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IN THE SUPERIOR COURT OF THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

The State of Alaska,

Plaintiff,

v.

JUUL Labs, Inc. f/k/a PAX Labs, Inc.;  
Altria Group, Inc.; Altria Client Services  
LLC; Altria Group Distribution Company;  
Nu Mark LLC; And Nu Mark Innovations,  
Ltd.,

Defendants.

Case No. 3AN-20-09477 CI

**COMPLAINT**

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COMPLAINT

4840-5007-2018\1

*State of Alaska v. JUUL Labs, Inc., et al.*  
3AN-20-\_\_\_\_CI

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## I. INTRODUCTION

1. One of the great public health success stories over the past nearly two decades has been a reduction in youth tobacco use and nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to 7.6% in 2017. This success has been the result of years of litigation and strict regulation. It is also due to a powerful public health message that Big Tobacco can no longer dispute or contradict: smoking kills.

2. This incredible progress toward eliminating youth use of tobacco products has now largely been reversed due to e-cigarettes and vaping. Between 2017 and 2018, e-cigarette use increased 78% among high school students nationwide, from 11.7% of high school students in 2017 to 20.8% in 2018. Among middle school students, e-cigarette use increased 48% between 2017 and 2018. The nationwide Monitoring the Future survey, funded by the National Institute on Drug Abuse (NIDA) and conducted annually since 1975, found that the increase in youth nicotine vaping from 2017 to 2018 was the largest annual increase for any substance tracked over the past forty-four years.

3. Youth vaping rates continued to climb from 2018 to 2019. In the past two years, vaping more than doubled among each grade level surveyed—eighth, tenth, and twelfth graders. In 2019, more than five million middle and high school students reported current use of e-cigarettes, including more than one in every four high schoolers.

4. Consistent with these national numbers, Alaska youth are vaping at high rates. According to the 2017 Alaska Youth Risk Behavior Survey, 40% of Alaska high school students have tried e-cigarettes, with 15.7% reporting e-cigarette use within the

past 30 days. By grade level, e-cigarette use within the past 30 days was reported at 14% of ninth graders, 15% of tenth graders, 16% of eleventh graders, and 18% of twelfth graders. For Alaskan students in alternative high schools, the reported prevalence of vaping was even higher, with 66% of students having tried e-cigarettes and 33% reporting e-cigarette use within the past 30 days.

5. According to the Centers for Disease Control and Prevention (“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 tobacco use. It’s putting a new generation at risk for nicotine addiction.” Former U.S. Food and Drug Administration (“FDA”) Commissioner Scott Gottlieb described the federal statistics as “astonishing,” and both the FDA and the United States Surgeon General (“Surgeon General”) have characterized youth vaping as an “epidemic.” The Secretary of the U.S. Department of Health and Human Services observed that “[t]he United States has never seen an epidemic of substance use arise as quickly as our current epidemic of youth use of e-cigarettes.”

6. Defendant JUUL Labs, Inc. (“JLI”), the maker of the JUUL e-cigarette, is a major cause of the youth vaping epidemic. JLI entered the e-cigarette market in 2015 and, by 2019, controlled over 70% of it. Over one million JUUL e-cigarettes were sold between 2015 and 2017. In 2017, JLI’s e-cigarette products had generated over \$224 million in retail sales, a 621% year-over-year increase. By June 2018, JUUL sales had skyrocketed another 783%, reaching \$942.6 million. The e-cigarette category as a whole grew 97% to \$1.96 billion in the same period, largely based on JUUL’s market success.

The JUUL e-cigarette's rise to become the dominant product on the e-cigarette market was so rapid, and so complete, that the act of vaping is now often referred to as "juuling."

7. The popularity of JUUL was not a coincidence. JLI successfully targeted a group that has always been crucial to the success to the cigarette industry: youth. JLI specifically based its marketing strategy around the advertisements previously used by Big Tobacco and coupled this knowledge with a sophisticated social media and influencer campaign. Moreover, everything from JUUL's patently youth oriented advertisements to its design, including reduced harshness, high nicotine content, a discreet vapor cloud, and flavors, lured youth in. As JLI's success with its intended targets became evident, various copycats hurried to mimic JUUL's potent nicotine formulation and youth-oriented design—building on the illicit youth e-cigarette market JLI created.

8. By September 2018, youth vaping rates were spiraling out of control, and the FDA sent warning letters to Defendants JLI and Altria Client Services regarding the alarmingly high rates of youth using their products. In October 2018, the FDA raided JLI's headquarters and seized more than one thousand documents relating to JLI's sales and marketing practices. By the end of 2019, the FDA, the Federal Trade Commission, and the U.S. House of Representatives Committee on Oversight and Reform had all commenced investigations into JLI's role in the youth vaping epidemic and whether JLI's marketing practices purposefully targeted youth.

9. As the pressure on JLI intensified, Altria—maker of Marlboro cigarettes, parent company of Philip Morris USA, and one of the largest tobacco companies in the world—sought to capitalize on JLI’s rapid success. While Altria first began having confidential discussions beginning in the spring of 2017, Altria did not make its relationship with JLI public until December 20, 2018, when Altria announced a \$12.8 billion equity investment in JLI—the largest equity investment in United States history, giving it a 35% stake in JLI. Just several weeks prior to this announcement, Altria had seemingly criticized JLI’s marketing practices in a letter to the FDA and declared that “pod-based products significantly contribute to the rise in youth use of e-vapor products.” Altria removed its own pod-based products, the MarkTen Elite and Apex by MarkTen, from the market—only to commit its substantial resources, regulatory knowledge, and lobbying muscle to protecting and expanding JUUL’s market share, which, as Altria and JLI both know, relies heavily on youth.

10. Attempting to revise history and cover up JLI’s misconduct, JLI and Altria are now describing their collaboration as a “harm reduction opportunity,” and insist JLI never marketed to youth, but rather to adults seeking to quit smoking combustible tobacco cigarettes. These assertions are contradicted by the facts, as detailed below. Altria has described the JUUL e-cigarette as “compelling” and “a terrific product.” In fact, JLI’s JUUL e-cigarette has compelled a generation of youth, who were never cigarette smokers, into nicotine addiction and forced local governments to spend significant amounts of time and resources combatting the youth vaping crisis sweeping their communities. JLI and Altria are now working together and denying that

JLI's products are marketed to and designed for youth and nonsmokers while maintaining JUUL's market dominance—which would not be possible if the customer base were in fact only adult smokers seeking to quit.

11. Plaintiff the State of Alaska brings this action against Defendants JUUL Labs, Inc.; Altria Group, Inc. and its subsidiaries Altria Client Services LLC, Altria Group Distribution Company, and Nu Mark, LLC, and Nu Mark Innovations, Ltd, for damages, civil penalties, and injunctive relief, including abatement costs to address the public health crisis caused by Defendants' wrongful conduct.

## II. PARTIES

### State of Alaska

12. The State of Alaska brings this action, by and through its Acting Attorney General, Ed Sniffen, in its sovereign capacity in order to protect the interests of the State and its citizens. The Attorney General brings this action pursuant to his constitutional, statutory, and common law authority, including the authority granted to him by AS 44.23.020, and the Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 *et seq.*

### JUUL Labs, Inc.

13. Defendant JUUL Labs, Inc. ("JLI") is a Delaware corporation, having its principal place of business in San Francisco, California. JLI was incorporated in Delaware on March 12, 2007 (file no. 4315504) under the name Ploom, Inc. ("Ploom"). In February 2015, Ploom changed its name to PAX Labs, Inc. In April 2017, PAX Labs, Inc. formed a new corporation under the name PAX Labs (Deux), Inc., incorporated in



Delaware on April 21, 2017 (file no. 6387684). On June 30, 2017, PAX Labs, Inc. was renamed JUUL Labs, Inc., and PAX Labs (Deux), Inc. was given the name PAX Labs, Inc.

14. JLI manufactures, designs, sells, markets, promotes, and distributes JUUL e-cigarettes, JUULpods and accessories (collectively, “JUUL products”). From JUUL’s launch in 2015 until June 2017, JLI manufactured, designed, sold, marketed, promoted, and distributed JUUL products under the name PAX Labs, Inc.

15. JUUL Labs, Inc., formerly known as PAX Labs, Inc., formerly known as Ploom, Inc., is referred to herein as “JLI.”

### **Altria Defendants**

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

17. Defendant Altria Client Services LLC (“Altria Client Services”) is a New York corporation and wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County, Virginia. Altria Client Services provides Altria Group, Inc. and its companies with services in many areas including digital marketing, packaging design & innovation, product development, and safety, health, and environmental affairs. Pursuant to Altria’s Relationship Agreement with JLI, Altria Client Services assists JLI in the sale, marketing, promotion and distribution of JUUL products. Such services include database support, direct marketing support, and

premarket product application support. On September 25, 2019, the former senior vice president and chief growth officer of Altria Client Services., K.C. Crosthwaite, became the new chief executive officer of JLI.

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

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

20. Defendant Nu Mark Innovations, Ltd. is a subsidiary of Nu Mark LLC located in Beit Shemesh, Israel. Nu Mark Innovations, Ltd. provides digital marketing and customer care services for Nu Mark LLC and Altria's e-vapor brands, as well as product and technology development services.

21. Collectively, Altria Group, Inc. and its subsidiaries named above will be referred to herein as "Altria" or "Altria Defendants."

### III. JURISDICTION AND VENUE

22. Jurisdiction over the subject matter of this cause of action is proper based upon AS 22.10.020, 09.58.015, and 45.50.501. The State seeks damages in excess of \$100,000.

23. The Court has personal jurisdiction over Defendants because they do business in Alaska and have sufficient minimum contacts with Alaska. Defendants intentionally avail themselves of the markets in this State through the promotion, marketing, and sale of the products at issue in this lawsuit in Alaska, and by retaining the profits and proceeds from these activities, to render the exercise of jurisdiction by this Court permissible under Alaska law and the U.S. Constitution. Jurisdiction is also proper under Alaska's long-arm statute, as codified in AS 09.05.015.

24. Venue is appropriate in the Third Judicial District at Anchorage pursuant to Rule 3 of the Alaska Rules of Civil Procedure, in that many of the unlawful acts committed by Defendants were committed in Anchorage.

25. The Attorney General has determined that pursuit of this action is in the public interest, as required by AS 45.50.501(a).

### IV. ALLEGATIONS OF FACT

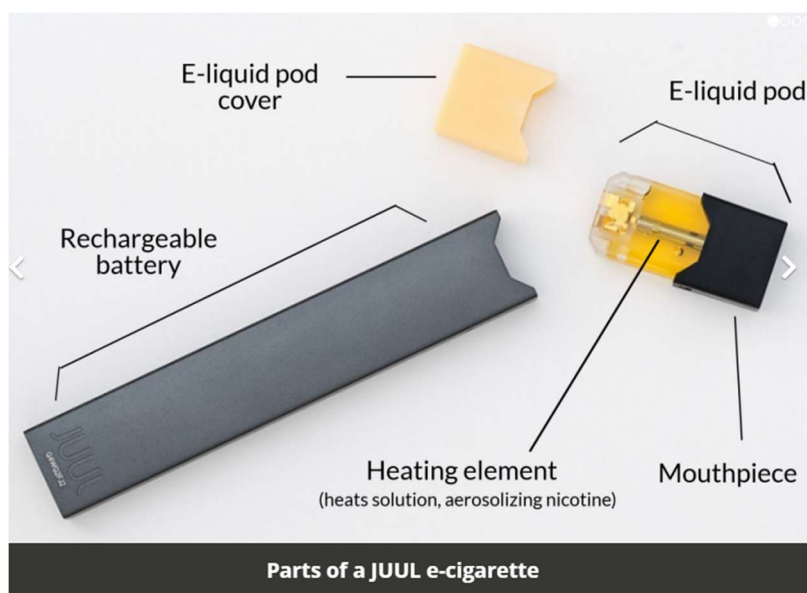
#### A. JUUL: Runaway Commercial Success and Public Health Disaster

##### 1. The JUUL Device

26. The JUUL device is an electronic nicotine delivery system ("ENDS"). ENDS are noncombustible tobacco products. These products use a liquid solution or "e-liquid" that contains nicotine, as well as other ingredients such as flavorings,

propylene glycol, vegetable glycerin. The liquid is heated to create an aerosol that the user inhales.

27. The JUUL device consists of a rechargeable battery and a replaceable e-liquid pod or “JUULpod.” The JUULpod contains a heating element that heats the liquid, aerosolizing the nicotine solution. The mouthpiece for the device is part of the JUULpod.



28. The JUUL device comes with a USB charging dock for recharging the battery. Plugged into the USB port in a laptop, the slim device resembles a long rectangular flash drive.

## 2. Redesigning “the most successful consumer product of all time”

29. JLI was founded by Adam Bowen and James Monsees. JLI’s beginnings can be traced to the pair’s collaboration on a product design master’s thesis when they were graduate students at Stanford University in 2004—Monsees completing a Master of Fine Arts in Product Design, and Bowen a Master of Science in Mechanical

Engineering in Product Design. Their proposed product? A better cigarette. Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”

30. Years of anti-smoking campaigns, however, including work by the State of Alaska’s tobacco prevention and control programs, have successfully stigmatized cigarette smoking. Monsees and Bowen set out to create a cigarette without the stigma. As part of their thesis research, they interviewed smokers who talked about feeling self-conscious of the signs of smoking, for example, coming back into a room after a smoke break and smelling like smoke, or having their hands smell like cigarettes even after washing them multiple times. When Monsees and Bowen presented their thesis and product design to their classmates, they included a clip from a South Park episode showing the characters assembled at the Museum of Tolerance and shaming a smoker. Their goal, as Monsees described it, was to “deliver[] solutions that refresh the magic and luxury of the tobacco category” and recreate the lost “ritual and elegance that smoking once exemplified.”

31. Monsees and Bowen saw a market opportunity in a generation of consumers brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign 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.” Monsees saw “a huge opportunity for products that speak directly to those consumers who aren’t perfectly aligned with traditional tobacco products.”

32. At one point during their thesis presentation, Monsees stated, “The cigarette is actually a carefully engineered product for nicotine delivery and addiction.” This description applies just as well to the product he and Bowen would launch a decade later: the JUUL e-cigarette.

33. The outcome of Monsees and Bowen’s thesis project was a “heat-not-burn” e-cigarette, which uses loose-leaf tobacco. The device heated tobacco contained in pods to a constant temperature, vaporizing nicotine and flavor without burning the materials or producing smoke.

34. After graduation, Bowen and Monsees worked on bringing their thesis project to the market, incorporating under the name Ploom in 2007. In those early years, they discussed their concerns with what Bowen called “evil Big Tobacco companies like coming down and squashing you.” But ultimately, that “was not really an issue.” In fact, not only did Big Tobacco not squash them, but the opposite occurred. Although Bowen and Monsees characterized their products as aimed toward consumers not aligned with traditional tobacco products, they themselves aligned with Big Tobacco on at least two occasions: first, with Japan Tobacco International (“JTI”) and then with Altria.

35. In 2010, JLI (then called Ploom) launched its e-cigarette as the ModelOne, using pods of loose-leaf tobacco heated by butane. It did not catch on. JLI only sold a few thousand of them. By then a company with a dozen employees, JLI was faltering, and in need of money, technological expertise, and marketing savvy.

36. Help came from JTI, a division of Japan Tobacco Inc., the fourth-largest tobacco company in the world. In December 2011, JTI and JLI entered into a strategic agreement, which gave JTI a minority stake in JLI and made it a strategic partner. According to internal documents, JLI entered into a “strategic partnership” with JTI after it “evaluated all major tobacco industry companies.” In a statement regarding the agreement, Monsees said, “We are very pleased to partner with JTI as their deep expertise, global distribution networks and capital resources will enable us to enter our next phase of growth and capitalize on global expansion opportunities.” As Bowen explained in an interview, “We were still doing a lot of our own internal product development, but now we had access to floors of scientists at JTI.”

37. In 2012, JLI (still known as Ploom) unveiled the PAX, a loose-leaf vaporizer that did not use pods, but which was much more successful. The following year, JLI combined elements of the PAX with the pod system as the ModelTwo. Although consumers were enthusiastic about both the PAX and the ModelTwo, the products were limited to a small, high-end market. The PAX, for example, retailed for \$250 when it was first marketed. But, as one of JLI’s investors remarked in 2014, “The company is going to invade the bigger, lower-end market now dominated by e-cigarettes.” He explained that JLI had “lots of products in the works” and that “[w]e know we need something cheaper than PAX to go after the mass market. There are still huge opportunities out there.”

38. In February 2015, JLI and JTI ended their relationship, with JLI buying back JTI’s minority stake in the business. JTI acquired the ModelTwo and pods product

line, as well as the Ploom name, while JLI kept its open-system PAX vaporizer and changed its name to PAX Labs Inc. Monsees characterized the partnership as having “afforded both parties many mutual benefits,” but said that the new arrangement would “fuel continued growth” and that JLI intended “rapid rollouts of new products.”

39. JLI made good on its promise of new products and invading the bigger, lower-end market in e-cigarettes. As discussed further below, JLI launched JUUL products in June 2015 with a well-publicized launch party in New York City and a viral social media marketing campaign.

40. In 2017, as JUUL became more and more popular, JLI changed its name from PAX to JUUL Labs, Inc.

41. By the close of 2017, according to Nielsen data, JLI had surpassed its competitors in capturing 32.9% of the e-cigarette market, with British American Tobacco at 27.4% and Altria at 15.2%. As JLI grew, so did the e-cigarette market. From 2016 to 2017, the total e-cigarette market expanded 40% to \$1.16 billion.

42. In 2018, JLI’s gross profit margins were 70% and it represented 76.1% of the national e-cigarette market. In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JLI asserted that it was “now responsible for over 95% of the growth in the ENDS pod refill market in the United States.” JLI shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook. This all came just three years after its product launch.



**3. Following Big Tobacco's footsteps to manipulate nicotine chemistry**

43. JLI's staggering commercial success did not come from a blank slate.

Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco's internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents "became a very intriguing space for us to investigate because we had so much information that you wouldn't normally be able to get in most industries. And we were able to catch-up, right, to a huge, huge industry in no time. And then we started building prototypes." JLI researched how Big Tobacco companies engineered their products and chemically manipulated nicotine to maximize delivery: "We started looking at patent literature. We are pretty fluent in 'Patentese.' And we were able to deduce what had happened historically in the tobacco industry."

44. JLI built on Big Tobacco's research to formulate its nicotine solution in a manner that would be appealing to youth and nonsmokers. JLI was well aware from the historical cigarette industry documents that the future of any nicotine-delivery business depends on ensnaring customers before they age beyond the window of opportunity. Big Tobacco designed products specifically to make it easier for teens to initiate smoking. In a 1973 internal memo, Dr. Claude Teague of R.J. Reynolds Tobacco Company ("R.J. Reynolds") observed, "Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market." Dr. Teague noted that

“‘learning’ smokers” have a low tolerance for throat irritation so the smoke should be “as bland as possible,” i.e., not harsh; and he specifically recommended an acidic smoke “by holding pH down, probably below 6.” As described below, JLI heeded Dr. Teague’s advice.

45. Monsees, Bowen, and JLI’s employees reviewed documents in the Big Tobacco archive that included information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while minimizing the throat irritation or “throat hit” that may potentially deter new smokers. Chenyue Xing, a chemist who worked for JLI (then called PAX Labs) and helped patent its liquid-nicotine formula, told Reuters that she recalled reviewing tobacco company records and research. “We had consultants who were veterans of the big tobacco companies,” she said. “We learned all the history.”

46. As Monsees noted in a 2015 interview with *WIRED* magazine, “The people who understood the science and were listed on previous patents from tobacco companies aren’t at those companies anymore. If you go to Altria’s R&D facility, it’s empty.” Instead, some of those people were advising JLI and helping to develop JUUL.

47. As Dr. Teague’s memo described, the solution that R.J. Reynolds scientists devised in the 1970s for reducing nicotine’s harshness to make it easier for “learning smokers” to start and continue smoking was to combine the high-pH nicotine with a low-pH acid. The result was a neutralized compound referred to as nicotine salt. In a 1973 R.J. Reynolds memorandum titled *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market*, R.J. Reynolds highlighted that this chemical manipulation

of the nicotine content was expected to give its cigarettes an “additional nicotine ‘kick’” that would be more appealing and addictive. A young R.J. Reynolds chemist, Thomas Perfetti, synthesized thirty different nicotine salt combinations, tested the salts’ ability to dissolve into a liquid, and heated them in pursuit of the “maximum release of nicotine.” Perfetti published his results in a 1979 memo stamped “CONFIDENTIAL,” which was found among the documents that the FDA obtained from JLI in 2018. Relying on cigarette industry research like this, and assistance from Perfetti himself, JLI developed a cartridge-based e-cigarette using nicotine salts. As described herein, JLI’s use of nicotine salts, pioneered by Big Tobacco, was a critical tool for addicting non-smokers, including youth.

48. The “nicotine salt” formulation that JLI popularized follows this same approach. JLI added benzoic acid to its nicotine liquid, creating a nicotine salt called nicotine benzoate. This both reduced the nicotine’s harshness and delivered it more directly to the user’s lungs and brain. The freebase nicotine in earlier e-cigarettes was partly absorbed in the user’s mouth and throat, resulting in a much slower absorption by the body.

49. JLI’s use of nicotine benzoate affects the palatability of nicotine inhalation by reducing the “throat hit” that users experience when vaping. According to Ari Atkins, one of the inventors of JUUL, “[i]n the tobacco plant, there are these organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes it . . . I’ve got to choose my words carefully here: Appropriate for inhalation.”

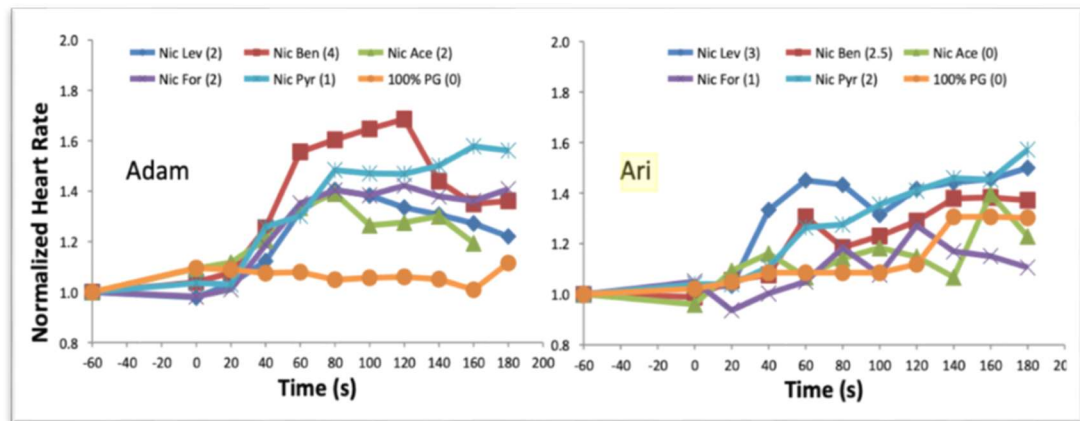
50. Because cigarette smokers are already accustomed to a certain level of harshness and throat hit, developing a product with reduced harshness and minimal “throat hit” is only a critical concern if the goal is to appeal to first-time smokers. The tobacco industry has long recognized this; a published study of industry documents concluded that “product design changes which make cigarettes more palatable, easier to smoke, or more addictive are also likely to encourage greater uptake of smoking.” In the vaping context, reducing the harshness of nicotine also allows more frequent vaping, for longer periods of time, and masks the amount of nicotine being delivered.

51. From the start, JLI pursued a formulation with high nicotine content, working to maximize the “buzz.” A former JLI manager told an investigative journalist that at times, when employees tested new liquid-nicotine formulations on themselves or on strangers taking smoke breaks on the street, the formulations contained so much nicotine that it made testers’ hands shake and even made some testers vomit.

52. JLI’s goal was to develop a “buzz-effective e-cig formulation,” which would principally turn on “effectiveness (buzz, harshness),” followed by shelf life and patentability. JLI founder Adam Bowen, head of R&D Ari Atkins, and director of Scientific Affairs Gal Cohen served as the initial subjects in JLI’s early “buzz” experiments. These tests were performed with the assistance of Perfetti, the same R.J. Reynolds chemist who had studied nicotine salt decades ago to help R.J. Reynolds palatably deliver more nicotine in its tobacco products.

53. The “buzz” experiments, which used heart rate as a qualitative measurement for buzz, showed that Bowen tested a 4% benzoate (nicotine salt) solution,

which caused his resting heart rate to increase by about 70% in under two minutes, far exceeding all other formulations JLI was considering:



54. High nicotine content generally translates into harshness upon inhalation that would discourage new users, but JLI's use of nicotine salts solved that problem. The difference between the nicotine salt e-liquid in JUULpods and other e-liquids on the market was significant. In a paper describing methodology for measuring nicotine content in e-liquids and aerosols, Portland State University scientists compared two JUULpod flavors, Fruit Medley and Crème Brûlée, with other commercially available e-liquids, and found that, of all the products tested, only the JUUL liquids were found to combine high nicotine levels with low freebase nicotine values. The researchers noted that tobacco company documents suggest that high-nicotine products with low freebase nicotine levels, like JUUL, "will yield vape aerosols of much reduced harshness as compared to products with even only moderate nicotine levels" but that are freebase nicotine, and that "[t]his may well contribute to the current use prevalence of JUUL products among youth."

55. JLI contemplated features that would automatically disable the device after nicotine delivery exceeded a certain threshold; according to Xing, one idea was to disable the device for thirty minutes or more following a certain number of puffs. But in the end JLI launched its product without any such features.

**4. JLI designed JUUL products to contain and deliver as much nicotine as possible**

56. JLI claimed that each JUULpod is the equivalent of one pack of cigarettes and contains up to fifty-nine mg per ml of nicotine. In fact, JLI's internal documents confirm that JUULpods actually contain significantly more nicotine than a pack of cigarettes: JLI's regulatory head explained in 2018 to then-CEO Kevin Burns that each JUULpod contains "roughly *twice* the nicotine content of a pack of cigarettes." At 59 mg/ml, the nicotine concentration in a JUULpod is nearly three times the concentration of nicotine that can be sold to consumers in the European Union, which set a maximum nicotine strength of 20 mg/ml for e-cigarettes, based on the determination that this concentration is adequate for the majority of smokers who use e-cigarettes as a substitute for smoking. Even compared to the average e-cigarette sold in the U.S., JUULpods deliver roughly twice as much nicotine at nearly three times the speed. While only approximately 10% of the nicotine in a traditional combustible cigarette is delivered to the user, JUUL e-cigarettes, on the other hand, have been found to deliver at least 82% of the nicotine contained in a JUULpod to the user. JLI's own internal studies suggest a nicotine transfer efficiency rate of closer to 100%.

