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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> JUUL LABS, INC.; PAX LABS, INC., <p style="text-align: center;">Defendants.</p>		NO. COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES, DISGORGEMENT, AND OTHER EQUITABLE RELIEF
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I. INTRODUCTION

1.1 JUUL. A product so wildly successful and ubiquitous that it has ascended to the most coveted status of product identification—the brand name itself has become an adverb in popular culture.¹ JUULing has become synonymous with vaping regardless of the actual brand being used. For millions of American teenagers JUULing and ‘ripping a JUUL’ has become the first necessity of the morning and the last ritual of the evening following a day of being interrupted to satisfy the nicotine craving JUUL is designed to create.

1.2 Washington law has made it a crime to sell vapor products to minors since 2013. And since 2016, Washington has imposed strict licensing requirements, with the threat of substantial civil penalties, aimed at closely regulating distributors and sellers of vapor products. Over a period of 20 months, from August 1, 2016, through April 9, 2018, the Defendants

¹ Jeffrey G. Willett, et al., *Recognition, use and perceptions of JUUL among youth and young adults*, 28(1) Tobacco Control 115-16 (2019). <https://tobaccocontrol.bmj.com/content/28/1/115>.

1 unlawfully sold hundreds of thousands of vaping products to Washington consumers in violation
2 of Washington’s vapor products licensing requirements.

3 1.3 In addition to the express criminal and civil laws banning the sale of vapor
4 products to youth and the various regulatory requirements for vapor product sellers, the
5 Consumer Protection Act prohibits unfair and deceptive conduct in Washington trade or
6 commerce. By targeting minors on social media, making deceptive claims, and hiding the truth
7 about the nicotine content in JUUL pods, the Defendants engaged in conduct in violation of the
8 Consumer Protection Act.

9 1.4 At all times relevant to this case, it has been illegal in Washington to sell vapor
10 products to underage youth. The Defendants’ marketing of JUUL targeted Washington’s youth
11 with unfair and deceptive advertising campaigns promoting a product that contains nicotine and
12 cannot lawfully be sold to underage consumers. Targeting a demographic that cannot lawfully
13 purchase the advertised product, as the Defendants did with the “Vaporized” campaign for
14 JUUL, is a violation of Washington’s Consumer Protection Act.

15 1.5 The Defendants’ unlawful conduct extended beyond targeting underage
16 consumers to include deceiving all consumers about the true nicotine levels being delivered by
17 JUUL pods and with misleading comparisons to smoking cigarettes. The Defendants represent
18 that vaping a JUUL pod and smoking a pack of cigarettes deliver about the same amount of
19 nicotine to the consumer. In fact, a JUUL device and pod can deliver at least twice the amount
20 of nicotine than smoking a pack of cigarettes would typically deliver to a smoker. Misleading
21 statements by the Defendants about the nicotine content of JUUL pods and implying a false
22 equivalency with the amount of nicotine from smoking a cigarette are violations of Washington’s
23 Consumer Protection Act.

24 1.6 Marketing an e-cigarette as a smoking cessation product is unlawful without
25 specific approval by the Federal Food and Drug Administration. The Defendants’ “Make the
26

1 Switch” marketing campaign unfairly implied that JUUL was a smoking cessation product. This
2 conduct is a violation of Washington’s Consumer Protection Act.

3 1.7 The meteoric rise of JUUL as a new entrant in the e-cigarette market in 2015 to
4 national domination of the market (over 70%) in only three years has been fueled by series of
5 marketing campaigns unlawfully targeting underage consumers—those under 18 years of
6 age—and deceptively downplaying the potency of nicotine being delivered by its products.
7 Indeed, in a September 11, 2018, interview with CNBC about how JUUL had so quickly
8 achieved market domination and its high percentage of underage consumers, the Defendants’
9 co-founder James Monsees admitted that JUUL’s success had been achieved “through a flawed
10 marketing campaign, not the best one.”²

11 1.8 The Defendants’ marketing campaign was much more than “flawed”, it was
12 unlawful. The marketing campaign targeted teenagers by exploiting youth friendly flavors and
13 saturating social media with imagery of young, ‘cool and hip’ models having fun and enjoying
14 JUUL. The images below are typical of Juul Labs, Inc.’s (JLI) notoriously youth hipster
15 “Vaporized” advertising campaign:



22 1.9 The numbers of high school and even middle school adolescents consuming
23 JUUL products is staggering. As recently as 2019, more than 20% of high school students
24

25 ² CNBC, *How Juul made vaping cool and became a \$15 billion e-cigarette giant*, Sept. 11, 2018,
26 <https://www.cnbc.com/video/2018/09/11/how-juul-became-a-15-billion-e-cigarette-company.html>.

1 reported vaping JUUL pods at least 20 times over a 30-day period and 10% of 8th graders also
2 reported vaping JUUL pods.³

3 1.10 JLI's unfair and deceptive youth oriented marketing campaigns have resulted in
4 the entirely predictable epidemic of a generation of America's youth becoming addicted to
5 nicotine. The prominence of JUUL in high school culture is exemplified in Instagram images
6 below with a young woman flashing the hipster hand gesture for JUUL and extending an
7 invitation for the product to the prom:



17 1.11 Besides its unfair and deceptive marketing that facilitated underage purchases of
18 vapor products in violation of Washington law, JLI violated an even more basic—but equally
19 critical—part of Washington law applying to vapor products. A key component of Washington's
20 2016 vapor products law included licensing requirements for the distribution and sale of vapor
21 products into this State. On August 1, 2016, Washington implemented specific licensing
22 requirements for the distribution and delivery of vapor products into the State. Despite numerous
23 efforts by the Liquor and Cannabis Board to assist JLI in obtaining the requisite licenses, JLI did
24 not provide the required criminal background information to secure the licenses until April 2018.

25 ³ Richard Miech, Ph.D., et al., *Trends in Adolescent Vaping, 2017-2019*, 381(15) *The New England Journal*
26 *of Medicine*, 1490-91 (2019). https://www.nejm.org/doi/10.1056/NEJMc1910739?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed.

1 JLI ignored Washington’s licensing requirements—aimed at keeping vapor products out of the
2 hands of minors—for almost two years. And during this time, youth smoking of JUUL vapor
3 products in Washington grew substantially.

4 1.12 The unlicensed sales of JUUL products resulted in [REDACTED]
5 violations of Washington’s vapor products law, each of which subjects JLI to a substantial civil
6 penalty. Indeed, from August 1, 2016, until April 8, 2018, every sale of a JUUL vaping device
7 and JUUL pod into Washington was unlawful, regardless of whether made to a minor or a person
8 of legal age to purchase vapor products. JLI operated unlawfully in Washington for nearly two
9 years and sold [REDACTED] dollars’ worth of JUUL products in violation of Washington law.

10 1.13 The harm to Washington from the Defendant’s violations of laws is significant.
11 The laws are designed to avoid the sale of nicotine products to minors; but similar to national
12 numbers, over a quarter of Washington high school students reported in 2018 that they regularly
13 use vapor products.⁴ And, of course, many adults do as well. Nicotine is highly addictive and
14 JUUL products deliver extraordinarily high doses of nicotine compared to its competitors.
15 Nicotine is also linked to various adverse health consequences—particularly in youth—such as
16 inhibiting brain development and a variety of cardio-pulmonary impairments. Furthermore, use
17 of JUUL products, litter, and improper disposal of waste has infiltrated public spaces such as
18 Washington public schools.

19 1.14 The Defendants’ sales of JUUL vaping products have exceeded a billion dollars
20 every year since 2018 and use of JUUL products by school-aged children increased by over a
21 million adolescents between 2017 and 2018.⁵ These sales included [REDACTED] of dollars of
22

23 ⁴ Washington Healthy Youth Survey, Office of the Superintendent of Public Instruction, the Department
24 of Health, the Health Care Authority - Division of Behavioral Health and Recovery, and Liquor and Cannabis Board.
<https://www.askhys.net/>.

25 ⁵ *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, U.S. Food & Drug Administration
26 [https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-](https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey)
[survey](https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey) (last accessed Aug. 21, 2020); *see also*, Jidong Huang, et al., *Vaping versus JUULing: how the extraordinary*
growth and marketing of JUUL transformed the US retail e-cigarette market, 28(2) *Tobacco Control* 146-51 (2019).
<https://tobaccocontrol.bmj.com/content/28/2/146>.

1 sales to Washington consumers built on a foundation of marketing in violation of Washington
2 law governing sales of vapor products and the Consumer Protection Act. The Defendants' profits
3 have come at the expense of addicting a new generation to nicotine, and in particular have
4 introduced a large percentage of Washington youth to a lifetime of nicotine addiction.

5 1.15 The State of Washington has an interest in protecting the health of its citizens and
6 protecting them from unlawful commercial activity. On behalf of the State of Washington,
7 Attorney General Robert Ferguson brings this action to protect Washington citizens from the
8 unlawful and deceptive marketing of vaping products by JLI and to enforce Washington laws
9 for penalties and other relief for delivering and distributing vapor products to Washington
10 consumers without the required licenses.

11 **II. PARTIES**

12 2.1 Plaintiff, State of Washington, by and through the Attorney General of the State
13 of Washington, Robert Ferguson, brings this action.

14 2.2 Defendant, JLI, is a Delaware Corporation, with its principal place of business in
15 San Francisco, California. Since approximately August 2019, it is believed that JLI has operated
16 an office in Bellevue, Washington.

17 2.3 Defendant, JLI, is the manufacturer and brand owner of JUUL products.

18 2.4 Defendant, PAX Labs, Inc. (PAX), is a Delaware Corporation, with its principal
19 place of business in San Francisco, California.

20 2.5 JLI was a part of PAX until 2017 when JLI became a separate company. JLI
21 focuses on vapor products, and manufactures, designs, markets, promotes, distributes, and sells
22 its products both at retail and wholesale to the public. It sells products directly to consumers who
23 purchase products over the internet, and through other retailers by selling its products to those
24 retailers at wholesale.

1 **III. JURISDICTION AND VENUE**

2 3.1 The Defendants’ vaping devices and pods are subject to regulation under
3 Washington’s vapor products legislation, RCW 70.345, and the Washington Consumer
4 Protection Act, RCW 19.86. Both statutes are within the subject matter jurisdiction of this Court.

5 3.2 The Attorney General has the authority to bring this action under
6 RCW 70.435.090; RCW 19.86.080; and RCW 19.86.140, and in his *parens patriae* capacity on
7 behalf of Washington’s citizens.

8 3.3 JLI and PAX have engaged in commerce within King County and elsewhere
9 within the State of Washington since no later than January 2016. Specifically, JLI designs,
10 manufactures, and markets Electronic Nicotine Delivery Systems (ENDS) and has sold those
11 vaping devices and associated products through distributors and authorized resellers, such as gas
12 stations and convenience stores, throughout King County. JLI has also sold vapor products
13 directly to consumers in King County via the internet. Personal jurisdiction is therefore
14 appropriate in King County, Washington.

