Persp. Med. 2 (2012), [https://www.ncbi.nlm.nih.gov/pmc/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/pdf/cshperspectmed-ADD-a012120.pdf)  
 22 [articles/PMC3543069/pdf/cshperspectmed-ADD-a012120.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/pdf/cshperspectmed-ADD-a012120.pdf).

23 <sup>146</sup> Michelle Ren and Shahrdad Lotfipour, *Nicotine Gateway Effects on Adolescent Substance*  
*Use*, 20(5) West J. Emergency Med. 696 (Aug. 20, 2019),  
 24 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6754186/>.

25 <sup>147</sup> Psychology Today, *Tobacco-Related Disorders*,  
 26 [https://www.psychologytoday.com/us/conditions/tobacco-related-disorders#:~:text=](https://www.psychologytoday.com/us/conditions/tobacco-related-disorders#:~:text=Symptoms,period%20of%20time%20than%20intended)  
[Symptoms,period%20of%20time%20than%20intended](https://www.psychologytoday.com/us/conditions/tobacco-related-disorders#:~:text=Symptoms,period%20of%20time%20than%20intended) (last visited June 13, 2020).

102. Medical research has revealed the difficulty of ceasing use of nicotine through nicotine withdrawal. Nicotine withdrawal is categorized by irritability, anxiety, difficulty concentrating, restlessness, increased appetite, dysphoric or depressed mood, and insomnia.<sup>148</sup>

103. According to the National Institute of Drug Abuse, 31% of the teen e-cigarette users will start smoking within six months, compared to 8% of non-e-cigarette users.<sup>149</sup>

104. Signs of addiction to nicotine include trembling, nausea, and frequent e-cigarette use. Other tell-tale signs are frequent trips to the bathroom, reports of illness, or hand-to-mouth activity.

105. According to congressional testimony from Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco Research and Treatment Center, “[n]icotine addiction can take hold in only a few days, especially in the developing adolescent brain that is particularly vulnerable to addiction to nicotine. . . . Many of my patients find JUUL nearly impossible to stop. Nicotine withdrawal can cause headaches, insomnia, irritability, anxiety, and depression, and these withdrawal symptoms are one of the primary reasons a nicotine addiction is difficult to overcome.”<sup>150</sup> Moreover, there is a lack of effective tools to help adolescents overcome nicotine addiction: there is no good data on how to treat adolescents with e-cigarette dependence; there has not

<sup>148</sup> Ian McLaughlin et al., *Nicotine Withdrawal*, U.S. Nat’l Library of Medicine, Nat’l Institutes of Health (Aug. 19, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4542051/>.

<sup>149</sup> National Institute on Drug Abuse, *Teens and E-cigarettes* (updated Feb. 2016), <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/teens-e-cigarettes>.

<sup>150</sup> *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I, Hearing Before the Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th Cong. (2019) (statement of Jonathan P. Winickoff, American Academy of Pediatrics) (“Winickoff Testimony”), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf>, at 2-3.



1 been enough research on youth tobacco cessation strategies; and most of the pharmacological  
2 therapies approved for adults have been shown to be ineffective or only marginally effective in  
3 adolescents.<sup>151</sup>

4 106. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is  
5 much more likely to continue than daily cigarette smoking. Out of the surveyed students who  
6 reported ever using cigarettes, only 17% indicated that they remained daily smokers. Out of the  
7 surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This  
8 data “demonstrates that e-cigarette use in teens is very persistent, a result consistent with the  
9 addictiveness of JUUL and the difficulty teens have in trying to quit.”<sup>152</sup>

10 107. E-cigarette use also puts adolescents at increased risk for cigarette smoking.  
11 Compared to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to  
12 begin smoking cigarettes.<sup>153</sup>

13 108. The dangerous and destructive nature of nicotine is no recent discovery. As a  
14 key ingredient in tobacco products, the drug and its deleterious effects have been the subject of  
15 scientific research and public health warnings for decades. Nicotine causes cardiovascular,  
16 reproductive, and immunosuppressive problems with devastating effects. Part of the reason the  
17 national decline in cigarette use in recent years was such a victory for public health was because  
18 there was a corresponding decline in teen exposure to nicotine. From 2000 to 2017, the  
19 smoking rate among high school students fell by 73%.<sup>154</sup>

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22 <sup>151</sup> *Id.* at 3.

23 <sup>152</sup> *Id.*

24 <sup>153</sup> *Id.*

25 <sup>154</sup> Press Release, Matthew L. Myers, President, Campaign for Tobacco-Free Kids, *Press*  
26 *Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for Bold Action*

109. That trend has been completely reversed. In 2018, more than one in four high school students in the United States reported using a tobacco product in the past thirty days, a dramatic increase from just one year before.<sup>155</sup> But there was no increase in the use of cigarettes, cigars, or hookahs during that same time period.<sup>156</sup> There was only increased use in a single tobacco product: e-cigarettes. While use of all other tobacco products continued to decrease as it had been for decades, e-cigarette use among high school students increased 78% in just one year.<sup>157</sup> This drastic reversal caused the CDC to describe youth vaping an “epidemic.”<sup>158</sup>

110. The teen vaping epidemic of which JUUL is the architect has and will continue to have significant costs, both for individual users and for society. Nicotine addiction alone has significant health care costs, and these costs are exacerbated when adolescents are involved. Adolescent nicotine addiction leads to memory and attention problems and increased chances of addiction later in life, all of which will continue to have long-lasting impacts on society.

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to Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids (Nov. 26, 2018), [https://www.tobaccofreekids.org/press-releases/2018\\_11\\_26\\_msa20](https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20).

<sup>155</sup> Press Release, Ctrs. For Disease Control and Prevention, “Progress Erased: Youth Tobacco Use Increased During 2017-2018” (Feb. 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

<sup>156</sup> Ctrs. for Disease Control and Prevention, *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason* (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

<sup>157</sup> Scott Gottlieb, U.S. Food & Drug Admin., *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*, U.S. Food & Drug Admin. (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

<sup>158</sup> Jerome Adams, Ctrs. For Disease Control and Prevention, *Surgeon General’s Advisory on E-cigarette Use Among Youth 2* (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

111. Science is also beginning to show that e-cigarettes have the potential to cause even more distinct health risks and costs. The very same liquids that enable e-cigarettes to deliver nicotine with such potency are proving to be increasingly dangerous. When heated the vape liquid turns into aerosol which may contain, in addition to nicotine, ultrafine toxic particles such as heavy metals, additional chemicals, and volatile organic compounds.<sup>159</sup> These chemicals have the potential to be deadly. Vaping is now linked to conditions like chronic obstructive pulmonary disease and seizures, and there were 193 possible cases of severe lung illness associated with e-cigarette product use in 22 states in less than two months in the summer of 2019 alone.<sup>160</sup> Public health officials reported the first known death from a vaping-related illness on August 23, 2019.<sup>161</sup> As of February 18, 2020, U.S. health officials had reported 68 deaths from respiratory illness tied to vaping and the number of people hospitalized to 2,807.<sup>162</sup>

112. Many teenagers are simply unaware of these risks, an ignorance that JUUL preys on. According to Dr. Winickoff, many of his patients believe JUULing is harmless:

Counseling teens and preteens on e-cigarette use is challenging. Many of my patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes

<sup>159</sup> Lena H. Sun, *He went from hiking enthusiast to 'on death's door' within days. Doctors blamed vaping*, Wash. Post (Aug. 24, 2019), [https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4\\_story.html?arc404=true](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true).

<sup>160</sup> Press Release, Ctrs. For Disease Control and Prevention, "CDC, FDA, States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes" (last updated Aug. 23, 2019), <https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html>.

<sup>161</sup> Matt Richtel & Sheila Kaplan, *First Death in a Spate of Vaping Sicknesses Reported by Health Officials*, N.Y. Times (Aug. 23, 2019, updated Oct. 8, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

<sup>162</sup> Ctrs. for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html) (last updated Feb. 25, 2020).

are dangerous, but assume that Juul—since it’s ubiquitous, comes in child-friendly flavors, and is marketed as a healthier alternative to smoking— must be harmless. I have to explain to kids that e-cigarettes do not have the same positive health benefits as the fruits whose flavors they copy. Even the term vapor calls to mind harmless water vapor. There is no water in these products.<sup>163</sup>

113. A peer-reviewed medical article published by *JAMA Pediatrics* on January 21, 2020 analyzed the prevalence, patterns and factors associated over time with e-cigarette use among adolescents and younger adults in the United States. The conclusions were in part as follows: “This study found that the e-cigarette device JUUL appears to be associated with the youth e-cigarette epidemic, attracting new users and facilitating frequent use with their highly addictive nicotine content and appealing flavors.”<sup>164</sup>

114. The JAMA study further revealed that while JUUL products were claimed to be designed for adults to try to quit smoking cigarettes, nearly 8% of 15- to 17-year-olds had used JUUL within the past month compared to just under 3% of older Americans.<sup>165</sup>

115. The research was conducted by the anti-tobacco advocacy group *Truth Initiative*. “Youth tobacco use is at its highest in nearly 20 years, primarily driven by e-cigarettes resulting in over 5 million youth now vaping across America,” Robin Koval, CEO and president of *Truth Initiative*, said in a news release. “Years of progress in the fight against youth tobacco [use]

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<sup>163</sup> Winickoff Testimony at 2.

<sup>164</sup> Donna M. Vallone et al., *Electronic Cigarette and JUUL Use Among Adolescents and Young Adults*, 174(3) *JAMA Pediatrics* (published online Jan. 21, 2020).