57. JLI knew that it had designed a highly addictive product that would appeal to youth much more than it would adult smokers. Additional early warnings about the addictive power and youth appeal of the JUUL e-cigarette came from consumer research that JLI commissioned in 2014. JLI hired the consumer research firm Tragon to do research with prototypes of the JUUL e-cigarette. In September 2014, Tragon sent JLI preliminary results from its market research, which showed that “the younger group is open to trying something new and liked J1 [the JUUL prototype] for being smart, new, techy, etc.” Tragon’s researcher added that “the qualitative information suggests J1 could fit into the e-cig or vapor category for the younger group. The qualitative findings suggested *this product isn’t going to fit as well with consumers who are looking to cut back on the cigarette intake.*” In a follow-up email, Tragon’s researcher stated that “[t]he delivery was almost too much for some smokers, especially those used to regular e-cigarettes. When they approached the product like they would a Blu or other inexpensive e-cig, they were floored by the delivery and didn’t really know how to control it.”

58. Survey responses showed that the least important product attribute for the adult smokers as well as adult non-smokers was JLI’s sought-after “buzz.” Respondents’ comments included the following: “overwhelming when I first inhaled,” “too much for me,” “it was too strong,” and “it caught me off-guard.” Traditional cigarette smokers were also put off by the style initially, and one subject said the “design was not as easy to hold and smoke.” However, other comments on the device’s style said JUUL was “[v]ery discrete” and that “[i]t doesn’t even look like an e-

cigarette. It's sort of a disguise kind of thing." One subject mused that JUUL "might manage to make smoking cool again."

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

60. JLI's later research also demonstrated that smokers preferred a lower nicotine strength: by May 2018, JLI had completed Phase I of "Project Bears," a study of smoker and vaper nicotine strength preferences. The results showed that "[a]cross the smoker segments, product liking is very similar[,]" and the "heaviest smokers (21+ cigs) like 1.7% more than higher strengths" such as 3% and 5%. Similarly, "for those who evaluated the 5% pod, when given the choice of lower level pod strengths, at least half would choose a lower strength pod."

61. Although JLI's own research showed that smokers—who JLI now claims were its target demographic—preferred products with lower nicotine, JLI took no steps to offer U.S. consumers its products in a lower nicotine formulation until August 2018, when it began marketing certain flavors in 3% nicotine strength. (JLI markets 1.7% nicotine JUULpods in countries such as the UK and Israel.) Instead, JLI's sales force emphasized the addictiveness of its formulation to persuade retailers to give the new product shelf space. Vincent Latronica, head of East Coast sales and distribution for JLI (then called PAX Labs) from 2014 until early 2016, told Reuters that he used a chart showing JUUL's rapid delivery of nicotine to the bloodstream as a way to convince store owners that they would have repeat business and not be left with unsold inventory,



and this became a central selling point for the new JLI product. JLI's sales team was, in Latronica's words, "relentless."

62. Even retailers grew concerned about the addictiveness of JUUL products. For example, on April 22, 2017, an e-cigarette retailer emailed JLI's director of Scientific Affairs, Gal Cohen, expressing concern about the addictiveness of JLI's products. He wrote:

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

The Brooklyn store is run by someone else and he still wants to carry it. I am not really happy about this. It was a simple product for users who do not want to fill tanks and change atomizers and it was easy to sell, but I really don't feel good about selling it. I know we talked about this back a few years ago before we were carrying the product, but I am curious to know what is in the liquid. I know the nicotine salts are added but I would like to know what else is in it. Do you guys have a GCMS or ingredient listing for the liquid? Are there other additives? I want to feel more comfortable so I can keep carrying these, but **I have seen what it is doing to people and I am very uncomfortable with it.** Last year when the news came to me and wanted me to help them with the story that teens were using JUUL I shut that story down by telling them it wasn't true. **It is true.. kids are getting hooked on this thing and they don't even understand half the time that it has nicotine in it! Little kids.. like 14 and 15 year olds.** They try to come in my shop and we tell them it is 21 and over and get them out... but it is REALLY bad! I have kids calling and trying to order using delivery services as well. We will only allow pickup and delivery for regular customers whose ID we have already checked... but they TRY and that worries me.. because the smoke shops and bodegas are NOT checking that the person they are picking up for is old enough to buy the product.

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

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

63. Just days later, on April 28, 2017, JLI held a meeting with outside scientists regarding its pharmacokinetic data, in which the “concern was raised that because the nicotine update [sic] is slightly faster the data could be interpreted as feeding an addiction faster[.] Given the current climate with addictions to OxyContin how the data is presented needs to be considered carefully.”

64. JLI did not, however, take any steps to reduce the addictive nature of its products; JUUL’s fast-acting and addictive formulation was just too valuable. In November 2017, JLI’s Director of Consumer Insights described JUUL’s “design and chemical formulation (fast acting nic salts)” as JLI’s “ace in the hole” over the competition.

**B. Following Big Tobacco’s Playbook, JLI Launched JUUL with a Blatantly Youth-Oriented Campaign**

**1. JLI learned from Big Tobacco the importance of hooking kids**

65. In addition to mining tobacco industry research on nicotine chemistry manipulation, JLI also looked to Big Tobacco for marketing strategies, including advertisements designed to lure non-smoking youth. As discussed above, Monsees and Bowen were able to take advantage of internal tobacco company documents made available to the public through the MSA. They also utilized an extensive online tobacco advertising research database maintained by Stanford Research into the Impact of Tobacco Advertising (“SRITA”), an inter-disciplinary research group devoted to

researching the promotional activities of the tobacco industry. SRITA’s database contains approximately 50,000 original tobacco advertisements. According to Monsees, JLI’s advertising was informed by traditional tobacco advertisements, and SRITA in particular had been very useful to JLI.

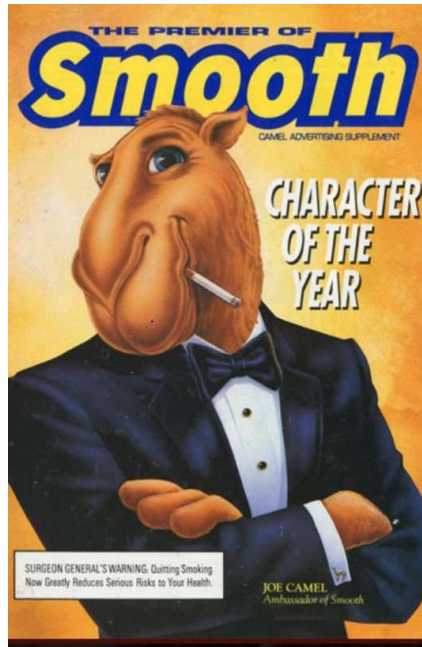
66. It is no secret that a good portion of the Big Tobacco playbook involved targeting youth. Beginning in the 1950s, Philip Morris—now JLI’s corporate affiliate—intentionally marketed cigarettes to young people under the age of twenty-one to recruit “replacement smokers” to ensure the economic future of the tobacco industry. Philip Morris knew that youth smoking was essential to the tobacco industry’s success and longevity, as one of its internal documents makes clear: “It is important to know as much as possible about teenage smoking patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer[.]” In August 1953, the public opinion research firm Elmo Roper & Associates conducted a study for Philip Morris that examined the smoking habits of a “cross section of men and women 15 years of age and over.” The study noted that Philip Morris had “very great strength among young people—particularly under 20.” In 1975, Philip Morris recognized that “Marlboro’s phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data, which includes younger teenagers, shows even higher Marlboro market penetration among 15-17-year-olds.” Similarly, an internal Philip Morris document reported that “[t]he success of Marlboro Red during its most rapid growth period was because it became the brand of choice among teenagers who then stuck with it as they grew older.” This was no accident.

Philip Morris designed its marketing campaigns to appeal to youth because it recognized that “the overwhelming majority of smokers first begin to smoke while still in their teens.” This marketing worked, and Marlboro cigarettes became the most popular brand with youth. In 2016, 48.7% of high school current cigarette smokers and 38.3% of middle school current cigarette smokers reported using Marlboro cigarettes.

67. Tobacco companies have focused on the fourteen to twenty-four-year-old age group because young smokers have been the critical factor in the growth of their business. As the Vice-President of Marketing at R.J. Reynolds 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.” In 1978, Lorillard’s Director of Sales in the Midwest told the president of the company that “the base of our business is the high school student.”

68. According to the Surgeon General, “[n]early 9 out of 10 smokers start smoking by age 18, and more than 80% of underage smokers choose brands from among the top three most heavily advertised.” The overwhelming consensus from public health authorities, independent studies, and credible expert witnesses is that “marketing is a substantial contributing factor to youth smoking initiation.”

69. For decades, cigarette companies spun smoking as signifier of adulthood. This turned smoking into a way for teenagers to project independence and enhance their image among their peers. R.J. Reynolds’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:



70. Big Tobacco, of course, is now prohibited from employing youth-oriented marketing strategies to sell traditional cigarettes by virtue of the Master Settlement Agreement and subsequent regulations. For example, combustible cigarette companies may not:

- A. use outdoor advertising such as billboards;
- B. sponsor events;
- C. give free samples;
- D. pay any person to “use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package . . . in any ‘Media;’”
- E. pay any third party to conduct any activity which the tobacco manufacturer is prohibited from doing; or
- F. sell “flavored” cigarettes.

71. All of these above activities were prohibited precisely because of their effectiveness at appealing to youth. But the MSA did not prevent JLI from using these same strategies to market e-cigarettes.

72. As described below, all of these activities figured prominently in the marketing campaign for JUUL products.

**2. JLI's advertising strategy was to own the "cool kid" equity to capture young nonsmokers, not adult smokers**

73. Although JLI and Altria now claim that JUUL was only marketed to adult smokers, JLI's internal documents show that, from the outset, JLI's target demographic was nonsmoking "cool kids."

74. Consistent with Monsees' statement in a 2014 interview that he had no "qualms" with marketing to people who were not yet addicted to nicotine, JLI's marketing strategy targeted individuals who were "Flavor-Seeking, Social 'Vapers,'" and those who "have very limited experience with traditional tobacco cigarettes." In January 2015, six months before JUUL's launch, JLI's Marketing Director, Sarah Richardson, identified "[k]ey needs" for JLI's public relations strategy for JUUL products, including "Establish premium positioning to entice the 'masses' to follow the trend setters; own the 'early adopter' / '**cool kid**' equity as we build out volume," and highlighted that "JUUL deliberately doesn't resemble e-cigs or cigalikes" that are "awkward" and "douche-y." Instead, JUUL is "elegant" and "cool."

75. JLI's strategy to cultivate an aura of "cool" around its nicotine-delivery device is, of course, not new. Decades before, Dr. Teague from R.J. Reynolds observed

that “pre-smokers” face “psychological pressure” to smoke if their peers are doing so, “a new brand aimed at a young smoker must somehow be the ‘in’ brand and its promotion should emphasize togetherness, belonging and group acceptance, while at the same time emphasizing ‘doing one’s own thing.’” Struggling to define their own identities, teenagers are particularly vulnerable to image-heavy advertisements that psychologically cue them on the “right” way to look and behave amongst peers. Advertisements that map onto adolescent aspirations and vulnerabilities drive adolescent tobacco product initiation.

76. JLI followed this playbook to the letter. The first major marketing company JLI hired, Cult Collective Ltd. (“Cult Collective”), presented a pitch deck to JLI in late 2014, which defined the “Target Consumer” as a person “[w]ithin a life stage or mindset where they are defining their own identity.” The study described the “Modern Vaper” as “[t]rendy, sophisticated image managers striving to balance their desire for originality against acceptance.” “[I]mage managers” with a desire for both “originality” and “acceptance” fairly describes most adolescents—but has little relevance to existing smokers wishing to quit their cigarette habit.

77. JLI also hired the Grit Creative Group (“Grit”), which billed itself as an agency whose marketing appealed to “cool kids.” Grit helped JLI to “[u]se external audiences to communicate nuanced messages around early adoption ‘coolness’ and product performance.”

78. Other internal documents emphasize the theme of making JUUL trendy and cool. In an email dated January 29, 2015, Sarah Richardson—then JLI’s Director of

Communications—sent a document dated December 31, 2014, to Dima Martirosyan, JLI’s Director of Digital Marketing, who forwarded it to Rafael Burde, JLI’s Director of Ecommerce. The document stated that “[m]ost e-cigarettes to date are unsatisfying and seem ‘douche-y.’ The JUUL product delivers nicotine far more effectively, and the product design is elegant and cool. We need to tell this story in a credible fashion through press, influencers and social media.” The document repeatedly referred to PAX Labs’ plan to target the “cool kids[.]” For example, it described as one of the “Key needs” to “Establish premium positioning to entice the ‘masses’ to follow the trend setters; own the ‘early adopter’ / ‘cool kid’ equity[.]” The document noted that “the voices of influencers can build strong demand.” Messaging to media similarly focused on “coolness” and the idea that “JUUL singlehandedly made e-cigarettes cool.”

79. This focus on “cool kids” continued up to and after launch. On May 18, 2015, Kate Morgan, JLI’s Field Marketing Manager, emailed Richard Mumby, JLI’s Chief Marketing Officer, and a variety of other marketing employees about “Some Music Options for JUUL Party” and noted that one of the options was a pair who were both “cool kids.” On June 7, 2015, Rafael Burde emailed Scott Dunlap, then JLI’s Chief Operating Officer, stating that the JUUL launch party “was a resounding success (at least in my mind) in terms of winning over the cool kids . . . .” PAX Labs’ employees used similar wording regarding interest in targeting “cool kids” in an email from Sarah Richardson on August 12, 2015, and emails from Ashley Marand on September 15, 2015, and October 21, 2015. The consistency of the language around this target demographic reflects a company-wide policy of marketing to “cool kids.”



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

**3. JLI’s “Vaporized” campaign was intentionally youth-focused**

81. As noted above, JLI’s first major marketing hire was Cult Collective. JLI engaged the Calgary-based advertising agency in 2014 to complete a “diagnostic” evaluation of the JLI brand and to make recommendations regarding the best advertising strategy to market the JUUL e-cigarette.

82. Cult Collective recommended that JLI position its e-cigarette technology as the focus of its advertisements, emphasizing JUUL as an alternative option for existing smokers. Cult Collective presented JLI with exemplar advertisements that used images of a boom box, a joy stick, and an antiquated, oversized cell phone, juxtaposed against the JUUL e-cigarette, with the tag line: “Everything changes, eventually. JUUL | The evolution of smoking | *Finally, a truly satisfying alternative.*”



83. This campaign expressly invokes combustible cigarettes and positions JUUL as a technological upgrade for the modern smoker, with images of outdated technology that older consumers would recognize.

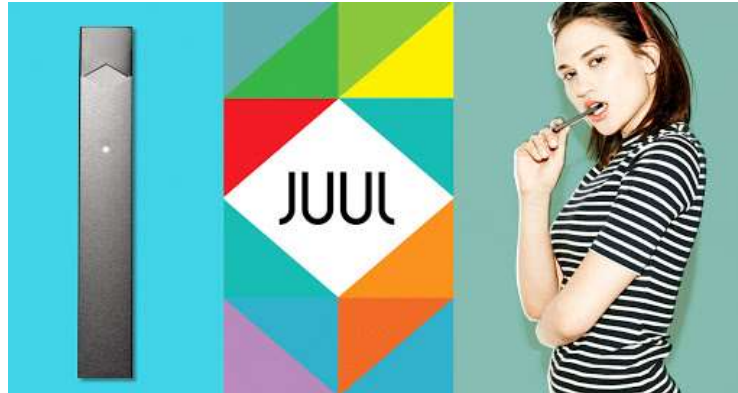
84. But JLI rejected Cult Collective’s suggestion, instead choosing to run a campaign that experts would later describe as “patently youth oriented.”

85. JLI’s 2015 ad campaign, called “Vaporized,” was designed to create a “cult-like following” for JUUL products. The Vaporized campaign’s imagery featured a

vivid color scheme and models in their twenties in poses that researchers noted are evocative of behaviors more characteristic of underage teens than mature adults.

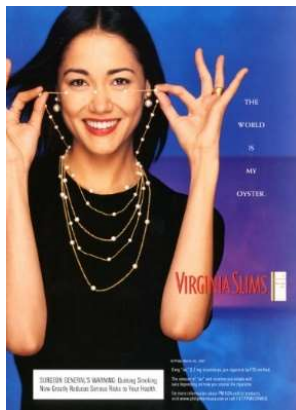
Researchers from the SRITA found it “clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young adults.





86. JLI recognized that the models in these advertisements looked young and were likely to appeal to youth, but it launched the campaign anyway. In the months leading up to the launch of this campaign, JLI executives and directors discussed how to market the new product. On March 23, 2015, there was a meeting of the Board of Directors where this advertising campaign was discussed. According to Chelsea Kania, then Brand Manager at JLI (then called PAX Labs), at this meeting, “there was some commentary at the youthfulness of the models[.]” but “nobody disliked them” and “everybody agreed they are pretty ‘effective[.]’” According to a source interviewed by *Fast Company*, Monsees, who was CEO at the time, personally reviewed images from the billboard photo shoot while it was in session. A JLI senior manager later told *The New York Times* that “he and others in the company were well aware” that the marketing campaign “could appeal to” teenagers.

87. JLI knew these images would be successful with a youth market because it crafted them to mimic ads that Big Tobacco had successfully used to target teens. In fact, many JUUL ads were nearly identical to old cigarette ads that were designed to get teens to smoke.



88. JLI's officers and directors were well aware that JLI's branding of JUUL products was oriented toward youth and duplicated earlier efforts by the cigarette industry to hook children on nicotine. They directed and participated in each marketing campaign pushing the JUUL e-cigarette, as they had the "final say" over all of JLI's marketing campaigns (including the Vaporized campaign and the other formal and informal marketing efforts described above), and Monsees provided specific direction to JLI employees regarding the content of the JUUL website.

89. JLI's directors recognized the ethical issues of following Big Tobacco's playbook, yet they chose not to change course. According to Scott Dunlap, then Chief Operating Officer, in June 2015, Nicholas Pritzker, a member of JLI's Board of Directors, commented that the branding "feels too young[.]" In early July 2015, Pritzker

and fellow Board members Riaz Valani and Alexander Asseily “spoke[] at length on the JUUL approach[,]” and Asseily also “spoke to James [Monsees] at length” on the same topic. Asseily followed up with a lengthy email to Valani and Pritzker, which he also sent to Mumby. He began by noting that “[o]ur fears around tobacco / nicotine are not going away. We will continue to have plenty of agitation if we don’t come to terms with the fact that these substances are almost irretrievably connected to the shittiest companies and practices in the history of business.” He stated that “an approach needs to be taken that actively, if implicitly, distances us from [Big Tobacco]: what we say, the way we sell, the way we run the company, what we emphasi[z]e, who we hire, etc.” Referring to JLI’s strategy of using the same marketing techniques as Big Tobacco used to market to youth, Asseily added that “[t]he trouble with just doing ‘what the others do’ is that we’ll end up as Nick [Pritzker] rightly points out in the same ethical barrel as them, something none of us want no matter the payoff (I think).” He continued that “the world is transparent and increasingly intolerant of bullshit. It’s not about faking it—it’s about doing it correctly....which could mean **not doing a lot of things we thought we would do like putting young people in our poster ads or drafting in the wake of big players in the market.**”

90. Despite this recognition that they could end up in the same “ethical barrel” as Big Tobacco, JLI’s officers and directors pressed on with JUUL’s youth-oriented campaign. Some of JLI’s leaders, including a member of JLI’s Board of Directors, Hoyoung Huh, opposed any actions to curb youth sales. Youth sales were a large potential source of revenue. As one manager explained, perhaps “people internally had



an issue” with sales of JUUL to teenagers, “[b]ut a lot of people had no problem with 500 percent year-over-year growth.” And JLI’s leaders understood that the youth who were hooked on nicotine were the most likely to become lifelong customers and thus were the most profitable segment to target.

91. Thus, in June 2015, JLI launched the “Vaporized” advertising campaign, with the express mission of “own[ing] the ‘early adopter’/’cool kid’ equity.” JLI aggressively sought high-visibility spaces with youth appeal. For example, Vaporized ads occupied the front spread of the July 2015 issue of *VICE Magazine*, which bills itself as the “#1 youth media brand” in the world, and a twelve-unit billboard display in New York City’s Times Square.



92. On information and belief, JLI’s advertisements were also placed on websites attractive to children, adolescents in middle school and high school, and underage college students. These advertisements, which included the images of models from the Vaporized campaign, began appearing on websites as early as June 2015. The websites included: [nickjr.com](http://nickjr.com) (the website for a children’s television network run by

Nickelodeon Group); cartoonnetwork.com (Cartoon Network’s website); allfreakidscrafts.com; hellokids.com; and kidsgameheroes.com. In addition, JLI purchased banner advertisements on websites providing games targeted to younger girls, educational websites for middle school and high school students, and other teen-targeted websites.

93. JLI knew these websites targeted children. In May 2015, Kania, the Brand Manager, contacted Cult Collective to raise concerns about advertising on younghollywood.com. Kania explained that the website’s demographics are “age 12-34 . . . and *weighing the % who could actually afford JUUL against the risk we’d run being flagged for advertising on that site* – don’t think we should do it.” Nevertheless, JLI continued to push its campaign on websites with young demographics.

94. As discussed further below, JLI also promoted the Vaporized campaign on Facebook, Instagram, and Twitter. JLI could have employed age-gating on its social media accounts to prevent underage consumers from viewing its Vaporized advertisements, but it chose not to do so.

95. The Vaporized campaign included the largest e-cigarette smartphone campaign of 2015, which accounted for 74% of all such smartphone advertising that year.

96. JLI’s ads, which ran for nearly a month, generated an estimated 1.5 million impressions—i.e., appearances on a user’s screen—per day.



4. **JLI hosted parties and pop-up “JUUL Lounges” to create a youthful brand and distributed free samples to hook youth**

97. In addition to print media, JLI utilized events, promotional models, and free samples to market JUUL products. Over the first year after JLI launched its ad campaign in June 2015, it held a series of at least twenty-five highly stylized parties, typically with rock music entertainment, in cities across the United States.



98. Photographs from these events confirm that they drew a youthful crowd.



99. At these launch parties, thousands of young people were given free JUUL devices and nicotine-filled JUULpods (appropriately named “JUUL starter kits”), and JLI posted photos of various young people enthusiastically puffing on JUULs across JLI’s social media channels.

100. In addition, JLI gave away samples at music events without age restrictions, including Outside Lands in San Francisco’s Golden Gate Park, and other events aimed a youthful audience, such as the annual Cinespia “Movies All Night Slumber Party” in Los Angeles. These events, in addition to providing youthful crowds for handing out samples, were opportunities for JLI to cultivate its brand image as youthful, hip, and trendy—but had nothing to do with smoking cessation. For example, on August 7, 2015, JLI tweeted, “Need tix for @cinespia 8/15? We got you. Follow us and tweet #JUULallnight and our faves will get a pair of tix!”

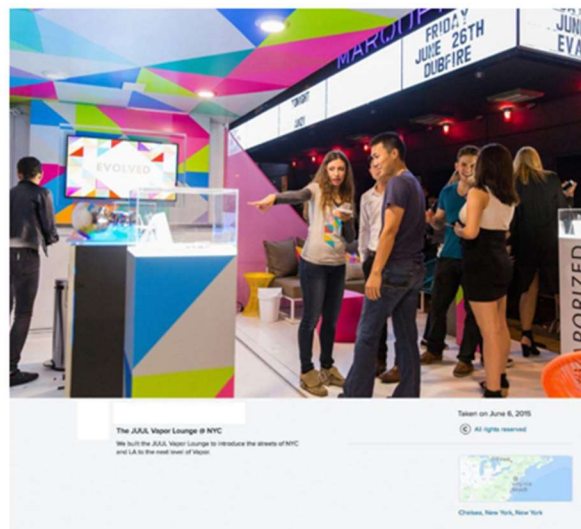
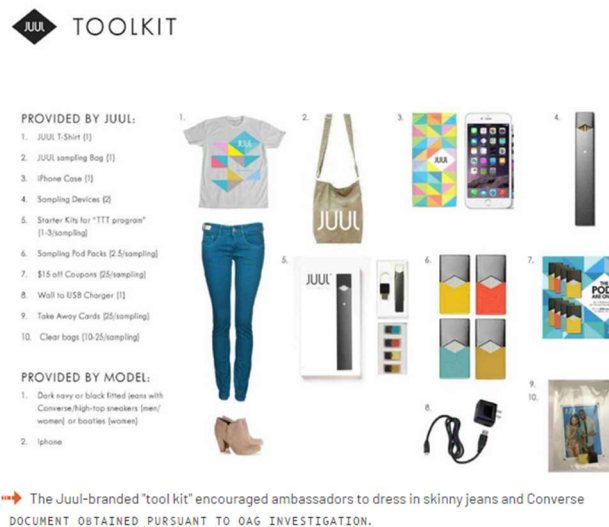
101. As part of the Vaporized campaign, JLI also emulated trendy pop-up restaurants and stores by using a shipping container “pop-up JUUL bar” at festivals and events in the Los Angeles and New York City metro areas. The firm BeCore designed and created the container for JLI, and managed it as a mobile JUUL product sampling lounge. BeCore reported that, on average, it “exceeded the sampling goals set by JUUL for each location (average number of samples/event distributed equals 5,000+.”



Juul's container bar

102. JLI also held sampling events in stores. By September 2015, JLI was on schedule to host sampling events in more than 5,000 stores in twenty cities in twelve states.

103. Documents obtained by the New York Attorney General show that JLI recruited young “brand ambassadors” to staff its events and required a dress code that included skinny jeans, high-top sneakers or booties, and an iPhone in a JUUL-branded case.