15 3.4 Venue is proper in King County pursuant to RCWs 4.12.020 and 4.12.025, and
16 King County Superior Court Civil Rule 82. Defendants transact business in King County
17 because they sell or have sold vapor products directly to consumers and to retailers at wholesale
18 within King County as described in the Complaint below.

19 **IV. FACTUAL ALLEGATIONS**

20 4.1 This Complaint focuses on two aspects of JLI’s non-compliance with Washington
21 law. First, JLI unfairly and deceptively marketed its products to Washington consumers in
22 violation of the Consumer Protection Act (CPA).⁶ Second, JLI failed to comply with Washington
23 licensing requirements and was unlawfully selling its vapor products to Washington consumers
24 and retailers from August 1, 2016 until April 8, 2018. These two issues are also related, however,

25 _____
26 ⁶ Allegations against JLI are also allegations against PAX if they relate to a time period where JLI was organized as a part of PAX.

1 as the vapor products law is intended to prevent the sale of vapor products to youth, and it
2 expressly makes unlawful delivery sales of vaping products a violation of the CPA.
3 RCW 70.345.090(12).

4 4.2 Both aspects of JLI's unlawful conduct carry penalties for each unlawful sale. In
5 addition, Washington law imposes a mandatory remedy of disgorgement for the unlicensed sale
6 of vapor products directly to consumers. RCW 70.345.090(12)(b). Disgorgement is also a
7 remedy under the CPA.

8 **A. The Law Applicable to Vapor Products**

9 **1. Criminal ban on selling vaping products to minors**

10 4.3 Recognizing the seriousness of nicotine addiction for Washington's youth caused
11 by the burgeoning e-liquid vaping industry, the Legislature amended Washington criminal law
12 to add a prohibition on the sale of vapor products to those under 18 years of age. Laws of 2013,
13 Ch. 47, § 1 (amending RCW 26.28.080). In 2019, the legal age for purchasing vapor products
14 increased from 18 to 21. Laws of 2019, ch. 15. This change went into effect in early 2020.

15 4.4 A recent study by the Truth Initiative found that most, but not all, underage
16 consumers of JUUL products obtain them from unlawful sales made by the Defendant, JLI's
17 authorized distributors.⁷

18 4.5 The Defendants began making sales directly to Washington consumers over the
19 internet in July 2015 and began making wholesale sales to Washington retailers in March 2016.
20 Since that time, JLI has continued to make sales both at retail (directly to consumers) and at
21 wholesale through distributors as authorized JUUL resellers.

22 4.6 [REDACTED]

23 [REDACTED].⁸

24 _____
25 ⁷ Truth Initiative, *Where are the kids getting JUUL?* May 29, 2018. <https://truthinitiative.org/research-resources/emerging-tobacco-products/where-are-kids-getting-juul>.

26 ⁸ JUULWAAG0152241-0152243.

1 4.7 The Defendants have taken no significant steps to correct misbehavior by its
2 authorized distributors, nor have the Defendants consistently applied their own internal controls
3 for underage consumers, or for misbehaving distributors.⁹

4 **2. Washington’s Vapor Products Legislation**

5 4.8 As the vapor products industry continued to expand, the Washington Legislature
6 deemed it necessary to take additional steps to ensure public health and prevent sales to minors.
7 In 2016, the Legislature enacted a civil regulatory framework for vapor products. Laws of 2016,
8 Spec. Sess., ch. 38.

9 4.9 The 2016 law sought to enhance the ban on sales of vapor products to minors,
10 and to take various other measures to protect the health of all. For example, the law required
11 product labeling, retail signage, verification of age, and banned use in schools. Laws of 2016,
12 Spec. Sess., ch. 38, §§ 12, 13, 15, 21.

13 4.10 Central to the law is the creation of three specific licenses. The law created three
14 licenses issuable by the Liquor and Cannabis Board: (1) a vapor products retailer’s license;
15 (2) a vapor products distributor’s license; and (3) a vapor products delivery sale license. Laws
16 of 2016, Spec. Sess., ch. 38, § 5, codified at RCW 70.345.020. Each license applicant is required
17 to undergo a criminal background check. RCW 70.345.020(4). The Legislature empowered the
18 Liquor and Cannabis Board (LCB) to review license applications and grant or deny licenses. The
19 three new licenses created by the vapor products law are in addition to the general business
20 license required of Washington businesses. The vapor products law specifically states:

21 No person may engage in or conduct business as a retailer, distributor, or delivery
22 seller in this state without a valid license issued under this chapter, except as
23 otherwise provided by law. Any person who sells vapor products to ultimate
24 consumers by a means other than delivery sales must obtain a retailer’s license
25 under this chapter. Any person who sells vapor products to persons other than
26 ultimate consumers or who meets the definition of distributor under this chapter
must obtain a distributor's license under this chapter. Any person who conducts
delivery sales of vapor products must obtain a delivery sale license.

⁹ JUULWAAG0152241-0152243.

1 RCW 70.345.030(1)(a). The law provides that a violation of this requirement is a class C felony.

2 RCW 70.345.030(1)(b).

3 4.11 The law provided that the license requirements would go into effect upon 30 days'
4 notice given by the LCB. The LCB provided written notice to the code reviser on June 27, 2016,
5 together with the application form to be used, which stated that the effective date for vapor
6 products sellers to have the required licenses would be August 1, 2016. The LCB posted a notice
7 of the licensing requirements and application forms on its website.

8 4.12 The delivery sellers section of the vapor products law provides a civil penalty of
9 up to \$5,000 for each violation of the law in addition to other civil penalties.
10 RCW 70.345.090(9). Violations of the delivery sale provisions are also deemed unfair and
11 deceptive acts in violation of the CPA. RCW 70.345.090(11); RCW 19.86.020. The Attorney
12 General is authorized to enforce these CPA and statutory violations and seeks to do so in this
13 action. RCW 70.345.090(11).

14 4.13 The Vapor Products statute also provides mandatory disgorgement upon the court
15 finding a violation: "the court *shall* order any profits, gain, gross receipts, or other benefit from
16 the violation to be disgorged and paid to the state treasurer for deposit in the general fund."
17 RCW 70.345.090(12)(b) (emphasis added). The CPA also permits disgorgement as a remedy.
18 The statute also allows the State to recover costs of the investigation, expert witness fees, costs
19 of the action, and reasonable attorneys' fees. RCW 70.345.090(12)(a).

20 4.14 The Defendants operated unlawfully in Washington in violation of the vapor
21 products licensing laws from August 1, 2016, through April 8, 2018. During that period the
22 Defendants were not licensed to distribute or deliver any JUUL vaping products into the State
23 of Washington. Every sale of a JUUL device or pod in the State of Washington during that 20
24 month period was unlawful regardless of whether the purchaser was a minor or an adult.

25 4.15 The Attorney General seeks each of these remedies provided by RCW 70.345.090
26 for the Defendant, JLI's unlicensed sales of JUUL vaping products.

1 **3. The Consumer Protection Act**

2 4.16 The CPA protects Washington consumers from unfair and deceptive conduct in
3 trade or commerce. RCW 19.86.020. The Attorney General may bring an action under the CPA.
4 RCW 19.86.080.

5 4.17 The Defendants’ marketing of JUUL products in Washington violated the CPA
6 in several respects, including but not limited to its unlicensed sales of vapor products. Illustrative
7 of the Defendants’ unfair and deceptive marketing practices are its targeting of underage
8 consumers, failure to disclose that JUUL pods contained an addictive substance—nicotine, and
9 by misrepresenting the amount of nicotine that is deliverable by JUUL’s vaping devices and
10 pods. These actions occurred in trade and commerce in Washington. These actions are contrary
11 to the public interest in Washington.

12 4.18 The State of Washington seeks all penalties, restitution, disgorgement and fees
13 set forth under the CPA for the Defendants unlawful marketing and sales of JUUL products to
14 Washington consumers.

15 **B. The Development and Marketing of JUUL**

16 4.19 JLI was founded by Adam Bowen and James Monsees. These two men closely
17 studied the advertising and marketing models developed by Big Tobacco for cigarettes, which
18 they called “probably the most successful consumer product of all time.”¹⁰

19 4.20 Working through their company PAX, Mr. Bowen and Mr. Monsees studied the
20 treasure trove of internal Big Tobacco documents maintained by the Truth Initiative at the
21 University of California San Francisco Library. The Tobacco Industry Documents were formerly
22 known as the Legacy Documents and the collection preserves the internal documents of Big
23 Tobacco discovered by the Attorneys General during the late 1990’s litigation that led to the
24 Master Settlement Agreement.

25 _____
26 ¹⁰ Gabriel Montoya, *PAX Labs: Origins with James Monsees*, <http://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited Aug. 7, 2020).

1 4.21 PAX did not set out to make a healthier alternative to cigarettes; it set out to revive
2 cigarettes' appeal for a new generation by making them cool again. One PAX engineer in 2015
3 said, "we're not trying to design a cessation product at all," and "health is not on our mind."
4 Rather, the Defendants wanted to "recreate the elegance and ritual that smoking once
5 exemplified." They wanted to remove stigma and "bring personal tobacco use to a new level of
6 accessibility." Because multiple competitors were working on the same general idea of an
7 electronic device to deliver nicotine to the user, "the war is won and lost in the marketing."

8 4.22 With JUUL, the Defendants won its marketing war, but not just through
9 innovation and creativity. Rather, the Defendants capitalized on a shrinking cigarette market and
10 captured a young and largely underage demographic through unfair and unlawful advertising
11 across a wide range of youth friendly media platforms such as Instagram, Facebook, and Twitter.
12 In at least one instance, JUUL was also advertised in VICE magazine, which purports to be the
13 largest youth media company in the world.¹¹

14 4.23 The Tobacco Industry documents contain a detailed history of the marketing
15 strategy used by Big Tobacco going back for decades, including the public denials of youth
16 targeting standing in stark contrast to years of youth friendly marketing campaigns.

17 4.24 Similar to the years of denials by Big Tobacco executives, JUUL's founders
18 vociferously denied targeting underage consumers while simultaneously using imagery designed
19 to appeal to youth and marketing fruit and sweet flavored vaping products known to be most
20 appealing to underage consumers.¹²

24 ¹¹ Robert K. Jackler, et al., *JUUL Advertising Over its First Three Years on the Market*, Stanford Research
25 into the Impact of Tobacco Advertising (2019),
http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf. (citing VICE. Digital
26 Media Kit. <https://kit.vice.com/> (accessed December 5, 2018)).

¹² Jackler, et. al, *JUUL Advertising, supra*.