<sup>165</sup> Robert Preidt, *Vape Devices Like Juul ‘Reversing’ Efforts to Keep Youth from Tobacco: Study*, U.S. News and World Report (Jan. 21, 2020, 12:00 PM), <https://www.usnews.com/news/health-news/articles/2020-01-21/vape-devices-like-juul-reversing-efforts-to-keep-youth-from-tobacco-study>.

1 have been reversed with millions of teens, most of whom were not smokers, now using a high  
 2 nicotine tobacco product.”<sup>166</sup>

### 3 **F. JUUL’s Remedial Measures**

4 116. In the face of increasing public scrutiny and pressure, JUUL has taken some  
 5 action to curb underage use of its products, but its efforts have been ineffective at best and  
 6 aggravating at worst. After media and researchers brought JUUL’s advertising tactics front and  
 7 center, it launched a new ad campaign focusing on former smokers, and it deleted social media  
 8 accounts. But, JUUL designed its social media campaign to flourish from user-made content,  
 9 which remains unaffected by the absence of a JUUL-run account. In fact, as noted above, posts  
 10 relating to JUUL increased after it stopped its direct social advertising campaign.

12 117. JUUL’s efforts to curb underage use through alterations to the product itself are  
 13 similarly either ineffective or potentially damaging. JUUL’s approach to its flavored products  
 14 illustrates this point. In response to serious concerns about flavored products and youth vaping,  
 15 JUUL did the following: (1) it slightly modified the flavor names (i.e., “Cool Mint” is now  
 16 “Mint,” “Crème Brulee” is now “Creme”); and (2) it limited the flavors carried by retail stores  
 17 to tobacco and mint, while continuing to offer the full range of flavors (including popular ones  
 18 such as Mango) online—a market which teens are particularly aware of and adept at navigating.

19 As Dr. Winickoff testified before Congress:

20 [it is] completely false to suggest that mint is not an attractive flavor to children.  
 21 From candy canes to toothpaste, children are introduced to mint flavor from a  
 22 young age. Not only do children enjoy mint, but it has special properties that make  
 23 it an especially dangerous flavor for tobacco. Menthol’s anesthetic properties cool

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24 <sup>166</sup> Truth Initiative, *New Truth Initiative Study Finds JUUL Use Doubled in One Year as*  
 25 *Tobacco and Nicotine Use Among Youth Reaches Highest Level in Decades* (Jan. 21, 2020),  
 26 <https://truthinitiative.org/press/press-release/new-truth-initiative-study-finds-juul-use-doubled-one-year-tobacco-and-nicotine>.

1 the throat, mask the harshness of nicotine, and make it easier for children to start  
2 using and continue using tobacco products. The impact of mint and menthol  
flavors on increasing youth tobacco addiction is well documented.<sup>167</sup>

3 118. Similarly, restricting other flavors to online sales is of limited effectiveness.

4 According to Dr. Winickoff, 80% of children get e-cigarettes from social sources such as older  
5 friends, meaning that if the products are available for sale somewhere, children will get them.<sup>168</sup>

6 119. In October 2019, JUUL suspended the sale of non-tobacco, non-menthol based  
7 flavors (Mango, Crème, Fruit, and Cucumber) in the U.S. pending FDA review.

8 120. In November 2019, JUUL announced that the company would immediately stop  
9 accepting order from its retailers for Mint JUULpods in the U.S. and cease the sale of Mint  
10 JUULpods in the U.S. through its website.

#### 12 **G. JUUL and the Federal Response**

13 121. In September 2019, President Trump, the first lady, and two of his top health  
14 officials gathered in the Oval Office to announce they would take what Mr. Trump called “very,  
15 very strong” action against the fast-growing epidemic of teenage vaping: a ban on the sale of  
16 most flavored e-cigarettes.<sup>169</sup>

17 122. In late December 2019, the President’s administration announced they would  
18 forbid the sale of most flavored e-cigarette cartridges, but would exempt menthol and tobacco  
19 flavors, as well as flavored liquid nicotine sold in open tank systems at vape shops.<sup>170</sup>

21  
22 <sup>167</sup> Winickoff Testimony at 4.

23 <sup>168</sup> *Id.*

24 <sup>169</sup> Abby Goodnough, Maggie Haberman, Sheila Kaplan, *With Partial Flavor Ban, Trump Splits  
the Difference on Vaping*, N.Y. Times (updated Feb. 12, 2020),  
<https://www.nytimes.com/2020/01/02/health/flavor-ban-e-cigarettes.html>.

25 <sup>170</sup> *Id.*

1           123. In late December 2019, the Food and Drug Administration ordered companies to  
2 stop manufacturing, distributing and selling most cartridge-based e-cigarette flavors—including  
3 mint and fruity flavors—by early February 2020, saying the crackdown was urgently needed to  
4 stem a surge in teen vaping.<sup>171</sup>

5           124. On December 20, 2019, the President signed legislation amending the Federal  
6 Food, Drug and Cosmetic Act and raising the federal minimum age of sale of tobacco products  
7 from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product, including e-  
8 cigarettes, to anyone under 21.

9           125. A bipartisan group of U.S. senators on January 22, 2020 announced that they have  
10 introduced legislation that would mandate e-cigarette companies to pay user fees to the U.S.  
11 Food and Drug Administration to fund stronger oversight over the industry. The senators—  
12 including Jeanne Shaheen, D-N.H., and Mitt Romney, R-Utah—said that the Resources to  
13 Prevent Youth Vaping Act authorizes the FDA to collect user fees from all makers of tobacco  
14 products, including e-cigarettes. While makers of traditional tobacco products currently pay  
15 FDA user fees, e-cigarette companies are currently exempt, according to the senators. The  
16 proposed bill increases the total amount of user fees that will be collected in fiscal year 2020 by  
17 \$100 million, the senators said. “This legislation gives FDA the authority and resources the  
18 agency needs to hold e-cigarette companies accountable, crack down on e-cigarette sales to  
19 minors and raise awareness among youth about the dangers of vaping,” Shaheen said in a  
20 statement.<sup>172</sup>

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24 <sup>171</sup> Wash. Post News Serv., *FDA bars sales of most e-cigarette pod flavors after 30 days*, Herald  
and News (Jan. 3, 2020), [https://www.heraldandnews.com/fda-bars-sales-of-most-e-cigarette-pod-flavors-after/article\\_2c51c3da-c953-56fa-99dd-857d266d621e.html](https://www.heraldandnews.com/fda-bars-sales-of-most-e-cigarette-pod-flavors-after/article_2c51c3da-c953-56fa-99dd-857d266d621e.html).

25 <sup>172</sup> Emily Field, *Senators Unveil Bill Requiring Vape Cos. To Pay FDA*, Law360 (Jan. 22, 2020,  
26 3:41 PM), <https://www.law360.com/articles/1236604>.

1           126. On January 22, 2020, Congress announced that in early February 2020, JUUL  
 2 representatives and those of other leading e-cigarette companies would be called to testify about  
 3 their role in creating the youth vaping crisis. “While consumers remain in the dark of the  
 4 possible health consequences, these companies are making billions of dollars as they lure a new  
 5 generation of young people into a lifetime of nicotine addiction,” Rep. Diana DeGette (D-  
 6 Colo.), the chair of the oversight panel conducting the hearing, wrote in a press release. Despite  
 7 spending more than \$4 million lobbying Congress in 2019, JUUL has been criticized by  
 8 everyone from former FDA Commissioner Scott Gottlieb to Sen. Elizabeth Warren (D-Mass.)  
 9 for its role in fueling the youth vaping epidemic.<sup>173</sup>  
 10

#### 11       **H. JUUL and New York’s Response**

12           127. New York is among the number of states that have taken action against JUUL.

13           128. On May 18, 2020, New York implemented a ban on the sale of flavored e-  
 14 cigarettes and vaping products.<sup>174</sup>

15           129. New York Governor Andrew Cuomo has stated that: “The dangers of vaping and  
 16 flavored e-cigarettes are becoming more apparent by the day, and it would be a tragedy if our  
 17 successful efforts to combat the tobacco industry were reversed by allowing the vaping industry  
 18 to get a whole new generation hooked on their products.”<sup>175</sup>  
 19

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21 <sup>173</sup> Nicholas Florko, *Congress calls Juul, four other vape companies to testify about youth*  
 22 *vaping*, STAT (Jan. 22, 2020), [https://www.statnews.com/2020/01/22/juul-other-vape-makers-](https://www.statnews.com/2020/01/22/juul-other-vape-makers-testify/)  
[testify/](https://www.statnews.com/2020/01/22/juul-other-vape-makers-testify/).

23 <sup>174</sup> N.Y. State Dep’t of Health, *New York State Department of Health Announces Statewide Ban*  
 24 *of Flavored Nicotine Vapor Products Takes Effect Today* (May 18, 2020),  
[https://www.health.ny.gov/press/releases/2020/2020-05-](https://www.health.ny.gov/press/releases/2020/2020-05-18_fl_nicotine_vapor_products_ban.htm)  
[18\\_fl\\_nicotine\\_vapor\\_products\\_ban.htm](https://www.health.ny.gov/press/releases/2020/2020-05-18_fl_nicotine_vapor_products_ban.htm).