104. JLI engaged PUSH Agency, LLC (“PUSH”), a promotional model and event staffing agency, to provide models and brand ambassadors to hand out coupons in trendy areas of New York City popular with young people. In a September 2017 email between PUSH and JLI, for example, PUSH offered suggestions “for the nightlife shifts” of “places that are popular for nightlife” that “would be great to hit,” including the Marquee nightclub in Chelsea, Provocateur, and Le Bain, a penthouse discotheque.

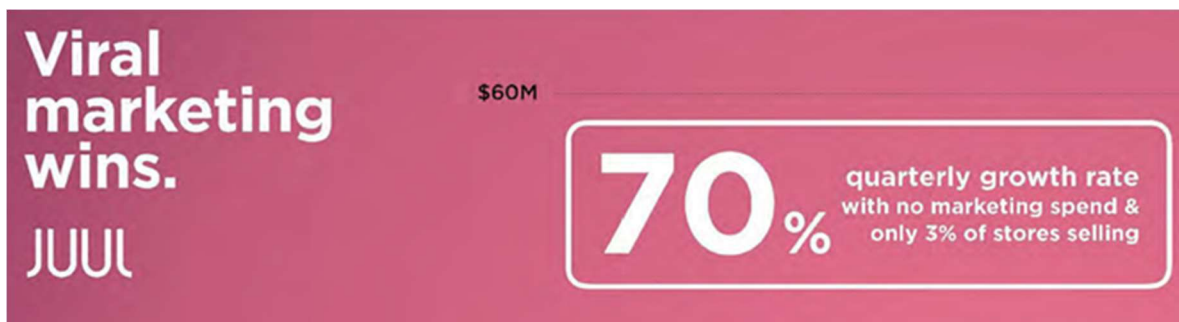
105. Though JLI publicly acknowledged in October 2017 that it is unlawful to distribute free samples of its products at live events, it continued to reach out to new users by offering samples, sometimes at \$1 “demo events.” Like so many of JLI’s initiatives, promotions of this kind are prohibited for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

106. The effect—and purpose—of JLI’s Vaporized giveaways was to flood major cities with JUUL products that would hook thousands of new users, and to generate buzz for the brand among urban trendsetters who would then spread JLI’s message to their friends via word of mouth and social media.

**5. JLI knowingly sought and accepted the benefits of viral marketing on social media platforms popular with youth**

107. JLI not only used Big Tobacco’s advertising imagery and giveaways in a manner that reached youth, but also coupled traditional advertisements with an aggressive social media marketing campaign. Through the use of social media, JLI has been able to operate an even more pervasive, insidious, and successful viral marketing

campaign than its predecessors in the tobacco industry. As JLI boasted in a pitch deck to potential investors dated December 2016, “Viral Marketing Wins.”

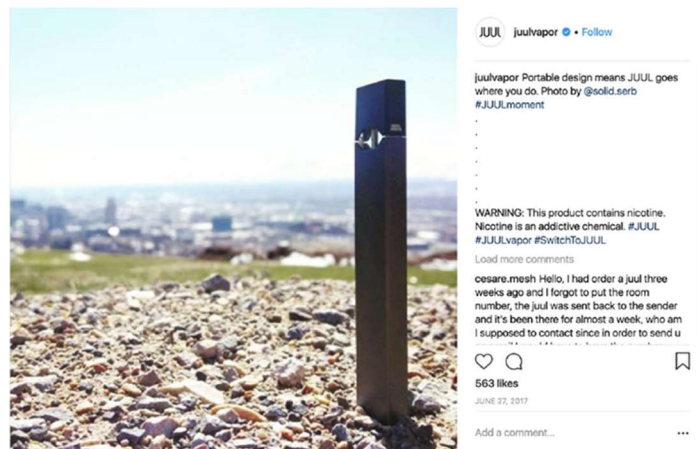


108. JLI was particularly active on Instagram, which is one of the most popular social media site among teens. JLI cultivated hashtags, allowing it to blend JUUL ads in with a wide range of user content, increasing exposure while concealing the commercial nature of the content. JLI introduced the hashtag “#juul” on June 4, 2015, when it launched the JUUL device. Between then and November 2018, over a quarter of a million posts using #juul appeared on Instagram. Numerous other hashtags on Instagram contained the JUUL brand name, such as “#juulnation,” “#juullife,” “#juulgang,” “#juultricks,” and “#doit4juul.”

109. JLI also used hashtags to reinforce the themes it crafted in JUUL’s design, like #style, #technology, #smart, and #gadget. JLI’s hashtag marketing went beyond passive posts to being “very proactive to find and reach out to people who are (or might be) interested in JUUL. This means searching hashtags to engage, using widely used hashtags, paying close attention to our followers, being responsive to posts, etc.” For example, JLI repeatedly used the hashtag “#JUULnation” on posts on its own Instagram

account, for example when advertising its “Cool Mint” JUULpods, JUUL’s portability, or party mode.

110. A key feature of JLI’s viral marketing campaign was inviting user-generated content. This strategy revolves around prompting social media followers to provide their own JUUL-related content—posting selfies in their favorite places to use JUUL products, for example. The response provided by a user is then typically distributed by the social media platform employed into the user’s personal network. In this way, brands can infiltrate online communities with personalized content that promotes their products, such as a picture of a friend using a JUUL e-cigarette at the beach.



111. Just as JLI intended, JUUL users began taking photos of themselves using JUUL devices and putting them on social media with the hashtag #juul. They were creating JLI content that looked and felt like real JLI ads: featuring young people having fun and using JUUL. JLI’s flavor-based hashtag campaigns #MangoMonday and #coolmint generated hundreds of thousands of user-generated posts. Within a few months of JLI’s commercial release of JUUL in June 2015, a former JLI executive



reportedly told *The New York Times* that JLI “quickly realized that teenagers were, in fact, using [JUULs] because they posted images of themselves vaping JUULs on social media.” JLI’s officers and directors sought to take advantage of this to build the JUUL brand. For example, on July 16, 2016, Bowen emailed Tyler Goldman, whom JLI would announce as its new CEO in August 2016, about social media posts by youth about JUUL e-cigarettes, stating, “I’m astounded by this ‘ad campaign’ that apparently some rich east coast boarding school kids are putting on.” Bowen added that “Riaz [Valani] was thinking maybe we can leverage user generated content.”

112. JLI’s cultivation of hashtags was wildly successful, and the user-generated content it encouraged continued to grow and promote JUUL products even after JLI ceased its own social media marketing due to pressure from regulators. For example, an analysis of social media posts in July 2019 showed that, over a single seven-day period, there were 7,442 posts to “#juul,” these posts generated 706,267 likes and comments.

113. JLI also sought to work with high profile “influencers” that appeal to youth. JLI used these “influencers” to push its product to young people. Influencers are “high-social net worth” individuals who have developed large social media followings—i.e., the “cool kids” of the social media world. Influencers are prized sources of brand promotion on social media networks.

114. Documents obtained pursuant to a Congressional investigation show that in July 2015, JLI contracted with the marketing agency Grit for services including “Influencer Relations,” in which Grit agreed to provide two “Social Buzzmakers” for six events within a four-week period, with each Social Buzzmaker having a minimum of

30,000 followers and be active on at least two social media channels, such as Instagram, Twitter, or Facebook. The contract provided that JLI would determine or approve the timing of the Buzzmakers' posts. In addition, JLI engaged Grit to "develop influencer engagement efforts to establish a network of creatives to leverage as loyalists for Juul/Pax brand activations."

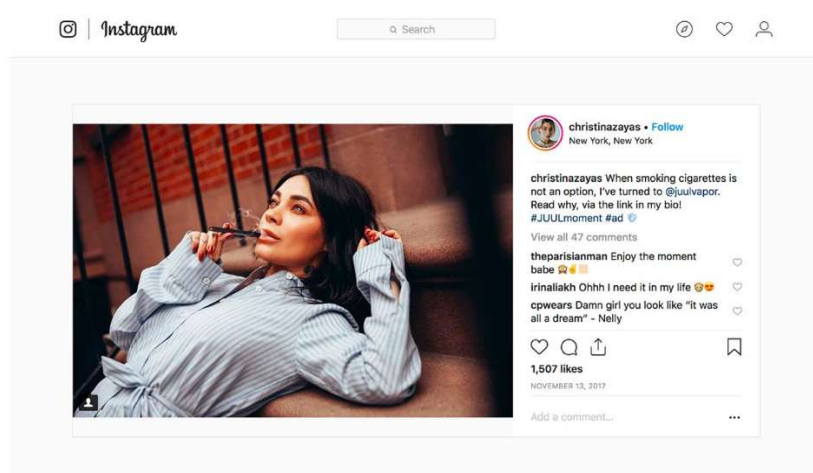
115. Like its Vaporized campaign, JLI's influencer strategy was youth-focused, with the stated aim of "show[ing] that the tastemakers, cool kids and early adopters who consume tobacco use JUUL." In keeping with this strategy, JLI targeted influencers who were young and popular with adolescents. One influencer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

116. JLI contracted with Grit to enlist influencers by sending them free JUUL e-cigarettes. Grit provided free JUUL products to Luka Sabbat, known as the "the Internet's Coolest Teenager," who was seventeen years old during the summer of 2015.

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

118. JLI paid these social media influencers to post photos of themselves with JUUL devices and to use the hashtags that it was cultivating. One such influencer was Christina Zayas, whom JLI paid \$1,000 for just one blog post and one Instagram post in the fall of 2017.

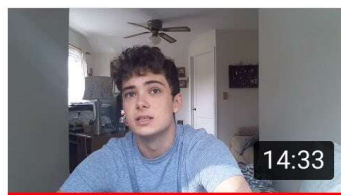




119. In some instances, JLI knowingly accepted the benefits of young influencers promoting JUUL products without engaging them directly. For example, one YouTube user with the handle “Donnysmokes” (Donny Karle, age twenty-one) created a JUUL promotional video in 2017 that garnered roughly 52,000 views, many of which were from users under the age of eighteen. Karle went on to create a series of videos, including videos titled *How to hide your JUUL from your parents* and *How to HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT*. Karle has admitted to earning approximately \$1,200 a month from unspecified sources simply from posting videos of himself consuming e-cigarettes, particularly JUUL, online.



How to hide your JUUL from your parents  
DonnySmokes · 31K views · 3 months ago



How To HIDE & HIT Your JUUL at SCHOOL WITHOUT Getting CAUGHT  
DonnySmokes · 98K views · 1 month ago

120. Karle also created a YouTube sensation called the “JUUL Challenge,” which is a play on the viral “Ice Bucket Challenge.” In the JUUL Challenge, the goal is to suck down as much nicotine as possible within a predetermined amount of time. The JUUL Challenge, which promotes nicotine abuse and adolescent use of JUUL products, went viral like the Ice Bucket Challenge it mimicked. Soon, youth across the country were posting their own JUUL Challenge videos, a practice that continues to this day on YouTube, Instagram, Snapchat, and other social media platforms. In one recent JUUL Challenge on YouTube, which has received nearly 500,000 views, the two individuals in the video, who appear to be teenagers, discuss the hundreds of thousands of views their prior JUUL Challenge received and comment upon the “virality” of their JUUL Challenge content.

121. JLI was aware of Karle’s videos and his young followers. In fact, Karle contacted JLI directly for sponsorship. And although JLI declined to sponsor him, it did not attempt to remove his JUUL-related content until 2018, and by then JLI’s efforts were too little, too late. Just as JLI had boasted to investors in 2016, “Viral marketing wins.” JLI knowingly sought and accepted the benefits of viral marketing and user-generated content. A sales representative at JLI sent Karle a direct message on Twitter stating, “Thanks for the Juul plugs. There ya go. An actual JUUL employee thanking you.”

122. JLI recruited “affiliates” to help its viral marketing campaign. In or around 2017, JLI began using a company called Impact Radius for the management of JLI’s affiliate program. Impact Radius’s affiliate application stated that JLI “auto-

approve[d]” applications and did not ask for or confirm the affiliate’s age. JLI’s affiliates promoted JUUL products on social media platforms including YouTube, Instagram, Facebook, Snapchat, and Twitter and routinely failed to disclose that they were being paid to promote JUUL products. JLI’s “affiliate program” recruited those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL products. It even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and get a discount.”

123. Between 2015 and 2017, JUUL-related posts on Twitter increased exponentially, which is the exact result to be expected from an effective viral marketing campaign.

124. A 2018 analysis of JLI’s sales and presence on social media platforms found that JLI grew nearly 700%, yet spent “no recorded money” in the first half of 2017 on major advertising channels, and spent only \$20,000 on business-to-business advertising. Despite JLI’s apparently minimal advertising spend in 2017, the study found a significant increase in JUUL-related tweets in 2017. The same analysis found that, on Instagram, seven JUUL-related accounts, including @doit4juul and @JUULgirls, accounted for 4,230 total JUUL-related posts and had more than 270,000 followers. The researchers concluded that JLI was “taking advantage” of the reach and accessibility of multiple social media platforms to “target the youth and young adults . . . because there are no restrictions,” on social media advertising.

125. A large number of JLI’s social media posts reached youth. The Surgeon General found that JLI’s Twitter account was being followed by adolescents, and that

25% of those re-tweeting official JLI tweets were under eighteen years old. Another study found that as many as half of JLI's Twitter followers were thirteen to seventeen years old.

126. A study characterizing JLI's JUUL-related Instagram posts between March and May 2018 found that among nearly 15,000 relevant posts from over 5,000 unique Instagram accounts, more than half were related to youth or youth lifestyle.

127. By April 2018, searching "JUUL" on YouTube yielded 137,000 videos with forty-three videos having over 100,000 views. Of these, a huge number were plainly related to underage use, including: 1,730 videos on "hiding JUUL in school," 789 on "JUUL in school bathroom," 992 on "hiding JUUL at home," and 241 on "hiding JUUL in Sharpie."

128. As such posts and videos multiplied, JLI took no action to address social media accounts using its trademarked name to target underage audiences. For example, JLI could have stepped in and attempted to stop the use of the word "JUUL," including the use of all the hashtags that contain the word "JUUL." JLI could have sought to shut down infringing accounts such as @doit4juul and @JUULgirls. JLI did not act promptly to do so.

**C. JLI Continued Its Aggressively Youth-Oriented Advertising Despite Knowing Kids Were Getting Hooked**

129. JLI was well aware from the beginning that its products would appeal to youth.

130. Within weeks of JUUL’s launch, on June 23, 2015, an article in *AdAge* regarding the Vaporized campaign highlighted the concerns about the youth focus of the campaign: “John Schachter, director of state communications for Campaign for Tobacco-Free Kids, expressed concern about the Juul campaign because of the youth of the men and women depicted in the campaign, especially when adjoined with the design.” Reacting to the article that evening, JLI Marketing Manager Sarah Richardson commented, “[I] think folks may also be concerned with the angle of 21st century marketing appealing to adolescents, *but that’s a risk we took*[.]”

131. A former JLI 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 JUUL products online or finding other individuals who made the purchases for them. Some people bought more JUUL kits on JLI’s website than they could individually use—sometimes ten or more devices at a time. “First, they just knew it was being bought for resale,” said the former senior manager, who was briefed on JLI’s business strategy. “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”

132. In July 2015, JLI Board member Asseily suggested “a cheeky campaign that asks existing smokers to return their unused cigarette packets (or other vaping products) to us in return for a discount on JUUL” because that would “send the only message that’s needed: JUUL is a superior alternative to conventional smoking and mediocre vaping products.” But JLI did not run this campaign then, and it did not begin focusing its advertising on switching from combustible cigarettes until 2018, when it

faced government scrutiny over its prior marketing campaigns targeting youth. Instead, JLI continued its youth-oriented advertising, proceeding as if, as Board member Huh argued, “the company couldn’t be blamed for youth nicotine addiction.”

133. In December 2015, at the joint Board of Directors and Executive Committee meeting, Huh, Pritzker, and Valani pressed for even “more aggressive rollout and [marketing].”

134. JLI and its officers and directors knew that JUUL’s marketing and flavors were causing youth to become addicted to nicotine. On January 5, 2016, Cohen forwarded a presentation dated December 16, 2015, which asked the question: “If *large numbers of youth are initiating tobacco use with flavored e-cigarettes*, but adults [*sic*] smokers may benefit from completely switching to an e-cigarette, what should the market look like?”

135. By March 2016, however, JLI employees acknowledged internally that JLI’s efforts to market to children were too obvious. On March 2, 2016, Mumby, the Chief Marketing Officer, sent a document related to JLI’s branding to Huh and a number of other marketing employees at JLI. According to Mumby, he was sending the document because Huh “indicated that [he] would review [JLI’s] brand and collateral positioning on behalf of the board.” The attached document noted that “[t]he models that we used for the #Vaporized campaign appeared to be too youthful for many consumers (and the media)[.]” Under a header that listed as one of JLI’s “Objectives” to “Be Different & Have Integrity[.]” the document stated that “[w]e need to be sensitive to the subjectivity of youthfulness by positioning the brand to be mature and relatable.”

On March 11, 2016, Mumby sent another version of this document to Huh and Zach Frankel, who was an observer on the Board and would later become a director, and Mumby thanked them “for the support on this.” Around this time, JLI reoriented its JUUL advertising from the explicitly youth-oriented Vaporized campaign to a more subtle approach to appeal to youth. The advertising’s key themes continued to include pleasure/relaxation, socialization/romance, and flavors—all of which still appeal to youth, as was made clear in the Big Tobacco litigation.

136. JLI, like Philip Morris and other Big Tobacco companies before it, targeted youth as a key business demographic. Unsurprisingly, JLI’s efforts to follow these pages of Big Tobacco’s playbook has yielded results: a recent study found that 15 to 17-year-olds are *sixteen times* more likely to use JUUL products than 25 to 34-year-olds.

**D. JLI’s Early Labeling and Advertising for JUUL Products Omitted the Fact that JUUL Products Contain Nicotine**

137. As part of its strategy to market to youth and nonsmokers, JLI did not effectively inform users that JUUL products contain nicotine. Despite making numerous revisions to JUUL products’ packaging since 2015, JLI did not add nicotine warnings until forced to do so in August 2018. The original JUUL product labels included a California Proposition 65 warning indicating that the product contains a substance known to cause cancer, and a warning to keep JUULpods away from children and pets, but contained no warnings specifically about the known effects, or unknown long-term effects, of nicotine or consuming e-cigarettes/inhaling nicotine salts.

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

139. Compounding these omissions, JLI’s marketing strategy for JUUL was so successful in embedding its products into pop culture that it entered the vernacular as a verb. The term “juuling” also erases the connection to terms like “smoking” or “e-cigarette,” which could alert users to the true nature of the activity.

140. As a result of these omissions, many youth were unaware that JUUL products contained nicotine at all, let alone a high dose of it. One recent survey of youth and young adults ages fifteen to twenty-four found that 63% of JUUL users did not know that JUULpods always contain nicotine.

**E. In Another Page from Big Tobacco’s Playbook, JLI Used Flavors to Hook Kids**

141. JUULpods sold in fruity or sweet flavors made the product even more attractive to adolescents. Tobacco companies have known for decades that flavored products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum: *Youth Cigarette – New Concepts*, specifically noted the “well known fact



that teenagers like sweet products.” A 1979 Lorillard memorandum concluded that younger customers would be “attracted to products with less tobacco taste,” and even proposed borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the widest appeal among youth.

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

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

143. A sales manager who worked at U.S. Tobacco in the 1980s told the Wall Street Journal that “They talked about graduation all the time—in sales meetings, memos and manuals for the college program. It was a mantra.”

144. According to 2004 data, seventeen-year-old smokers were more than three times as likely as those over the age of twenty-five to smoke flavored cigarettes and viewed flavored cigarettes as safer. For this reason, in 2009 the FDA banned flavored cigarettes pursuant to its new authority under the Family Smoking Prevention and Tobacco Control Act of 2009. In announcing the ban, former FDA Commissioner Dr. Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young adults to become regular smokers.” A 2017 study of the cigarette flavor ban found that the ban was effective in lowering both the number of smokers and the

amount smoked by smokers, though it was associated with an increased use of menthol cigarettes (the only flavor still available).

145. The use of flavors is just as problematic with e-cigarettes. According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored varieties. Studies also show that flavors motivate e-cigarette initiation among youth, and that youth are much more likely to use flavored tobacco products than adults are. According to the FDA, 96% of twelve to seventeen-year-olds who recently begun using e-cigarettes reported using a flavored e-cigarette the first time they tried the product. Similarly, a survey of teenagers between the ages of thirteen to seventeen from 2014-2015 showed that this age group was six times more interested in trying e-cigarettes in fruity flavors than they were in trying e-cigarettes with only tobacco flavor.

146. Research confirms that flavored products—no matter what the tobacco product—appeal to youth and young adults. According to the *2012 Surgeon General Report*, “Much of the growing popularity of small cigars and smokeless tobacco is among younger adult consumers (aged <30 years) and appears to be linked to the marketing of flavored tobacco products that, like cigarettes, might be expected to be attractive to youth.” A study published in *JAMA* in 2015 found that approximately 80% of those between the ages of twelve and seventeen who had ever used a tobacco product initiated tobacco use with a flavored product, and that for each tobacco product, at least two-thirds of youth reported using these products “because they come in flavors I like.” Research also shows that when youth see advertisements for flavored e-cigarettes, they

believe the advertisements and products are intended for them. A significant majority of under-age users choose flavored e-cigarette products.

147. Both mint and menthol flavors have been successfully used to make tobacco products more palatable to youth. Among youth smokeless tobacco users, for example, mint and menthol are the most popular flavors. And a recent study found that among high school JUUL users, mint is the most popular flavor.

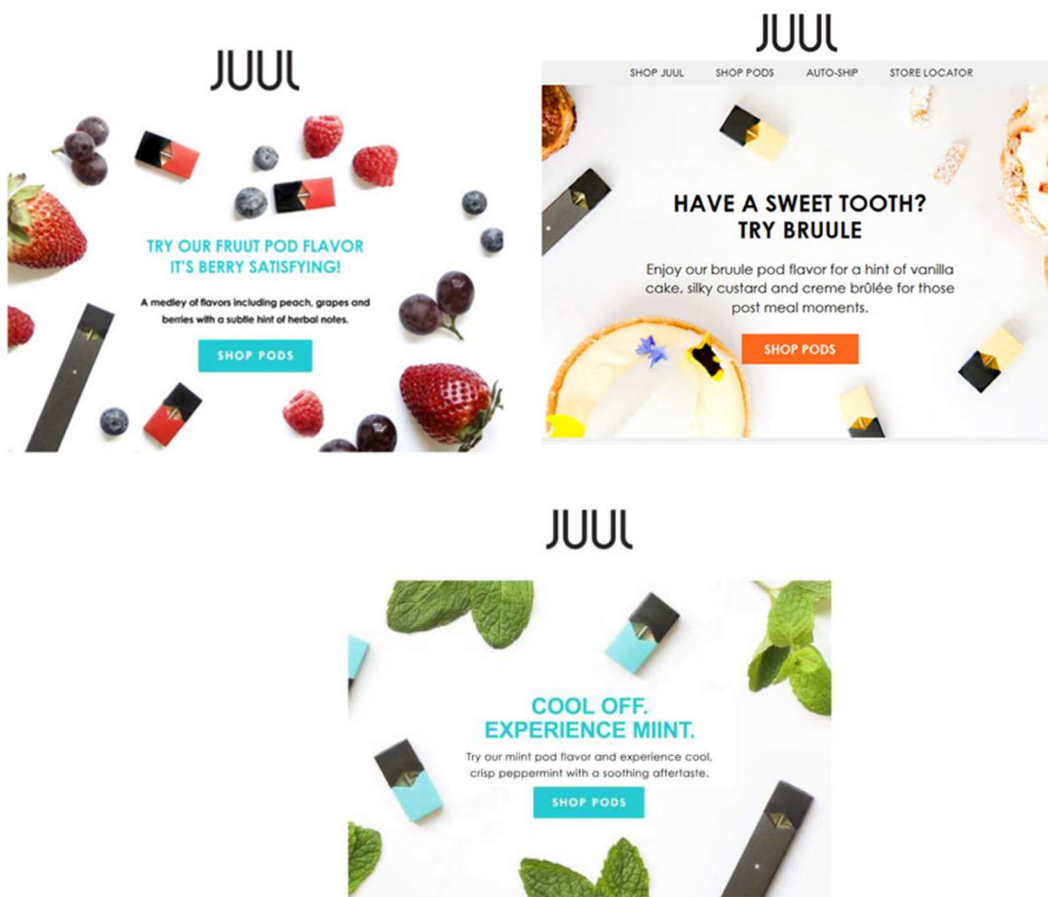
148. The role of mint and menthol flavors in facilitating youth tobacco use is well documented, as Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco Research and Treatment Center, testified before Congress:

[It is] completely false to suggest that mint is not an attractive flavor to children. From candy canes to toothpaste, children are introduced to mint flavor from a young age. Not only do children enjoy mint, but it has special properties that make it an especially dangerous flavor for tobacco. Menthol's anesthetic properties cool the throat, mask the harshness of nicotine, and make it easier for children to start using and continue using tobacco products. The impact of mint and menthol flavors on increasing youth tobacco addiction is well documented.

149. Robin Koval, CEO and president of Truth Initiative (a national public health organization founded as part of the Master Settlement Agreement to address youth tobacco use), echoed Dr. Winickoff's testimony, stating that mint and menthol are among the most popular flavors for youth and that "[w]e also know, as does the tobacco industry, that menthol has been and continues to be the starter flavor of choice for young cigarette users." According to the FDA, "younger populations have the highest rate of smoking menthol cigarettes" and "menthol in cigarettes is likely associated with

increased initiation and progression to regular [] cigarette smoking.” Menthol cigarettes are also more addictive than regular cigarettes.

150. In June 2015, JUUL came to market in four flavors including Tabacac (later renamed Tobacco), Fruut (later renamed Fruit Medley), Bruulé (later renamed Crème Brulee), and Miint (later renamed Mint).



151. JUUL later offered other kid-friendly flavors, including Cool Cucumber and Mango.



152. JUUL also offered limited edition flavors, including Coco Miint, a mint chocolate flavor.



153. By at least early 2017, JLI knew that its flavors had attracted young people and non-smokers in droves. Instead of taking corrective action or withdrawing the kid-friendly flavors, JLI capitalized on their popularity with kids and continued to promote JUUL's flavors. In a social media post from August 2017, for example, JLI tweeted "Beat The August Heat with Cool Mint" and "Crisp peppermint flavor with a pleasant aftertaste." In another August 2017 tweet, JLI compared JUUL to dessert: "Do you brul  e? RT [re-tweet] if you enjoy dessert without the spoon with our Creme Brulee #JUULpods."