1 4.25 From the beginning, the founders of PAX/JLI sought to create an electronic
2 cigarette product that captured the ‘coolness’ of the cigarette.¹³ As JLI co-founder James
3 Monsees explained, “smoking is also sexy. So, let’s say, uh, Marilyn Monroe and her cigarette
4 holder or James Dean who was cool as hell.”¹⁴ JLI clearly evoked James Dean with one of its
5 Vaporized models shown below:



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12 **1. PAX/JLI unlawfully marketed and sold vaping products to underage**
13 **consumers across the nation and in Washington, creating a public health**
14 **crisis**

15 4.26 It is unlawful and a violation of Washington’s CPA to sell vaping products to any
16 person who is under the lawful age to purchase vaping products. RCW 70.345.120. It is also a
17 violation of Washington’s CPA to advertise a vaping product in a manner designed to appeal to
18 a person that is underage to lawfully purchase the product as defined by RCW 70.345.120. The
19 Defendants violated Washington law by targeting an underage market with their advertising for
20 vaping products, by failing to exercise control over their social media platforms to disallow
21 underage access to images of its products and underage use of its products, and by failing to
22 adequately discipline their authorized retailers for selling JUUL products to underage consumers
23 even when JLI received actual knowledge of underage sales occurring in Washington.

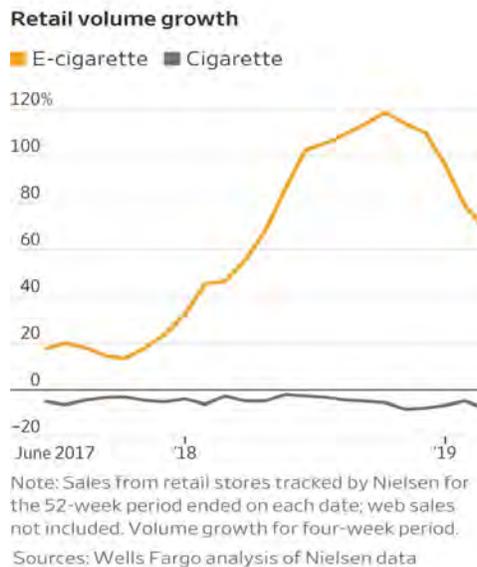
24 ¹³ Nitasha Tiku, *Startup behind the Lambo of vaporizers just launched an intelligent e-cigarette*, Apr. 21,
2015, <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

25 ¹⁴ David Pierce, *This Might Just Be the First Great E-Cig*, Apr. 21, 2015,
26 <https://www.wired.com/2015/04/pax-juul-ecig/> (Ari Atkins, Research and Development engineer, PAX Labs,
“How do you make somebody look cooler? Give them a cigarette.”).

1 **2. As traditional cigarette use declined, JUUL filled the void**

2 4.27 Cigarette smoking has been a scourge on public health for over half a century,
3 and still kills approximately half a million people in the United States per year. In recent years,
4 cigarettes have caused approximately one in five deaths in the United States.¹⁵ Traditional
5 cigarette use, thankfully however, is declining. The awful health consequences of cigarette
6 smoking, the industry’s lies about its product, and its unlawful youth targeting are now
7 widespread public knowledge. The adult smoking rate for cigarettes as of 2018 was
8 approximately 13.7%, down from 20.9% in 2005.¹⁶

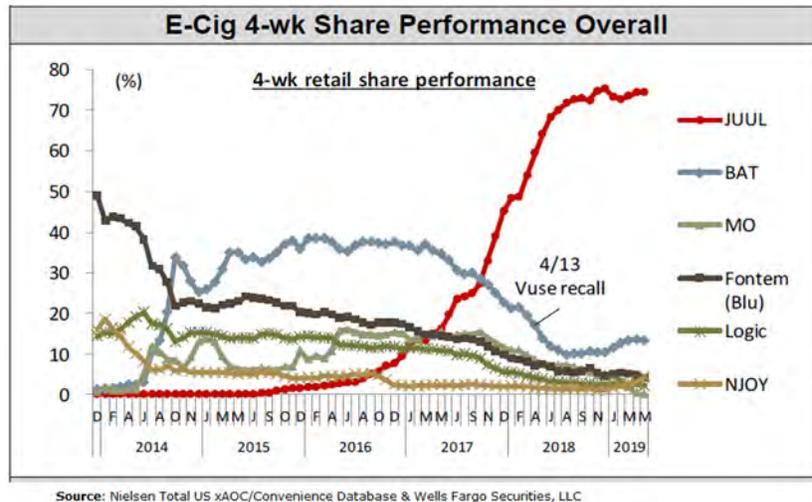
9 4.28 While smoking traditional cigarettes is declining, the use of e-cigarettes with their
10 much higher nicotine delivery is increasing. The chart below illustrates how e-cigarettes have
11 displaced traditional cigarettes:



15 Current Cigarette Smoking Among Adults in the United States, Centers for Disease Control and Prevention. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm (last visited Aug. 21, 2020).

16 *Id.*

1 4.29 The dubious crowning achievement of JUUL has been to switch America's
2 nicotine addiction from cigarettes to e-liquid vaping with its centerpiece being a generation of
3 young and often underage addicts who will be consumers of JUUL's nicotine laden products for
4 years. The chart below demonstrates JUUL's dominance of the e-cigarette market:



13 4.30 The pervasiveness of JUULing and the consequent onset of nicotine addiction for
14 American youth recently led the Surgeon General of the United States to issue a powerful
15 warning against the rising “epidemic” of nicotine addiction sweeping across the nation. As stated
16 by Surgeon General Adams:

17 I, Surgeon General of the United States Public Health Service, VADM Jerome
18 Adams, am emphasizing the importance of protecting our children from a lifetime
19 of nicotine addiction and associated health risks by immediately addressing the
20 epidemic of youth e-cigarette use. The recent surge in e-cigarette use among
21 youth, which has been fueled by new types of e-cigarettes that have recently
22 entered the market, is a cause for great concern. **We must take action now to
23 protect the health of our nation’s young people.** (Bold in original).

24 4.31 The concerns of Surgeon General Adams were shared by U.S. Health and Human
25 Services Secretary Alex Azar, who stated:

26 “. . . [W]e have never seen use of any substance by America’s young people rise
as rapidly as e-cigarette use is rising. Combustible cigarettes remain the leading
cause of preventable death in the United States, and providing an effective
off-ramp for adults who want to quit using them is a public health priority. *But
we cannot allow e-cigarettes to become an on-ramp to nicotine addiction for
younger Americans.*” (emphasis added).

1 4.32 While children have turned away from smoking traditional cigarettes, they have
2 instead turned to electronic cigarettes. Rates of cigarette use among youth are critical to public
3 health goals because nearly nine out of ten smokers first try cigarettes before the age of 18.¹⁷ A
4 staggering 27.5% of high school students had recently smoked electronic cigarettes in 2019, up
5 from 1.5% in 2011. And 10.5% of middle school students had done the same, up from 0.6% in
6 2011.¹⁸ This shocking rise in child use of electronic cigarettes threatens decades of advances in
7 driving down youth smoking rates. Led by JUUL, e-cigarettes are addicting a new generation to
8 nicotine.

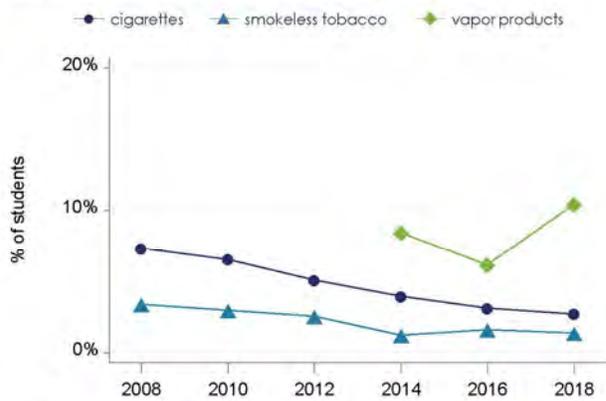
9 4.33 The annual Healthy Youth Survey for Washington in 2018 reflected similar
10 substantial growth in e-cigarette use amongst Washington’s children as was occurring around
11 the nation. The Washington Healthy Youth Survey reports on cigarette smoking and vaping
12 amongst students in 8th, 10th, and 12th grades. Over 900 schools administered the survey
13 representing all 39 counties and 228 school districts. The survey returned reports of vapor
14 product use by the students between 2016 and 2018. Over the course of only two years,
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25 ¹⁷ *Youth and Tobacco Use*, Centers for Disease Control and Prevention,
26 https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Aug. 21,
2020).

¹⁸ *Id.*

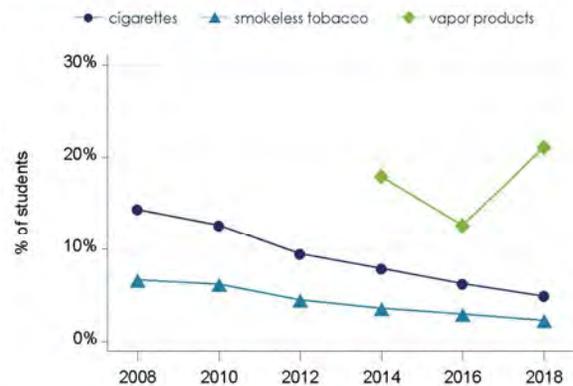
1 8th graders reporting use of vaping products rose from 6% to 10%; for 10th graders the increase
 2 nearly doubled from 13% to 21%, and for 12th graders use increased from 20% to 30%.

3 **Current (past 30-day) use trends, grade 8**



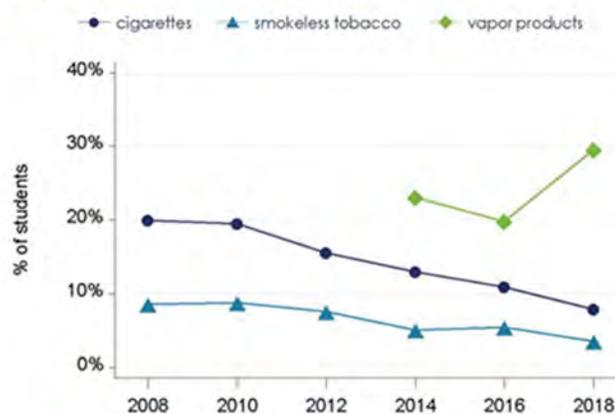
Prevalence	2008	2010	2012	2014	2016	2018
cigarettes	7% ±1	7% ±1	5% ±1*	4% ±1*	3% ±0*	3% ±1
smokeless tobacco	3% ±1	3% ±1	3% ±0	1% ±0*	2% ±0	1% ±0
vapor products	N/S	N/S	N/S	8% ±1	6% ±1*	10% ±1*

4 **Current (past 30-day) use trends, grade 10**



Prevalence	2008	2010	2012	2014	2016	2018
cigarettes	14% ±2	13% ±2	10% ±1*	8% ±1	6% ±1*	5% ±1*
smokeless tobacco	7% ±1	6% ±1	5% ±1*	4% ±1	3% ±1	2% ±1
vapor products	N/S	N/S	N/S	18% ±2	13% ±2*	21% ±3*

5 **Current (past 30-day) use trends, grade 12**



Prevalence	2008	2010	2012	2014	2016	2018
cigarettes	20% ±3	20% ±3	16% ±2*	13% ±2*	11% ±2	8% ±1*
smokeless tobacco	9% ±1	9% ±2	8% ±1	5% ±1*	6% ±1	4% ±1*
vapor products	N/S	N/S	N/S	23% ±2	20% ±2*	30% ±3*

6 4.34 Adolescent use of e-cigarettes in schools and public spaces has created major
 7 difficulties for school administrators and teachers. Places like school bathrooms have turned into
 8 hangouts for e-cigarette use.¹⁹ Washington schools have been forced to try to monitor e-cigarette
 9

10 ¹⁹ Jaime E. Sidani, Ph.D., et al., *JUUL on Twitter: Analyzing Tweets about Use of a New Nicotine Delivery System*. 90(2) *Journal of School Health*, 135-42 (2019). <https://onlinelibrary.wiley.com/doi/10.1111/josh.12858>.