25 <sup>175</sup> *Governor Cuomo Launches Campaign to Ban Flavored Nicotine Vaping Products and*  
 26 *Restrict Vaping Ads Aimed at Youth*, N.Y. State Governor (Feb. 20, 2020),



1           130. New York State Congress of Parents and Teachers, Inc. President Lorey Zaman  
 2 said, “We are proud to fully support the Governor’s proposal to ban the sale of flavored  
 3 ecigarettes and flavored e-liquids. According to New York State Department of Health, nearly  
 4 40 percent of 12th grade students and 27 percent of all NYS high school students are now using  
 5 ecigarettes and NYS high school vaping use today is 160 percent higher than it was in 2014.”<sup>176</sup>

6           131. New York State Congress of Parents and Teachers, Inc. Executive Director Kyle  
 7 Belokopitsky said, “Did you know that ecigarettes are shockingly available in more than 15,000  
 8 fruit and candy flavors? Eliquid flavors such as gummy bear and cotton candy are intentionally  
 9 targeted to children and youth. Our children don’t understand the harms of vaping, they don’t  
 10 understand the lifetime of lung disease they face, nor the cancer risks, and they don’t understand  
 11 the risk of death, yes death, due to vaping.”<sup>177</sup>

12           132. New York State Commissioner of Health Dr. Howard Zucker stated that: “The  
 13 ban on flavored nicotine vapor products will protect our children, who, thanks to the tobacco  
 14 industry’s marketing efforts, have been using vaping products at alarming rates.”<sup>178</sup> Dr. Zucker  
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21 <https://www.governor.ny.gov/news/governor-cuomo-launches-campaign-ban-flavored-nicotine-vaping-products-and-restrict-vaping-ads>.

22 <sup>176</sup> *Id.*

23 <sup>177</sup> *Id.*

24 <sup>178</sup> N.Y. State Dep’t of Health, *New York State Department of Health Announces Statewide Ban of Flavored Nicotine Vapor Products Takes Effect Today*, (May 18, 2020),  
 25 [https://www.health.ny.gov/press/releases/2020/2020-05-18\\_fl\\_nicotine\\_vapor\\_products\\_ban.htm](https://www.health.ny.gov/press/releases/2020/2020-05-18_fl_nicotine_vapor_products_ban.htm).

1 explained that following the ban on the sale flavored e-cigarettes, “we will no longer permit Big  
2 Tobacco to target young New Yorkers for a lifetime of nicotine addiction.”<sup>179</sup>

3 133. Tobacco-Free Action of Columbia & Greene Counties Program Director Karen  
4 dePeyster said, “This year’s priority was getting the ban on flavored e-cigarettes because we  
5 know that those flavors attract young people to vaping and open the pathway to nicotine  
6 addiction without them even realizing it.” Director dePeyster added, “The problem has gotten  
7 so bad that 40% of high school seniors report using vape products, and the sad part is that most  
8 of these are young people who would never touch a cigarette. The flavor ban will take away a  
9 lot of the appeal of e-cigarettes and we expect the numbers using vape products to decrease.”<sup>180</sup>

#### 11 **I. JUUL and Indian Tribes**

12 134. Smoking rates have continued to remain disproportionately high among  
13 American Indian and Alaska Natives. According to the CDC, “American Indians/Alaska  
14 Natives have the highest prevalence of cigarette smoking compared to all other racial/ethnic  
15 groups in the United States,” but the progress made in recent years is quickly vanishing due to  
16 the explosion of JUUL vaping devices.<sup>181</sup>

17 135. More than 22% of American Indian and Alaska Native adults currently smoke  
18 cigarettes compared to about 13.7% of American adults overall.<sup>182</sup> The reasons for the  
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20 <sup>179</sup> Melanie Lekocevic, *State bans flavored vaping products*, The Daily News (Apr. 12, 2020),  
21 [https://www.thedailynewsonline.com/top\\_story/state-bans-flavored-vaping-products/article\\_43a406e3-5838-50ee-b5e9-ea36acb3e56b.html](https://www.thedailynewsonline.com/top_story/state-bans-flavored-vaping-products/article_43a406e3-5838-50ee-b5e9-ea36acb3e56b.html).

22 <sup>180</sup> *Id.*

23 <sup>181</sup> Ctrs. for Disease Control & Prevention, *American Indians/Alaska Natives and Tobacco Use*,  
24 <https://www.cdc.gov/tobacco/disparities/american-indians/index.htm> (last visited May 29, 2020).

25 <sup>182</sup> Truth Initiative, *Tobacco use in the American Indian/Alaska Native communities* (May 28,  
26 2020), <https://truthinitiative.org/research-resources/targeted-communities/tobacco-use-american-indianaalaska-natives-community>.

discrepancies are numerous and attributed to the fact that American Indians “suffer from the effects of historical trauma and stressors in our lives, and have problems in the areas of poverty, housing, all of these social determinants of health.”<sup>183</sup>

136. E-cigarette use is a growing problem for American Indian youth. According to National Youth Tobacco Survey data, 16.1% of American Indian and Alaska Native middle school students and 40.4% of American Indian and Alaska Native high school students were current users of e-cigarette products.<sup>184</sup> This is much higher than the general population rate of 27.5% of high school students and 10.5% of middle school students who use e-cigarette products.<sup>185</sup>

137. JUUL has specifically targeted the American Indian population with false and misleading statements about its products. On February 5, 2020, the United States House of Representatives Subcommittee on Economic and Consumer Policy found that, among other damaging things, “JUUL’s targeting of Native American Tribes was more pervasive than initially known[.]”<sup>186</sup> The Subcommittee “exposed JUUL’s pervasive targeting of children by obtaining testimony about JUUL: (1) presenting to kids in school and falsely claiming that JUUL was “totally safe”; (2) sponsoring summer camps for kids as young as eight; (3) targeting

<sup>183</sup> Jamie Ducharme, *‘It’s Insidious’: How Juul Pitched E-Cigs to Native American Tribes*, Time (Feb. 6, 2020, 11:38 AM), <https://time.com/5778534/juul-native-american-tribes/>.

<sup>184</sup> Truth Initiative, *Tobacco use in the American Indian/Alaska Native communities* (May 28, 2020), <https://truthinitiative.org/research-resources/targeted-communities/tobacco-use-american-indianaalaska-natives-community>.

<sup>185</sup> *Id.*

<sup>186</sup> Subcommittee Staff, *Memorandum re Update on the Subcommittee’s E-Cigarette Investigation, Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th Cong. (Feb. 5, 2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-04.RK%20Memo%20re%20JUUL.pdf>, at 8.

Native Americans as guinea pigs for its product; (4) targeting other vulnerable populations, including veterans and minority communities; and (5) implementing a vast and sophisticated network of social media influencers . . . .”<sup>187</sup>

138. In particular, between December 2018 and February 2019, the Congressional Subcommittee accepted testimony from JUUL indicating that it had specifically targeted at least eight Indian tribes: (a) the Moapa Band of the Paiute Tribe; (b) the Lummi Nation; (c) the Nooksack Tribe; (d) the Cheyenne River Sioux Tribe; (e) the S’Klallam Tribe; (f) the Chickasaw Nation; (g) the Muckleshoot Tribe; and (h) the Kalispel Tribe.<sup>188</sup> JUUL also admitted that it contacted an undisclosed additional number of tribes with marketing pitches, but has refused to identify those additional tribes or even indicate how many tribes were contacted.<sup>189</sup>

139. The Congressional Subcommittee found that representatives of JUUL have appeared at tribal council meetings of various Indian Tribes offering free JUUL vaping devices.<sup>190</sup> JUUL representatives told tribal members they were better off without cigarettes and could replace them with JUUL’s cool electronic vaping devices and cartridges as part of a so-called “switching program.”<sup>191</sup>

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<sup>187</sup> *Id.* at 4.

<sup>188</sup> *Id.* at 9.

<sup>189</sup> *Id.*

<sup>190</sup> *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I, Hearing Before the Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th Cong. (2019) (statement of Rae O’Leary, Public Health Analyst, Missouri Breaks Industries Research), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20O%27Leary%20Testimony.pdf>.

<sup>191</sup> *Id.*

**J. Impacts on the Tribe**

140. The Tribe and its members have been directly impacted by the e-cigarette epidemic and surge in youth vaping created by Defendants' misconduct. Vaping use by young members of the Tribe has reversed the positive trend of decreased cigarette use and nicotine addiction.

141. Defendants' marketing strategy, advertising, and product design directly targets minors, especially teenagers, and has dramatically increased the use of JUUL products amongst youth and underage members of the Tribe.

142. Defendants' activities have caused youth and underage members of the Tribe to become addicted to Defendants' e-cigarette products.

143. The Tribe's current available resources to address Defendants' misconduct are extremely limited. The Tribe has been compelled to redirect its limited resources and seek additional resources to help its youth combat Defendants' false, deceptive, and misleading marketing scheme, and to educate youth and their parents of the true dangers of e-cigarettes. Significant further resources will be required now and in the future to continue to respond to the widespread vaping by youth members of the Tribe and the addictive habits and behavior that it has caused.

144. The Tribe has recognized the urgency of the youth vaping crisis. The Tribe has issued a press release stating that: "Vaping products, such as JUUL, are available in enticing flavors for youth and come in a small, sleek device that resembles a USB flash drive—making it easy for middle and high school students to conceal."<sup>192</sup> The Tribe has taken steps to address

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<sup>192</sup> Saint Regis Mohawk Tribe, *Tribe Increases Minimum Purchase Age for Vaping Devices and Bans Flavored Products*, <https://www.srmt-nsn.gov/news/2019/tribe-increases-minimum-purchase-age-for-vaping-devices-and-bans-flavored-products> (last visited June 2, 2020).

1 the public health concerns associated with vaping and e-cigarette products and their appeal to  
2 youth and young adults.