154. 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 JLI uses for flavor and perfume—particularly in the Crème Brulee flavor—contain relatively high levels of acetals. Acetals are airway-irritating chemicals that may cause lung damage. Dr. Robert Jackler reported that test results have shown that JLI’s sweet and fruity flavors “contribute[] to the increasing body of evidence documenting toxicological effects of e-cig vapor.”

155. JLI also engaged market research consultants to study youth flavor preferences, and this research provided additional confirmation that JLI’s flavors appealed to youth. By February 2018, the consulting firm McKinsey & Company had provided a roadmap to JLI’s Consumer Insights department, which included multiple

flavor studies including a flavor “likability” test, which was carried out under JLI’s Marketing and Commercial department.

156. Under the guise of JLI’s “youth prevention program,” JLI directly surveyed thirteen to seventeen-year-old teens’ e-cigarette flavor preferences. Through this research, undertaken in 2018—when JLI and Altria were coordinating their activities—JLI asked teens to rank a variety of e-cigarette flavors in terms of appeal, and included the names of current JUUL flavors, JUUL flavors under development, and flavors offered by JLI’s competitors. McKinsey & Company surveyed teens aged thirteen to seventeen, generating over 1,000 responses. In addition, DB Research gathered data on flavor preferences from a focus group of sixteen kids in Maryland.

157. Both the survey and the focus group found that teens’ co-favorite JLI flavors were Mango and Mint, and that teens found only one third-party flavor more desirable than Mango and Mint: “Cotton Candy” (McKinsey) and “Fruit Loops” (DB Research).

158. Though the McKinsey survey did not ask about teens’ preference for menthol, the kids in the DB Research focus group did and found that while approximately one-third of the group found menthol appealing, nearly three-quarters of the group liked mint.

159. In other words, these surveys showed that teens respond to mint the way they respond to their favorite candy flavors.

160. A 2018 survey of adolescents and young adults in California found that 74% of those surveyed indicated that their first use of a JUUL was of a flavored JUULpod.

161. In January 2020, the FDA banned flavored e-cigarette pods, other than “Tobacco” and “Menthol” flavors, in response to “epidemic levels of youth use of e-cigarettes” because these products are “so appealing” to children.” But the harm to Alaska youth had already been done, and as discussed below, copycat companies have exploited loopholes in the ban to continue supplying flavored nicotine products to youth.

**F. JLI Also Used JUUL’s Discreet and Tech-Inspired Design to Attract a New Generation of Youth to Nicotine**

162. The design of JUUL is also acutely attractive to youth. Unlike most of its predecessors, JUUL looks nothing like a cigarette. Instead of mimicking a cigarette, the product that adult smokers are used to using, JUUL is sleek and linear and seems like the latest tech invention. JLI co-founder Bowen drew on his experience as a design engineer at Apple Inc. (“Apple”) to make JUUL’s design mimic technology children were already familiar with, like Apple’s iPhone. This made JUUL look “more like a cool gadget and less like a drug delivery device. This wasn’t smoking or vaping, this was juuling.” The evocation of technology makes JUUL familiar and desirable to the younger tech-savvy generation, particularly teenagers. According to a nineteen-year-old interviewed for the Vox series *By Design*, “our grandmas have iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust modern stuff a little



bit more so we're like, we can use it, we're not going to have any trouble with it because you can trust it." A sixteen-year-old agreed, explaining that "the tech aspect definitely helps people get introduced to it and then once they're introduced to it, they're staying, because they are conditioned to like all these different products. And then this is another product. And it's just another product. Until you're addicted to nicotine."

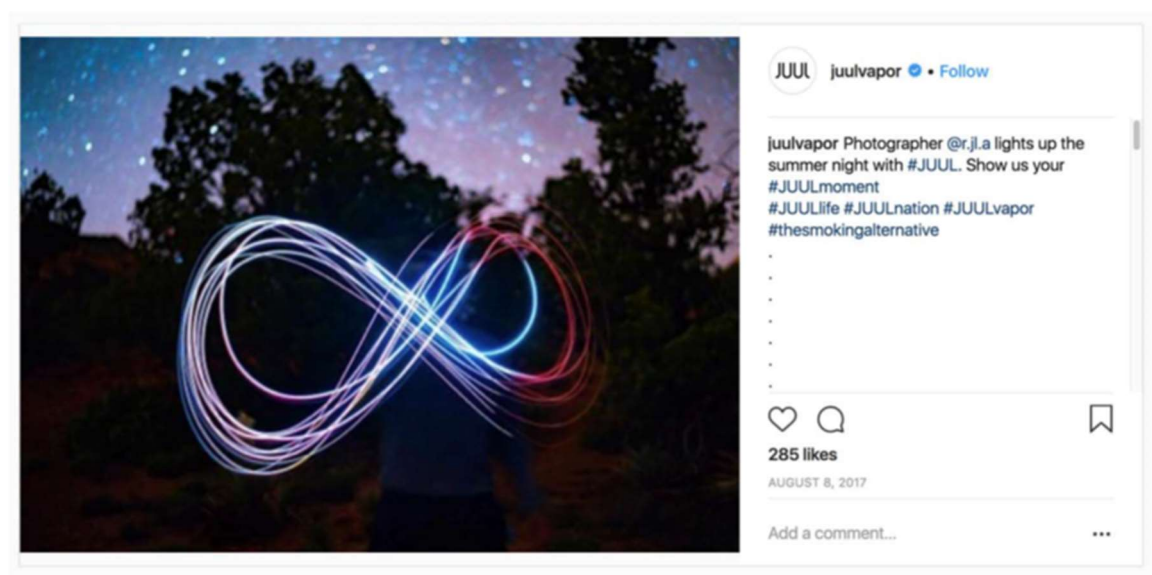
163. JUUL is small and discrete. Fully assembled, the device is just over 9.5 cm in length and 1.5 cm wide. JUUL resembles a memory stick and can be charged in a computer's USB drive. This design allows the device to be concealed in plain sight, camouflaged as a thumb-drive, for use in public spaces, like schools and even charged in school computers. JLI has been so successful in emulating technology that its small, rectangular devices are often mistaken for—or passed off as—flash drives. According to a manager of Alaska's Tobacco Prevention and Control Program, "It's hard to tell when the kids are using them. They look like a USB drive or something that kids would have normally." As one high school senior explained, "that's what people tell the teachers a lot, too, if you charge it in class, they'll just say it's my flash drive." And unlike the distinct smell and odor emitted from combustible cigarettes, JUUL emits a reduced aerosol with a nearly undetectable scent. And unlike other e-cigarettes, JUUL does not produce large plumes of smoke. Instead, the vapor cloud is very small and dissipates very quickly, allowing for concealed use. As a result, young users can, and do, use JUUL—in class or at home—without detection.



164. The ability to conceal a JUUL is part of the appeal for adolescents. The devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it possible to covertly use a JUUL behind a turned back, which has become a trend in many schools. As a police officer told reporters, JUUL use is “incredibly prevalent in schools,” including both high schools and middle schools, and that it is hard to catch kids in the act of vaping because JUUL does not produce a big vapor cloud. As the officer explained, students will “just take a little hit or puff off them and then can hold the vapor in their mouth for a little while . . . There’s minimal vapor. They’ll also

just blow into their sleeve or into their hoodie.” Finding new ways to hide the ever-concealable JUUL has spawned products designed just for that purpose, such as apparel that allows the wearer to use the device while it is concealed in the drawstring of a hoodie or the strap of a backpack.

165. JLI also designed JUUL with features reminiscent of youth-oriented tech culture and gaming, like “secret” features users can unlock, such as making the indicator light flash rainbow colors in “party mode.” “Party mode” is activated by the user waving the JUUL device back and forth until the white LED light starts flashing multiple colors, so that the rainbow colors are visible while the person inhales from the JUUL device. “Party mode” can also be permanently activated by the user quickly and firmly slapping a JUUL against the palm of the hand, until the LED light starts flashing multiple colors permanently. JUUL party mode on is described by users to be “like an Easter egg in a video game” and allows for “some cool tricks that are going to drive [] friends crazy.” This feature made it even more appealing and “cool” to young users.



166. According to Dr. David Kessler, a former Commissioner of the FDA and current Professor of pediatrics at the University of California, San Francisco, JUUL’s “fundamental design appears to ease young people into using these e-cigarettes and ultimately, addiction.” Dr. Kessler emphasized the reduced harshness of JUUL’s nicotine salt formulation, the high nicotine content, discreet vapor cloud, and use of flavors as design features that appeal to youth. On April 24, 2018, the FDA sent JLI a letter, based on the FDA’s concern “about the popularity of JUUL products among youth” and stated that this popularity may be related to “the product design.” As a result, the FDA requested documents related to product design, including its “shape or form,” “nicotine salt formulation” and “nicotine concentration/content,” “flavors,” and “features such as: appearance, or lack thereof, or plume . . . [and] USB port rechargeability.”

**G. The Proliferation of “JUULalikes” and Next-Generation Products Targeting Youth**

167. As JUUL sales skyrocketed in 2017 and 2018, other companies followed JLI’s lead. Everyone from tobacco industry giants to vape start-ups launched their own products with the key elements of JUUL’s design: flavor pods, nicotine salts, and a tech-like appearance.

168. Imperial Brands and Reynolds American, both of which already marketed e-cigarettes, launched “JUULalike” versions of their products in 2018. As Alison Cooper, the CEO of Imperial Brands, put it, “The type of experience JUUL delivered was definitely a step forward.” In February 2018, Imperial Brands launched a new pod-

based device called “*myblu*,” noting in its press release that “[p]od-based devices are the fastest growing segment of the e-vapour category in the USA.” Imperial Brands offered *myblu* pods in eleven flavors, including Polar Mint, Mango Apricot, and Green Apple. In July 2018, Imperial Brands introduced a line of flavor pods called *myblu* INTENSE, using a nicotine salt formulation, with 4% nicotine strength.

169. The launch of Imperial Brands’ *myblu* as a “JUULalike” product concerned Vince Willmore, Vice President of Communications for the Campaign for Tobacco-Free Kids. According to Willmore, “Juul is our biggest concern right [now] as it is being widely used by kids across the country . . . [b]ut we are also concerned that the introduction of a growing number of Juul-like products could make the problem even worse.” Willmore was not the only one worried. Then-FDA Commissioner Gottlieb expressed concern about products like *myblu*, stating that such products “closely resemble a USB flash drive, have high levels of nicotine and emissions that are hard to see. These characteristics may facilitate youth use, by making the products more attractive to children and teens.”

170. According to British American Tobacco, parent company of Reynolds American, it had used nicotine salts in its Vuse e-liquid in the U.S. since 2012, “[s]o to be clear—not in response to Juul,” according to a spokesperson. But in August 2018, R.J. Reynolds Vapor Co. launched the Vuse Alto, with pre-filled pods available in 5% nicotine strength, compared to the 3% nicotine in Vuse Vibe cartridges and 1.5% nicotine in the Vuse Ciro. “Juul has achieved tremendous progress over the last 18 months,” Reynolds American CEO Ricardo Oberlander told reporters, adding that he

sees JUUL as “showing the great potential for growth” in the e-cigarette industry.

Seeking some of the social media marketing success that propelled JLI’s growth, Reynolds American began marketing Vuse e-cigarettes on Twitter and Instagram in May 2019.

171. Also in 2018, as discussed further below, Altria launched its pod-based products, the MarkTen Elite and the Apex by Markten.

172. Researchers from SRITA called it “a nicotine arms race,” writing that “JUUL’s success in the e-cigarette marketplace has spurred a variety of new pod-based products with exceptionally high nicotine.” “As of September 2018,” the researchers wrote, “there were at least 39 JUUL knock off devices on the market”—none of which were sold prior to the introduction of JUUL. These new devices followed JLI’s example of high nicotine and discrete design:

The vast majority of these emulate, and sometimes exceed, JUUL’s exceptionally high nicotine levels. Like JUUL, they are also inconspicuous, small enough to easily fit in a pocket or purse, and their purpose as a nicotine delivery system may not be obvious to many casual observers, including parents and teachers.

173. In addition to the thirty-nine “JUULalike” devices, the researchers identified fourteen brands marketing fifteen JUUL-compatible pods, and seventy-one American e-liquid brands selling nicotine salt e-liquids with 5% or greater nicotine strength. All but one vendor of the JUUL-compatible pods offered mango flavor.

174. The rapid proliferation of vape products in JUUL’s wake and the speed with which the vape market evolves make it difficult to enact effective legislative and regulatory measures. When the FDA finalized its policy restricting flavored pods and

“cartridge-based products” in January 2020, vape products sprung up in the regulatory loopholes almost immediately.

175. The FDA’s enforcement policy took effect on February 6, 2020, and covered:

- Any flavored, cartridge-based ENDS [Electronic Nicotine Delivery System] product (other than a tobacco- or menthol-flavored ENDS product);
- All other ENDS products for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent minors’ access; [and]
- Any ENDS product that is targeted to minors or likely to promote use of ENDS by minors.

176. In effect, this was a ban on flavored e-cigarette pods, other than tobacco and menthol flavors. But both flavored nicotine liquid designed for refillable vape devices and disposable vape products were allowed to remain on the market.

177. In announcing the ban, the Secretary of HHS recognized, “The United States has never seen an epidemic of substance use arise as quickly as our current epidemic of youth use of e-cigarettes.” FDA Commissioner Stephen Hahn, M.D. added, “As we work to combat the troubling epidemic of youth e-cigarette use, the enforcement policy we’re issuing today confirms our commitment to dramatically limit children’s access to certain flavored e-cigarette products we know are so appealing to them—so-called cartridge-based products that are both easy to use and easily concealable.”

178. Enterprising companies recognized loopholes in a policy aimed only at cartridge-based products and the opportunity to fill the demand for fruit-flavored nicotine

created by JLI. Disposable vape devices, not covered by the FDA’s ban, have become increasingly popular with youth, building on the public health crisis Defendant JLI helped create. The use of disposable vape devices is now “rampant” in schools. These products are typically cheaper than JUULpods and are offered in increasingly more flavors. One high school junior told *The New York Times* that she starting vaping mint and other flavored JUULs when she was in tenth grade. She now vapes using disposable “Puff Bars” because “[t]hey have flavors like the Juul flavors. It’s basically like smoking a Juul.” Other high school students confirmed the popularity of Puff Bars, saying they “saw them everywhere” and “[t]hat’s what everyone was talking about.”

179. As a Professor at Rutgers Center for Tobacco Studies stated, “[t]hese disposable, completely self-contained e-cigarettes like Puff Bar and others share all of the characteristics that made Juul a problem.” In online discussions of these disposable vape products, including Eon St!K, users focused on “tasting similar to JUUL flavours, lasting longer than a JUUL pod and having a good ‘hit’ like a JUUL . . . [and] posted images highlight[ing] the similar physical dimensions to JUUL.” Researchers evaluating the rise of these products noted that “these products are similar to JUUL—the brand driving high rates of youth vaping—in form and function.” Disposable vape devices are “nearly identical in size” to JUUL and “also contain nicotine salts,” but also offer even more flavors, even higher nicotine concentrations, colorful marketing, and low pricing in an attempt to take full advantage of the market JUUL created. Researchers also noted that “as a ‘single use product’, disposable [vape devices] further contribute to plastic waste and microplastic pollution, which is a growing health concern.”



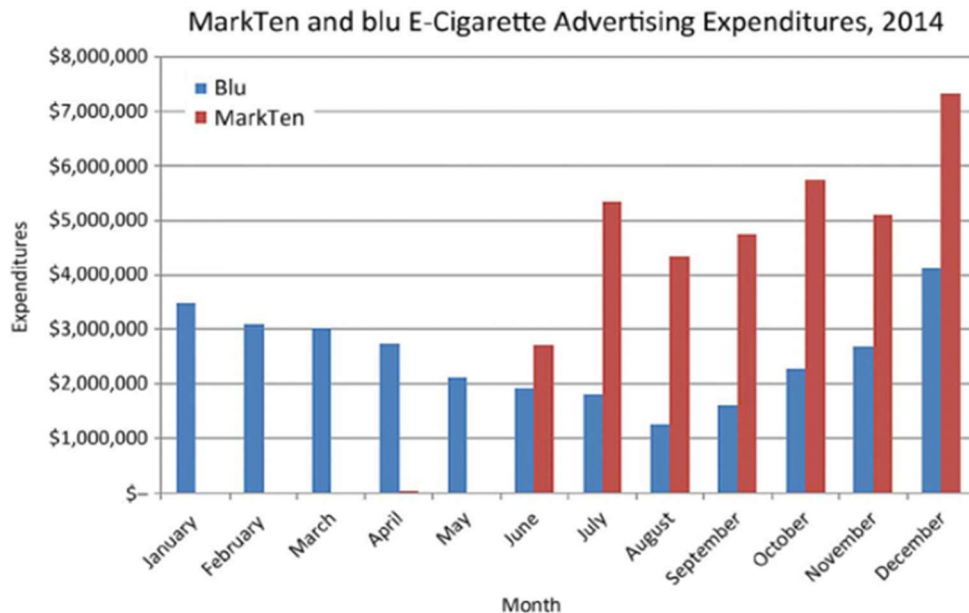
180. In response to increasing pressure, the founder and CEO of the company behind Puff Bar, Cool Clouds, announced that the company has “ceased all distribution” of Puff Bar products in the U.S. and stopped licensing to “prevent third parties from distributing in the U.S.” However, other vape devices encouraged by JUUL are still available. Moreover, for every company selling candy-flavored vape products that exits the market, more materialize to take its place, driven by the knowledge that there is a large market of nicotine-addicted youth eager for their products.

181. The rise in disposable products as a means to evade bans on flavored e-cigarettes demonstrates why partial regulatory measures—banning flavor pods but not all flavored tobacco products, for example—are not sufficient to halt the spread of youth vaping.

#### **H. JLI and Altria Join Forces to Protect JUUL’s Market Domination**

##### **1. Before conspiring with JLI, Altria tried to corner the youth e-cigarette market**

182. Altria’s first e-cigarette was a cigarette-lookalike, or “cigalike,” style of e-cigarette, sold under the brand MarkTen. Following a phased roll-out of MarkTen in Indiana and Arizona in late 2013, Altria, through and with the assistance of its subsidiaries Nu Mark LLC and Nu Mark Innovations, Ltd., launched the MarkTen nationwide in 2014 with an aggressive marketing campaign, eclipsing the advertising expenditures for the market leader at that time, blu e-cigarettes.



183. Spending on advertising by the e-cigarette industry in 2014 totaled \$88.1 million, a 52% increase from 2013. Of the \$88.1 million spent in 2014, nearly 40% of that was Altria’s MarkTen campaign, at \$35 million. More than eighteen million middle school and high school children were exposed to e-cigarette advertisements in 2014. Approximately one in two middle school and high school age children saw advertisements for e-cigarettes in retail stores and almost two in five saw advertisements for e-cigarettes online.

184. At the time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were using “exactly the same themes we saw work with kids in the U.S. for decades with cigarettes.”

185. Although free samples of tobacco products are prohibited under the terms of the Tobacco Master Settlement Agreement, as well as FDA regulations issued in 2010, Altria, Nu Mark LLC, and Nu Mark Innovations, Ltd. exploited the grey area in

the regulation of e-cigarettes and distributed coupons for free sample nicotine cartridges as part of Altria's MarkTen launch. (The FDA has since issued finalized guidance clarifying the scope of the ban on distributing free samples or coupons to generally include e-cigarettes or components.)

186. Altria utilized its extensive distribution network, reaching 60,000 stores in a month. For instance, in Arizona, Altria's distribution network allowed MarkTen to achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO Marty Barrington's statements on an earnings call. Altria was clear in its intent to dominate the e-cigarette market as it has the traditional cigarette one: "We are the market leader today and we will continue to be," Barrington told investors at the time of MarkTen's launch.

187. Altria also began acquiring small companies in the vaping industry, starting in 2014 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style, and were sold in flavors including "Vanilla Dreams" and "Smooth Chocolate." In 2016, Altria acquired a vape product called Cync, from Vape Forward. Cync is a small vapor device that uses prefilled pods, similar to JUUL.

188. In 2016, Altria, through and with the assistance of Nu Mark LLC and Nu Mark Innovations, Ltd., launched a pod-based, "closed-tank" e-cigarette like JUUL, which it branded as the MarkTen Elite: "a pod-based product with a premium, sleek battery design" and having the "convenience of prefilled, magnetic click pods." Altria told investors that the product "offers a variety of flavorful liquids in a modern, discrete

device format.” After its nationwide launch, former Altria CEO, Marty Barrington, boasted that the Elite’s pods held more than twice as much liquid as JUUL’s.

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

190. As mentioned above, Altria, through and with the assistance of Nu Mark LLC and Nu Mark Innovations, Ltd., marketed its e-cigarettes in flavors that would appeal to youth. For example, the MarkTen Elite came in “Strawberry Brulee,” “Glacier Mint,” “Apple Cider,” and “Hazelnut Cream” flavors.

191. In February 2017, Altria told investors at the 2017 Consumer Analyst Group of New York (CAGNY) Conference that over the past year, “Nu Mark LLC (Nu Mark) made excellent progress toward its long-term aspiration of becoming a leader in e-vapor.” In his remarks, Altria’s then-CEO Howard Willard III noted, however, that the estimated “total 2016 e-vapor consumer spending was roughly flat compared to the prior year at approximately \$2.5 billion.”

192. Despite its best efforts, by the end of 2017, Altria’s MarkTen e-cigarettes had a market share of only 13.7%, well behind JLI’s market share of 40% and growing.

## **2. JLI and Altria conspired to expand JUUL’s reach and cover up JLI’s youth marketing**

193. As set forth above, Big Tobacco has long known the importance of targeting youth and addicting them to nicotine. Profitable growth requires a pipeline of “replacement” smokers or e-cigarette users. JLI was wildly successful at expanding that

pipeline, hooking youth who had never smoked cigarettes—and who, having grown up in the decades of anti-smoking efforts following the Master Settlement Agreement between Big Tobacco and the States, never intended to try cigarettes.

194. While still popular overseas, cigarette use has been declining in the United States in the last decade, especially with youth. Altria estimated that the cigarette industry declined by 4% in 2017 and by 4.5% in 2018, and it predicted a continued 4% to 5% decline in the average annual U.S. cigarette industry volume for 2019 through 2023. Altria later adjusted the estimated rate of decline to 4% to 6%, to reflect efforts to increase the legal age for cigarette smoking to twenty-one.

195. As described above, Altria marketed its own e-cigarettes, testing different versions of the MarkTen e-cigarette and acquiring products such as the GreenSmoke cigalike and the Cync vape device. But JLI, a younger, social-media-savvy company led by founders who had experience in the tech industry, was far better at targeting youth and making its product “cool” than Altria and other Big Tobacco companies were. JLI’s customers largely represented the generation that Altria could not reach.

196. JLI and Altria all knew that JUUL’s meteoric growth came from young, nonsmoking customers. As described below, Altria told the FDA as much in an October 25, 2018 letter responding to the FDA’s request for a plan of action to address youth e-cigarette use. Altria informed the FDA that it was exiting the market for pod-based e-cigarettes, on the grounds that these products contributed to the youth vaping epidemic. Altria even displayed this letter to the public by posting it on its website, purporting to disclaim the very marketing and advertising tactics JLI relied on. But by this time,

Altria and JLI had already been collaborating for approximately one year, and just seven weeks later, Altria would publicly announce its \$12.8 billion investment in JLI.

197. Altria wanted JUUL's profits and new customer base. JLI, facing a public outcry, needed Altria's help to navigate the storm that they created. The solution was a well-orchestrated cover-up with JLI dramatically changing its tune to promote itself as a company focused on "harm reduction," purportedly providing existing adult smokers with a way to "Make the Switch" from combustible cigarettes to JUUL.

198. Thus, JLI and Altria conspired to protect and expand the market for JUUL through fraudulent means, including disseminating false statements denying JLI's efforts to target youth with nicotine products and characterizing JUUL as a cessation device that was never intended for, or marketed to, youth. All the while, JLI and Altria understood that maintaining and expanding JUUL's market share meant maintaining and expanding a customer base predominantly made of youth users.

199. Altria was prepared for this deception. Altria, and the rest of Big Tobacco, has a long history of targeting youth with nicotine products and then lying about it. Altria and JLI's conspiracy to cover up JLI's youth marketing is more of the same. As part of the conspiracy, JLI and Altria made false statements to the public and to regulators about actions they were purportedly taking to address rampant youth vaping, including removing certain JUULpod flavors from the market while continuing to promote Mint JUULpods with the knowledge that Mint was a preferred flavor with youth, with the intent that parents, policymakers, and regulators would rely on such false statements in a way that would allow JLI to keep selling JUUL products. JLI and

Altria also made repeated statements to the public and regulators, in advertising and otherwise, that JLI does not market to youth and its marketing is only aimed at adult smokers, that neither JLI nor Altria want youth to vape, and vaping is for adults only.

### **3. Late 2017–August 2018: Early coordination between Altria and JLI**

200. From JLI’s beginnings, Altria, a pioneer in addicting youth to nicotine, “followed Juul’s journey rather closely.”

201. According to Altria’s former CEO, Howard A. Willard III, Altria first contacted JLI about a commercial relationship in early 2017, with “confidential discussions” beginning in the spring of 2017. JLI and Altria’s “confidential discussions” occurred “over a period of approximately 18 months.”

202. On information and belief, the “confidential discussions” between JLI and Altria intensified in late 2017 and early 2018, and they began to lay the groundwork for their collaboration to preserve and expand JUUL’s market share by concealing marketing and sales of JUUL products to youth. Altria has acknowledged that it was monitoring JUUL sales data “in late 2017 and early 2018.” At that time, JUUL was dominating the e-cigarette market. By November 2017, JLI had sold one million units of its blockbuster product, with a 621% growth in year-to-year sales and capturing 32% of e-cigarette sales tracked by Nielsen.

203. Altria recognized that JLI had, against the backdrop of steadily declining cigarette sales, created the perfect product to addict a new generation to nicotine. But to keep the product from disappearing off the shelves as quickly as it had arrived due to

public outcry, JLI would need a more sophisticated approach to marketing and to navigating the storm of public opinion and regulatory and congressional scrutiny on the horizon. In short, JLI needed Altria's experience, and Altria needed access to JLI's best-selling e-cigarette and its youth market.