1 usage and take actions such as installing detectors for vaping. The pervasive JUULing in school
2 bathrooms is exemplified by the meme below, which has been widely circulated on teen oriented
3 websites:



me_irl

14
15 **3. JLI updated the tobacco industry’s marketing strategy by using social media
and product features to hook kids on e-cigarettes**

16 4.35 JUUL’s phenomenal growth and dominance of the e-cigarette market was based
17 on capturing the youth market. As demonstrated below, JLI cashed in on the cynical proposition
18 that targeting a young and frequently underage demographic would be the key to dominating the
19 e-cigarette market.

20 **a. JLI studied and employed Big Tobacco’s playbook**

21 4.36 Big Tobacco successfully targeted children and marketed to them for decades,
22 hooking millions of Americans on cigarettes. Stanford University maintains a collection of
23 internal company documents obtained in litigation with Big Tobacco.²⁰ As acknowledged by
24 PAX/JLI co-founder James Monsees, the Tobacco Industry Documents and Stanford

25
26 ²⁰ *Stanford University: Research Into the Impact of Tobacco Advertising.*
http://tobacco.stanford.edu/tobacco_main/index.php (last visited Aug. 21, 2020).

1 University’s collection of historical tobacco advertisements allowed PAX Labs/JLI to catch up
2 very quickly with the vast historical learning of the well-established media and product design
3 strategies of another nicotine based industry – Big Tobacco.²¹ The founders of PAX/JLI viewed
4 these documents as educational and as a “very intriguing space for us to investigate”²²

5 4.37 In a 2018 interview with public health expert Dr. Robert Jackler, JUUL
6 co-founder James Monsees thanked Dr. Jackler for Stanford’s work to maintain the tobacco
7 advertising imagery and commented that the design of JUUL’s advertising campaigns had been
8 informed by traditional tobacco advertisements and that Stanford’s collection had been quite
9 useful in developing JLI’s marketing for JUUL.²³

10 4.38 Rather than using Big Tobacco as a source of lessons learned about what not to
11 do, the Defendants looked to Big Tobacco as a source of inspiration. Cult Collective, a marketing
12 firm hired by PAX Labs, initially proposed targeting an older demographic for JUUL, but the
13 Defendants vetoed that idea in favor of targeting a young crowd as had been successful for Big
14 Tobacco. Cult Collective then turned to assisting PAX/JLI develop marketing for JUUL
15 targeting a young demographic. In particular, the marketing for JUUL would focus on flooding
16 social media sites such as Instagram and Twitter with advertising themes targeting teen and early
17 20’s demographics.²⁴

18 4.39 A number of marketing images, themes, and tactics developed by Big Tobacco
19 to reach underage consumers with concepts of being “cool,” “smooth,” and “hip”, were
20 reinvented to entice today’s youth into getting hooked on JUUL. For example JUUL’s
21 “Vaporized” campaign, acknowledged by co-founder James Monsees as “flawed,” copied
22

23 ²¹ Montoya, *supra*.

24 ²² *Id.*; see also Mario Schulzke, *James Monsees – Co-founder and CEO of Ploom*, Apr. 11, 2014,
<https://ideamensch.com/james-monsees/> (“We did a ton of research on why the industry had evolved to where it
was at that time.”).

25 ²³ Robert K. Jackler, *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I*, House Committee
on Oversight and Reform Hearing at 1:32:15–1:33:18 (Jul. 24, 2019),
<https://oversight.house.gov/legislation/hearings/examining-juul-s-role-in-the-youth-nicotine-epidemic-part-i>.

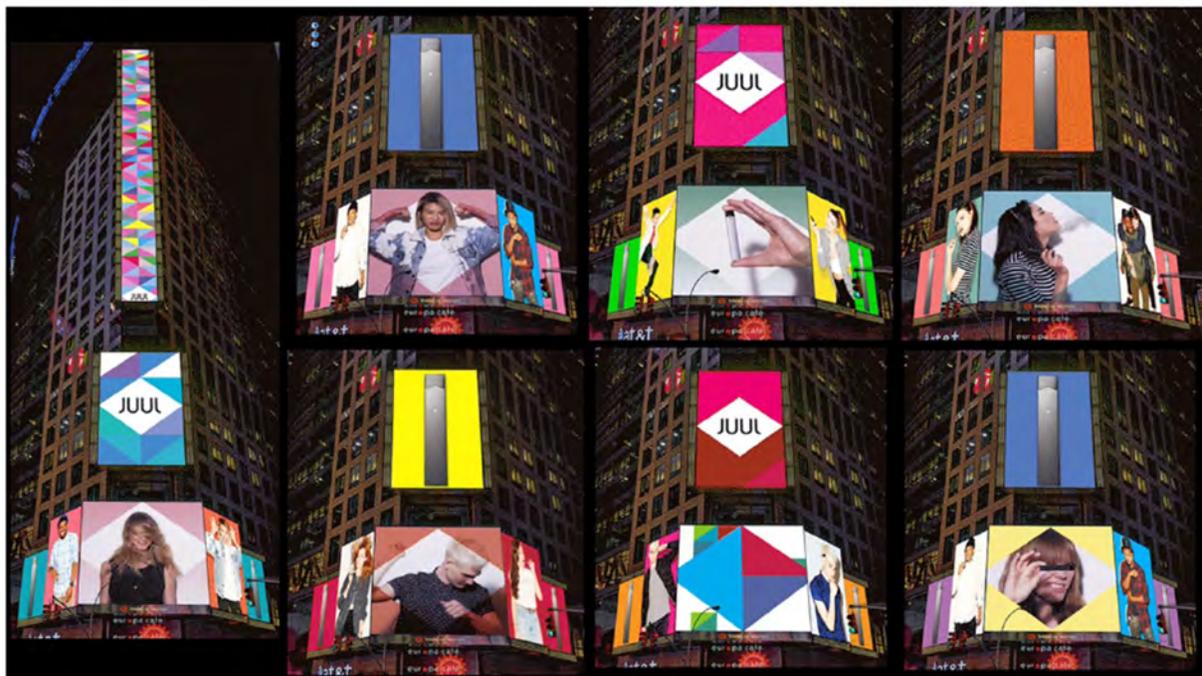
26 ²⁴ Huang, *supra*, at 146-51.

1 themes developed by Big Tobacco to attract young smokers using bright colors, sharp patterns,
2 and young, fashionable models holding the product. An example of a young JUUL model from the
3 “Vaporized” campaign mimicking the pose and attitude of the hip ‘Kool Woman’ campaign for Kool
4 cigarettes is clearly seen in this side-by-side:



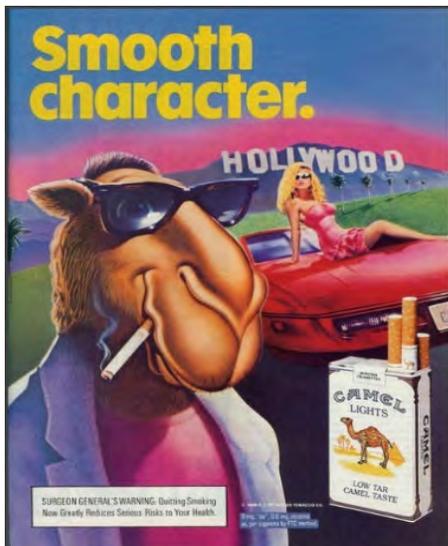
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1 4.40 One of the most notorious youth marketing techniques employed by Big Tobacco
2 was the use of large outdoor advertisements. Using large colorful outdoor displays allows created
3 unavoidable incidents of youth exposure to tobacco. This practice is so patently offensive to
4 youth targeting that large outdoor advertisements are forbidden for cigarette manufacturers under
5 the Master Settlement Agreement. The Defendants quickly seized on this technique with a
6 massive multi-color display for JUUL in Times Square and shown throughout the world over
7 the internet, including Washington:



1 4.41 Another example of the Defendants copying themes used by Big Tobacco arose
2 from R.J. Reynold’s notoriously youth popular Joe Camel campaign, with its comically hip
3 central character and the emphasis on being “smooth.” A 1991 American Medical Association
4 study showed that over 90% of six-year-olds identified Joe Camel with cigarettes.²⁵ The Joe
5 Camel campaign was amongst a variety of youth targeting marketing strategies that were made
6 unlawful under the Master Settlement Agreement.

7 4.42 Below is an example of JLI echoing the ‘smooth’ theme that was a central feature
8 of the Joe Camel advertising campaign:



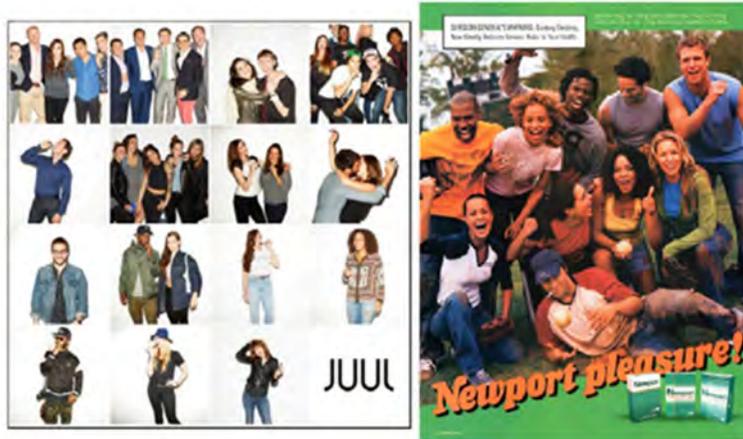
18 4.43 The imagery and reference to being “smooth” used by R.J. Reynolds and JUUL
19 in these campaigns expertly captures the duality of the product user being ‘smooth’ as well as
20 the quality of inhalation of the product.