3 145. Due to concerns associated with vaping amongst its young members, in October  
4 2019, the Tribe's Alcohol/Chemical Dependency Program provided a presentation on the ill  
5 effects of vaping.<sup>193</sup> Following the presentation, the Tribe's Tribal Council sought to take  
6 measures to address the e-cigarette and vaping epidemic.<sup>194</sup>

7 146. On December 6, 2019, the Tribal Council passed Resolution No. 2019-58, which  
8 set the minimum age to purchase all products associated with vape, e-cigarettes, Electronic  
9 Nicotine Delivery Systems (ENDS), or similar devices to 21 years of age and prohibited the  
10 retail sale and distribution of all flavored vape, e-cigarettes, ENDS or similar devices and  
11 products within the territory of the Tribe.<sup>195</sup>

12 147. In Resolution No. 2019-58, the Tribal Council acknowledged that tobacco use is  
13 commonly established during adolescence and determined the critical need to take action to  
14 prevent its youth from the potential of a lifetime of nicotine addiction.<sup>196</sup> The Tribal Council  
15 noted that the U.S. Department of Health and Human Services's 2016 report on "E-Cigarette  
16 Use Among Youth and Young Adults" confirmed that the use of e-cigarettes is growing rapidly  
17 among youth and youth adults.<sup>197</sup>

18 148. The Tribal Council also recognized the specific potential adverse health effects  
19 for youth who inhale e-cigarette aerosol, including those on the body from acute administration  
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22 <sup>193</sup> *Id.*

23 <sup>194</sup> *Id.*

24 <sup>195</sup> *Id.*

25 <sup>196</sup> *Id.*

26 <sup>197</sup> *Id.*

1 of nicotine, flavorants, chemicals, other particulates, and additional effects, to be: (1) nicotine  
2 addiction; (2) development effects on the brain from nicotine exposure, which may have  
3 implications for cognition, attention, and mood; (3) e-cigarette influence initiating or supporting  
4 use of conventional cigarettes and dual use of conventional cigarettes and e-cigarettes; (4) e-  
5 cigarette influence on subsequent illicit drug use; (5) e-cigarette effects on psychosocial health,  
6 particularly among youth with one or more comorbid mental health disorders; and (6) battery  
7 explosion and accidental overdose of nicotine.  
8

9 149. Tribal Council Chief Michael Conners explained that: “E-cigarette flavors like  
10 crème brûlée, mango and fruit medley are being produced and marketed specifically for one  
11 consumer group—our youth.”<sup>198</sup> Chief Conners added, “With so many adverse health effects  
12 and fatalities that are just now being made known from inhaling aerosols containing toxic  
13 chemicals, we needed to implement measures intended to protect the health and safety for a  
14 vulnerable segment of our population.”<sup>199</sup>

15 150. Tribal Council Chief Beverly Cook stated that: “Most tobacco use is established  
16 during adolescence and often leads to a host of health problems associated with a lifetime of  
17 nicotine addiction.”<sup>200</sup> Chief Cook added, “Because youth are more likely to take risks with  
18 their health and safety, they are at a greater risk of using vaping products that are being  
19 marketed with them in mind.”<sup>201</sup>  
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23 <sup>198</sup> *Id.*

24 <sup>199</sup> *Id.*

25 <sup>200</sup> *Id.*

26 <sup>201</sup> *Id.*

1           151. In response to the e-cigarette pandemic, the Tribe has expended a significant part  
2 of its limited health care resources on addiction treatment and prevention programs specific to  
3 youth and addiction of e-cigarettes.

4           152. The Tribe's steps taken are necessary, but these measures cannot fully address  
5 the existing widespread use of vaping products and resulting nicotine addiction among its  
6 youth. Because of the potency of JUUL's nicotine and ease of delivery—allowing youth to  
7 discreetly and frequently use the product—widespread use of JUUL products has created a  
8 problem of addiction much greater than the Tribe can address with its current level of resources.  
9

10           153. Fully addressing the harms to the Tribe caused by Defendants' conduct will  
11 require a comprehensive approach. Without the resources to fund these measures such as those  
12 described herein, the Tribe will continue to be harmed by the ongoing consequences of  
13 Defendants' conduct.

14           154. The harm that the Tribe has suffered and will continue to suffer cannot be  
15 addressed by Federal agency or regulatory action. There are no rules that the FDA could make  
16 or actions that agency could take which would provide the Tribe with the relief it seeks in this  
17 case.

18           155. Even if e-cigarettes were entirely banned today or only used by adults, the Tribe's  
19 youth would remain addicted to the nicotine contained in Defendants' products.  
20

21           156. Regulatory action would not be sufficient to compensate the Tribe for the money  
22 and resources that it has already expended on addressing the impacts of the youth vaping  
23 epidemic and the resources it will need to expend in the future.

24           157. The costs that the Tribe has incurred and will incur in the future in responding to  
25 the vaping epidemic among its youth and in providing the public services described in this  
26



Complaint are recoverable pursuant to the causes of action asserted by the Tribe. Defendants' misconduct alleged herein is not a series of isolated incidents, but instead involves a sophisticated and complex marketing scheme and related cover-up that has caused a continuing, substantial, and long-term burden on the services provided by the Tribe to its youth. Additionally, the public nuisance created by Defendants and the Tribe's requested relief in seeking abatement further compels Defendants to reimburse and compensate the Tribe for the substantial resources it has expended and will need to continue to expend to address the youth vaping epidemic created by Defendants' misconduct.

158. The creation and maintenance of the youth e-cigarette epidemic directly harms the Tribe by imposing costs on its members and territory. As a result of Defendants' misconduct, the Tribe has been, and will be, forced to go far beyond what a governmental entity would be expected to pay to enforce the laws to promote the general health and welfare of the Tribe and its members in order to combat the youth vaping crisis. This includes providing new programs and services in direct response to the damage caused by Defendants' misconduct.

159. Defendants' actions and omissions have substantially, unreasonably, and injuriously interfered with the functions and operations of the Tribe and have affected the public health, safety, and welfare of the Tribe's community. Without the youth and underage vaping epidemic within the Tribe's community, more time, money, and resources could have been used for the Tribe's goal of increasing the health and welfare of its members.

## **V. CAUSES OF ACTION**

### **COUNT I – VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961, *et seq.***

160. The Tribe hereby incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

1           161. At all relevant times, each Defendant is and has been a “person” under 18 U.S.C.  
2 § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in  
3 property.”

4           162. The Tribe is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has  
5 standing to sue as it was and is injured in its business and/or property as a result of Defendants’  
6 wrongful conduct described herein.

7           163. Section 1962(a) makes it “unlawful for any person who has received any income  
8 derived, directly or indirectly, from a pattern of racketeering activity or through collection of an  
9 unlawful debt in which such person has participated as a principal within the meaning of section  
10 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income,  
11 or the proceeds of such income, in acquisition of any interest in, or the establishment or  
12 operation of, any enterprise which is engaged in, or the activities of which affect, interstate or  
13 foreign commerce.” 18 U.S.C. § 1962(a).

14           164. Section 1962(c) makes it “unlawful for any person employed by or associated  
15 with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to  
16 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a  
17 pattern of racketeering activity . . . .” 18 U.S.C. § 1962(c).

18           165. Section 1962(d) makes it unlawful for “any person to conspire to violate”  
19 § 1962(a) and (c), among other provisions.

20           166. JUUL Enterprise: RICO defines an “enterprise” as “any individual, partnership,  
21 corporation, association, or other legal entity, and any union or group of individuals associated  
22 in fact although not a legal entity.” 18 U.S.C. § 1961(4).

1           167. Under RICO, an “enterprise” may be an association-in-fact that, although it has  
2 no formal legal structure, has (i) a common purpose, (ii) relationships among those associated  
3 with the enterprise, and (iii) longevity sufficient to pursue the enterprise’s purpose. *See Boyle v.*  
4 *United States*, 556 U.S. 938, 946 (2009).

5           168. Defendants formed an enterprise comprised of JUUL, Altria Group, Inc., Altria  
6 Client Services LLC, Altria Group Distribution Company, Nu Mark LLC, Philip Morris USA,  
7 Inc., and John Does 1-100 (collectively, the “JUUL Enterprise”).

8           169. The JUUL Enterprise functions to achieve a shared goal: a scheme to deceive  
9 tribal youth regarding the health risks and characteristics of JUUL e-cigarettes and JUULpods  
10 to encourage tribal youth use of JUUL products, to enable use of JUUL products on school  
11 premises and during class, to improperly downplay or conceal the dangers posed by nicotine  
12 use, to design a product that facilitated tribal youth e-cigarette use and initiation of use by non-  
13 smokers, to conceal the unparalleled potency of JUUL’s e-cigarette, to addict youth to JUUL  
14 products, and to gain financially, through unlawful means.

15           170. JUUL misstated and omitted material facts in social media posts—both its own  
16 posts and posts of its social media influencers, advertisements on JUUL’s website, email  
17 messages, print materials including 2015 full-page ads in VICE magazine, point-of-sale  
18 advertising, free JUUL distribution events, “education” programs to schools and youth, and  
19 product packaging.

20           171. The JUUL Enterprise misrepresented or failed to adequately disclose that its  
21 products contained nicotine or how much nicotine JUUL products deliver to a user’s  
22 bloodstream, including as compared to a combustible cigarette, as well as the benzoic acid  
23 levels JUULpods contain. JUUL further omitted the increased risk of addiction, physiological  
24 levels JUULpods contain. JUUL further omitted the increased risk of addiction, physiological  
25 levels JUULpods contain. JUUL further omitted the increased risk of addiction, physiological  
26 levels JUULpods contain.

1 effects, and other severe health risks the higher-than-disclosed levels of nicotine delivery pose  
2 to a JUUL user. Instead, JUUL intentionally created a misleading impression that JUUL's  
3 products were intended for youth, were totally safe or at least safer than combustible cigarettes,  
4 and were not a nicotine delivery device but rather a trendy tech product that should be  
5 associated with products like the popular iPhone. The JUUL Enterprise violated the Federal  
6 Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 387b(8), 387k(a), as amended by the Tobacco  
7 Control Act, by advertising its e-cigarettes and nicotine juice as modified risk tobacco products  
8 without an appropriate FDA Order in effect, *i.e.*, widely disseminating misleading statements  
9 about the safety of JUUL products.  
10

11 172. These deceptive acts were taken with the express intent of growing JUUL's  
12 market share and increasing JUUL's revenue, thereby causing financial gain to each of the  
13 JUUL Enterprise's members. In addition to enhancing the fortunes of its members, some of the  
14 increased revenues were used to operate and expand the JUUL Youth Marketing Enterprise.