204. While following JLI's journey closely and engaging in "confidential discussions," Altria had tested variations on the MarkTen that shared features of JUUL, such as the MarkTen Bold, with a nicotine salt formulation and 4% nicotine by weight, and the MarkTen Elite, "a small pod-based product that offers a variety of flavorful liquids in a modern, discrete device format." But as noted above, sales of Altria's own e-cigarettes trailed behind both JUUL and British American Tobacco's Vuse.

205. Altria wanted JLI's market dominance and young customer base. JLI, in the crosshairs of a public and regulatory outcry, needed Altria's experience placating the public and its influence in Washington. Together, by lying about JLI's efforts to addict youth to nicotine and fraudulently misrepresenting the nature of JUUL, JLI and Altria could protect, maintain, and expand JLI's massive and ill-gotten youth market share.

206. As the sales of JUUL continued to mushroom, it was readily apparent, and widely reported, that the rapid growth in sales was due to the surging popularity of "juuling" among teenagers. By March 2018, multiple national news outlets including *National Public Radio*, *USA Today*, and *Business Insider* reported youth were using JUUL with alarming frequency, posting about "juuling" in school restrooms on social



media, and bragging about being able to use the device in the classroom due to JUUL's discreet design.

207. One of the priorities for JLI and Altria was therefore to control the messaging and narrative around youth vaping. Faced with an urgent, growing public health crisis, national media attention, and the ire of the public, the FDA and members of Congress, JLI and Altria realized that given the increasing public and regulatory scrutiny of JLI's marketing tactics, a dis-information campaign was urgently needed to protect its bottom line, and it turned to a sophisticated and savvy third party for assistance. By at least April 2018, both JLI and Altria were working with the global public strategy firm Mercury LLC ("Mercury"), which is part of Omnicom Group, Inc. ("Omnicom"), one of the "Big Four" advertising holding companies dominating marketing and communications worldwide since the 1990s.

208. Mercury filed a lobbying registration on behalf of Defendant Altria Client Services LLC, effective April 1, 2018, identifying "tobacco product regulations" as the specific issue; two of Mercury's managing directors, Stephen Aaron and Al Simpson, handle the Altria account. Aaron, who was the federal liaison for the National Rifle Association for nearly a decade, describes his role as "help[ing] clients nuance complex issues to deliver effective messages amid intense national debates to move the public in support of client agendas." Big Tobacco spin tactics are familiar territory for Mercury: another Mercury client is the Foundation for a Smoke-Free World ("Foundation"), an organization established and solely funded by Philip Morris International that claims to be an independent scientific body. The World Health Organization strongly rejected

partnering with the Foundation and urged others to do the same, while other global health organizations pointed out that “[w]hile PMI and its grantee claim a commitment to reducing harm; reports show that PMIs’ cigarettes continue to be heavily marketed in ways that attract children and undermine public health policy.” Working with JLI and Altria, Mercury has promoted a similar “harm reduction” message as a central feature of its dis-information campaign.

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

**From:** Erick Mullen <emullen@mercuryllc.com>  
**Date:** April 2, 2018 at 15:48:16 GMT+1  
**To:** Riaz Valani <RValani@gacapital.com>, "danielcruisenv@gmail.com" <danielcruisenv@gmail.com>  
**Subject:** 'I Can't Stop': Schools Struggle With Vaping Explosion - The New York Times

1. We need a third party to scrutinize the "growing body of research."
  2. We need to get active in the diversion conversation - cracking down on illegal sales to minors. Not data about the past, new local partnerships with mayors and superintendents to attack the leakage.
  3. Deconstruct the nicotine argument and drag-in the caffeine and sugar industry into a fight about addictive additives and health outcomes. We win that frame.
  4. Engage the press on all the definitions in every fucking story: it's not a "cigarette" of any kind; there's no smoke and nothing medical science has on the books says water and nicotine is more harmful than water, sugar and caffeine.
- The enemy becomes stronger with every unchecked factoid - just wait: some politicians will start quoting flawed stories that the , in turn, generate more flawed stories. A malicious cycle until the plaintiffs attorneys (jackals) start circling.

<https://www.nytimes.com/2018/04/02/health/vaping-ecigarettes-addiction-teen.html>

- Erick

Mercury.

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210. Valani and Cruise each separately forwarded the email to JLI CEO Kevin Burns. Cruise commented, "Kevin, recent email from friend Erick—a possible 'campaign manager'" for us. His argument is in line with yours. We need to be systematic, aggressive and relentless. Btw we are not tobacco—have [you] corrected today's NYT story?"

211. On April 18, 2018, a group of eleven United States Senators sent JLI a letter declaring that JUUL 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."

212. Less than a week later, on April 23, 2018, then-FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and

enforcement actions against JLI in particular. On April 24, 2018, the FDA sent JLI a request for documents “relating to marketing practices and research on marketing, effects of product design, public health impact, and adverse experiences and complaints related to JUUL.” The FDA stated clearly that it was requesting these documents because of evidence of widespread youth use, including media reporting about middle school and high school student use of JUUL on school property and social media evidence of youth use. “Widespread reports of youth use of JUUL products are of great public health concern,” the FDA warned.

213. JLI, with the help of its “campaign manager” Mercury and Altria guiding its campaign, was ready with a response. The next day, on April 25, 2018, JLI issued a press release, pledging its support of efforts to raise the minimum age to purchase tobacco products to twenty-one and “an initial investment of \$30 million over the next three years dedicated to independent research, youth and parent education, and community engagement efforts.”

214. As part of its “independent research,” in 2018, JLI engaged McKinsey & Company to survey teenagers regarding their e-cigarette flavor preferences, among other things, and engaged DB Research to conduct a focus group with teenagers in Maryland. As discussed above, this research confirmed the popularity of Mint JUULpods with teens. Similarly, Altria knew from decades of experience selling a variety of tobacco products—and the development of its “graduation theory”—that both mint and menthol were popular with youth, as discussed above. Despite this knowledge, JLI and Altria kept Mint and Menthol JUULpods on the shelves even when ostensibly

removing youth-friendly flavors from retail stores in November 2018, as discussed further below.

215. If the purpose of JLI's youth prevention studies was to "better understand how different flavor profiles appeal to different age groups to inform youth prevention," as the McKinsey slides presenting the survey results indicate, the lesson for JLI and Altria was that teenagers like Mint as much or more than any other JUUL flavor, including Mango, Fruit Medley, Crème Brulee, Cucumber, and more than a dozen other candy-like flavors produced by third parties for use with JUUL. Instead, with that knowledge and with no genuine interest in youth prevention, and as detailed below, JLI and Altria committed to work to preserve Mint as a flavor for as long as possible.

216. On July 9, 2018, Mercury partner Stefan Friedman emailed JLI's Chief Communications Officer, Matt David, about the use of the word "epidemic" in connection with youth use of JUUL products, saying, "This is a term we will need to battle back against. Part of the challenge of being the clear market leader is that you become ubiquitous typically in negative ways." Linking a commentary published in *The BMJ Medical Journal*, Friedman explained that "this piece won't hit our target audiences, but something to keep in mind."

217. In response, JLI's David noted that recent CDC data showed no increase from 2016-2017, but that "[t]he thing we have to be mindful of is our rapid growth started at the end of '17...after these stats." Friedman advised, "If we expect those numbers to rise significantly, better to lead with a series of specific, pro-active efforts (what will the \$30 million be used for) to consistently push against youth vaping." Put

another way, JUUL's continued market growth required Altria and JLI to convince the public and regulators that, contrary to the facts, JLI had nothing to do with youth vaping.

218. On July 30, 2018, Pritzker emailed then-CEO of Altria, Howard Willard. On information and belief, the purpose of this communication was to discuss the next steps in Altria's collaboration with JLI. Pritzker and Valani continued to meet and communicate with Altria and JLI throughout August 2018.

219. On August 1, 2018, JLI's then-CEO Kevin Burns, Pritzker and Valani, Altria's then-CEO Howard Willard, and Altria's then-CFO (now CEO) Billy Gifford met at the Park Hyatt Hotel in Washington D.C. No attorneys were present from either side at this meeting. On information and belief, these executives discussed the next steps in the coordination between JLI and Altria.

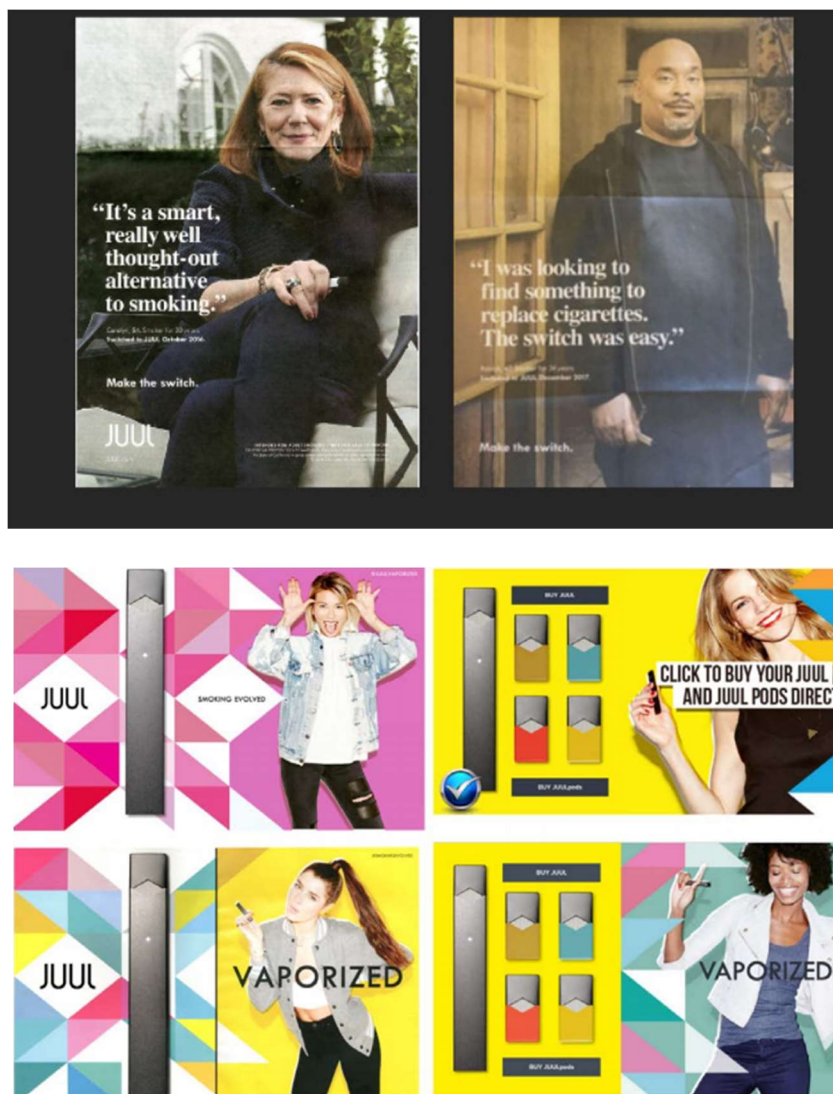
220. The next day, on August 2, 2018, JLI met with the FDA to discuss a proposed youth-behavioral study on the prevalence of use, perceptions of use, and intentions to use JUUL and other tobacco products among adolescents aged thirteen and seventeen (the "Youth Prevalence study"). As with other steps taken by JLI and Altria during this time, the Youth Prevalence study was a distraction and delay tactic, meant to give the public and regulators the impression that JLI was actively addressing the youth vaping epidemic. In fact, as discussed further below, the Youth Prevalence study was a sham, and JLI would provide "results" to the FDA in November 2018 that were directly contradicted by its own internal data.

221. In August 2018, Omnicom agency DDB Chicago sent JLI a proposal for an estimated \$11 million campaign “to more firmly establish the true intent of the company,” noting that JLI was “moving *very* fast.” The brand campaign that Omnicom ultimately created was the “Make the Switch” campaign, which revolved around television ads featuring former smokers aged thirty-seven to fifty-four, each discussing “how JUUL helped them quit smoking.”

222. A striking departure from JLI’s earlier advertising campaigns and launch parties, the “Make the Switch” campaign was intended to support the fraudulent statements disseminated by JLI and Altria—that JUUL was only ever intended as an alternative to smoking for existing adult smokers and JLI’s marketing was never aimed at youth. According to JLI’s Vice President of Marketing, the “Make the Switch” campaign was “an honest, straight down the middle of the fairway, very clear communication about what we’re trying to do as a company.”

223. These statements, however, are belied by evidence of JLI’s early marketing campaigns and statements such as the admission by one of JLI’s engineers that “[w]e don’t think a lot about addiction here because we’re not trying to design a cessation product at all . . . anything about health is not on our mind.” As described elsewhere herein, JLI directly targeted underage nonsmokers. JLI and Altria were well aware that such users made up a significant percentage of JLI’s customer base in 2018—in fact, they counted on this customer base to grow and preserve JUUL’s market share—and that the statements they disseminated regarding “Make the Switch” from smoking being JLI’s mission from the start were fraudulent.

224. The fraudulent nature of the “Make the Switch” campaign can literally be seen by comparing the campaign’s advertisements to JLI’s initial advertising, as demonstrated below. The fact that these advertisements are for the same product almost defies belief.



225. Indeed, JLI and Altria knew that the JUUL device was the *opposite* of a “tool[] to reduce or eliminate” nicotine consumption, given JUULpods’ high nicotine content, as well as the delivery of nicotine to the user. According to the National Institutes of Health, the “amount and speed of nicotine delivery . . . plays a critical role



in the potential for abuse of tobacco products.” JLI designed JUUL to provide the largest amount of nicotine in the fastest way possible. As JLI itself advertises, JUUL delivers nicotine to the bloodstream as much as 2.7 times faster than other e-cigarettes. And, because of JLI’s unique formula of nicotine salts and organic acids, as described above, vaping a JUUL delivers a vapor that is extremely potent in terms of nicotine content but also considerably smoother than cigarettes or even other e-cigarettes. At some point during the coordination between JLI and Altria, but no later than the due-diligence period for Altria’s investment in JLI, JLI provided Altria with a copy of Project Bears findings, described above. Therefore, both JLI and Altria knew through Project Bears, at minimum, that existing smokers prefer a *lower* nicotine content than JLI’s 5% formulation. Although JLI and Altria claimed that “harm reduction” and switching from cigarettes were the true goals, the highly potent 5% nicotine formulation is plainly inconsistent with those goals.

226. Far from being a product used by adults to quit smoking, JUUL has been an initiation product for nonsmokers, particularly and predominantly youth. Researchers found that in 2018, only 7.9% of American adults had ever used USB-shaped vape devices, like JUUL, and only 2% of adults currently used them. And as mentioned above, youth were sixteen times more likely to use the USB-shaped JUUL than adults.

227. Thus, JLI and Altria conspired to deceive the public when they caused the “Make the Switch” campaign to air on television with the misrepresentation that JLI is and has always been focused solely on targeting adult smokers.

228. Another key aspect of JLI and Altria’s early coordination was Altria’s acquisition of shelf space that it would later provide to JLI in order to sustain the exponential growth of underage users of JUUL products. By acquiring shelf space in furtherance of the conspiracy, Altria took steps to ensure that JUUL products would receive prominent placement alongside a top-rated brand of combustible cigarettes, namely, Altria’s Marlboro brand—the best-selling cigarette overall and by far the most popular brand among youth, as described above.

229. In 2018, Altria spent approximately \$100 million to secure shelf space at retailers for e-vapor products—purportedly for the MarkTen e-cigarette that it stopped manufacturing in 2018, although sales data suggests this was not the true reason for purchasing the shelf space: Altria’s short-lived 2018 launch of its pod-based MarkTen Elite put that product in only 25,000 stores, whereas its 2014 launch of the original MarkTen saw the MarkTen reaching 60,000 stores in the first month in the western United States alone. Altria’s payments for shelf space were a mixture of “cash and display fixtures in exchange for a commitment that its e-cigarettes would occupy prime shelf space for at least two years.” But Altria had no need for two years of prominent shelf space while it was engaged in discussions with JLI, was actively scaling back sales of the original MarkTen, and had no true plans for a wide launch of the MarkTen Elite. Instead, when Altria later announced its \$12.8 billion investment in JLI, part of the agreement was that Altria would provide JLI with this premium shelf space.

230. Altria’s purchase of shelf space in 2018 indicates that Altria and JLI were coordinating even before Altria announced its investment in JLI and demonstrates

Altria's commitment to maintaining and expanding JUUL's market, including its youth market. Altria would ensure that JUUL products are placed where kids are most likely to see them and buy them: in retail establishments, next to the most popular cigarette brand for underage users, Marlboro.

#### **4. September–December 2018: Further coordination between JLI and Altria**

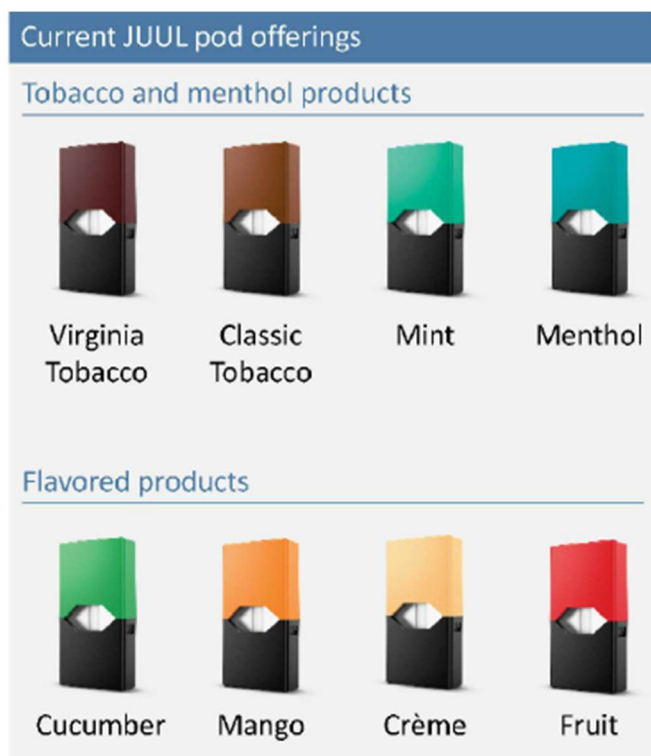
231. Throughout 2018, as public and government scrutiny of JLI's practices intensified, JUUL's market share continued to climb. In the fall of 2018, with pressure mounting, JLI and Altria stepped up the fraudulent practices of their conspiracy in response. Altria and JLI's responses to such scrutiny reflect a coordinated, successful effort to mislead the public, including Alaska residents, and regulators. In reliance on JLI and Altria's fraudulent statements and actions, JUUL remained on the market without an overwhelming public outcry and continued to enjoy massive commercial success in Alaska.

232. On September 25, 2018, then-FDA Commissioner Gottlieb called youth vaping an "epidemic" and sent letters to JLI and Altria demanding each company's plan to reduce youth use, requesting a "detailed plan, including specific timeframes, to address and mitigate widespread use by minors."

233. On October 2, 2018, the FDA raided JLI's headquarters and seized more than one thousand documents related to JLI's sales and marketing practices.

234. On October 16, 2018, JLI presented JLI's "Action Plan" to the FDA in response to then-FDA Commissioner Gottlieb's September 25, 2018 letter. JLI's Action

Plan proposed only partial restrictions on sales of its fruity and sweet flavor pods, asserting the “critical importance of flavored products in helping adult smokers switch.” JLI’s presentation to the FDA also fraudulently characterized its Mint flavor pods as a “tobacco and menthol product,” as opposed to a “flavored product”:



235. As discussed below, JLI presented a similar Action Plan to the public a month later.

236. On October 25, 2018, Altria submitted a letter in response to the FDA’s call to combat the youth vaping epidemic, which it published to the public on its website. Altria claimed to have “serious concerns” about youth access to e-vapor products and admitted that the use of e-cigarettes by youth had risen to “epidemic levels.” Altria agreed to remove its pod-based e-cigarettes from the market and stop selling any flavored traditional e-cigarettes other than tobacco, menthol, and mint. It

acknowledged that “[b]ased on the publicly available information from FDA and others, we believe pod-based products significantly contribute to the rise in youth use of e-vapor products.” Altria further stated that, “Although we do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.” Altria’s letter went on to disclaim a number of practices that it associated with marketing to youth—strategies that were key components of JLI’s marketing strategy. Altria specifically identified the use of flavors that go beyond traditional tobacco flavors, digitally advertising on websites with a large percentage of youth visitors, using social media to promote the brand, allowing online purchases and promotional sign-ups without age verification, advertising e-cigarettes on billboards, advertising with models who appear to be under twenty-five-years old, distributing branded merchandise, and paying celebrities or other third parties to market or use a particular brand’s e-cigarette. Altria also claimed to support “banning vaping in schools” in order to reduce “social access.” Altria ended the letter by committing to “reverse the current use trend among youth.”

237. On a public earnings conference call that same day, Altria repeated many of these statements, describing its decision to remove its pod-based products from the market as one intended to address the dramatic increase in youth e-cigarette use—while knowing that it was only weeks away from publicly announcing a \$12.8 billion investment in JLI, the company that ignited the youth vaping crisis:

In September, the FDA asked several companies, including Altria, to provide plans to address underage use of e-vapor products. We welcomed

FDA's action and *we agreed that the reported rise in underage use of e-vapor products is alarming and immediate action should be taken.*

238. Throughout the call, Willard repeatedly emphasized that Altria's withdrawal of its own pod-based products was intended to address youth use: "[W]e really feel like in light of this dramatic increase in youth usage, withdrawing those products until the PMTA is filed is one path forward." He later said, "And frankly, the actions we took were the actions that we thought we could take that would have the biggest impact on addressing the increased use of e-vapor products by youth . . . we wanted to make a significant contribution to addressing the issue."

239. Willard stated that Altria had concluded that "pod-based products and flavored products" caused the increase in youth use of e-cigarettes:

[A]s we looked at the data that is available in some of the remarks from the FDA, I think we concluded that *the driver of the recent increase we think is pod-based products and flavored products* and so we thought that the two actions that we took addressed the drivers of the increased youth usage here in the short run.

240. Without saying anything about the massive investment it was about to make in JLI's pod-based products, Willard declared that Altria was removing its pod-based products from the market to address youth use, and it would discontinue its cig-a-like flavors other than mint, menthol, and tobacco:

First, Nu Mark will remove from the market MarkTen Elite and Apex by MarkTen pod-based products until these products receive a market order from the FDA or the youth issue is otherwise addressed. Second, for our remaining MarkTen and Green Smoke cig-a-like products, *Nu Mark will sell only tobacco, menthol and mint varieties*. Nu Mark will discontinue the sale of all other flavor variants of our cig-a-like products until these products receive a market order from the FDA or the youth issue is otherwise addressed. Although we don't believe we have a current issue

with youth access or use of our e-vapor products, we are taking this action, because *we don't want to risk contributing to the issue*.

241. Although Altria grouped mint and menthol flavors in the same category as tobacco flavor, it knew from decades of selling tobacco products with these flavors that mint and menthol are popular with youth, no matter what tobacco product, as discussed above.

242. On November 5, 2018, JLI transmitted the results of its Youth Prevalence study to the FDA. Remarkably, JLI's study concluded that only 1.5% of youth had ever used JUUL, and that only 0.8% of youth had used JUUL in the last thirty days. And in contrast to the survey and focus group conducted by McKinsey and DB Research, respectively, JLI's Youth Prevalence study suggested that Mango was four times as popular as Mint. Specifically, the Youth Prevalence study found that 47% of youth who reported vaping using JUUL in the last thirty days used Mango most often, with only about 12% reporting the same for Mint.

243. On November 13, 2018, JLI presented its "Action Plan" to the public, largely identical to what JLI had presented to the FDA in October 2018. JLI claimed that JLI and the FDA "share a common goal—preventing youth from initiating on nicotine." As part of its Action Plan, JLI stated that it had "stopped accepting retail orders for our Mango, Fruit, Creme, and Cucumber JUUL pods" to retail stores, and that these flavors would only be available for sale on its website. JLI also announced its intent to restrict online purchases to adults age twenty-one and over and shut down its social media accounts. However, JLI continued to sell Mint and Menthol flavor pods in

retail stores. Through both JLI's October 2018 presentation to the FDA and JLI's Action Plan shared with the public in November 2018, the JLI fraudulently characterized Mint as a "tobacco and menthol-based product," as opposed to a "flavored product," suggesting that it was a product for adult smokers.

244. But JLI and Altria knew that non-smoking youth liked Mint as much as any flavor. As internal documents confirm, Mint's success was "not because it's a menthol/a familiar tobacco flavor but because it is the best JUUL flavor profile on multiple levels." JLI knew there was "No Implied Relationship Between Mint & Menthol," and "former-menthol smokers are not the driver behind the popularity of mint flavored JUULpods." As alleged in a whistleblower complaint, JLI's then-CEO told his employees that "You need to have an IQ of 5 to know that *when customers don't find mango they buy mint.*"

245. As predicted, JLI's sale of Mint pods rose from one third of its sales in September 2018 to approximately two thirds in February 2019. JLI's 2019 revenues were estimated to be between \$2.36 billion and \$3.4 billion, and Mint pods accounted for approximately 75% of JLI's total 2019 sales.

246. On December 7, 2018, Altria discontinued the production and distribution of all MarkTen and Green Smoke vapor products. "We remain committed to being the leader in providing adult smokers innovative alternative products that reduce risk, including e-vapor," Willard explained in a statement to the press. "We do not see a path to leadership with these particular products and believe that now is the time to refocus our resources."



## 5. Publicly announcing the ties between JLI and Altria

247. On December 20, 2018, Altria and JLI publicly announced the collaboration that had been taking place, on information and belief, since late 2017. In the largest equity investment in United States history, Altria invested \$12.8 billion in JLI. This investment was made through Altria Enterprises LLC. The announcement came less than two months after Altria told the FDA that it “believe[s] that pod-based products significantly contribute to the rise in youth use of e-vapor products” and that it accordingly would be removing its pod-based products from the market.

248. In making this decision to place profits over public health, Altria considered that the e-cigarette industry would see significant year-over-year growth in the near term, and that “JUUL continu[es] to be a growth driver for the e-vapor category.” And although Altria claimed its investment had an altruistic motive—“we believed the transaction would give Altria an unprecedented opportunity to share our experience in underage tobacco prevention with JUUL to help address youth usage”—in reality, Altria has provided *no* underage / youth prevention services to JLI.