21 4.44 Below are some additional side by side examples of JUUL models mimicking the
22 themes, poses, and imagery so successfully developed by Big Tobacco for attracting a young
23 demographic:

24
25
26 ²⁵ Paul M. Fischer, et al., *Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel*, 266(22) JAMA 3145–48 (1991). <https://jamanetwork.com/journals/jama/article-abstract/393811>.

Youth

Similarities between a JUUL advertisement and a 2002 advertisement typical of the "Newport Pleasure" campaign of 1973 – 2016. Playfully arranged groups of young people.



Health

JUUL's "smoking evolved" conveys a similar message of health reassurance to L&M's "miracle tip."



Smart

Similarities between a JUUL "Smart" advertisement and a 1950s advertisement from a 1955 Parliament "Smart" advertisement. In both the term 'smart' conveys a message of health reassurance.



1 4.45 JLI entered the market in 2015 with a sleek, flashy advertising campaign called
2 “Vaporized.” Vaporized was a hashtag used to market JUUL products on Twitter, Instagram,
3 and Facebook, three social media platforms popular with youth.



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17 4.46 For many of its early years, the Defendants focused on “organic” social media
18 marketing. This occurs when, rather than paying for advertising directly, companies seek to stimulate
19 conversation about their products among a community of online users. JLI hired a social media team
20 that monitored and participated in the online conversations about its products.²⁶ JLI posted to certain
21 sites, as did various members of the community. Here is an example of a post featuring young people
22 using JUUL products:

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25 ²⁶ See Jackler, R. K., Chau, C., Getachew, B. D., et al. (2019). JUUL Advertising over its First Three Years
26 on the Market, at 34. *Stanford University School of Medicine*. Retrieved from http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.



4.47 JLI’s marketing campaigns worked. Teenagers spread interest in the product on various platforms, for example, by posting pictures or videos of vaping tricks. By 2017, JUUL products were very popular with students, celebrities, and others. A new and largely underage generation was getting addicted to nicotine.

4.48 A study of followers of JUUL’s official Twitter hashtag @JUULvapor in 2018 found that 80% were between the ages of 13 and 20.²⁷

Table. Predicted Age Category of Twitter Users Following @JUULvapor Who Were Classified as Individuals

Model	Individual Accounts, No. (%) (n = 9077)
3-Age category, y	
13-17	4078 (44.9)
18-24	3957 (43.6)
≥25	1042 (11.5)
2-Age category, y	
13-20	7313 (80.6)
≥21	1764 (19.4)

²⁷ Sidani, J. E., Colditz, J. B., Barrett, E. L., Shensa, A., Chu, K.-H., James, A. E., & Primack, B. A. I Wake Up and Hit the JUUL: Analyzing Twitter for JUUL Nicotine Effects and Dependence. *Drug and Alcohol Dependence*. 2019:204, 107500. <https://doi.org/10.1016/j.drugalcdep.2019.06.005>.

1 4.49 JLI had actual knowledge of the widespread use of JUUL by underage consumers
2 because JLI employees regularly monitored its own sites and social media sites where JUUL
3 was being discussed and pictured.²⁸

4 4.50 JLI created an email list on its website. Until 2018, it required only that the
5 participant check a box saying that he or she was of legal age to buy JUUL products, without
6 any verification.

7 **b. JLI marketed flavors, known to appeal to youth**

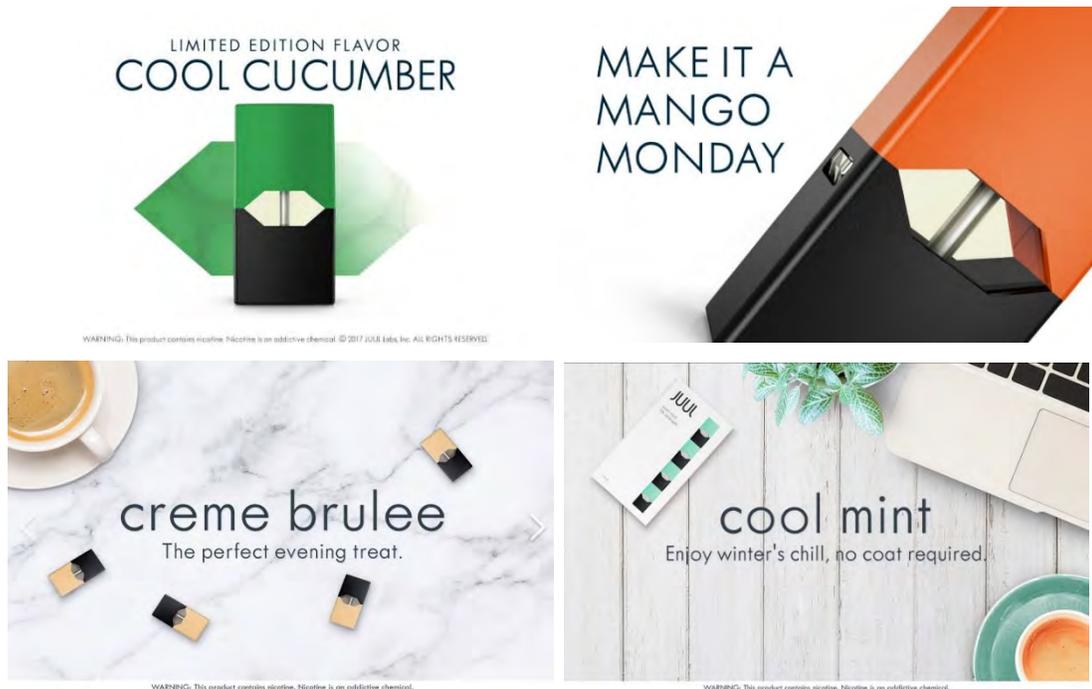
8 4.51 One of the challenges in getting youth addicted to nicotine is the harsh sensation
9 resulting from smoking either cigarettes or e-cigarettes. To overcome this obstacle, JLI
10 concentrated on flavors. Flavors mask the bitter taste of products that contain nicotine, and
11 became very popular among teens. Approximately 69% of high school e-cigarette users use
12 flavors.²⁹

13 4.52 When JUUL entered the market with the youth oriented “Vaporized” campaign,
14 the introductory starter kit included one JUUL pod each of cool mint, fruit medley, crème brulee,
15 and Virginia Tobacco. The youth friendly pods of cool mint, fruit medley, and crème brulee
16 were available until November of 2019.

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24 ²⁸ Matt Richtel & Shiela Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?* The New York
25 Times, Aug. 27, 2018, <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

26 ²⁹ *Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019*, 68(12) Centers for Disease Control and Prevention 1-22, 4 (2019).
https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm?s_cid=ss6812a1_w.

1 4.53 JLI combined its youth friendly flavors with attractive names and bright colors in
2 its marketing, such as “Cool Cucumber,” “Mango,” Crème Brulee,” and “Cool Mint.” The
3 Defendants knew that these flavors were the most popular with underage consumers.



15 **c. JLI used brand ambassadors and social media influencers**

16 4.54 JLI hired “brand ambassadors” to hand out JUUL products at launch parties. The
17 “brand ambassadors” were selected based on known popular trendsetters on the internet and
18 were paid to promote JUUL. These brand ambassadors were given a “tool kit” that showed them
19 how to dress, including, for example, skinny jeans and Converse sneakers. In other words, the
20 brand ambassadors were instructed to dress fashionably in a way that would appeal to young
21 people. The tool kits also contained colorful JUUL branded products such as t-shirts and iPhone
22 cases.³⁰

23
24
25 ³⁰ Michael Nedelman, Roni Selig, and Arman Azad, *#JUUL: How social media hyped nicotine for a new*
26 *generation* (Dec. 19, 2018, 5:30 PM EST), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

1 **4. Development of the sleek tech inspired JUUL vaping device**

2 4.55 Like traditional cigarettes, electronic cigarettes deliver nicotine to the user. The
3 JUUL device resembles a USB flash drive. It is small enough to fit in the palm of a hand and has
4 a tech-inspired design.³¹ Due to its size, the device can easily be hidden from parents or teachers
5 in ordinary clothing. And given its resemblance to a USB flash drive, it is not immediately
6 obvious upon viewing that it is a smoking device, rather than a piece of computer technology,
7 especially since it is designed to be charged in a USB port.

8 4.56 JUUL devices are battery operated. They heat up a cartridge or pod containing
9 liquid to create an aerosol that users inhale. Controlling the consistency of the temperature of the
10 vaporized aerosol was one of distinguishing technical accomplishments for the JUUL device.
11 The liquid contains nicotine, flavorings, and many other chemicals that are vaporized and inhaled
12 into the lungs of the user.

13 4.57 The photos below show the JUUL device and pods from its ‘starter kit’:



22 4.58 In addition to the sleek tech look of JUUL devices, other features also appeal to
23 underage users such as “party mode.” The JUUL device contains an LED light with different
24 colors relating to battery charge status. The “party mode” feature allows the light on the JUUL
25

26 ³¹ Most of the pictures in this Complaint are from the Stanford Research into the Impact of Tobacco Advertising database, available at http://tobacco.stanford.edu/tobacco_main/index.php.

1 device to flash a rotating rainbow of different colors. The internet is replete with videos of
2 teenagers showing how to activate “party mode” on the JUUL by tapping and shaking the device
3 to continuously produce a cycle of different colored lights.

4 4.59 Below is an Instagram posting of what “party mode” can look like with the lights
5 off:



15 Party mode has been described as similar to “an Easter egg in a video game” and allowing for
16 “some cool tricks that will drive friends crazy.”³² This video game-like feature also helps make
17 JUUL unique in the market.

18 4.60 “Party mode” is a hidden feature of the JUUL to be discovered by users and has
19 been accessible since at least 2016. The “party mode” feature is never advertised by any official
20 JLI/JUUL promotions, appears nowhere on JLI/JUUL websites, and is not described anywhere
21 in the packaging for the device.

22 4.61 “Party mode” is clearly a youth oriented feature and JLI’s guilty knowledge of
23 the youth appeal is demonstrated by its claim that the feature is a design accident that
24 inexplicable has never been fixed.

25 ³² Jon Hos, *Getting Your Juul Into Party Mode* (Jul. 12, 2018), <https://vapedrive.com/gettingyour-juul-into-party-mode>.
26

1 4.62 JLI customer care representatives have expressly told Washington consumers that
2 the rotating colors are a “glitch relating to the motion sensor.”³³ No explanation is provided for
3 why a vaping device needs a motion sensor, nor is the motion sensor identified by JLI in its
4 diagrams of the device components. JLI has made improvements to its vaping system and ironed
5 out various glitches over the years, but this feature has never been removed regardless of the
6 well-known youth appeal of activating “party mode.”