15 173. Each member of the JUUL Enterprise was associated with an illegal enterprise,  
16 and conspired, conducted, and participated in that enterprise's unlawful affairs, through a  
17 pattern of racketeering activity consisting of numerous and repeated uses of the interstate mail  
18 and wire facilities to execute a scheme to defraud, in violation of 18 U.S.C. § 1341 (relating to  
19 mail fraud) and § 1343 (relating to wire fraud), all in violation of the RICO Act, 18 U.S.C.  
20 §§ 1962(a), (c)-(d). These acts, committed by interstate wire and through the mails, include: (1)  
21 sending and receiving thousands of statements over a number of years that contained deceptive  
22 statements regarding JUUL's e-cigarettes and JUULpods, the effects of nicotine use, the  
23 likelihood of becoming addicted to nicotine use, the design of JUUL's e-cigarettes, the amount  
24 of nicotine and other chemicals in JUULpods, and that JUUL's e-cigarettes were intended for  
25  
26

1 use by adults who were already addicted to nicotine use rather than by teens who were new  
 2 nicotine users; and (2) sending payments over that same time to further and guarantee the  
 3 success of the deceptive acts described in (1).

4 174. The JUUL Enterprise falsely and misleadingly used the mails and wires in  
 5 violation of 18 U.S.C. § 1341 and § 1342. Illustrative and non-exhaustive examples of this  
 6 unlawful conduct include the following:

- 7 A. “Here at JUUL we are focused on driving innovation to eliminate cigarettes, with  
 8 the corporate goal of improving the lives of the world’s one billion adult smokers.”  
 9 (JUUL Twitter Feed, July 5, 2017);<sup>202</sup>
- 10 B. “JUUL Labs was founded by former smokers, James and Adam, with the goal of  
 11 improving the lives of the world’s one billion adult smokers by eliminating  
 12 cigarettes. We envision a world where fewer adults use cigarettes, and where adults  
 13 who smoke cigarettes have the tools to reduce or eliminate their consumption  
 14 entirely, should they so desire.” (JUUL Website as of Oct. 7, 2019);<sup>203</sup>
- 15 C. “JUUL Labs exists to help adult smokers switch from combustible cigarettes.”  
 16 (Ted Kwong, a company spokesman);<sup>204</sup>
- 17 D. “JUUL was designed with adult smokers in mind. . . . JUUL provides satisfaction  
 18 to meet the standards of adult smokers looking to move away from smoking  
 19 cigarettes.” (JUUL Website as of May 31, 2020);<sup>205</sup>
- 20 E. “Our Intent[:] . . . [W]e believe that vaping can have a positive impact when used  
 21 by adult smokers, and can have a negative impact when used by nonsmokers. Our  
 22

20 <sup>202</sup> Jackler Testimony at 25 (noting that this was the first mention of the term “adult” or “adult  
 21 smoker” on JUUL’s Twitter Feed).

22 <sup>203</sup> *Our Mission*, JUUL, <https://web.archive.org/web/20191009012430/https://www.juul.com/mission-values> (last visited June 13, 2020).

23 <sup>204</sup> Joseph P. Williams, *Vaping: From ‘Safer Than Cigarettes’ to Public Health Crisis*, U.S.  
 24 News and World Rep. (Sept. 30, 2019, 9:00 AM).

25 <sup>205</sup> *Shop: Our Devices*, JUUL, <https://www.juul.com/shop/devices#:~:text=With%20its%20unique%20satisfaction%20profile,move%20away%20from%20smoking%20cigarettes> (last visited May 31, 2020).

goal is to maximize the positive and reduce the negative.” (JUUL Website as of May 31, 2020);<sup>206</sup>

F. “We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences.” (JUUL Social Media Post, Mar. 14, 2018);<sup>207</sup>

G. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL products. We certainly don’t want youth using the product. It is bad for public health, and it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth from initiating on nicotine. To paraphrase Commissioner Gottlieb, we want to be the off-ramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine. We won’t be successful in our mission to serve adult smokers if we don’t narrow the on-ramp. Our intent was never to have youth use JUUL products. But intent is not enough, the numbers are what matter, and the numbers tell us underage use of e-cigarette products is a problem. We must solve it.” (Statement of Former CEO of JUUL, Ken Burns, posted on the JUUL website Nov. 13, 2018);<sup>208</sup>

H. “We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, a world leader in switching adult smokers. We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.” (Statement of Howard Willard, Altria Chairman and Chief Executive Officer in Altria Press Release, Dec. 20, 2018);<sup>209</sup>

I. “First of all, I’d tell them that I’m sorry that their child’s using the product... It’s not intended for them. I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.” (JUUL CEO Ken Burns, CNBC Interview, July 13, 2019);<sup>210</sup>

<sup>206</sup> JUUL, *Our Intent*, <https://www.juul.com/mission-values> (last visited May 31, 2020).

<sup>207</sup> Jackler Testimony at 36.

<sup>208</sup> Kevin Burns, *Juul Labs Action Plan*, <https://newsroom.juul.com/juul-labs-action-plan/> (last visited May 31, 2020).

<sup>209</sup> *JUUL Statement About Altria Minority Investment and Service Agreements*, JUUL Newsroom <https://newsroom.juul.com/juul-statement-about-altria-minority-investment-and-service-agreements/> (last visited May 31, 2020).

<sup>210</sup> Angelica LaVito, *As Juul grapples with teen vaping ‘epidemic,’ CEO tells parents ‘I’m sorry’*, CNBC (July 13, 2019, 8:36 AM), <https://www.cnbc.com/2019/07/13/as-juul-deals-with-teen-vaping-epidemic-ceo-tells-parents-im-sorry.html>.

- 1 J. “We never wanted any non-nicotine user, and certainly nobody under the legal age  
2 of purchase, to ever use Juul products. . . . That is a serious problem. Our company  
3 has no higher priority than combatting underage use.” (Testimony of JUUL  
4 Founder James Monsees Before the House Committee on Oversight and Reform  
5 Subcommittee on Economic and Consumer Policy, July 25, 2019);<sup>211</sup>
- 6 K. “[W]e have no higher priority than combating youth use... we have taken a series  
7 of escalating steps to combat youth access, appeal, and use of vapor products ”  
8 (JUUL statement in response to lawsuits, Aug. 29, 2019);<sup>212</sup>
- 9 L. James Monsees, one of the company’s co-founders, said selling JUUL products to  
10 youth was “antithetical to the company’s mission.” (Quoted in New York Times  
11 article, *Did JUUL Lure Teenagers and Get ‘Customers for Life’?*, Aug. 27,  
12 2018);<sup>213</sup>
- 13 M. “Our focus is and will remain entirely on helping adult smokers switch away from  
14 combustible cigarettes, the leading cause of preventable death in the world.”  
15 (Joshual Raffel, JUUL spokesperson, quoted in New York Times article, *Philip  
16 Morris and Altria Are in Talks to Merge*, August 27, 2019);<sup>214</sup> and
- 17 N. “We have never marketed to youth and we never will.” (JUUL statement quoted  
18 in Los Angeles Times article, *Studies show how Juul exploited social media to get  
19 teens to start vaping*, Sep. 24, 2019).<sup>215</sup>

20 <sup>211</sup> *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part II, Hearing Before the*  
21 *Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th  
22 Cong. (2019) (statement of James Monsees, Co-founder and Chief Product Officer, JUUL Labs,  
23 Inc.), <https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-ii>.

24 <sup>212</sup> *Our Actions to Combat Underage Use*, JUUL Labs (Aug. 29, 2019),  
25 <https://newsroom.juul.com/category/1youth-prevention/> (last visited May 31, 2020).

26 <sup>213</sup> Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?* N.Y.  
Times (Aug. 27, 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

<sup>214</sup> Sheila Kaplan, *Philip Morris and Altria Are in Talks to Merge*, N.Y. Times (Aug. 27, 2019),  
<https://www.nytimes.com/2019/08/27/health/philip-morris-altria-merger-tobacco.html>.

<sup>215</sup> Michael Hiltzik, *Studies show how Juul exploited social media to get teens to start vaping*,  
Los Angeles Times (Sep. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens>.

1           175. Each member of the JUUL Enterprise profited from the Enterprise, and the Tribe  
2 suffered injury to its property because it has incurred substantial expense, is incurring  
3 substantial expense, and will continue to incur substantial expense in mitigating and combatting  
4 the harmful effects resulting from JUUL use by its youth members, including increased security  
5 and monitoring protocols, disciplinary programs, and educational programs necessary to correct  
6 the difficult and widespread problems resulting from the JUUL Enterprise's deceptive and  
7 illegal marketing. The members of the JUUL Enterprise used the proceeds from their deceptive  
8 acts to further the scheme by, among other things, expanding the depth and breadth of the  
9 deceptive marketing. For example, JUUL began offering to sponsor purportedly education-  
10 related activities under the guise of preventing underage use of e-cigarettes. In reality, JUUL  
11 sought to raise awareness of its products and gain additional users. The members of the JUUL  
12 Enterprise conspired to deceive the Tribe and its members on these matters.  
13

14           176. The JUUL Enterprise has existed and operated since at least 2015. It has  
15 functioned as a continuing entity and maintains an ascertainable structure separate and distinct  
16 from the pattern of racketeering activity. Each member's participation in the JUUL Enterprise  
17 is necessary for the successful operation of the deceptive marketing scheme and the financial  
18 gains that resulted therefrom.  
19

20           177. The Tribe has sustained injury by reason of the acts and conduct of Defendants  
21 alleged in this Complaint, including its loss of money in funding mitigation and remedial  
22 programs regarding JUUL use by youth which but for the deceptive marketing and other acts of  
23 the JUUL Enterprise, it would not have incurred.