249. Altria admitted that minors were using JUUL products and that “underage use of e-cigarette product is a problem.” But Altria would not have made such a sizable investment if it did not intend to grow JUUL’s already enormous market even more. In fact, Altria said as much when announcing its infusion of cash, explaining that its investment in JLI “enhances future growth prospects” and committing to applying “its logistics and distribution experience to help JUUL expand its reach and efficiency.” Both Altria Client Services and Altria Group Distribution Company have been

instrumental in this mission to assist JLI and grow JLI's market share. According to Willard, Altria was "excited to support JUUL's highly-talented team and offer [Altria's] best-in-class services to build on their tremendous success." In deciding to make a huge investment in JLI, Altria took into account that the e-cigarette industry would see significant year-over-year growth in the near term, and that "JUUL continu[es] to be a growth driver for the e-vapor category."

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

251. On a December 20, 2018 call, Altria emphasized the profit opportunity from its investment, noting Altria's sales organization covering approximately 230,000 stores and its "deep regulatory affairs expertise," while simultaneously characterizing it as an opportunity for harm reduction and reducing youth e-cigarette use. Willard made the following statements:

We believe the investment in Juul represents *the fastest and most sustainable opportunity to generate the most significant income in the e-vapor category*. The geo-economics today are attractive and we expect our strong distribution infrastructure to help accelerate their financial performance.

We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction. Through Juul, we are making the biggest investment in our history toward that goal.

Altria and Juul are committed to preventing kids from using any tobacco products. *As recent studies have made clear, youth vaping is a serious problem which both Altria and Juul are committed to solve.*

Together Juul and Altria will work to prevent youth usage through their announced initiatives, further technological developments, and increased advocacy for raising the minimum age of purchase for all tobacco products to 21.

252. Willard went so far as to characterize Altria's investment in JLI as the culmination of decades of pursuit of harm reduction for the sake of smokers' health and wellbeing:

Almost my entire career, we have believed that our business would be better in the long term if we could offer harm reduced products that would represent attractive alternatives to our adult cigarette smokers to switch. And we have invested billions of dollars in it and lots of effort. And ultimately until December this year, we really didn't have the product portfolio to fully achieve our harm reduction aspiration. And the opportunity to invest in JUUL, I think, really makes that harm reduction aspiration a reality.

253. During Altria's January 31, 2019 Earnings Call, Altria explained that it expected the meteoric growth in JUUL sales in the U.S. to be replicated abroad:

*JUUL's 2018 growth was quite remarkable.* JUUL had net revenues in excess of \$1 billion in 2018, up from approximately \$200 million in 2017. JUUL overwhelmingly reaccelerated the U.S. e-vapor category growth rate, growing JUUL's volume by nearly 600% to over 450 million refill kit pods. . .

. . . We expect the JUUL product features that have driven *JUUL's success in switching adult smokers in the U.S.* to strongly appeal to international adult cigarette smokers.

254. These statements were misleading: both JLI and Altria knew that JUUL's "remarkable" 2018 growth was not due to switching adult smokers.

255. Willard emphasized that Altria expects to reap the benefits of JLI's expansion to international markets: "Ultimately, we expect the international revenue and income opportunity to end up being as large as or larger than the U.S. opportunity. Our 35% investment was based on a deep strategic, operational and financial analysis of JUUL and the marketplace." But he also explained that Altria expected continued growth even in the U.S., with "a U.S. e-vapor category that grows volume between 15% to 20% annually" and "JUUL continuing to be the primary growth driver for the e-vapor category"—statements which are inconsistent with the idea of eliminating the underage and youth non-smoker sales that had driven JUUL to its position of dominance:

Clearly, we look at this opportunity over the long term, but for context, let us provide a view five years out. Some of our independently developed key assumptions over the next five years that informed that analysis include: *a U.S. e-vapor category that grows volume between 15% to 20% annually; JUUL continuing to be the primary growth driver for the e-vapor category*; attractive JUUL operating margins that achieve current cigarette-like margins due to the benefits of increasing scale and automation in the supply chain; international revenues that equal domestic revenues by 2023; and international margins that approach current international cigarette margins. Under our assumptions, our investment in JUUL would generate an after-tax return exceeding our weighted average cost of capital in 2023.

Additionally, with five-year e-vapor category volume growth in the range of 15% to 20% annually, we would expect the U.S. cigarette category volume decline rate to be consistent with the decline rate estimate of 4% to 5%. *I'll remind you that in 2018 with e-vapor category volume growth of 35%, the cigarette category decline rate was 4.5%*, including half of a percent headwind from gas prices. Combined with the earnings and cash generation engine of our core tobacco business, we believe this investment in JUUL will support consistent returns over the long term by providing

Altria with a significant stake in the fastest-growing -- in the fast-growing e-vapor category.

***And I think we agree with the other JUUL investors that its growth prospects are so strong that now is the time to invest in—and ultimately driving top-line growth.***

256. Later in the call, Willard referred to JUUL's growth as "unique," "first of its kind," and "dramatic":

I have to point out that ***JUUL's growth and success in the U.S. market last year was unique and first of its kind*** compared to other tobacco product successes both in the U.S. and overseas. ***I mean, the growth rate was dramatic, it represented the entire growth of e-vapor for the year,*** and it dramatically reaccelerated the growth of e-vapor.

257. Such "dramatic" growth was, as Altria well knew, due to the product's viral popularity among teens. Willard briefly acknowledged the youth vaping crisis, stating, "Briefly touching on the regulatory environment, the FDA and many others are concerned about an epidemic of youth e-vapor usage. We share those concerns. This is an issue that we and others in the industry must continue to address aggressively and promptly.

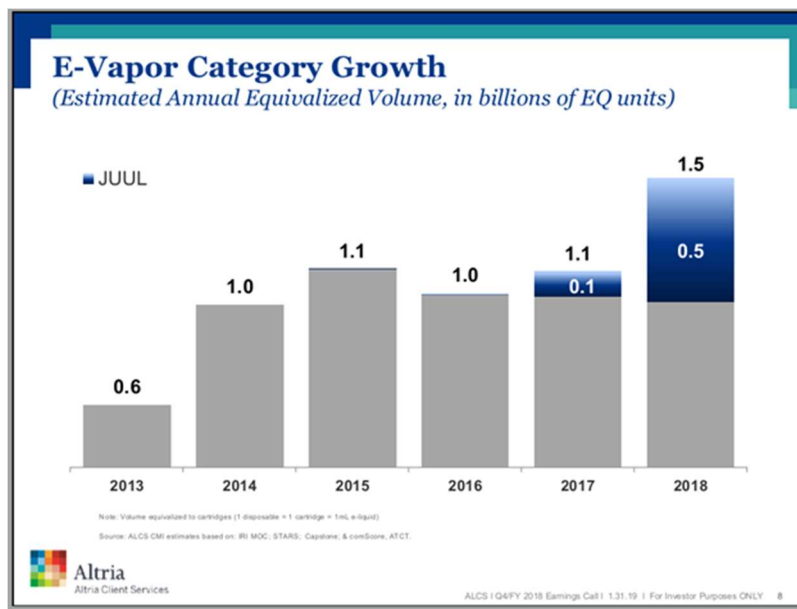
258. In response to questions from an analyst at Morgan Stanley, Willard said that even if there is "a slowdown in growth in the next year or two" due to regulatory actions aimed at reducing youth use, Altria expects overall growth in JUUL sales over the next five years:

I think with regard to the midterm forecast, one of the reasons why we selected a five-year period to estimate the growth rate of the e-vapor category and JUUL is a significant driver of that growth is, I think, there is a bit of uncertainty as to whether or not there'll be a slowdown in growth in the next year or two as the industry works together with the FDA to drive down youth usage. And so I think that is to be determined.

But I think even taking into account the fact that there could be some impact in the short run, I think we're confident in the long-term growth rate that we forecasted.

259. Two different analysts on the call quizzed Altria about the math behind its projections—how was it that Altria projected 15% to 20% growth in the United States e-vapor category, with JUUL as the primary driver of growth in the category, while the cigarette market decline was only predicted to be 4% to 5% annually, and JUUL's supposed customer base was primarily smokers making the switch from cigarettes to vaping? Specifically, an analyst from Citi asked Altria about the slide shown below, representing JUUL's growth relative to the growth of the e-vapor category as a whole:

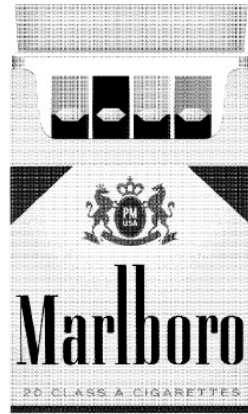
So if I take what you've said about the impact basically with growth of JUUL—this is Slide 8, and equate that to cigarettes, it looks like the JUUL has grown about 0.4 billion units, which equates essentially to a 4% market share growth, and that's true for the whole e-cigarettes or e-vapor category. And yet you've also said that the impact of the growth of e-vapor on cigarettes is about 1.3%, 1.4%. So is there a right way of thinking about it, where basically two-thirds of vapor growth is incremental? Is that how we should think about it? And, I guess, if that is the right way of thinking about it, *where is that increment coming from?* Do you think it's mostly coming from people in their 20s or what?



260. Willard did not offer a full explanation but responded by saying the increase in the vapor growth category was coming in part from smokeless tobacco users and cigar smokers. Given the forecasted dramatic growth in vaping and the relatively modest consumer base for smokeless tobacco and cigar smokers, this explanation is unconvincing at best.

261. While JLI and Altria remain distinct corporate entities, following its equity investment in JLI, Altria and JLI became even further intertwined, including through contractual relationships, financial ties, and continuing coordination of activities.

262. JLI and Altria also agreed to cross-market JUUL with Marlboro cigarettes, a move that creates the appearance of marketing JUUL to existing smokers. For example, Altria offered coupons for JUUL starter kits inside packs of Marlboro cigarettes.



Insert Reverse



Insert Front



Insert Back



263. These coupons, however, were more for show than anything else. In response to analyst questions about the JUUL coupons in Marlboro packs, Willard explained that Altria did not actually expect these coupons to cut into Marlboro sales, for two reasons. First, he said that cigarette smokers were already aware of JUUL:

So I think with regard to your question about putting JUUL inserts on our cigarette packs . . . *theoretically, I guess, it could result in a bit more volume coming out of Marlboro. But I think that that is unlikely to be the case.* And I say that for really two reasons. I think there's already very high awareness among all cigarette -- adult cigarette smokers and, frankly, all Marlboro smokers about the availability of JUUL. So I think that a lot



of that awareness has already been established. I wouldn't expect a big incremental uptick from those inserts.

264. The second reason Willard gave is that JUUL is popular with younger customers, although he was careful to reference that group as twenty-one to twenty-nine-year-olds:

And then secondly, *I would point out that I think JUUL tends to get more of its growth from the 21- to 29-year-old cigarette smoker than it does from the 30-plus cigarette smoker.* And if you think about it, I think, as we've communicated in the past, Marlboro's share of those 21- to 29-year-old smokers is about equal to its overall share. But there are several other cigarette brands that are overdeveloped among 21- to 29-year olds, such as Newport, Camel or Natural American Spirit that, frankly, might actually give up more volume on a relative basis than Marlboro.

265. By including JUUL coupons in Marlboro packs, JLI and Altria created the impression of marketing JUUL to existing smokers, to "Make the Switch." But neither Altria nor JLI expect a significant migration of Marlboro customers to JUUL. As Altria and JLI know, and as reflected by the analysts' inquiries about the growth of the e-vapor category compared to the decline in the cigarette category, JUUL sales depend on nonsmokers.

266. Altria also, through its provision of "services," actively sought to assist JLI in staving off regulation and keeping its products on the market and available to kids and the public at large and allow it to remain accessible to Alaska youth. Altria is and was working to actively help run JLI's operations and expand sales of JUUL products. Altria's investment brings legal and regulatory benefits to JLI, by helping to navigate the regulatory waters and FDA pressure while continuing to deceive the public

about JLI's youth marketing. Altria's services include "[p]roviding regulatory affairs consulting and related services to Juul as it prepares its PMTA application."

267. From its decades of experience dealing with regulators, Altria knows the critical importance of influence in Washington, D.C. Altria "has a potent lobbying network in Washington and around the country," and a significant priority for JLI and Altria is expanding JLI's connections to Washington insiders. In September 2018, for example, Andrew Perraut joined JLI as the Deputy Director of Public Policy; Perraut was previously a policy analyst for the White House Office of Information and Regulatory Affairs ("OIRA") and the lead for all regulatory issues for tobacco for six years.

268. Altria's lobbying prowess in the area of e-cigarettes was on display in the context of the FDA's deeming rule. First, notwithstanding Altria's professed concern about flavors attracting youth customers, Altria submitted comments in August 2014 in response to the proposed rule opposing the regulation of flavors. Altria asserted that restrictions could result in more illicit sales, and that adults also liked fruity and sweet e-cigarette flavors. Then, in April 2015, Altria distributed draft legislation on Capitol Hill that would eliminate the new requirement that most e-cigarettes already on sale in the United States be evaluated retroactively to determine if they are "appropriate for the protection of public health." Altria delivered its proposal, *F.D.A. Deeming Clarification Act of 2015*, to Representative Tom Cole of Oklahoma, who introduced the bill two weeks later *using Altria's draft verbatim. Seventy other representatives signed on to Altria's legislation.*

269. Altria brings this lobbying muscle to its partnership with JLI. Vince Willmore, a spokesman for the Campaign for Tobacco-Free Kids, which has been involved in many state lobbying battles, said, “It’s hard to say where Altria ends and Juul begins.” Since JLI and Altria joined forces, JLI’s spending on lobbying has risen significantly. JLI spent \$4.28 million on lobbying in 2019, compared to \$1.64 million in 2018. Successful lobbying efforts directly further Altria and JLI’s goal of deceiving the public by preventing regulators from drawing public attention to JLI’s prior youth marketing.

270. In addition, Altria’s arrangement with JLI gives JLI greater access to retail opportunities. JUUL products have been in 90,000 retail outlets in the United States, while Altria reaches 230,000 outlets in the United States. Altria also brought its logistics and distribution experience. Only after increasing public scrutiny, in January 2020, Altria announced that it would limit its support to regulatory efforts beginning in March 2020.

271. Beyond the services Altria provides for JLI, Altria and JLI share leadership. Altria’s investment allows it to appoint one third of JLI’s Board. In addition, by October 2019, JLI’s CEO would be replaced by career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as the vice president and chief growth officer of Defendant Altria Client Services, overseeing the company’s work, including digital marketing, packaging design and innovation, product development, and safety, health, and environmental affairs. Crosthwaite knows Big Tobacco’s playbook all too well, having previously served as the president and CEO of Phillip

Morris USA, the vice president and general manager at Marlboro—the leading cigarette brand among youth. In addition, Joe Murillo, who headed regulatory affairs for Altria and previously ran Altria’s e-cigarette business, Defendant Nu Mark, is now JLI’s Chief Regulatory Officer.

272. The relationship between JLI and Altria did not go unnoticed. By February 2019, the FDA became aware that it had been deceived by JLI and Altria. On February 6, 2019, then-FDA Commissioner Gottlieb wrote JLI and Altria demanding in-person meetings, excoriating Altria for its “newly announced plans with JUUL [that] *contradict the commitments you made to the FDA*” in a prior meeting and Willard’s October 25, 2018 letter to the FDA. Gottlieb’s letter to JLI alleged that JLI’s conduct was “inconsistent with its previous representations to the FDA.”

273. The FDA demanded Altria be prepared to explain itself regarding its “plans to stop marketing e-cigarettes and to address the crisis of youth use of e-cigarettes.” Commissioner Gottlieb told Altria that “deeply concerning data” shows that “youth use of JUUL represents a significant proportion of overall use of e-cigarette products by children” and despite any alleged steps the companies had taken to address the issue he “ha[d] no reason to believe these youth patterns of use are abating in the near term, and they certainly do not appear to be reversing.”

274. JLI and Altria met with Gottlieb in March 2019 in a meeting the then-FDA Commissioner described as “difficult.” Gottlieb “did not come away with any evidence that public health concerns drove Altria’s decision to invest in JLI, and instead

said it looked like a business decision. According to reporting by *The New York Times*, Gottlieb angrily criticized JLI's lobbying of Congress and the White House, stating:

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

275. But just a week after the "difficult" meeting with JLI and Altria, Gottlieb posted a statement about the FDA's new e-cigarette policy, proposing to ban all flavors *except* "tobacco-, mint- and menthol-flavored products." He cited the strong support of President Trump (whose administration JLI had aggressively lobbied), and also cited "recent evidence indicat[ing] that mint- and menthol-flavored ENDS products are preferred more by adults than minors." JLI and Altria's success in getting the FDA to repeat their fraudulent characterization of Mint flavor pods as a traditional tobacco flavor not popular with youth was crucial to maintaining sales of JUULpods. Just a few weeks later, Gottlieb resigned from his position as FDA Commissioner.

276. JLI and Altria's cover-up activities are ongoing. JLI has recently taken another page out of Big Tobacco's playbook, in working to manufacture a "grassroots" campaign of adult JUUL users—what some call an "Astroturf campaign." In June 2019, JLI retained Locust Street, another DC-based political and communications consultant, and what some have called a "political dark arts" firm. JLI hired Locust Street to sway public opinion in New York in response to the state's contemplated ban on flavored e-cigarettes. As part of this effort, Locust Street contacted adult JUUL customers by phone and/or email to encourage them to share their "switch story":

My name is [redacted] and I am an Outreach Specialist with Locust Street Community Solutions. I'm reaching out to you on behalf of Juul Labs, who has contracted with Locust Street to support its services and collect success stories from New Yorkers who have made the switch to Juul from combustible cigarettes. We received your information as a Juul user from Juul Labs and we are only using this contact information to support our services on behalf of the company and to discuss your "switch story."

I attempted to reach you by phone, but I'm emailing in case this is an easier way to get in touch. I hope that we can talk to discuss your experience with Juul products.

Please feel free to give me a call back at [redacted] or reply to this email if you'd like to share your story!

277. This sort of fake "grassroots" campaign was a technique utilized by Big Tobacco in decades past to deceive the public. According to Sarah Milov, an assistant professor of history at the University of Virginia and the author of *The Cigarette: A Political History*, Big Tobacco companies "pioneered techniques of manufacturing popular outrage to proposed regulations on cigarettes because grassroots anti-smoking campaigns were beginning to gain traction in the 1970s."

278. JLI and Altria's "Make the Switch" campaign was also fraudulent because, despite what it represented to the public, JLI does not have authority to claim that JUUL is healthier than cigarettes. On September 9, 2019, the FDA warned JLI that it had violated federal law by making unauthorized representations that JUUL products are safer than cigarettes.

279. On October 17, 2019, JLI announced that it would suspend the sale of certain JUUL flavors online. However, this likely had minimal impact given that JLI was continuing to sell the mint and menthol flavors, which both JLI and Altria knew to

be popular flavors with youth, as discussed above. Recent research confirmed that 60% of high school e-cigarette users prefer mint and menthol flavors. As former New York City Mayor Mike Bloomberg stated, “JUUL’s decision to keep mint- and menthol-flavored e-cigarettes on the shelves is a page right out of the tobacco industry’s playbook.” Almost a month later, JLI announced that it would stop selling Mint, but it continues to sell its Menthol JUUL products.

280. JLI’s purported attempts to limit the sale of flavored JUUL products have not been effective, thereby demonstrating that JLI’s so-called remedial measures have been about swaying public opinion and not about preventing youth access to JUUL. On November 4, 2019, *VICE Magazine* reported that when it visited more than twenty stores in New York City, all but two of the stores selling JUUL products had at least one of the banned flavors available in stores, including Mango. Some of these stores were displaying these products even after JLI announced that it would suspend the sale of these flavors online. According to one bodega owner, the last time a JLI representative came into his store, flavored pods including Mango were on display, but the representative said nothing about them. Photographs taken for that article showed both Mango-flavored JUUL pods still being sold as recently as mid-October 2019.

## **I. The Cost of JUUL’s Success**

281. JLI’s success in addicting a new generation to nicotine, and Altria’s support to insulate JLI from a public outcry that could have mitigated this harm, have come at a terrible cost to public health. On December 28, 2018, the University of Michigan’s National Adolescent Drug Trends for 2018 reported that increases in

adolescent e-cigarette use from 2017 to 2018 were the “largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S.”

282. The percentage of twelfth grade students who reported consuming nicotine almost doubled between 2017 and 2018, rising from 11% to 20.9%. This increase was “twice as large as the previous record for largest-ever increase among past 30-day outcomes in twelfth grade.”

283. By 2018 approximately 3.6 million middle and high school students were consuming e-cigarettes regularly, and one in five twelfth graders reported using an e-cigarette containing nicotine in the last thirty days. As of late 2019, five million students reported active use of e-cigarettes, with 27.5% of high school students and 10.5% of middle school students using them within the last thirty days and with most youth reporting JUUL as their usual brand.

284. The Secretary of HHS 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].” Then-FDA Commissioner Gottlieb described the increase in e-cigarette consumption as an “almost ubiquitous—and dangerous—trend” that is responsible for an “epidemic” of nicotine use among teenagers. The rapid—indeed infectious—adoption of e-cigarettes “reverse[s] years of favorable trends in our nation’s fight to prevent youth addiction to tobacco products.” CDC Director Robert Redfield agreed, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.” Then-



Commissioner Gottlieb identified the two primary forces driving the epidemic as “youth appeal and youth access to flavored tobacco products.”

285. Within days of the FDA’s declaration of an epidemic, Surgeon General Dr. Jerome Adams also warned that the “epidemic of youth e-cigarette use” could condemn a generation to “a lifetime of nicotine addiction and associated health risks.” The Surgeon General’s 2018 Advisory states that JUUL, with its combination of non-irritating vapor and potent nicotine hit, “is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine . . . and also could make it easier to progress to regular e-cigarette use and nicotine dependence.”

286. As described above, JUUL uses patented nicotine salts rather than freebase nicotine. Between 2013 and 2018, the average nicotine concentration in e-cigarettes more than doubled.

287. The increased nicotine exposure facilitated by JUUL and similar vape devices has serious health consequences. The ease of use and “smoothness” strip away external inhibitors and enable extreme levels of unfettered use. Using JLI’s own calculations, consuming two JUULpods in a day is the equivalent of consuming two to four packs of cigarettes a day. In this way, JLI has not only cultivated a new generation of e-cigarette smokers, but it has also accelerated a new style of smoking—vaping—that is more nicotine-saturated than ever before. Kids are consuming so much nicotine that they are experiencing symptoms of nicotine toxicity, including headaches, nausea, sweating, and dizziness, and they have even coined a term for it: “nic sick.” As one high school student explained to *CBS News*, it “kinda seems like a really bad flu, like, just

out of nowhere. Your face goes pale, you start throwing up and stuff, and you just feel horrible.”

288. Increased rates and duration of vaping lead to greater overall exposure to nicotine. Nicotine is a highly addictive neurotoxin. Nicotine’s addictive properties are similar to heroin and cocaine. Nicotine fosters addiction through the brain’s “reward” pathway. Both a stimulant and a relaxant, nicotine affects the central nervous system; increases blood pressure, pulse, and metabolic rate; constricts blood vessels of the heart and skin; and causes muscle relaxation. Long-term exposure to nicotine causes upregulation—an increase in the number of these high-affinity nicotinic receptors in the brain. When nicotine binds to these receptors it triggers a series of physiological effects in the user that are perceived as a “buzz” that includes pleasure, happiness, arousal, and relaxation of stress and anxiety. With regular nicotine use, however, these feelings diminish, and the user must consume increasing amounts of nicotine to achieve the same effects.

289. Youth are particularly vulnerable to nicotine addiction, as Defendants know well. As described by the Surgeon General, “Tobacco use is a pediatric epidemic.” Nine out of ten smokers begin by age eighteen and 80% who begin as teens will smoke into adulthood.

290. The above statements apply equally, if not more so, to e-cigarettes. Further, the Surgeon General has explained how the nicotine in e-cigarettes affects the developing brain and can addict kids more easily than adults: “Until about age 25, the brain is still growing. Each time a new memory is created, or a new skill is learned,

stronger connections—or synapses—are built between brain cells. Young people’s brains build synapses faster than adult brains. Because addiction is a form of learning, adolescents can get addicted more easily than adults.”

291. Studies confirm that exposure to nicotine as a teen—even minimal exposure—biologically primes the brain for addiction and greatly increases likelihood of dependence on nicotine as well as other substances later in life. In a study done on mice, even “very brief, low-dose exposure to nicotine in early adolescence increases the rewarding properties of other drugs, including alcohol, cocaine, methamphetamine—and these are long-term changes.” E-cigarette use also puts adolescents at increased risk for cigarette smoking. Compared to adolescents who do not use e-cigarettes, those who do are four times more likely to begin smoking cigarettes.

292. The use of flavors only amplifies vape devices’ addictive qualities. Research done by Nii Addy, Associate Professor of psychiatry and cellular and molecular physiology at the Yale University School of Medicine, found that “sweet flavors can make the nicotine more palatable . . . but also act in the brain to increase nicotine taking.” This effect is especially troubling for teenage brains, which are more sensitive than adult brains to rewards. According to University of Pennsylvania psychologist Janet Audrain-McGovern, research shows that “if the first e-cigarette you used was flavored, then you’re more likely to go on and use an e-cigarette again.”

293. As Dr. Winickoff explained in his testimony before Congress:

Nicotine 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.”

294. 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 been enough research on youth tobacco cessation strategies; and most of the pharmacological therapies approved for adults have been shown to be ineffective or only marginally effective in adolescents.

295. Research indicates that daily e-cigarette use is much more likely to continue than daily cigarette smoking. Out of surveyed students who reported ever using cigarettes daily, only 17% indicated that they remained daily smokers. Out of surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This data demonstrates both that e-cigarette use in teens is very persistent, a result consistent with the addictiveness of these products and the difficulty youth have in trying to quit.