7 **5. The Defendants developed a smoother throat hit that attracted new, young**
8 **smokers**

9 4.63 The Defendants also focused the engineering of their vaping system to reduce the
10 harsh shock of inhaled nicotine that can deter new smokers by manipulating the nicotine salts in
11 JUUL pods to make the inhalation of JUUL vapor smoother.³⁴

12 4.64 Prior to JUUL, most e-cigarettes used a freebase form of nicotine that limited the
13 amount of nicotine that could be tolerated by a consumer. Freebase forms of nicotine are a natural
14 by-product of tobacco that can be extracted and manipulated. However, inhaled freebase nicotine
15 has a harsh and bitter taste that irritates the throat and is referred to as the “throat hit.” Big
16 Tobacco discovered that the harshness of the throat hit could be softened, and made more
17 palatable for new and young smokers, by manipulating the pH balance in the nicotine solution.
18 Documents discussing the importance of softening the throat hit so that new and younger
19 smokers are not deterred by initial exposure to nicotine are amongst the Tobacco Industry
20 Documents reviewed by JLI’s founders.

21 4.65 Prior to the JUUL pod, most e-liquids on the market were between 1% and 2%
22 nicotine concentrations and 3% solutions were high concentrations for persons accustomed to
23 smoking two packs of cigarettes per day. The JUUL pods entered the market with an advertised
24 “5% nicotine by weight” solution that smoothly delivered more than twice the nicotine load of
25 JUUL’s competitors. According to national public health experts, JUUL’s development of a

26 ³³ JUULWAAG0165409, 0166835, 0169091, and 0177149.

³⁴ *Id.*

1 nicotine salt formulation delivering extremely high, but palatable doses of nicotine, set off a
2 tragic nicotine arms race.³⁵

3 4.66 With the development of a ‘smooth’ delivery system, extraordinarily high
4 nicotine delivery, a hipster marketing campaign, combined with youth friendly flavorings, a
5 winning formula for JUUL was created. But this winning formula was achieved illegally, by
6 unfairly targeting youth and making deceptive claims about nicotine.

7 **6. JLI knew underage buyers were acquiring its products**

8 4.67 The Defendants knew that youth who could not lawfully purchase JUUL products
9 were using them. For example, one former manager explained that JLI saw online videos of
10 underage people smoking JUUL products.³⁶ JLI took no corrective action when becoming aware
11 of underage consumers promoting JUUL on social media sites, including its own #juulvapor
12 account.

13 4.68 The Defendants also have direct knowledge that their authorized distributors [REDACTED]
14 [REDACTED]³⁷ Since September 2017, JLI has operated a Retail
15 Monitoring Program, or Secret Shopper Program, in Washington. The program purports to
16 monitor and police retailers of JUUL products to ensure that they are following applicable
17 minimum age laws and enforcing JLI’s bulk purchase requirements.

18 4.69 The Program is described to work as follows: a third-party vendor sends a
19 customer (or checker) age 18 to 25 into a retail location to conduct mock purchases of JUUL
20 products to monitor whether the retail employee will request the customer’s identification (ID)
21 prior to quoting a price. If ID is requested, the retail location receives a “pass.” If not, the retail
22 location “fails.” If a retailer fails, it is added back to the shopping list for another round of secret
23 shopping.

24
25 ³⁵ Robert K. Jackler and Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine product*
26 *market*, 28 Tobacco Control 623-28 (2019). <https://doi.org/10.1136/tobaccocontrol-2018-054796>.

³⁶ Huang, et al., *supra*, at 148.

³⁷ JUULWAAG0152241–0152243.

1 4.70 JLI receives and records the results of the attempt to make an unlawful underage
2 purchase of its product. JLI records whether the unlawful sale was made or denied, and whether
3 the retail clerk required age verifying identification from the purchaser.

4 4.71 JLI claims that it applies a progressive scale of measures for retailers known to
5 sell its products in violation of Washington law beginning with corrective education up to
6 revocation of permission to JUUL products. JLI has publically touted its Secret Shopper Program
7 as an example of its commitment to preventing sales of JUUL products to underage consumers.

8 4.72 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 4.73 JLI's Secret Shopper program shares the same deceptive duality as other public
13 relations campaigns by the Defendants that sound good, but are not serious priorities for JLI until
14 pressure is applied by the public health community and civil law enforcement.

15 4.74 The Defendants profit from the illegal sales of its distributors. The Defendants
16 failure to take adequate corrective action when presented with actual knowledge of unlawful
17 sales to minors makes them complicit in those unlawful sales.

18 **C. The Defendants Have Harmed Washington Consumers with Years of Deception**
19 **About the Nicotine in JUUL Pods**

20 4.75 JLI has also deceived Washington consumers either by failing to disclose for
21 several years that JUUL pods contained addictive amounts of nicotine and followed by making
22 misleading claims about the amount of nicotine in JUUL products. This deceptive conduct is a
23 violation of the CPA and affects consumers of all ages.

24 **1. JLI did not inform Washington consumers that JUUL pods contained**
25 **nicotine for the first three years its products were on the market**

26 4.76 The National Institutes of Health determined many years ago that nicotine
addiction and abuse increases with the amount, efficiency, and speed of nicotine delivery into

1 the bloodstream. Due to the highly addictive qualities of nicotine, cigarette companies have been
2 required for more than 50 years to print distinctive warnings on all packages of cigarettes that
3 the product contains nicotine and that nicotine is an addictive substance.³⁸

4 4.77 As late as 2016, JLI’s marketing emails omit any mention of nicotine in JUUL
5 pods. Rather, the marketing extols the inhalation of the vapor “And then you take a drag of one
6 of the JUUL’s flavors – miint, bruule, tabaac, or fruit – and you feel even better.” The
7 advertisements said nothing about the addictive risks that are going to come with ‘feeling
8 better.’³⁹

9 4.78 In a breath-takingly bold deception, JLI printed nothing on the packaging of
10 JUUL products informing consumers that JUUL pods contained nicotine, let alone anything
11 about addiction, for the first three years the product was on the market.⁴⁰

12 4.79 JLI did not place nicotine warnings on its packaging of JUUL pods until the FDA
13 required it to do so late in 2018.⁴¹ Similarly, JUUL’s vast social media presence was largely
14 bereft of any notice that JUUL pods contained nicotine.

15 4.80 The Defendant, JLI’s failure to disclose that its products contained nicotine
16 proved highly effective in concealing the presence of the addictive substance. A study published
17 by Truth Initiative in 2019 found that 63% of adolescents did not understand that JUUL products
18 contain nicotine.⁴²

19 4.81 For the first three years that JUUL vaping products were being sold to
20 Washington consumers, a consumer would not see from the packaging that the product contained
21 nicotine. Just as importantly a parent who saw their teenager with JUUL products would have

22 ³⁸ 15 U.S.C. ch. 36 § 1331 (1966), *Federal Cigarette Labeling and Advertising Act*.

23 ³⁹ http://tobacco.stanford.edu/tobacco_web/images/pod/juul/. The misspelling of the flavors was an
24 intentional attention grabber.

25 ⁴⁰ JUULWAAG0093654 (2015), JUULWAAG0094151 (2016), JUULWAAG0094664 (2017).

26 ⁴¹ Julie Creswell & Sheila Kaplan, *How JUUL Hooked a Generation on Nicotine*, *The New York Times*
(Nov. 23, 2019, updated Feb. 12, 2020), <https://www.nytimes.com/2019/11/23/health/juul-vaping-crisis.html>.

⁴² Truth Initiative, *Behind the Explosive Growth of JUUL* (Jan. 3, 2019) [https://truthinitiative.org/research-
resources/emerging-tobacco-products/behind-explosive-growth-
juul#:~:text=For%20example%2C%20a%20recent%20Truth.6%20percent%20reporting%20current%20use.](https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul#:~:text=For%20example%2C%20a%20recent%20Truth.6%20percent%20reporting%20current%20use.)

1 had no information that the product being consumed by their child contained nicotine—a
2 substance known for its propensity to become a serious addiction.

3 4.82 JUUL’s ascendance to dominance of the e-cigarette market coincided with the
4 time it was failing to provide notice that JUUL pods contained nicotine and actively marketing
5 kid friendly flavors such as Fruit Medley, Mango, Mint and Crème Brule.

6 4.83 JLI’s failure to provide notice that JUUL pods contained nicotine is an unfair and
7 deceptive practice because it deceived Washington consumers about the addictive nature of the
8 product and significantly the consumers’ ability to make reasoned decisions about buying and
9 consuming the product. JLI’s failure to disclose and provide warnings of the known risk of
10 nicotine addiction to its product is a violation of Washington’s CPA.

11 **2. JLI’s representation that JUUL pods contain 5% nicotine is unlawfully**
12 **deceptive**

13 4.84 After being forced by the FDA to provide notice that its vaping products contain
14 nicotine, JLI continued to be deceptive about the actual amount of nicotine in a JUUL pod. The
15 packaging on JUUL pods now represents that the pod contains “5% nicotine by weight.”⁴³
16 Undisclosed by the Defendants is that nicotine in an e-liquid is appropriately measured by
17 volume not by weight.⁴⁴ The impact of the Defendant’s deceptive slight-of-hand describing the
18 amount of nicotine in a JUUL pod is significant. Measuring the nicotine concentration by volume
19 results in an actual nicotine concentration of 5.9%, which is 20% higher than JLI’s
20 representations.⁴⁵

21 4.85 JLI knows that measuring e-liquid nicotine strength by weight rather than by
22 volume will understate the nicotine concentration contained in the JUUL pod and is not
23 necessarily an apples-to-apples comparison for consumers who are comparing nicotine
24 concentrations of e-liquid vaping products on the shelf.

25 ⁴³ JUULWAAG0180119.

26 ⁴⁴ American E-Liquid Manufacturing Standards Association, Version 2.3.3, Mar. 8, 2017.
<https://www.aemsa.org/standards/>.

⁴⁵ Jackler and Ramamurthi, *supra*.

1 4.86 Without an explanation from JLI about how its method of measuring nicotine “by
2 weight” understates the nicotine concentration of JUUL pods versus measuring “by volume,”
3 JLI deceives Washington consumers about the relative amount of nicotine in a JUUL pod when
4 comparing JUUL to other e-liquid products on the market. The misleading representation of the
5 nicotine strength of a JUUL pod is a violation of Washington’s CPA.

6 **3. JLI’s representation that the nicotine in a JUUL pod is about the same as a**
7 **cigarette is unlawfully deceptive**

8 4.87 JLI represents that a JUUL pod contains about the same amount of nicotine as a
9 pack of cigarettes.⁴⁶

10 4.88 The represented equivalency to cigarettes is deceptive for at least two reasons.