24           178. The Tribe and its youth were the direct target of Defendants' scheme.  
25  
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179. But for the conduct of Defendants alleged herein, the Tribe would not have suffered the injuries alleged in this Complaint. These injuries suffered by the Tribe were a foreseeable and natural consequence of the scheme to defraud. The injuries of the Tribe were directly and proximately caused by Defendants' racketeering activity that deceived and defrauded consumers and resulted in a meteoric rise of tribal youth-vaping.

180. As a result and by reason of the foregoing, the Tribe has been injured, has suffered harm and sustained damage to its business and property, and is therefore entitled to recover actual and treble damages and its costs of suit, including reasonable attorney fees, pursuant to 18 U.S.C. § 1964(c).

181. In addition, as set forth above, Defendants have violated 18 U.S.C. §§ 1962(c) and (d) and will continue to do so in the future unless a court enjoins them from doing so.

182. Enjoining Defendants from committing these RICO violations in the future and/or declaring their invalidity and disgorging ill-gotten gains is appropriate pursuant to 18 U.S.C. § 1964(a), which authorizes the district courts to issue appropriate orders to provide equitable relief to the Tribe and enjoin violations of 18 U.S.C. § 1962.

183. The Tribe seeks compensatory damages, disgorgement, equitable relief, injunctive relief, treble damages, and attorneys' fees.

## **COUNT II – VIOLATION OF NEW YORK PUBLIC NUISANCE LAW**

184. The Tribe hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

185. The Tribe brings this public nuisance claim under New York law as to all Defendants. "A public nuisance under New York law exists when there is a substantial interference with a public right." *Johnson v. Bryco Arms*, 304 F. Supp. 2d 383, 390 (E.D.N.Y.

2004) (citation omitted). Under New York law, a private party bringing a public nuisance tort claim must allege: (1) the existence of a public nuisance; (2) conduct or omissions by a defendant that create, contribute to, or maintain that public nuisance; and (3) particular harm suffered by the plaintiff that is different in kind from that suffered by the community at large.

*Id.*

186. The Tribe has the power and authority to take action for abatement or removal of a public nuisance as its public health, safety or welfare may require.

187. The Tribe has made it unlawful to sell flavored vaping and e-cigarette products in the Tribe's territory, and increased the age to purchase vaping and e-cigarette products to 21 years of age.<sup>216</sup>

188. New York law also makes it unlawful to sell tobacco products, liquid nicotine, and electronic cigarettes to persons under the age of 21. N.Y. Pub. Health Law § 1399-cc(3).

189. Defendants' design, marketing, and distribution of its products to minors, and specifically targeting Native American children, knowing that they were more susceptible to addiction than non-Native Americans, and the resulting youth vaping epidemic is unquestionably a public nuisance on and in the Tribe.

190. Defendants, through the actions described in this Complaint, have created and maintained or were a substantial factor in creating and maintaining a public nuisance by unreasonably interfering with a right that is common to the general public and that harms the health, safety, peace, comfort, or convenience of the general community.

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<sup>216</sup> Saint Regis Mohawk Tribe, *Tribe Increases Minimum Purchase Age for Vaping Devices and Bans Flavored Products*, <https://www.srmt-nsn.gov/news/2019/tribe-increases-minimum-purchase-age-for-vaping-devices-and-bans-flavored-products> (last visited June 2, 2020).

1           191. Defendants' conduct has caused significant interference with a public right that is  
2 unreasonable in that it involves a significant interference with the public health, safety, peace,  
3 comfort, and convenience.

4           192. The Tribe has a right to be free from substantial injury to the public health, safety,  
5 peace, comfort, or convenience that has resulted from Defendants' wrongful conduct.

6           193. The Tribe has a right to educate its children in a safe, healthy, peaceful,  
7 comfortable, and convenient setting.

8           194. The health and safety of the Tribe's youth who use, have used, or will use JUUL  
9 products, as well as members of the Tribe affected by others' use of JUUL products, are matters  
10 of substantial public interest and of legitimate concern to the Tribe.

11           195. Defendants' design, manufacture, production, marketing, distribution, and sale of  
12 highly-addictive and harmful e-cigarettes and nicotine pods, when such actions were taken with  
13 the intent to market and, in fact, were marketed to youth through repeated misstatements and  
14 omissions of material fact, unreasonably interfered with a public right in that the results of  
15 Defendants' actions created and maintained a condition dangerous to the public's health, was  
16 offensive to community moral standard, or unlawfully obstructed the public in free use of public  
17 property. Defendants intentionally created and maintained a public nuisance by, among other  
18 acts: (a) actively seeking to enter school campuses, targeting children as young as eight through  
19 summer camps and school programs, extensively targeting youth through social media  
20 campaigns, and recruiting "influencers" to market to teens; (b) engaging in marketing tactics  
21 specifically designed to mislead children and youth and to ensnare minors into nicotine  
22 addiction, including by explicitly adopting tactics prohibited from Big Tobacco, with the  
23 knowledge that those tactics were likely to ensnare children and youth into nicotine addiction,  
24  
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1 including using billboards and outdoor advertising, sponsoring events, giving free samples,  
2 paying affiliates and “influencers” to push JUUL products on JUUL’s behalf, and by selling  
3 JUUL in flavors designed to appeal to youth; (c) engaging in advertising modeled on cigarette  
4 ads and featuring youthful- appearing models and designing advertising in a patently youth-  
5 oriented fashion; (d) directing advertising to youth media outlets and media designed to appeal  
6 to children and youth, such as Instagram and other social media channels; (e) hosting youth-  
7 focused parties across the United States, at which free JUUL samples were dispensed and in  
8 which vaping was featured prominently across JUUL-sponsored social media; (f) formulating  
9 JUULpods with flavors with the knowledge that such flavors appealed to youth and with the  
10 intent that youth become addicted or dependent upon JUUL products; (g) promoting and  
11 assisting the growth of the JUUL market and its availability with knowledge that JUUL  
12 products were being purchased and used by large numbers of youth; and, (h) targeting Native  
13 American youth, knowing that Native Americans in general are more susceptible to addictive  
14 substances such as nicotine and specifically nicotine for a variety of reasons.

16 196. Defendants’ conduct has been continuous and has occurred over a span of years  
17 and is ongoing. Defendants’ conduct has affected and continues to affect a substantial number  
18 of people within the Tribe and is likely to continue causing significant harm to them.

19 197. But for Defendants’ actions, JUUL and other e-cigarette use by tribal youth and  
20 other minors would not be as widespread as it is today, and the vaping public health epidemic  
21 that currently exists as a result of the Defendants’ conduct would have been averted.

22 198. The significant time and resources necessary for the Tribe to combat the  
23 epidemic, maintain the safety of its youth members, and achieve its educational goals are harms  
24 that are unique from the harm suffered by the general public.  
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1           199. The particular harms suffered by the Tribe are different than those suffered by the  
2 community at large, both in kind and quality. The Tribe has incurred and will continue to incur  
3 significant expenditures of time and resources to combat rampant use of Defendants' nicotine  
4 products by its members. The true scope and nature of the harm and the extent of resources that  
5 are going to be required to abate the harm continues to evolve as the epidemic still exists and  
6 best practices to combat it are still being developed.

7           200. The Tribe has been constrained in the action it has been able to take given  
8 budgetary and resource constraints. Expenditures past and future required as a direct result of  
9 the public nuisance include, but are not limited to: (a) time and resources spent collecting and  
10 analyzing data regarding vaping and factors associated with vaping; (b) time and resources  
11 spent obtaining and considering medical and scientific literature; (c) time and resources spent  
12 educating persons on the effects of vaping; (d) time and resources for investigating vape-related  
13 incidents; (e) time and resources associated with changing health curricula to include dangers  
14 regarding vaping; (f) time and resources associated with changing codes of conduct, rules and  
15 disciplinary methods; (g) costs associated with signage or printed materials regarding vaping;  
16 (h) time and resources spent on group and individual counseling and meetings on vaping and its  
17 effects; (i) time and resources spent on prevention; and (j) time and resources to establish  
18 cessation programming on vaping.

19           201. Defendants' unfair and deceptive conduct has caused the damage and harm  
20 described in this Complaint. Defendants knew or reasonably should have known that their  
21 statements regarding the risks and benefits of JUUL were false and misleading; that their  
22 marketing methods were designed to appeal to minors; that their products would be particularly  
23 addictive and harmful to children; that Native American children were particularly susceptible  
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1 to addictive substances, specifically nicotine; and that their false and misleading statements,  
2 marketing to minors, and active efforts to increase the accessibility of JUUL products and grow  
3 JUUL's market share were causing harm to minors including members of the Tribe. Thus, the  
4 public nuisance caused by Defendants was reasonably foreseeable, including the economic  
5 losses incurred by the Tribe.