296. The effects of nicotine exposure on the brain of youth and young adults include not only addiction, priming for use of other addictive substances, but also reduced impulse control, deficits in attention and cognition, and mood disorders. A psychoactive substance that targets brain areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting consequences for cognitive ability, mental health, and even personality.” Animal researchers from Yale

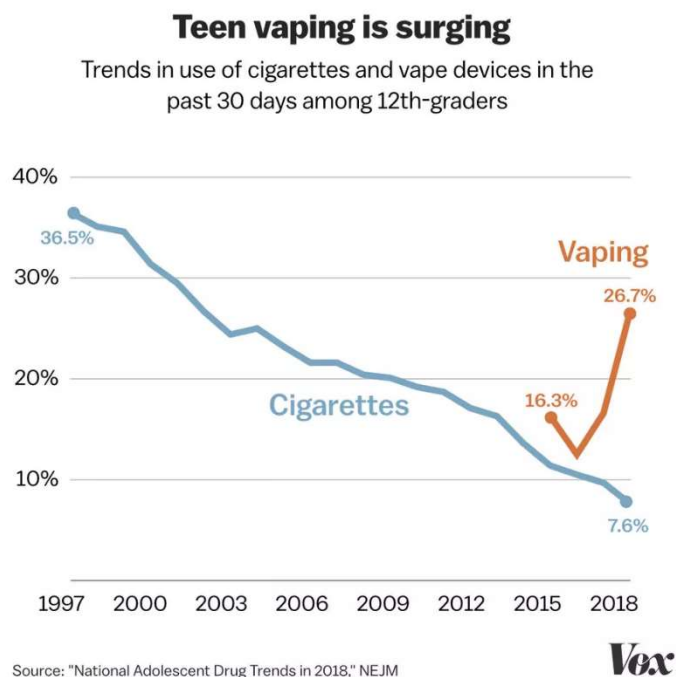
University School of Medicine found that vaping during adolescence can lead to long-term brain changes, like attention deficit hyperactivity disorder.

297. The dangerous and destructive nature of nicotine is no recent discovery. As a key ingredient in tobacco products, the drug and its deleterious effects have been the subject of scientific research and public health warnings for decades. Nicotine causes cardiovascular, reproductive, and immunosuppressive problems with devastating effects. In 2014, the Surgeon General reported that nicotine addiction is the “fundamental reason” that individuals persist in using tobacco products, and this persistent tobacco use contributes to millions of needless deaths and many diseases, including diseases that affect the heart and blood vessels (cardiovascular disease), lung diseases (chronic obstructive pulmonary disease (“COPD”) and lung cancer), cancer almost anywhere in the body, and birth defects. Part of the reason the national decline in cigarette use in recent years was such a victory for public health was because there was a corresponding decline in youth exposure to nicotine. From 2000 to 2017, the smoking rate among high school students fell by 73%.

298. In June 2014, the CDC reported that “by achieving a teen smoking rate of 15.7 percent, the United States has met its national Healthy People 2020 objective of reducing adolescent cigarette use to 16 percent or less.” The Surgeon General reported in 2014 that:

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

299. That trend has 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. But there was no increase in the use of cigarettes, cigars, or hookahs during that same time period. 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 increased 78% in just one year. This drastic reversal caused the CDC to describe youth vaping an “epidemic.”



300. The teen vaping epidemic has had, and will continue to have, significant costs for individual users and society alike. Nicotine addiction alone carries significant health consequences, and these are exacerbated when adolescents are involved. Adolescent nicotine addiction leads to memory and attention problems, and increases

chances of addiction later in life, all of which will continue to have long-lasting impacts on society.

301. Science is also beginning to show that e-cigarettes have the potential to cause even more distinct health risks and costs. E-cigarettes were initially considered to be a safer alternative to cigarettes, but recent studies done on rats and mice have demonstrated results that they are “as damaging to pulmonary structures as traditional tobacco cigarettes.” Mice exposed to e-cigarette fluids containing nicotine experienced effects that are associated with chronic obstructive pulmonary disease, such as cytokine expression, airway hyper-reactivity, and lung tissue destruction. The use of e-cigarettes also caused inflammation in mice and impaired their immune defenses against various bacterial and viral infections. Moreover, a recent study that monitored 32,000 adults in the United States for three years found that e-cigarette users were 30% more likely to develop a chronic lung disease, such as asthma, bronchitis, and emphysema, than people who did not smoke either e-cigarettes or traditional cigarettes.

302. It is not just these consequences that raise public health concerns. The CDC and FDA recently investigated an outbreak of e-cigarette, or vaping, product use-associated lung injuries, known as EVALI. As of February 18, 2020, there were over 2,800 reported cases of hospitalization due to EVALI in all fifty states and sixty-eight deaths had been confirmed by the CDC. While public health officials believe this outbreak is associated with vitamin E acetate, which is often used in connection with vaping marijuana, 14% of patients have reported vaping nicotine only.

303. Many teenagers are simply unaware of these risks, an ignorance that Defendants have capitalized on. According to Dr. Winickoff, many of his patients believe vaping 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 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 flavor they copy. Even the term vapor calls to mind harmless water vapor. There is no water in these products.

#### **J. Vaping in Schools**

304. In addition to severe health consequences, widespread vaping and “juuling” has placed severe burdens on society and schools in particular. It is not an overstatement to say that JUUL has changed the educational experience of students across the nation. As one vape shop manager told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”

305. The JUUL youth addiction epidemic spread rapidly across high schools in the United States. JUUL surged in popularity, largely through social media networks, and created patterns of youth usage, illegal youth transactions, and addiction, that are consistent with this account from Reddit in 2017:

Between classes the big bathroom in my school averages 20-25 kids, and 5-10 JUULs. Kids usually will give you a dollar for a JUUL rip if you don’t know them, if you want to buy a pod for 5\$ you just head into the bathroom after lunch. We call the kids in there between every class begging for rips ‘JUUL fiends.’ Pod boys are the freshman that say ‘can I put my pod in ur juul?’ and are in there every block. I myself spent about 180\$ on mango pods and bought out a store, and sold these pods for 10\$ a pod, making myself an absolutely massive profit in literally 9 days. Given



because I'm 18 with a car and that's the tobacco age around here, I always get offers to get pod runs or juuls for kids. people even understand the best system to get a head rush in your 2 minutes between classes, is all the juuls at once. So someone yells "GIVE ME ALL THE JUULS" and 3-7 are passed around, two hits each. This saves us all juice, and gives you a massive head rush. Kids also scratch logos and words onto their juuls to make i[t] their own, every day you can find the pod covers in my student parking lot. I know this sounds exaggerated, but with a school with 1400 kids near the city and JUULs being perceived as popular, it's truly fascinating what can happen.

306. In response to the post above, several others reported similar experiences:

- a. "[T]his is the exact same thing that happens at my school, we call [JUUL fiends] the same thing, kind of scary how similar it is."
- b. "Same thing at my school. JUUL fiend is a term too."
- c. "Yeah nicotine addiction has become a huge problem in my high school because of juuls even the teachers know what they are."
- d. "[S]ame [expletive] at my school except more secretive because it's a private school. It's crazy. Kids hit in class, we hit 3-5 at once, and everyone calls each other a juul fiend or just a fiend. Funny how similar it all is."
- e. "[T]he same [expletive] is happening in my school. kids that vaped were called [expletive] for the longest time, that all changed now."
- f. "Made an account to say that it's exactly the same way in my school! LOL. I'm from California and I think I know over 40 kids that have it here just in my school. We do it in the bathrooms, at lunch etc. LMAO. 'Do you have a pod man?'"
- g. "It's the same at my school and just about every other school in Colorado."
- h. "2 months into this school year, my high school made a newspaper article about the 'JUUL epidemic.'"
- i. "Wow do you go to high school in Kansas because this sounds EXACTLY like my school. I'll go into a different

bathroom 4 times a day and there will be kids in there ripping JUUL's in every single one.”.

- j. “At my high school towards the end of lunch everyone goes to the bathroom for what we call a ‘juul party.’ People bring juuls, phixes, etc. It’s actually a great bonding experience because freshman can actually relate to some upperclassmen and talk about vaping.”
- k. “To everyone thinking that this is just in certain states, it’s not. This is a nationwide trend right now. I’ve seen it myself. If you have one you’re instantly insanely popular. Everyone from the high-achievers to the kids who use to say ‘e-cigs are for [expletives]’ are using the juul. It’s a craze. I love it, I’ve made an insane amount of money. It’s something that has swept through our age group and has truly taken over. And it happened almost overnight.”

307. E-cigarette use has completely changed school bathrooms—now known as “the Juul room.” As one high school student explained, “it’s just a cloud.” The ubiquity of e-cigarette use in high school bathrooms has generated numerous online spoofs about “the juul room.”

308. As another high school student explained, “You can pull it out, you can have it anywhere. To smoke a cigarette you have to hit the bus stop. You want a Juul you hit the bathroom, it’s easy.” He added that JLI “market[s] it as an alternative to cigarettes but really it’s a bunch of kids who have never picked up a pack and they’re starting their nicotine addiction there.” Students at another high school stated that classmates had “set off the fire alarm four times last year from vaping in the bathrooms [at school],” adding that it is commonplace to see students vaping in school bathrooms or in the parking lot.

309. Such rampant vapor product use has effectively added another category to teachers' and school administrators' job descriptions; many now receive special training to respond to the various problems that vaping presents, both in and out of the classroom. A national survey of middle schools and high schools found that 43.3% of schools have had to implement not only an e-cigarette policy but a e-cigarette-specific policy. Participants in the survey reported multiple barriers to enforcing these policies, including the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive nature of the product.

310. Across the United States, schools have had to divert resources and administrators have had to go to extreme lengths to respond to the ever-growing number of students vaping on school grounds. According to the *Truth Initiative*, more than 40% of all teachers and administrators reported that their school uses camera surveillance near the school's restroom, almost half (46%) reported camera surveillance elsewhere in the school, and 23% reported using assigned teachers for restroom surveillance. Some schools have responded by removing bathroom doors or even shutting bathrooms down, and schools have banned flash drives to avoid any confusion between flash drives and JUUL devices. Schools have also paid thousands of dollars to install special monitors to detect vaping, which they say is a small price to pay compared to the plumbing repairs otherwise spent as a result of students flushing vaping paraphernalia down toilets. Other school districts have sought state grant money to create new positions for tobacco prevention supervisors, who get phone alerts when vape smoke is detected in bathrooms.

311. Many schools have also shifted their disciplinary policies in order to effectively address the youth vaping epidemic. Rather than immediately suspending students for a first offense, school districts have created anti-vaping curricula which students are required to follow in sessions held outside of normal school hours, including on Saturdays. Teachers prepare lessons and study materials for these sessions with information on the marketing and health dangers of vaping—extra work which requires teachers to work atypical hours early in the mornings and on weekends. Some schools will increase their drug testing budget to include random nicotine tests for students before they join extracurricular activities. Under this drug-testing protocol, first offenders will undergo drug and alcohol educational programming; second and third offenders will be forced to sit out from extracurriculars and attend substance abuse counseling.

312. JUUL’s prevalence in schools is not a coincidence; JLI actively sought to enter school campuses. By June 2017, JLI began developing a “youth prevention program[,]” through which JLI sent corporate representatives into schools to present what were essentially advertising campaigns for JUUL products.

313. The U.S. House Subcommittee on Economic and Consumer Policy (“Subcommittee”) conducted a months-long investigation of JLI, including reviewing tens of thousands of internal documents, and concluded that JLI “deliberately targeted children in order to become the nation’s largest seller of e-cigarettes.” The Subcommittee found that “(1) JUUL deployed a sophisticated program to enter schools and convey its messaging directly to teenage children; (2) JUUL also targeted teenagers

and children, as young as eight years-old, in summer camps and public out-of-school programs; and (3) JUUL recruited thousands of online ‘influencers’ to market to teens.”

314. According to the Subcommittee, JLI was willing to pay schools and organizations hundreds of thousands of dollars to have more direct access to kids. For example, JLI paid a Baltimore charter school organization \$134,000 to start a summer camp to teach kids healthy lifestyles, for which JLI itself would provide the curriculum. Participants were “recruited from grades 3 through 12.” JLI also offered schools \$10,000 to talk to students on campus and gave the Police Activities League in Richmond, California, almost \$90,000 to provide JLI’s own vaping education program, “Moving On,” to teenage students suspended for using cigarettes. The Richmond Diversion Program targeted “youth, aged 12-17, who face suspension from school for using e-cigarettes and/or marijuana” and “juveniles who have committed misdemeanor (lesser category) offenses” and required students to “participate in the JUUL labs developed program, Moving Beyond,” for as long as ten weeks.

315. Community members testified before the Subcommittee as to the content of one of JLI’s presentations in school. During JLI’s presentation to students, “[n]o parents or teachers were in the room, and JUUL’s messaging was that the product was ‘totally safe.’ The presenter even demonstrated to the kids how to use a JUUL.”

316. JLI also sponsored a “Saturday School Program” in which students caught using e-cigarettes in school were presented with JLI-sponsored curriculum and snacks, and JLI “established the right to collect student information from the sessions.” A JLI spokesman said the company is no longer funding such programs.

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

318. Internal emails confirm both that JLI employees knew about the similarities of JLI’s “youth prevention program” to the earlier pretextual antismoking campaigns by the cigarette industry and that JLI management at the highest levels was personally involved in these efforts. In April 2018, Julie Henderson, the Youth Prevention Director, emailed school officials about “the optics of us attending a student health fair” because of “how much our efforts seem to duplicate those of big tobacco (Philip Morris attended fairs and carnivals where they distributed various branded items under the guise of ‘youth prevention’).” She later wrote that she would “confirm our participation w[ith] Ashley & Kevin”—an apparent reference to Kevin Burns, at the time the CEO of JLI, who would later personally approve JLI’s involvement in school programs. In May 2018, Henderson spoke with former members of Philip Morris’s “youth education” team, and Ashley Gould received and forwarded what was described

as “the paper that ended the Think Don’t Smoke campaign undertaken by Philip Morris.” The paper concluded that “the Philip Morris[’s ‘youth prevention’] campaign had a counterproductive influence.”

319. JLI’s directors were intimately involved in these “youth prevention” activities. For example, in April 2018, Valani and Pritzker edited a youth prevention press release, noting that they “don’t want to get these small items wrong” and that they “think it’s critical to get this right.”

320. JLI was aware that these out-of-school programs were, in the words of Henderson, “eerily similar” to the tactics of the tobacco industry. Eventually, JLI ended this version of its youth prevention program, but the damage had been done: following the playbook of Big Tobacco, JLI had hooked more youth on nicotine.

#### **K. Impact of the Youth Vaping Crisis in Alaska**

321. Plaintiff the State of Alaska is home to approximately 730,000 residents. Almost 25% of Alaska’s residents are under the age of eighteen.

322. In 2017, two out of five (39.9%) Alaska students reported having tried an e-cigarette or vapor product. By 2019, that number had risen to 45.8%, nearly half of Alaska high school students. The percent of Alaska high school students reporting current use of e-cigarettes (i.e., use within 30 days of the survey) also jumped significantly, from 15.7% to 26.1%, according to the Alaska Youth Risk Behavior Survey.

323. Tellingly, the vaping trend is not mirrored by adults in Alaska. The use of e-cigarettes by Alaska adults peaked in 2014 at less than 10% and has decreased in each subsequent year. In 2017, only 3.8% of Alaska adults used e-cigarettes.

324. In addition, the percent of Alaska youth who use both traditional cigarettes and e-cigarettes has increased. While 46% of youth smokers in 2015 also used e-cigarettes, that percentage rose to 77% in 2019. This dual use, which was foreseeable to Defendants, poses additional health risks. Data indicate that young e-cigarette users are four times more likely to begin smoking cigarettes compared to their peers who do not use e-cigarettes, suggesting that e-cigarette use itself is a risk factor, not just a correlation with smoking. Young adults (18-35) who used e-cigarettes the previous year increased their odds of daily cigarette use by 1.67 and increased their odds of being diagnosed with tobacco use disorder by 2.58. In addition to the heightened risks of addiction that multiple tobacco product use poses, recent research indicates that persons who vape and smoke cigarettes have blood toxin levels far higher than one would expect given the blood toxin levels that e-cigarettes and cigarettes generate individually.

325. Vapor product use is particularly prevalent among youth in the Gulf Coast, Southeast Alaska, and Anchorage/Mat-Su regions. In Anchorage, vaping has become highly disruptive to school operations, as school administrators have had to respond to many vaping disciplinary issues and confiscate hundreds of vape devices from students. It has also been reported that students in elementary school, including one as young as third grade, have been caught vaping at school.



326. In a January 2020 interview with Alaska Public Media, the principal at Service High School in Anchorage described youth vaping as one of the issues that keeps him up at night. He explained, “I was very surprised at just how students don’t care if it’s in class or in the middle [of class]. They really felt the need, the desire, the addiction to take a hit off of the e-cigarette or the vape.” Administrators at Service High School have confiscated vape devices that resemble USB drives, pencil cases, and even a watch, as well as a pile of flavor cartridges that a student was planning to sell at school. A parent shared that her daughter, a senior at Service High School, was addicted to vaping and, unbeknownst to her parents, had been vaping since she was a freshman. “I thought I was paying attention,” the parent confessed, “and it happened anyway.” Her daughter has tried to quit several times, unsuccessfully.

327. Even for parents who are “paying attention,” JUUL and its copycat products are hard to detect. For school administrators and teachers, the discreet nature of these vaping devices makes it challenging to prevent student use. As an administrator at Dimond High School, also in Anchorage, explained, students “went from having big vapes that gave off huge plumes to something that didn’t give off anything—that looked like a USB and can fit in someone’s sleeve, or hidden in undergarments.” As a result, and by design, vaping is easy for students to hide and difficult for administrators to track. “Because it’s so stealthy, the kids can do it anywhere,” the Dimond administrator acknowledged. Faced with a rapid rise in student vaping, Anchorage School District administrators have had to check bathrooms more frequently and confiscate vape products from students. Additionally, School Resource Officers and school security

personnel have dedicated substantial time to handling vaping-related incidents, which takes away from time spent addressing other issues.

328. The problem of youth vaping is not limited to Anchorage or urban areas of Alaska. Many rural communities across the state have seen the vaping phenomenon spread through their schools.

329. In response to the increase in youth vaping statewide, Alaska has invested substantial and unexpected amounts of time and money in efforts to address this public health crisis. The cost to Alaska has been compounded by the fact that the rise of youth vaping in Alaska has undermined significant progress the State made (and dollars spent) to reduce youth tobacco use over the last three decades.

330. Prior to JUUL’s launch and the subsequent spread of youth vaping, Alaska had spent years investing significant resources to reduce tobacco use among Alaskans, with the highest per capita tobacco control and prevention expenditures of any state. Alaska is one of only two states that allocates funding for tobacco control at the level recommended by the CDC’s Best Practices for Comprehensive Tobacco Prevention and Control Programs (“Best Practices”).

331. Since 1994, the State of Alaska has run a comprehensive tobacco prevention and control program. The Alaska Tobacco Prevention and Control (“TPC”) Program is located within the Department of Health and Social Services, Division of Public Health, in the Section of Chronic Disease Prevention and Health Promotion (CDPHP). Through the TPC Program, Alaska educates the public on health harms of tobacco use and secondhand smoke, supports community policies that create tobacco-

free environments, and helps people quit tobacco by supporting free cessation services for adults in Alaska.

332. One of the TPC Program's primary goals, in accordance with the model outlined in the CDC's Best Practices, is preventing youth from starting tobacco product use. Over time, Alaska's investments in tobacco prevention and the work of the TPC Program have resulted in a significant reduction in youth smoking: among Alaska high school students, smoking declined by **80 percent** between 1995 and 2019, from a rate of 36.5% in 1995 to 7.5% in 2019. However, the recent rise in youth vaping has reversed, and if not abated, will continue to reverse, the tremendous progress the State has made in reducing youth tobacco product use and nicotine addiction.

333. While Alaska's TPC Program has been working for years to help Alaskans quit using tobacco products, it does not have the resources or staffing needed to combat the crisis of youth vaping and nicotine addiction created by Defendants' conduct.

334. As the vaping phenomenon has spread through Alaska schools, state agencies have fielded an increasing number of calls from school districts around the state asking for assistance with the problem. The TPC Program provides assistance to school districts on structuring comprehensive school policies to address all forms of nicotine use, including e-cigarette use. This includes giving presentations to administrators, school nurses, and teachers on best practices for developing, implementing, and enforcing tobacco-free policies that encompass e-cigarettes like JUUL and developing alternatives to suspension. But as a result of the rapid rise in

youth vaping statewide, the State received more calls for assistance from Alaska schools than it could feasibly handle with its current TPC Program staff.

335. In addition, the TPC Program partners with the Rural Alaska Community Action Program (“RurAL CAP”) to educate youth about e-cigarettes and prevent them from becoming addicted to nicotine. The RurAL CAP Teen Ambassador Program, called Youth Encouraging Alaskans’ Health (“YEAH”), “promotes peer-to-peer tobacco education and prevention among Alaska youth. Teen Ambassadors visit schools and coordinate community education events to raise awareness about tobacco and nicotine use. Among their campaigns for 2019, ambassadors reached audiences of more than 300 individuals statewide.”

336. The TPC Program also sponsors the ongoing “Not Buying It” social media campaign. As part of the campaign, Teen Ambassadors develop messaging and share resources with their peers on social media platforms such as Facebook. The Not Buying It page also provides information that the tobacco industry’s marketing might not share with the general public.

337. For example, the TPC Program has supported efforts to increase the price of e-cigarettes, restrict youth and young adult access to e-cigarettes by raising the legal purchasing age and supporting compliance efforts, and restrict access to flavored e-cigarette products due to their appeal to young people.

338. In addition to the work of the TPC Program, Alaska’s Tobacco Enforcement program, run through DHSS’s Division of Behavioral Health, works to decrease youth access to tobacco products, including e-cigarettes. State Tobacco

Enforcement Investigators enforce Alaska’s tobacco law to obtain retailer compliance and educate store owners, clerks, tobacco distributors, community members, and police officers regarding compliance with the law. In January 2019, Alaska expanded its existing youth access law to prohibit purchase and possession of all vape devices, regardless of whether the device itself contains nicotine. Alaska prioritizes retailer compliance enforcement and, since 2003, has maintained the compliance rate established by the federal Synar amendment, a measure intended to decrease youth access to tobacco products by requiring states to enact laws limiting youth access and conduct compliance inspections.

339. Although Alaska has made great progress in reducing sales of tobacco directly to underage youth, data also indicate that underage youth are still able to obtain tobacco products from other sources. Among Alaska high school students who smoke combustible cigarettes, a majority of these youth report obtaining cigarettes with the assistance of other people, including by giving money to someone else to buy cigarettes, by borrowing or bumming cigarettes from someone else, and by having someone older give them cigarettes.” Alaska youth are obtaining e-cigarettes and vaping products through these same or similar methods.

340. Alaska’s schools, with state support and assistance, have hosted trainings for administrators on how to respond to students caught vaping at school, educational seminars for parents outside of school hours, and presentations from school nurses about health risks of youth vaping in schools. The State has also worked with its schools

to research the prevalence of youth vaping and to develop and disseminate educational materials about youth vaping and its health impact.

341. Additionally, many schools, including more than half of the high schools in the Anchorage School District, have developed Peer Mentorship programs. These programs allow upper classmen to mentor freshmen by engaging with and connecting with them over various issues. These mentorships are an important avenue for getting information related to the harms and risks of vaping to youth. It creates space for youth who are vaping to confide in their peers and seek guidance. With additional resources, more school districts across Alaska could further develop peer-to-peer mentoring.

342. Fully addressing the widespread use of vapor products and resulting nicotine addiction among youth Alaska's youth will take significant and sustained effort. Because of the potency of Defendants' nicotine salts, combined with the discreet device design and the ease of delivery—allowing youth to take a puff as often as every few minutes with no limit to the total amount of nicotine they are imbibing—widespread vaping has resulted in a higher incidence of addiction than that caused by youth cigarette smoking. In other words, unlike a combustible cigarette with its telltale smoke, there is nothing about the JUUL device that prevents kids from taking a puff behind the closed doors of their bedrooms or even the moment a teacher's back is turned in the classroom. As the researchers conducting the national *Monitoring the Future* survey wrote in a letter to the *New England Journal of Medicine*:

Current efforts by the vaping industry, government agencies, and schools have thus far proved insufficient to stop the rapid spread of nicotine vaping among adolescents. Of particular concern are the accompanying

increases in the proportions of youth who are physically addicted to nicotine, an addiction that is very difficult to overcome once established. The substantial levels of daily vaping suggest the development of nicotine addiction. New efforts are needed to protect youth from using nicotine during adolescence, when the developing brain is particularly susceptible to permanent changes from nicotine use and when almost all nicotine addiction is established.

343. Therefore, while Alaska has been working to address the youth vaping crisis, its efforts have not been, and will not be, sufficient to combat the increase and prevalence of youth vaping in the State. Rather, additional resources are needed to fully counter Defendants' conduct. A sustained media campaign is necessary to counter the disinformation surrounding vaping and educate young people about the risks and dangers of e-cigarettes. Ultimately, reducing youth vaping requires changing the social norms surrounding vaping such that it is no longer viewed as cool, sophisticated, or harmless, (false notions that Defendants promoted) as was done with combustible cigarettes over the course of many years. Creating the necessary treatment options for youth addicted to nicotine will also take sustained effort to develop. The nicotine replacement therapy products currently available are not approved by the FDA for pediatric use. In addition, while the State would like to add a youth component to its Tobacco Quit Line, this program is not currently an option for youth under eighteen. Although the need for resources has increased, overall funding for tobacco prevention programs has been declining.

344. The burden on Alaska schools has become so taxing that officials are calling for more community-wide attention to the issue. With additional resources, Plaintiff would work with its school districts to develop comprehensive education

programs that reach not only students but parents in particular, as well as the broader community.

345. Fully addressing the harms to Alaska caused by Defendants' conduct will require a comprehensive approach. Without the resources to fund measures such as those described herein, Alaska will continue to be harmed by the ongoing consequences of Defendants' conduct.

## V. CAUSES OF ACTION

### COUNT ONE — VIOLATIONS OF ALASKA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT, AS 45.50.471, *ET SEQ.* (UTPCPA)

#### (All Defendants)

346. The State of Alaska incorporates each preceding paragraph as though set forth fully herein.

347. The Alaska State Legislature has declared that it is the public policy of this State to prohibit minors' access to tobacco products, including e-cigarettes. For example, pursuant to AS 11.76.100, it is a criminal violation to give or sell tobacco products to minors. Further, AS 11.76.105 prohibits a person under the age of 19 from knowingly possessing tobacco products.