11 4.89 JLI bases its representation that a JUUL pod is equivalent to a cigarette on its
12 assumption that a user will draw 200 puffs from a JUUL pod.⁴⁷ JLI deceptively focuses on
13 200 puffs because that number most closely approximates the amount of nicotine that can be
14 delivered from a pack of traditional cigarettes, but the JUUL device and pod actually delivers up
15 to 400 puffs. Because of the way nicotine droplets from inhaled aerosols are absorbed into the
16 bloodstream the number of puffs from a pod effects how much nicotine is actually delivered into
17 the consumer. Even if JLI’s representations about the efficiency of nicotine absorption for its
18 JUUL pods are correct, the nicotine delivery of a JUUL pod is only comparable to a cigarette if
19 the consumer uses half the capacity that the JUUL device can deliver. [REDACTED]

20 [REDACTED]

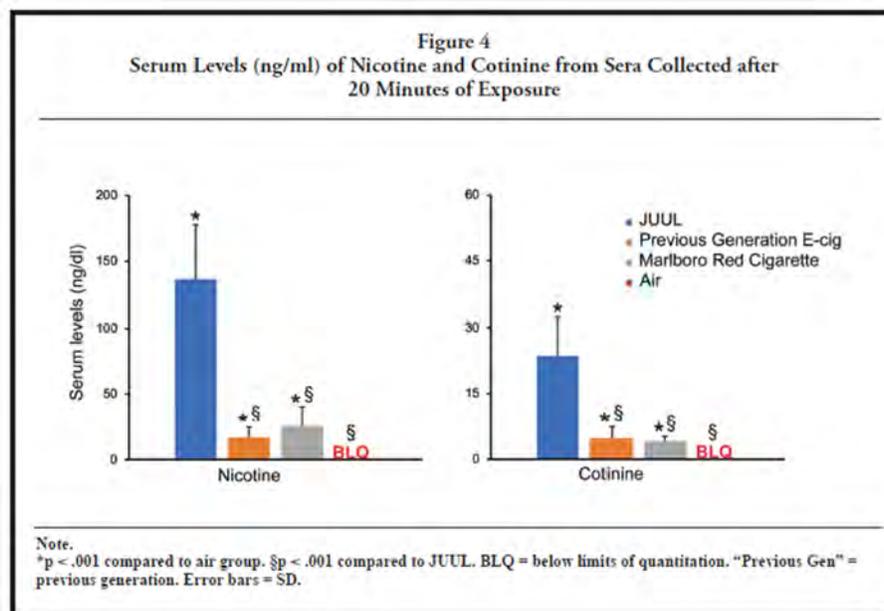
21 [REDACTED]

22 4.90 Further, JLI’s representation that per puff delivery of nicotine to a consumer is
23 comparable between a JUUL pod and a cigarette is questionable. A 2020 study published by
24 researchers at the University of California found that a JUUL pod delivers five times more

25 ⁴⁶ *How much nicotine is in JUUL?* Truth Initiative (Feb. 26, 2019). [https://truthinitiative.org/research-](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul)
26 [resources/emerging-tobacco-products/how-much-nicotine-juul](https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul).

⁴⁷ *Id.*

1 nicotine into the bloodstream, per puff, than a Marlboro Red cigarette.⁴⁸ The findings of the
2 study are charted below:



13 4.91 JUUL's extraordinarily high delivery of nicotine was also made clear when its
14 5% nicotine salt solution was banned from the European Union. European studies determined
15 that JUUL's 5% nicotine salt solution was delivering approximately 60 mg/ml of inhaled
16 nicotine which is triple the lawful limit allowed in the European Union. JLI was able to quickly
17 engineer a nicotine formulation delivering no more than 20 mg/ml in order to lawfully enter the
18 European market.⁴⁹

19 4.92 A paper published by the European Union citing the United Kingdom Medicines
20 and Healthcare Products Regulatory Agency notes, "an e-cigarette with a concentration of
21 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the time needed to smoke
22 a traditional cigarette, for which the maximum allowable delivery is 1mg of nicotine)." With
23 50-60 mg/mL of nicotine delivered in a salt form that increases the rate and efficiency of uptake,

24 ⁴⁸ Poonam Roa, et al., *JUUL and Combusted Cigarettes Comparably Impair Endothelial Function*,
25 6(1) Tobacco Regulatory Science 30-37 (2020). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6953758/>.

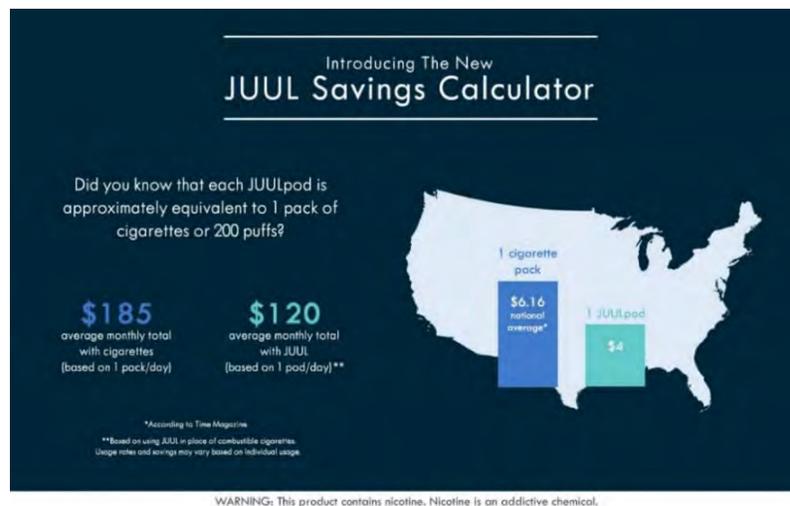
26 ⁴⁹ Directive 2014/40/EU of the European Parliament and of the Council, Official Journal of the European
Union, https://ec.europa.eu/health/sites/health/files/tobacco/docs/dir_201440_en.pdf.

1 a JUUL pod will easily exceed the nicotine dose of a traditional cigarette. As a result, the
2 European Union has banned all e-cigarette products with a nicotine concentration of more than
3 20 mg/ml nicotine, and Israel is seeking to do the same.⁵⁰

4 4.93 Similarly, Israel’s Deputy Health Minister explained the public health risk:
5 “a product that contains a concentration of nicotine that is almost three times the level permitted
6 in the European Union constitutes a danger to public health and justifies immediate and
7 authoritative steps to prevent it from entering the Israeli market.”⁵¹

8 4.94 JLI’s unfair and deceptive comparisons about the amount of nicotine in cigarettes
9 and a JUUL pod are unfair or deceptive under the CPA.

10 4.95 In a related deception, the “JUUL Savings Calculator” misrepresents the relative
11 costs of JUUL pods and cigarettes. The “JUUL Savings Calculator” is shown below:



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20 4.96 The ‘JUUL Savings Calculator’ repeats the misrepresentation implying that
21 vaping a JUUL pod is the same as smoking a pack cigarettes, but the “Savings” isn’t actually
22 possible when purchasing JUUL pods. The advertisement expressly tells consumers that a JUUL
23 pod is about \$2.16 cheaper than a pack of cigarettes, but the advertisement doesn’t mention that

24
25 ⁵⁰ *Id.*

26 ⁵¹ Linder-Ganz, *JUUL Warns It Will Fight Israel Over Its Potential Ban on E-Cigarettes*, HAARETZ (Mar. 6, 2018), www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058.

1 it isn't possible to buy only one JUUL pod. JLI only sells JUUL pods in pack of two or four.

2 4.97 This deceiving advertisement is a violation of the CPA.

3 **4. JLI wrongfully marketed its e-cigarettes as a smoking cessation device**

4 4.98 JLI, through its marketing efforts, has implied that its products are safe to be used
5 and effective as a cessation device to help users quit traditional cigarettes. However, the FDA
6 has not approved the products for this purpose. And the existing evidence is insufficient to
7 demonstrate JUUL products are effective to help users quit smoking.⁵²

8 4.99 By contrast, the opposite concern is very real: that people (especially youth) begin
9 using e-cigarettes and transition to traditional cigarettes. And the data show that there are many
10 "dual users." In fact, a 2020 survey by the Surgeon General found that about half of adult
11 e-cigarette users also use traditional cigarettes.⁵³

12 4.100 After coming under fire for marketing to youth, JLI shifted its emphasis to
13 promoting its products as a way to stop smoking traditional cigarettes. In 2018, JLI began its
14 "Make the Switch" campaign, which sought to "[i]mprove the lives of the world's one billion
15 adult smokers by eliminating cigarettes."⁵⁴

16 4.101 In September 2019, the FDA sent a warning letter explaining its determination
17 that JLI had sold or distributed its products as modified risk products without authorization to
18 do so under federal law. The letter was particularly concerned with evidence presented at a
19 Congressional hearing that JLI had told students in a school presentation that its products were
20 "99% safer" than cigarettes, "much safer" than cigarettes, "totally safe," and "a safer alternative
21 than smoking cigarettes."⁵⁵

22 _____
23 ⁵² Adult Smoking Cessation—The Use of E-Cigarettes. Centers for Disease Control and Prevention.
24 https://www.cdc.gov/tobacco/data_statistics/sgr/2020-smoking-cessation/fact-sheets/adult-smoking-cessation-e-cigarettes-use/index.html. (last visited Aug. 20, 2020).

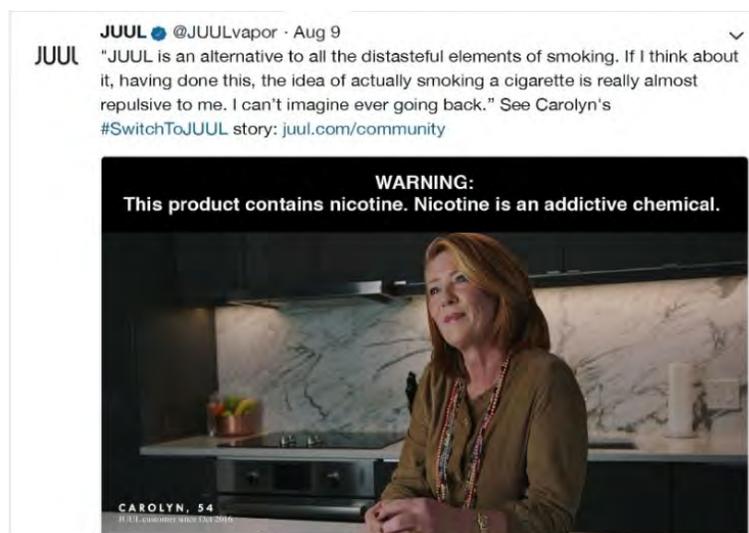
25 ⁵³ *Id.*

26 ⁵⁴ JUUL, Our Mission, <https://www.juul.com/mission-values> (last accessed Oct. 17, 2019).