6 202. Alternatively, Defendants' conduct was a proximate cause in bringing about the  
7 public nuisance. By directly marketing to youth and continuing marketing practices after it was  
8 evident that children were using JUUL products in large numbers and were specifically using  
9 these products in school, JUUL directly facilitated the spread of the youth vaping epidemic and  
10 the public nuisance affecting the Tribe. By investing billions of dollars in JUUL and actively  
11 working to promote the sale and spread of JUUL products with knowledge of the JUUL practice  
12 of marketing its products to youth and failure to control youth access to its products, Defendants  
13 directly facilitated the spread of the youth vaping epidemic and the public nuisance affecting the  
14 Tribe.  
15

16 203. The public nuisance created and maintained by Defendants has resulted, and  
17 continues to result, in significant damage and annoyance to the Tribe. Again, the FDA and  
18 others have recognized that teen vaping is an epidemic and that Defendants' actions are at the  
19 heart of that epidemic.  
20

### 21 **COUNT III – NEGLIGENCE**

22 204. The Tribe hereby incorporates by reference the allegations contained in the  
23 preceding paragraphs of this Complaint.

24 205. The Tribe brings this negligence claim under New York law as to all Defendants.  
25 Under New York law, the elements of a cause of action for negligence are: (1) the existence of a  
26

1 duty on the defendant's part as to the plaintiff; (2) a breach of the duty; and (3) an injury to the  
2 plaintiff as a result of the breach of duty. *Bridges v. Corr. Servs.*, No. 17-cv-2220, 2020 WL  
3 2410506, at \*6 (S.D.N.Y. May 12, 2020) (citations omitted).

4 206. Defendants owed the Tribe and its children a duty to not expose the Tribe and its  
5 children to an unreasonable risk of harm.

6 207. At all times relevant to this litigation, Defendants had a duty to exercise  
7 reasonable care in the design, research, manufacture, marketing, advertisement, supply  
8 promotion, packaging, sale, and distribution of its JUUL products, including the duty to take all  
9 reasonable steps necessary to manufacture, promote, and/or sell a product that was not  
10 unreasonably dangerous to consumers, users, and other persons coming into contact with the  
11 product.  
12

13 208. At all times relevant to this litigation, Defendants had a duty to exercise  
14 reasonable care in the marketing, advertisement, and sale of its JUUL products. Defendants'  
15 duty of care owed to consumers and the general public, including the Tribe, included  
16 providing accurate, true, and correct information concerning the risks of using JUUL products  
17 and appropriate, complete, and accurate warnings concerning the potential adverse effects of  
18 vaping and nicotine use and, in particular, JUUL's patented nicotine salts and the chemical  
19 makeup of JUULpods liquids.  
20

21 209. At all times relevant to this litigation Defendants knew, or in the exercise of  
22 reasonable care should have known, of the hazards and dangers of JUUL products and  
23 specifically the health hazards posed by vaping JUULpods and continued use of nicotine,  
24 particularly among adolescents.  
25  
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1           210. Accordingly, at all times relevant to this litigation, Defendants knew or, in the  
2 exercise of reasonable care should have known, that use of JUUL e-cigarettes and JUULpods  
3 by minors, especially Native American children, could cause the Tribe's injuries and thus  
4 created a dangerous and unreasonable risk of injury to the Tribe.

5           211. Defendants also knew, or in the exercise of reasonable care should have known,  
6 that users and consumers of JUUL products were unaware of the risks and the magnitude of the  
7 risks associated with the use of JUUL products, including but not limited to the risk of  
8 continued nicotine use and nicotine addiction.

9           212. As such, Defendants breached their duty of reasonable care and failed to exercise  
10 ordinary care in the design, research, development, manufacture, testing, marketing, supply,  
11 promotion, advertisement, packaging, sale, and distribution of their JUUL e-cigarettes and  
12 JUULpods, in that Defendants manufactured and produced defective products containing  
13 nicotine and other chemicals known to cause harm to consumers, knew or had reason to know  
14 of the defects inherent in its products, knew or had reason to know that a user's or consumer's  
15 use of the products created a significant risk of harm and unreasonably dangerous side effects,  
16 and failed to prevent or adequately warn of these risks and injuries.

17           213. Despite its ability and means to investigate, study, and test its products and to  
18 provide adequate warnings, Defendants have failed to do so. In fact, the Defendants did just the  
19 opposite. The Defendants plotted, schemed, and investigated a marketing strategy designed to  
20 attract children to use the highly addictive product, especially Native American youth, including  
21 the youth of the Tribe. Moreover, Defendants have wrongfully concealed information and has  
22 further made false and/or misleading statements concerning the safety and/or use of JUUL  
23 products and nicotine vaping.  
24  
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1           214. Defendants' negligence also included: (a) manufacturing, producing, promoting,  
2     formulating, creating, developing, designing, selling, and/or distributing its JUUL products  
3     without thorough and adequate pre- and post-market testing; (b) failing to undertake sufficient  
4     studies and conduct necessary tests to determine whether or not JUUL products were safe for  
5     their intended use; (c) failing to use reasonable and prudent care in the design, research,  
6     manufacture, formulation, and development of JUUL products so as to avoid the risk of serious  
7     harm associated with the prevalent use of JUUL products and nicotine; (d) failing to provide  
8     adequate instructions, guidelines, and safety precautions to those persons who Defendants could  
9     reasonably foresee would use its JUUL products; (e) failing to disclose to the Tribe, users,  
10    consumers, and the general public that the use of JUUL products presented severe health risks  
11    including nicotine addiction; (f) misrepresenting that its JUUL products were safe for their  
12    intended use when, in fact, Defendants knew or should have known that the products were not  
13    safe for their intended use; (g) declining to make or propose any changes to JUUL products'  
14    labeling or other promotional materials that would alert the consumers and the general public of  
15    the true risks of JUUL products; (h) advertising, marketing, and recommending the use of  
16    JUUL products, while concealing and failing to disclose or warn of the dangers known by  
17    Defendants to be associated with or caused by the use of JUUL products; (i) continuing to  
18    disseminate information to its consumers, which indicates or implies that Defendants' products  
19    are not unsafe for their intended use; and (j) continuing the manufacture and sale of its products  
20    with the knowledge that the products were unreasonably unsafe and dangerous.

23           215. Defendants knew and/or should have known that it was foreseeable that the Tribe  
24    and its youth would suffer significant injuries as a result of Defendants' failure to exercise  
25  
26

1 ordinary care in the manufacturing, marketing, labeling, distribution, and sale of JUUL  
2 products.

3 216. The Tribe did not know the nature and extent of the injuries that could result from  
4 the intended use of JUUL products or JUUL's patented JUULpods liquids by youth members of  
5 the Tribe.

6 217. Defendants' negligence was the proximate cause of the injuries, harm, and  
7 economic losses that the Tribe suffered, and will continue to suffer, as described in this  
8 Complaint.  
9

## 10 VI. REQUEST FOR PUNITIVE DAMAGES

11 218. The Tribe hereby incorporates by reference the allegations contained in the  
12 preceding paragraphs of this Complaint.

13 219. Under New York, punitive damages "may be awarded where the defendant's  
14 conduct amounts to such gross, wanton or willful fraud, dishonesty, or malicious wrongdoing as  
15 to involve a high degree of moral culpability, making it appropriate to deter the defendants from  
16 engaging in similar conduct in the future and to induce the victim to take action against the  
17 wrongdoer." *Whitney v. Citibank, N.A.*, 782 F.2d 1106, 1118 (2nd Cir. 1986) (citing *Walker v.*  
18 *Sheldon*, 179 N.E.2d 497, 499-500 (N.Y. 1961)).  
19

20 220. "[I]t is well-settled that conduct warranting an award of punitive damages 'need  
21 not be intentionally harmful but may consist of actions which constitute willful or wanton  
22 negligence or recklessness.'" *Randi A.J. v. Long Island Surgi-Ctr.*, 842 N.Y.S.2d 558, 564  
23 (N.Y. Sup. Ct. 2007) (citations omitted). "Such wantonly negligent or reckless conduct must be  
24 'sufficiently blameworthy,' and the award of punitive damages must advance a strong public  
25 policy of the State by deterring its future violation." *Id.* (citation omitted). A "principal goal"  
26

1 of punitive damages is to “deter future reprehensible conduct by the wrongdoer and other  
2 similarly situated.” *Id.* (citations and quotation marks omitted).

3 221. Defendants’ corporate acts described herein showed a reckless and wanton  
4 disregard of the rights of the Tribe and are beyond human decency.

5 222. Defendants’ corporate acts demonstrated malice by showing bad motive, ill will,  
6 or reckless disregard toward the Tribe and its young members.

7 223. Defendants’ deliberate and outrageous corporate acts were aimed at securing  
8 financial gain at the expense of the Tribe and its young members.

9 224. A motivation behind Defendants’ corporate acts was to place its desire and greed  
10 for profits ahead of the well-being and safety of the Tribe and its youth members.

11 225. Defendants’ corporate acts were outrageously reprehensible.

12 226. Defendants’ corporate acts have the character of outrage frequently associated  
13 with crime.

14 227. Defendants intentionally targeted the Tribe’s young members when they knew  
15 that their brains were not fully developed, that they were particularly vulnerable, and that they  
16 were more susceptible to marketing and more easily addicted to nicotine than adults.

17 228. Defendants intentionally marketed to the Tribe’s young members when they knew  
18 that nicotine was especially harmful to children’s developing brains.

19 229. Defendants knowingly and intentionally sold JUULpods to minors through the  
20 use of an internet sales platform and allowed internet websites to sell to minors without controls  
21 on whether purchasers were of the legal age to purchase.

1           230. Defendants knew that children under the age of 18, including the Tribe's youth  
2 members, were obtaining and using their products at disturbing levels yet failed to act in a  
3 timely manner to stop the illegal diversion of its products.

4           231. Defendants knew that there was a high risk of substantial harms to the Tribe's  
5 youth members, but deliberately proceeded to act and failed to act in conscious disregard of  
6 those risks.