348. In addition, the Alaska State Legislature has declared that it is the public policy of the State to prohibit a person from aiding, inducing, causing or encouraging a child under 18 years of age to do any act prohibited by state law. AS 11.51.130(a)(1).

349. Defendants have engaged in a course of conduct intended as described in the Complaint to deceptively, unfairly, and unlawfully encourage minors to use tobacco



products, which violates the declared public policy of the State of Alaska, and as such is an unfair and deceptive act or practice in violation of AS 45.50.471.

350. More specifically, and as set forth above, Defendants have aided, induced, caused, and/or encouraged the delinquency of the children of Alaska by their conduct as described in the Complaint, including but not limited to: (i) marketing that is designed to encourage underage youth to use e-cigarettes in violation of State law, and concealing that fact; (ii) concealing that their products are addictive and harmful and suppressing and omitting information on these subjects, while at the same time portraying e-cigarette use as glamorous and “cool” in a fashion that is designed to minimize the severe risks associated with e-cigarette use; (iii) concealing that JUUL contains nicotine and how much nicotine it contains; (iv) designing their marketing campaigns to cause youth to rely on their advertisements; (v) designing their marketing campaigns to cultivate and perpetuate user-generated viral marketing with the knowledge that youth would be exposed to and rely on such marketing; and (vi) engaging in conduct with the purpose of causing youth to use e-cigarettes in violation of state law. This conduct is both unfair and deceptive. Further, Defendants’ conduct is made even more unfair and deceptive by virtue of the fact they have publicly proclaimed that they are against encouraging youth to use e-cigarettes while secretly launching a course of conduct intended and designed to accomplish exactly the opposite.

351. E-cigarette sales to underage youth and/or use by youth have increased in Alaska as a direct, foreseeable, and intended result of Defendants’ conduct.

352. Defendants’ conduct as described in the Complaint is immoral, unethical, oppressive, and unscrupulous. Defendant JLI deliberately marketed its nicotine delivery devices to young non-smokers, including by, for example, distributing free samples and “JUUL starter kits” in locations frequented by youth and events and festivals attended predominantly by youth. In addition, Defendant JLI deliberately sought to generate, and did generate, viral marketing to promote sales among youth by utilizing social media platforms used predominantly by young people. Defendant Altria represented to the FDA that products and practices like Defendant JLI’s were contributing to the youth vaping crisis and that Altria’s “action plan” for addressing youth vaping included voluntarily removing its pod-based products from the market—but then, less than two months later, Altria invested \$12.8 billion in JLI. Defendants Altria and JLI have worked, and continue to work, to maintain and increase the sales of JUUL products as described in the Complaint despite public concern about the rise of youth vaping, including by, for example, fraudulently representing Mint JUULpods as a “tobacco or menthol-based product” despite their knowledge that mint flavor is popular with youth. Defendants JLI and Altria fraudulently asserted, and continue to assert, that JUUL products were never marketed to youth and are instead marketed to adult smokers only as a cessation device, while knowing, as it had intended, that JLI’s enormous sales growth was based primarily on new customers—a new generation of youth addicted to nicotine—and not on adult “switchers.”

353. Defendants’ conduct caused substantial injury to consumers, i.e., the youth they convinced to buy their products. As described in the Complaint, e-cigarette

use poses severe health risks and does not provide any benefit to youth, particularly those who began using e-cigarettes with no prior experience with combustible cigarettes.

354. In the regular course of business, Defendants engaged in misrepresentations and/or omissions of material facts as described in the Complaint, including but not limited to omitting that their products contain nicotine and misrepresenting the true nicotine content of their products. In addition, Defendants JLI and Altria falsely represented that they have never marketed to youth, that JUUL products have always been marketed to adult smokers only, and that JLI and Altria do not target, direct, or seek to focus their e-cigarette marketing efforts on children and adolescents and, in fact, actively discourage sale of those products to children and adolescents. Defendants' misrepresentations, omissions of material fact, and course of conduct as described in this Complaint were "unfair" and "deceptive" and had the capacity or tendency to deceive, in violation of AS 45.50.471, including but not limited to subsections (b)(4), (b)(11), (b)(12), and (c).

355. The conduct described above and throughout this Complaint constitutes unfair and deceptive acts or practices in violation of AS 45.50.471 in that Defendants market, distribute, and sell vape products in a manner that targets children and adolescents and intentionally attracts them to begin or continue to use vape products.

356. Defendants' violation of AS 45.50.471 was done in order to defraud Alaskans. Alaska consumers have been substantially injured by Defendants' conduct.

357. Defendants' unfair and deceptive practices occurred in the course of conduct involving trade or commerce. Among other things, Defendants' unfair and deceptive conduct occurred in the course of advertising, offering for sale, selling, and/or distributing e-cigarettes, flavor pods, and accessories, and involved soliciting and receiving money or property.

**COUNT TWO —  
VIOLATIONS OF ALASKA PUBLIC NUISANCE LAW  
(All Defendants)**

358. The State of Alaska incorporates each preceding paragraph as though set forth fully herein.

359. A public nuisance is an unreasonable interference with a right common to the general public, including interference with the public health, safety, peace, comfort, or convenience. A public nuisance includes any conduct regarded as so inimical to so many people that the government is entitled to enjoin the conduct through abatement to protect the general welfare.

360. Alaskans have a right to be free from conduct that injures their health. Defendants by their affirmative acts and omissions, have substantially and unreasonably interfered with that right by creating, contributing to, and assisting in the creation of a public health crisis of youth vaping.

361. Defendants have created, contributed to, and assisted in creating a public nuisance in the State of Alaska, by, among other actions, creating a public health crisis of nicotine usage among the youth of Alaska. Each Defendant's conduct has been a

substantial factor in creating or continuing this public nuisance. Defendants specifically created, contributed to, and/or assisted, and/or were a substantial contributing fact in the creation of a public nuisance, i.e., the creation of the public health crisis of youth vaping, by, *inter alia*, producing, promoting, distributing, and marketing JUUL products for use by underage users and contributing to and assisting in the same. Defendants created, and continue to create, contributed to, and continue to contribute to, and/or have assisted in creating, or continue to assist in creating, a condition that is harmful to human health, and harmful to the general welfare of Alaskans.

362. The public nuisance caused by Defendants' conduct is a direct and proximate contributing cause of the injuries and harms sustained by the State of Alaska and its citizens.

363. The public nuisance caused by Defendants' actions is substantial and unreasonable. Defendants' actions caused and continue to cause the public nuisance, and the harms of that public nuisance outweigh any offsetting benefits. Defendants' actions have no offsetting benefits. Any purported offsetting benefits are significantly outweighed by the harm of the public health crisis they created.

364. Defendants knew that their products are tobacco products and contain nicotine, that nicotine is highly addictive, and that it is illegal to sell or furnish tobacco products to underage individuals. Defendants also knew that that their products were harmful to underage consumers, knew that their products specifically appealed to minors, and knew that their marketing was effective among underage consumers. Even so, Defendants knowingly and actively marketed their products to youth.

365. By directly marketing to youth, by continuing these marketing practices after it was evident that children were using JUUL products in large numbers, and by advertising, marketing, and distributing JUUL products at sampling events without providing any nicotine warning, Defendant JLI directly facilitated the spread of youth vaping and the public nuisance affecting the State of Alaska. By investing billions of dollars in JLI and actively working to promote the sale and spread of JUUL products with knowledge of JLI's practice of marketing its products to youth and failure to control youth access to its products, Altria directly facilitated the spread of the youth vaping crisis and the public nuisance affecting the State of Alaska.

366. The public nuisance created, perpetuated, and maintained by Defendants can be abated and further reoccurrence of such harm and inconvenience can be prevented. It is an ongoing public health crisis.

367. Defendants' conduct has affected and interfered with and continues to affect and interfere with the rights of a considerable number of young people and others throughout the State of Alaska, including but not limited to Alaska youth who have become and continue to become addicted to nicotine due to Defendants' products and marketing.

368. This addiction has caused, is causing, and will continue to cause physical, sometimes fatal, harm, and mental harm, to those who are addicted and who use tobacco products.

369. Abating Alaska's youth vaping crisis will require the development of treatment options for nicotine-addicted youth and making those treatment options

accessible to youth throughout the state. This need is heightened by the current lack of approved tobacco cessation products for underage individuals.

370. Public schools throughout Alaska are suffering from increased absenteeism, classroom disruptions, suspensions, loss of class time for students, increased nurse visits by students, diversions of and losses of critical funding to school districts, and many other harms and expenses directly due to Defendants' actions.

371. The consequences of Defendants' conduct are not in the public interest.

372. Defendants must abate the public nuisance caused by their conduct in marketing, furnishing, and selling their products to underage persons in Alaska. Accordingly, Plaintiff requests that the court order Defendants to create a fund that will be used to remediate the public health crisis of youth vaping that Defendants created.

### **COUNT THREE — NEGLIGENCE**

#### **(All Defendants)**

373. The State of Alaska incorporates each preceding paragraph as though set forth fully herein.

374. Defendants had a duty to the State and its citizens to exercise due care in the marketing, advertisement, promotion, and sale of e-cigarette products. This includes a duty not to cause foreseeable harm to others.

375. Defendants had a duty to exercise due care in promoting and selling potent and addictive nicotine products.

376. Defendants had a duty to the State and its citizens not to make deceptive or misleading statements about the risks of using Defendants' products.

377. Defendant JLI breached its duty of care by advertising, marketing, and promoting its products to youth, including through the use of viral social media campaigns, launch parties, distribution of free samples, use of sweet flavors, failure to clearly disclose the nicotine content, and failure to take steps to prevent its products from being sold to or used by underage youth.

378. Defendant Altria publicly represented that it was undertaking to act on behalf of the public's health, and particularly to protect youth, in its October 25, 2018 letter to the FDA representing that it was removing its pod-based e-cigarette products from the market because such products have contributed to the significant rise in youth vaping.

379. In addition, JLI and Altria have publicly represented that they were committed to "harm reduction" through the development and promotion of their products.

380. Defendants knew or, in the exercise of ordinary care, should have known of the substantial proportion of nonsmoking youth comprising JUUL's customer base.

381. Defendants acted unreasonably in light of what could be foreseen as a result of their conduct, and Defendants' negligence was a substantial factor in and was the proximate cause of the injuries to the State of Alaska and its citizens.

382. Alaska is without fault and the injuries to the State and its citizens would not have occurred in the ordinary course of events had Defendants exercised the due care commensurate to the foreseeable risk of promoting addictive nicotine products to youth.



**COUNT FOUR —  
CIVIL CONSPIRACY**

**(Defendants JLI and Altria)**

383. The State of Alaska hereby incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

384. Defendants JLI and Altria entered into a conspiracy to violate the statute set forth above in Count 1 and the common law set forth in Counts 2 and 3. JLI and Altria did this in two ways: (1) marketing JLI's product to Alaska's youth, and (2) coordinating a message to the public and regulators that JUUL e-cigarettes are designed only for adults as an off-ramp from cigarettes and denying that JLI markets to youth, all to conceal that JLI and Altria were working together to carry out (1).

385. Through their conspiracy to market e-cigarettes to youth, JLI and Altria caused the expansion of an illicit e-cigarette market for youth in Alaska and caused many Alaska youth to become addicted to nicotine. The repeated fraudulent misstatements by JLI and Altria denying that JLI marketed to youth have served to preserve JUUL's market share—a market share that is based upon children purchasing JLI's tobacco products.

386. Defendants knowingly and voluntarily participated in the conspiracy to commit these unlawful acts.

387. A part of this conspiracy was a plan to cause governmental officials to believe that immediate action on their part to curb youth vaping was not needed. As the evidence mounted as to the prevalence of youth vaping, governmental entities

considered and/or began to legislate various controls on vape products, particularly flavors. Defendants resisted these efforts, and their “Action Plans,” including the removal of Altria’s pod-based vape products and the partial restriction of retail sales of JUUL products, were intended to delay the implementation and/or passage of such regulations.

388. As described above, Altria—having long followed JUUL’s market-share dominance with envy—decided to go from JLI’s competitor to its co-conspirator. Altria and JLI recognized that one of the keys to preserving JUUL’s market share was to continue to falsely deny that JLI marketed its tobacco products to youth. Altria provided marketing and messaging services to JLI to cover up JLI’s past youth marketing. To further this effort, JLI and Altria have made repeated statements, in advertising and otherwise, that JLI does not market to youth and its marketing is only aimed at adult smokers, that Altria and JLI do not want youth to vape, and that vaping is for adults only. But this is not now, and has not ever been, an effective tactic to prevent youth initiation, as Altria well knows. As mentioned above, “[e]mphasizing that smoking is an adult activity underscores the desirability of engaging in adult behavior for adolescents who are particularly motivated to appear mature.”

389. JLI and Altria worked in concert to defraud the public and regulators in order to quell a public outcry and prevent regulation that would have impeded their plan to maintain and expand sales of JUUL products to a customer base primarily consisting of youth. Specifically, they worked to ensure that certain flavors popular with youth such as mint remained on the market as long as possible, even while publicly declaring

that they were removing flavors from the market to specifically address the youth vaping crisis and despite their knowledge that mint was a particularly attractive flavor to youth.

390. Thus, in furtherance of their conspiracy, JLI and Altria repeatedly made statements denying that youth were intended targets for JUUL products and asserting that JUUL products were really created and designed as a smoking cessation device, intended from the start for “switchers” (existing smokers who are open to vaping).

391. In order to protect JLI’s ability to continue to sell JUUL products and market to youth, Altria and JLI worked in concert to defraud the public and regulators in order to prevent the public and political condemnation that would have impeded the conspiracy’s purpose: maintaining and expanding JLI’s massive, and ill-gotten, share of the e-cigarette market.

392. In furtherance of their conspiracy, JLI and Altria repeatedly made false statements to the public disclaiming any desire to build a youth market, and statements that JUUL was always intended for and marketed to adult smokers and/or as a smoking cessation device. In truth, JLI and Altria knew that JUUL was a potent nicotine delivery system designed to addict non-smokers, particularly youth, to nicotine, and in fact was specifically marketed to appeal to children. It was only when JLI and Altria faced widespread public outrage and increased scrutiny that they dramatically re-shaped JUUL’s marketing message and launched its “Make the Switch” campaign. Throughout this campaign, JLI and Altria represented to consumers, the public, and regulators that

JUUL products were designed to assist smoking cessation, did not pose a threat to public health, and were never intended to be used or marketed to appeal to youth.

393. JLI and Altria knew at the time of making these statements that they were untrue and misleading. JUUL is not FDA-approved as a cessation product.

394. As set forth herein, JLI obtained its massive market share over a short time period by successfully targeting youth and addicting youth to nicotine. Altria's investment in and provision of "services" to JLI reflect an intention to further the goal of fraudulently maintaining and expanding JUUL's market share, including by maintaining and growing JLI's youth sales. JUUL's predominantly youth customer base ensures a steady supply of nicotine-addicted customers—creating a new generation of customers for Altria's products. Altria has worked to maintain and expand JUUL's market share—which, based on Altria's own October 25, 2018 letter to the FDA, Altria believes was obtained by employing marketing and advertising practices that contributed to youth vaping.

395. The following false, deceptive, and misleading statements and representations are examples of JLI's and Altria's overt acts in furtherance of their joint purposes, of creating an image that their products are designed to assist smoking cessation in adults while simultaneously marketing their products to youth:

1. "Here at JUUL we are focused on driving innovation to eliminate cigarettes, with the corporate goal of improving the lives of the world's one billion adult smokers." (JLI's Twitter Feed, July 5, 2017).
2. "It's a really, really important issue. We don't want kids using our products." (CNBC Interview of JLI's Chief Administrative Officer, December 14, 2017).

3. “We market our products responsibly, following strict guidelines to have material directly exclusively toward adult smokers and never to youth audiences.” (JLI Social Media Post, March 14, 2018).
4. “JUUL Labs was founded by former smokers, James and Adam, with the goal of improving the lives of the world’s one billion adult smokers by **eliminating cigarettes**. We envision a world where fewer adults use cigarettes, and **where adults who smoke cigarettes have the tools to reduce or eliminate their consumption entirely**, should they so desire.” (JLI Website, April 2018 (or earlier)).
5. “Our company’s mission is to eliminate cigarettes and help the more than one billion smokers worldwide switch to a better alternative,” said JUUL Labs Chief Executive Officer Kevin Burns. “We are already seeing success in our efforts to enable adult smokers to transition away from cigarettes and believe our products have the potential over the long-term to contribute meaningfully to public health in the U.S. and around the world. At the same time, we are committed to deterring young people, as well as adults who do not currently smoke, from using our products. We cannot be more emphatic on this point: No young person or non-nicotine user should ever try JUUL.” (JLI Press Release, April 25, 2018).
6. “Our objective is to provide the 38 million American adult smokers with meaningful alternatives to cigarettes while also ensuring that individuals who are not already smokers, particularly young people, are not attracted to nicotine products such as JUUL,” said JUUL Labs Chief Administrative Officer Ashley Gould, who heads the company’s regulatory, scientific and youth education and prevention programs. “We want to be a leader in seeking solutions, and are actively engaged with, and listening to, community leaders, educators and lawmakers on how best to effectively keep young people away from JUUL.” (JLI Press Release, April 25, 2018).
7. “JUUL was not designed for youth, nor has any marketing or research effort since the product’s inception been targeted to youth.” (Letter to FDA, June 15, 2018).
8. “With this response, the Company hopes FDA comes to appreciate why the product was developed and how JUUL has been marketed — to provide a viable alternative to cigarettes for adult smokers.” (Letter to FDA, June 15, 2018).
9. “We welcome the opportunity to work with the Massachusetts Attorney General because, we too, are committed to preventing underage use of

JUUL. We utilize stringent online tools to block attempts by those under the age of 21 from purchasing our products, including unique ID match and age verification technology. Furthermore, we have never marketed to anyone underage. Like many Silicon Valley technology startups, our growth is not the result of marketing but rather a superior product disrupting an archaic industry. When adult smokers find an effective alternative to cigarettes, they tell other adult smokers. That's how we've gained 70% of the market share. . . . Our ecommerce platform utilizes unique ID match and age verification technology to make sure minors are not able to access and purchase our products online.” (Statement from Matt David, JLI Chief Communications Officer, July 24, 2018).

10. “We adhere to strict guidelines to ensure that our marketing and commercial communications are directed toward existing adult smokers.” (JLI Website, July 26, 2018).
11. “We did not create JUUL to undermine years of effective tobacco control, and we do not want to see a new generation of smokers.” (JLI’s website as of July 26, 2018).
12. “Although we do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue.” (Letter from Altria CEO to FDA Commissioner Gottlieb, October 25, 2018).
13. “We believe e-vapor products present **an important opportunity to adult smokers to switch from combustible cigarettes.**” (Letter to FDA Commissioner Gottlieb, October 25, 2018).
14. “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.” (JLI Website, November 12, 2018).
15. “To paraphrase Commissioner Gottlieb, **we want to be the offramp for adult smokers** to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.” (JLI Website, November 13, 2018).
16. “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.” (JLI Website, November 13, 2018).

17. ***“Altria and JUUL are committed to preventing kids from using any tobacco products.”*** As recent studies have made clear, youth vaping is a serious problem, which both Altria and JUUL are committed to solve. As JUUL previously said, ‘Our intent was never to have youth use JUUL products.’” (Altria News Release, December 20, 2018).
18. “Altria’s investment sends a very clear message that JUUL’s technology has given us a truly historic opportunity to improve the lives of the world’s one billion adult cigarette smokers,” said Kevin Burns, Chief Executive Officer of JUUL. “This investment and the service agreements will accelerate our mission to increase the number of adult smokers who switch from combustible cigarettes to JUUL devices.” (Altria News Release, December 20, 2018).
19. “We have long said that **providing adult smokers with superior, satisfying products with the potential to reduce harm** is the best way to achieve tobacco harm reduction. **Through Juul**, we are making the biggest investment in our history toward that goal.” (Altria News Release, December 20, 2018).
20. “We are taking significant action to prepare for a future where adult smokers overwhelmingly choose non-combustible products over cigarettes by investing \$12.8 billion in JUUL, **a world leader in switching adult smokers . . . .** We have long said that providing adult smokers with superior, satisfying products with the potential to reduce harm is the best way to achieve tobacco harm reduction.” (Altria News Release, December 20, 2018).
21. “Almost my entire career, we have believed that our business would be better in the long term if we could offer harm reduced products that would represent attractive alternatives to our adult cigarette smokers to switch. And we have invested billions of dollars in it and lots of effort. And ultimately until December this year, we really didn't have the product portfolio to fully achieve our harm reduction aspiration. And the opportunity to invest in JUUL, I think, really makes that harm reduction aspiration a reality.” (Altria Earnings Call, January 31, 2019).
22. “Through JUUL, we have found a unique opportunity to not only participate meaningfully in the e-vapor category but to also **support and even accelerate transition to noncombustible alternative products by adult smokers.**” (Altria Earnings Call, January 31, 2019).
23. “We expect the **JUUL product features that have driven JUUL's success in switching adult smokers in the U.S.** to strongly appeal to

international adult cigarette smokers.” (Altria Earnings Call, January 31, 2019).

24. “Throughout our analysis, it became clear that investing with JUUL to accelerate its global growth was more value accretive than investing internally to leap frog its product. We determined that our services and infrastructure could complement JUUL’s terrific product and capabilities, and help advance a compelling long-term commercial and harm-reduction opportunity.” (Remarks by Altria CEO, Feb. 20, 2019).
25. “First of all, I’d tell them that I’m sorry that their child’s using the product. It’s not intended for them. I hope there was nothing that we did that made it appealing to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in terms of what the challenges they’re going through.” (CNBC Interview of JLI CEO, July 13, 2019).
26. “We never wanted any non-nicotine user, and certainly nobody under the legal age of purchase, to ever use Juul products. . . .That is a serious problem. Our company has no higher priority than combatting underage use.” (Testimony of James Monsees, July 25, 2019).
27. James Monsees, one of the company’s co-founders, said selling JUUL products to youth was “antithetical to the company’s mission.”(James Monsees’ Statement to *The New York Times*, August 27, 2019).
28. “***Our focus is and will remain entirely on helping adult smokers switch*** away from combustible cigarettes, the leading cause of preventable death in the world.” (Statement by JLI spokesman to *The New York Times*, August 27, 2019).
29. “We have no higher priority than to prevent youth usage of our products which is why we have taken aggressive, industry leading actions to combat youth usage.” (JLI Website, August 29, 2019).
30. “JUUL Labs, which exists to **help adult smokers switch** off of combustible cigarettes. . .” (JLI Website, September 19, 2019).
31. “We have never marketed to youth and we never will.”(JLI Statement to *Los Angeles Times*, September 24, 2019).
32. “In late 2017 and into early 2018, we saw that the previously flat e-vapor category had begun to grow rapidly. JUUL was responsible for much of the category growth and **had quickly become a very compelling product among adult vapers**. We decided to pursue an economic interest in JUUL, believing that an investment would **significantly improve our**



**ability to bring adult smokers a leading portfolio of non-combustible products** and strengthen our competitive position with regards to potentially reduced risk products.” (Letter from Altria CEO to Senator Durbin, October 14, 2019).

33. “The growth of the e-vapor category since 2017 illustrates the willingness of adult smokers to try these products, and ***JUUL in particular has been highly successful at moving adult smokers away from cigarettes.***” (Remarks by Altria CEO, Feb. 19, 2020).

34. “***JUUL was designed with adult smokers in mind.*** . . . By accommodating cigarette-like nicotine levels, JUUL provides ***satisfaction to meet the standards of adult smokers*** looking to switch from smoking cigarettes.” (JLI Website, last visited March 29, 2020).

396. The statements and representations described herein were made in furtherance of JLI’s and Altria’s conspiracy to fraudulently grow the market of nicotine-addicted youth and to cover up JLI’s marketing to youth, thereby increasing or maintaining JUUL’s market share.

397. JLI’s and Altria’s conspiracy not only served to forestall government regulation but contributed to the State’s increased health care costs because the conspiracy caused youth in the State of Alaska to take up or continue vaping. Had JLI and Altria not engaged in the conspiracy, had they not targeted youth, had they not fraudulently disavowed targeting youth, had they not suppressed information about addiction and nicotine manipulation, the amount of youth e-cigarette use in the State of Alaska would be far less. The very purpose of their conspiracy was to promote and increase the use of vape products and thus directly increase the risk of harm to the State of Alaska.

398. JLI's and Altria's conspiracy was designed to and did influence the State's course of conduct.

399. The effect of this conspiracy was to violate State law as set forth above. The conspiracy is ongoing and will not stop unless injunctive relief is granted.

400. The Defendant co-conspirators performed tortious acts in furtherance of the conspiracy, thereby proximately causing injury to the State of Alaska.

401. As a direct, actual and proximate result of Defendants' conduct, the State of Alaska has suffered and will continue to suffer substantial injuries and damages for which the State of Alaska is entitled to relief.

### **PRAYER FOR RELIEF**

WHEREFORE, the State prays for judgment against Defendants as follows:

- A. For a declaration that Defendants have violated the UTPCPA;
- B. For an injunction pursuant to AS 45.50.501 enjoining Defendants from engaging in any acts that violate the UTPCPA, including, but not limited to, the unfair and deceptive acts and practices, and unfair methods of competition alleged in this Complaint;
- C. For civil penalties in the amount of \$25,000 for each and every violation of the UTPCPA under AS 45.50.551;
- D. For a declaration that Defendants JLI and Altria's conduct is an unlawful conspiracy.

E. For an order enjoining Defendants and their officers, agents, servants and employees, and those in active concert or participation with them, from continuing or engaging in such conduct or other conduct having similar purpose or effect;

F. For a declaration that Defendants' conduct alleged herein constitutes a public nuisance under Alaska law;

G. For an order requiring Defendants to abate the public nuisance described herein and to deter and/or prevent the resumption of such nuisance, including by ordering Defendants to fund prevention education directed at youth, clinical vaping cessation programs for youth, and other appropriate action, in the State of Alaska;

H. For actual and compensatory damages;

I. For punitive damages;

J. For reasonable attorneys' fees and costs of suit;

K. For pre-judgment and post-judgment interest; and

L. For such other and further relief as the Court deems just and proper under the circumstances.

### **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED this 24th day of November, 2020.

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