⁵⁵ *Warning Letter JUUL Labs, Inc.*, U.S. Food and Drug Administration (Sept. 9, 2019),
<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

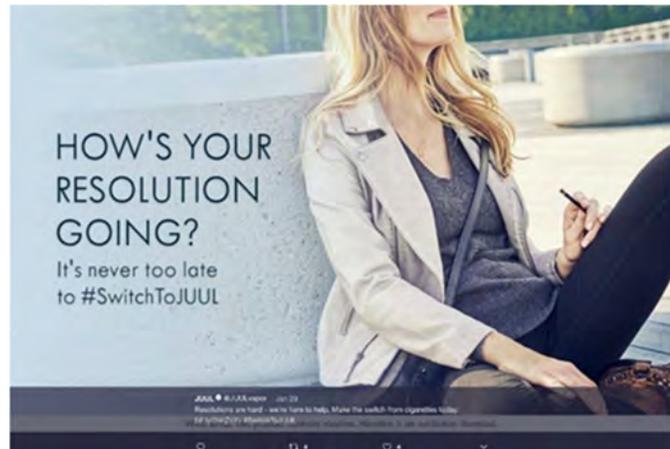
1 4.102 The FDA further explained that “JUUL has marketed its [] products as modified
2 risk tobacco products because JUUL’s labeling, advertising, and/or other actions directed to
3 consumers [], represent, or would be reasonably expected to result in consumers believing, that
4 the products present a lower risk of tobacco-related disease or are less harmful than one or more
5 other commercially marketed tobacco products; contain a reduced level of a substance or present
6 a reduced exposure to a substance; and/or do not contain or are free of a substance or
7 substances.”⁵⁶ This letter demanded that JUUL bring its marketing efforts on this front into
8 compliance with federal law.

9 4.103 JLI’s false nicotine equivalency to cigarettes is particularly cynical in light of its
10 “Switch” marketing campaign for JUUL. Unlike most of JLI’s marketing campaigns for JUUL,
11 such as the “Vaporized” campaign, the “Switch” campaign focused on adult cigarette smokers.
12 JLI presented JUUL as the clean and fun loving alternative to the dirty and dangerous cigarettes.
13 The “Switch” campaign was done primarily through testimonials as exemplified below:



⁵⁶ *Id.*

1 4.104 The “Switch” campaign also expressly played into the frustration of not being
2 able to “quit smoking” and suggests that JUUL is the way forward. The ads below were an
3 important part of JLI’s “Switch” campaign:



15 4.105 JLI fails to disclose that ‘switching’ from a pack of cigarettes per day to
16 consuming a JUUL pod per day is increasing the consumer’s nicotine load and hence increasing
17 nicotine addiction and dependence.

18 4.106 The “Switch” campaign created the deceptive impression that JUUL could be
19 used as a smoking cessation system, which cannot be asserted absent FDA approval and which
20 JUUL has never received.

21 4.107 JLI was forced to discontinue the “Switch” campaign under heavy pressure from
22 regulators and the public health community. JLI’s founders unfairly minimized the risk of its
23 product in order to maximize profit and market share.

1 **5. Nicotine addiction is real and is particularly dangerous for the developing**
2 **brains of youth**

3 4.108 According to the National Institutes of Health, the “amount and speed of nicotine
4 delivery . . . plays a critical role in the potential for abuse of tobacco products.”⁵⁷ The cigarette
5 industry has long known that “nicotine is the addicting agent in cigarettes”⁵⁸ and that “nicotine
6 satisfaction is the dominant desire” of nicotine addicts.⁵⁹ Knowing this, tobacco companies spent
7 decades manipulating nicotine to foster and maintain addiction in their customers. For example,
8 R.J. Reynolds Tobacco Company (RJR) developed and patented nicotine salt additives such as
9 nicotine benzoate to increase nicotine delivery in cigarette smoke. As detailed in an RJR
10 memorandum titled “Cigarette concept to assure RJR a larger segment of the youth market,”
11 reducing the pH was expected to give cigarettes an “additional nicotine ‘kick’.”⁶⁰ This kick was
12 attributed to increased nicotine absorption associated with lower pH.⁶¹

13 4.109 The much greater nicotine delivery of JUUL compared to other e-cigarettes
14 followed the trail blazed by RJR Tobacco and other Big Tobacco companies as a key component
15 for capturing the youth market.

16 4.110 Nicotine has harmful health effects in and of itself, apart from addiction. Because
17 nicotine has traditionally been consumed in concert with other chemicals in cigarettes containing
18 tobacco, medical literature addressing the health effects of nicotine from e-cigarettes alone is in
19 the early stages. However, there are serious concerns. Data from nearly 100,000 participants in

20 ⁵⁷ See *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable*
21 *Disease: A Report of the Surgeon General*, 4 Nicotine Addiction: Past and Present. Centers for Disease Control and
22 Prevention (US); National Center for Chronic Disease Prevention and Health Promotion (US); Office on Smoking
23 and Health (US) (2010). <https://www.ncbi.nlm.nih.gov/books/NBK53018/>.

24 ⁵⁸ Brown & Williamson official A.J. Mellman, 1983
25 <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf>.

26 ⁵⁹ R.J. Reynolds Tobacco Co. marketing memo, 1972.

⁶⁰ Colby FG. *Cigarette concept to assure RJR a larger segment of the youth market*, 1973. RJ Reynolds
Collection. Bates No. 501166152/6153. <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=mzfx0091>.

⁶¹ Neal Benowitz, et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, *Nicotine*
Psychopharmacology, 22-29, 192 *Handbook of Experimental Pharmacology*.
https://link.springer.com/chapter/10.1007%2F978-3-540-69248-5_2#copyrightInformation.

1 the National Health Interview Survey, conducted by the CDC in 2014, 2016, and 2017, showed
2 significantly worse health outcomes for e-cigarette users compared to people who did not smoke
3 cigarettes or e-cigarettes. The study found e-cigarette users were 56% more likely to have a heart
4 attack, 30% more likely to suffer stroke, 10% more likely to have coronary artery disease, and
5 44% more likely to have circulatory problems such as blood clots. Most of these associations
6 held true when controlling for other cardiovascular risk factors.⁶²

7 4.111 Nicotine use among children is particularly concerning. Nicotine is believed to
8 harm brain development, which continues until about age 25.⁶³

9 V. CAUSES OF ACTION

10 Count I: 11 Violation of the Consumer Protection Act – Unfair and Deceptive Conduct through 12 Youth Targeting and False or Deceptive Claims

13 5.1 The State incorporates the allegations above as though they are stated in their
14 entirety herein.

15 5.2 Since 2013, it has been a crime to sell vapor products to minors in this state. And
16 since 2016, Washington has imposed detailed civil regulatory requirements upon vapor products
17 sellers to avoid underage consumers purchasing these products. It has therefore been unlawful
18 to sell JUUL devices or pods to underage consumers within the State of Washington at all times
19 since JLI first began marketing its products and through to the present day. A violation of the
20 Vapor Products legislation, RCW 70.345, is an unfair or deceptive act in trade or commerce in
21 violation of the Consumer Protection Act.

22 5.3 Defendants' marketing of vapor products to youth is unfair and deceptive conduct
23 under the Consumer Protection Act. Further, as detailed in this Complaint, Defendants unfairly
24 and deceptively made misrepresentations in its marketing, including that JUUL pods are

25 ⁶² Nicole Naploi, *E-Cigarettes Linked to Heart Attacks, Coronary Artery Disease and Depression: Data
26 reveal toll of vaping; researchers say switching to e-cigarettes doesn't eliminate health risks*, American College of
Cardiology (Mar. 7, 2019), <https://www.acc.org/about-acc/press-releases/2019/03/07/10/03/ecigarettes-linked-to-heart-attacks-coronary-artery-disease-and-depression>

⁶³ *Adult Smoking Cessation—The Use of E-Cigarettes, supra.*

1 comparable to a pack of cigarettes and failed to accurately disclose their nicotine content.
2 The Defendants' marketing of JUUL as a smoking cessation device was unauthorized by federal
3 law and unlawfully deceptive in violation of the Act.

4 5.4 Such conduct was in trade or commerce in Washington.

5 5.5 Such conduct affected the public interest in Washington.

6 5.6 The Attorney General seeks civil penalties, restitution, disgorgement, declaratory
7 and injunctive relief, attorney fees, and any other equitable relief that the Court deems
8 appropriate as allowed by the Act.

9 **Count II:**
Violation of Vapor Products Licensing Requirements

10 5.7 The State reincorporates the allegations above as though they are stated here in
11 their entirety.

12 5.8 RCW 70.345 requires delivery sellers and distributors of vapor products engaging
13 in sales into Washington to first obtain the required license.

14 5.9 A JUUL device and JUUL pods, whether sold together or separately, are vapor
15 products under Washington law.

16 5.10 From August 1, 2016, when a vapor products license was first required, until
17 April 9, 2018, the Defendants were illegally making vapor products sales into Washington
18 without a license. Therefore, during this time period, the Defendants were in violation of Vapor
19 Products laws for every sale of a JUUL device and pod made to Washington consumers and
20 authorized resellers.

21 5.11 The Attorney General seeks civil penalties, restitution, disgorgement, declaratory
22 and injunctive relief, attorney fees, and any other equitable relief that the Court deems
23 appropriate as allowed by the Act.

1 **VI. REQUEST FOR RELIEF**

2 6.1 The State seeks a declaratory judgment that JLI violated the Consumer Protection
3 Act in its marketing, and seeks an injunction prohibiting such conduct. The State also seeks
4 penalties of up to \$2,000 per violation, restitution, disgorgement, attorney fees, and any other
5 equitable relief that the Court deems appropriate under the Act.

6 6.2 The State seeks a declaratory judgment that JLI violated the delivery sales
7 requirements of the vapor products law, RCW 70.345, by making delivery sales into Washington
8 without a license between August 2016 and April 2018.

9 6.3 The State seeks a declaratory judgment that each of these delivery sales violations
10 was also a violation of the Consumer Protection Act.

11 6.4 The State seeks a declaratory judgment that JLI violated the distributor
12 requirements of the vapor products law by distributing vapor products to Washington retailers
13 without a license between August 2016 and April 2018.

14 6.5 The State seeks a civil penalty of up to \$5,000 for each violation of the delivery
15 sales law under RCW 70.345.090(9).

16 6.6 The State also seeks penalties for each of these violations under the Consumer
17 Protection Act. RCW 19.86.080.

18 6.7 The State seeks its costs of investigation, costs of the action, its attorney fees, and
19 any expert witness fees that may be incurred in investigating and pursuing these delivery sales
20 violations. RCW 70.345.090(12)(a) and/or RCW 19.86.080.

21 6.8 The State seeks disgorgement of all gross receipts derived from these delivery
22 sales violations under RCW 70.345.090(12)(b) and/or RCW 19.86.080.

23 6.9 The State also seeks disgorgement of all gross receipts derived from JUUL's
24 wholesale sales made in violation of the distributor's licensing requirements pursuant to the
25 CPA.

1 6.10 The State also seeks whatever other relief this Court deems just and equitable.

2 DATED this 2nd day of September 2020.

3 ROBERT W. FERGUSON
4 Attorney General

5 /s/ Rene D. Tomisser
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