7           232. Defendants knew that it was not legal to target minors and intentionally did so  
8 anyway for purposes of maximizing profit.

9           233. Defendants knew JUUL's products were the types of products that could  
10 endanger children if negligently made, promoted, or distributed. Defendants knew the risks that  
11 young people would be attracted to their e-cigarettes and JUULpods and knew the importance  
12 of ensuring that the products were not sold and/or distributed to anyone under age 26, but  
13 especially to minors.

14           234. Defendants knew that their marketing, distribution, and sales practices did not  
15 adequately safeguard minors from the sale and distribution of e-cigarette devices and  
16 JUULpods and, in fact, induced minors to purchase JUUL products.

17           235. As a powerfully addictive and dangerous nicotine-delivery device, Defendants  
18 knew JUUL's products needed to be researched, tested, designed, advertised, marketed,  
19 promoted, produced, packaged, labeled, manufactured, inspected, sold, supplied and distributed  
20 properly, and without defects to avoid needlessly causing harm. Defendants knew that their  
21 products could cause serious risk of harm, particularly to young persons like the Tribe's youth  
22 members.  
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1           236. Defendants failed to perform adequate testing of the JUUL products prior to  
2 marketing to ensure safety, including long-term testing and research of the product, testing for  
3 injury to the brain and cardiovascular systems, and other related medical conditions.

4           237. Defendants promoted JUUL's products to young people under age 26, and  
5 especially to minors, despite knowing that they were unsafe for minors.

6           238. Defendants used flavors and design to appeal to young people under age 26 and  
7 especially to minors.

8           239. Defendants designed the products to smell good, look cool, and easy to conceal  
9 from adults.

10           240. Defendants were aware of social media on the internet encouraging the use of  
11 JUUL, explaining how to use JUUL, explaining how to conceal JUUL, and suggesting products  
12 created by others to facilitate concealing JUUL.

13           241. Defendants knew of products designed to help conceal JUUL, including hoodies  
14 and backpacks.

15           242. Defendant used design that maximizes nicotine delivery while minimizing "throat  
16 hit" thereby easily creating and sustaining addiction and causing deep inhalation into the child's  
17 lungs.

18           243. Defendants failed to prevent JUUL's products from being sold to young people  
19 under age 26, particularly to minors, including youth of the Tribe.

20           244. Defendants failed to prevent use of JUUL's products among young people under  
21 age 26, particularly for minors.

22           245. Defendants failed to curb use of JUUL's products among young people under age  
23 26, particularly for minors.

1           246. Defendants failed to develop tools or support to help people addicted to JUUL's  
2 products cease using the products, including manufacturing lesser amounts of nicotine.

3           247. Defendants failed to reasonably and properly test and properly analyze the testing  
4 of JUUL's products under reasonably foreseeable circumstances.

5           248. Defendants failed to warn its customers about the dangers associated with use of  
6 JUUL's products, in that it was unsafe for anyone under age 26; significantly increases blood  
7 pressure, carries risks of stroke, heart attacks, and cardiovascular events; is powerfully addictive  
8 especially in Native Americans; causes damages to the lungs, increases the risk of respiratory  
9 failure; and can cause permanent brain changes, mood disorders, and impairment of thinking  
10 and cognition.

11           249. Defendants failed to instruct customers not to use the product if they were under  
12 26, particularly minors and Native Americans, and failed to provide any instructions regarding a  
13 safe amount of JUULpods to consume in a day.

14           250. Defendants failed to ensure that JUUL's products would not be used by persons  
15 like Tribe's youth members who were not smokers.

16           251. Defendants failed to warn customers that JUUL had not adequately tested or  
17 researched JUUL products prior to marketing to ensure safety, including long-term testing of  
18 the product and testing for injury to the brain, lungs, and cardiovascular systems; susceptibility  
19 to respiratory viruses and bacteria; and other related medical conditions.

20           252. Defendants failed to utilize proper materials and components in the design of  
21 JUUL's products to ensure they would not deliver unsafe doses of nicotine in unsafe pathways  
22 to the lungs.

1           253. Defendants failed to take necessary steps to modify JUUL's products to avoid  
2 delivering high doses of nicotine to children and repeatedly exposing them to toxic chemicals.

3           254. Defendants failed to recall JUUL's products.

4           255. Defendants failed to inspect JUUL's products for them to operate properly and  
5 avoid delivering unsafe levels of nicotine to young person.

6           256. Defendants were either (a) intentionally knowing of the susceptibility of Native  
7 Americans to nicotine addiction and other addictive substances, or (b) grossly negligently  
8 making themselves unaware of said susceptibility directly targeted and marketed to Native  
9 American children and minors. Defendants thus engaged in reprehensible conduct either  
10 intentionally calculated to harm Native Americans, or in total and utter disregard for the health  
11 of Native Americans.  
12

13           257. A responsible company whose claimed primary purpose was to help adult  
14 smokers would not design a product to appeal to minors and nonsmokers nor market their  
15 products to minors and nonsmokers. If they were aware of the dangers of smoking and nicotine  
16 ingestion enough to create a device ostensibly designed to help people stop smoking, then  
17 Defendants should also have been aware of the dangers to know that it would be harmful for  
18 young people, children, Native Americans, and/or nonsmokers to use.  
19

20           258. Responsible management personnel within the Defendants' corporations had  
21 actual knowledge of wrongdoing on the part of lower-level employees or were involved in the  
22 wrongful acts themselves.

23           259. The governing officers and leadership representatives of Defendants directed,  
24 participated, and ratified the wrongful acts of corporate agents of Defendants herein described.  
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1           260. As a foreseeable consequence of Defendants' aforementioned conduct, the Tribe  
2 suffered direct and consequential economic injuries as described in this Complaint as a result of  
3 dealing with the JUUL epidemic within the Tribe.

4           261. The Tribe is therefore entitled payment of punitive damages from Defendants  
5 meant to punish them, deter their future conduct, and to send a message to the community at  
6 large that the Defendants' outrageous conduct will not be tolerated.

#### 7                               **VII. PRAYER FOR RELIEF**

8           WHEREFORE, the Tribe prays to the Court and/or jury for judgment from and against the  
9 Defendants, jointly and severally, as follows:  
10

- 11           1. Entering an Order that Defendants are jointly and severally liable;
- 12           2. Entering an Order that Defendants' conduct as alleged herein constitutes a violation  
13 of RICO and entitles the Tribe to compensatory damages, disgorgement, equitable  
14 relief, injunctive relief, treble damages, and attorneys' fees;
- 15           3. Entering an Order that Defendants' conduct as alleged herein constitutes a public  
16 nuisance under applicable law;
- 17           4. Entering an Order that Defendants shall be required to abate and remediate the  
18 public nuisance described herein;
- 19           5. Entering an Order that Defendants were negligent and that said negligence caused  
20 the harm and damages herein alleged and to be proven at trial;
- 21           6. Enjoining Defendants from engaging in further actions causing or contributing to  
22 the public nuisance as described herein;
- 23           7. Awarding the Tribe equitable relief to fund prevention education and addiction  
24 treatment, as well as to abate the nuisance;
- 25
- 26



8. Entering an Order that Defendants engaged in a civil conspiracy to commit and promote the wrongful conduct herein alleged;
9. Awarding the Tribe actual and compensatory damages as determined by the trier of fact;
10. Awarding the Tribe punitive damages as determined by the trier of fact;
11. Awarding the Tribe statutory damages in the maximum amount permitted by law;
12. Awarding reasonable attorneys' fees and the costs and expenses of this civil action and lawsuit;
13. Awarding pre-judgment and post-judgment interest; and
14. Such other and further relief as the Court and/or jury deems just and proper under the circumstances.

#### **VIII. JURY TRIAL DEMANDED**

The Tribe hereby demands a trial by jury.

Respectfully submitted,

Dated: June 15, 2020

/s/ Geoffrey D. Strommer  
Geoffrey D. Strommer, *pro hac vice pending*  
(Lead Counsel)  
Cari L. Baermann, *pro hac vice pending*  
Hobbs, Straus, Dean & Walker, LLP  
215 SW Washington Street, Suite 200  
Portland, OR 97204  
Phone: (503) 242-1745  
Fax: (503) 242-1072  
[gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com)  
[cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)

Jerry C. Straus, *pro hac vice pending*  
Lisa M. Meissner, *pro hac vice pending*  
Riley F. Plumer, *pro hac vice pending*  
Hobbs, Straus, Dean, & Walker, LLP

1 1899 L Street NW, Suite 1200  
2 Washington, DC 20036  
3 Phone: (202) 822-8282  
4 Fax: (202) 296-8834  
5 [jstraus@hobbsstrauss.com](mailto:jstraus@hobbsstrauss.com)  
6 [lmeissner@hobbsstrauss.com](mailto:lmeissner@hobbsstrauss.com)  
7 [rplumer@hobbsstrauss.com](mailto:rplumer@hobbsstrauss.com)

8 T. Roe Frazer II, *pro hac vice*  
9 FRAZER PLC  
10 30 Burton Hills Blvd., Ste. 450  
11 Nashville, TN 37215  
12 Phone: (615) 647-6464  
13 Fax: (866) 314-2466  
14 [roe@frazer.law](mailto:roe@frazer.law)

15 J. Nixon Daniel, III, *pro hac vice*  
16 W. Lee Elebash, *pro hac vice*  
17 Beggs & Lane, RLLP  
18 501 Commendencia Street  
19 Pensacola, FL 32502  
20 [JND@beggslane.com](mailto:JND@beggslane.com)  
21 [wle@beggslane.com](mailto:wle@beggslane.com)  
22 Phone: (850) 469-3306  
23 Fax: (850) 469-3331

24 *Attorneys for Saint Regis Mohawk Tribe*