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20
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22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

24 **FOND DU LAC BAND OF LAKE**
25 **SUPERIOR CHIPPEWA,**

MDL Member Case No. _____

MDL Case No. 3:19-02913-WHO

Plaintiff,

Filed Pursuant to Direct Filing Order

vs.

Honorable William H. Orrick

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

COMPLAINT

DEMAND FOR JURY TRIAL

Defendants.

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I. INTRODUCTION

1. For nearly 14,000 years the native Ojibwe people have lived at “Waiekwakitchigami”, the end of Lake Superior, which in French is called Fond du Lac. The Ojibwe people have encountered many crises that threatened their lives, land, and history. They face another crisis presently, one that has targeted minors of the Fond du Lac Band of Lake Superior Chippewa, causing damages to these children, as well as to the educational institutions and social services that the Band provides. The Ojibwe name for the Band’s Reservation is “Nagaajiwanaang”, meaning “where the water stops”. The Fond du Lac Band of Lake Superior Chippewa is resolute to remediate the JUUL crisis where the water stops.

2. Plaintiff Fond du Lac Band of Lake Superior Chippewa, a federally recognized sovereign Indian tribe located within the State of Minnesota, (“Fond du Lac Band”) brings this action for the wrongful actions and conduct in the marketing and sale of e-cigarettes to American Indian minors by and against Defendants JUUL Labs, Inc. (JUUL); Altria Group, Inc.; Altria Client Services; Altria Group Distribution Company (collectively “Altria Defendants”); Nu Mark LLC; Philip Morris USA, Inc.; and John Does 1-100.

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

4. The social and economic costs of the JUUL epidemic brought upon by Defendants are logically and predictably shouldered by governments. This includes the Fond

1 du Lac Band Tribal government, which is responsible for the protection of public health and
2 safety within the Fond du Lac Band's jurisdiction, for providing essential services to its
3 members, and for generating governmental revenues through economic development. The
4 ability of the Fond du Lac Band Tribal government, to carry out these essential functions has
5 been, and continues to be, profoundly threatened by the JUUL epidemic that Defendants'
6 actions have created.

7
8 5. While the damage it has caused is widespread, the JUUL epidemic
9 disproportionately impacts American Indian communities and young members of Indian tribes
10 across the United States. The Centers for Disease Control and Prevention (CDC) reported
11 smoking rates among American Indian and Alaska Natives are the highest in the country
12 compared to all other racial and ethnic groups.¹ The CDC has also reported that more than 20%
13 of American Indian and Alaska Native middle and high school students have used tobacco
14 products, with e-cigarettes the most commonly used product among this group.² The effects of
15 the crisis created by Defendants is exacerbated by numerous factors that are specific to
16 American Indian communities such as the effect of historical trauma, high rates of poverty,
17 deficient health care services and lack of adequate housing, all of which make tribal
18 communities particularly susceptible to health and social problems.³
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21

22 ¹ Centers for Disease Control & Prevention, *American Indians/Alaska Natives and Tobacco Use*,
<https://www.cdc.gov/tobacco/disparities/american-indians/index.htm> (last visited May 29, 2020).

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

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

1 6. JUUL has also specifically and deceptively targeted and exploited American
2 Indian communities with its highly addictive and damaging products. It has sought to
3 implement “switching programs” and sales partnerships with numerous tribes by directly
4 seeking to take advantage of a vulnerable American Indian population with its deceptive and
5 misleading sales and marketing practices.⁴

6 7. Defendants, through their actions, have fueled the JUUL epidemic for their own
7 financial gain, causing Indian tribes across the United States, and the geographic area
8 surrounding Fond du Lac Band in particular, to be flooded with JUUL products and creating an
9 environment where these products and their abuse are rampant. Such diversion and abuse were
10 entirely foreseeable results of Defendants’ actions in intentionally creating a market for
11 dangerously addictive JUUL products through, in part, concealing the risks of addiction, and
12 shipping massive quantities of such products throughout the United States without taking
13 reasonable and necessary steps to prevent diversion and misuse. All of the Defendants in this
14 action, thus share responsibility for creating and perpetuating the JUUL epidemic.

15 8. Defendants have caused foreseeable damages to Fond du Lac Band, including
16 the costs of providing: (1) health care services and treatment for young members of the Fond du
17 Lac Band; (2) prevention and early intervention programs designed to curb the use of JUUL
18 products among its youth and underage members; and (3) law enforcement and public safety
19 relating to the use of JUUL products within the Fond du Lac Band. The Fond du Lac Band has
20 also suffered substantial damages due to the lost productivity of tribal members, increased
21 administrative costs, lost opportunities for tribal community growth and self-determination, and
22 relating to its ability to govern itself, its members, and territory as a direct result of Defendants’
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26 ⁴ *Id.*

1 acts and omissions. These damages have been suffered and continue to be suffered directly by
2 the Fond du Lac Band.

3 9. Fond du Lac Band brings this action in its proprietary capacity and under its
4 *parens patriae* authority, in the public to protect the health, safety, and welfare of the members
5 of the Fond du Lac Band and the nonmember inhabitants of its lands. Fond du Lac Band is not
6 asserting claims that belong to individual members of the Fond du Lac Band, nor seeking to
7 recover on behalf of individual members based on individual personal harm. Instead, Fond du
8 Lac Band is seeking damages for harm caused to the Fond du Lac Band as a tribal entity with
9 sovereign status, including recovery of the funds that the Fond du Lac Band has already
10 expended and must expend in the future to address the conduct described in this Complaint that
11 would otherwise be available to provide for the health and welfare of its members.
12

13 10. Fond du Lac Band seeks injunctive relief, abatement, and damages arising out of
14 the injuries to its members, property, and employees caused by Defendants' wrongful conduct
15 in the marketing and sale of its JUUL vaping devices and nicotine-laced cartridges.
16

17 II. JURISDICTION AND VENUE

18 11. Fond du Lac Band brings this action in *In re JUUL Labs, Inc., Marketing, Sales*
19 *Practices, and Products Liability Litigation*, Case No. 19-md-02913-WHO, and files directly in
20 the U.S. District Court for the Northern District of California as permitted by Amended Case
21 Management Order No. 3, ECF No. 643 (June 4, 2020). In the absence of direct filing, the
22 Fond du Lac Band would have filed this Complaint in U.S. District Court for the District of
23 Minnesota.

24 12. This Court has subject matter jurisdiction over this action because the Fond du
25 Lac Band brings a federal cause of action that raises federal question jurisdiction pursuant to 28
26

1 U.S.C. § 1331. The Court also has supplemental jurisdiction over the Fond du Lac Band's state
2 law claims pursuant to 28 U.S.C. § 1367 because the state law claims are part of the same case
3 or controversy.

4 13. This Court has personal jurisdiction over each Defendant because JUUL is
5 headquartered and does business in the State of California, each Defendant has purposefully
6 availed itself of the privilege of exploiting forum-based business opportunities, including by
7 promoting, marketing, and the sale of the productions at issue in this lawsuit, and the exercise
8 of personal jurisdiction is consistent with Section 410.10 of the California Code of Civil
9 Procedure. This Court also has personal jurisdiction over all Defendants under 18 U.S.C.
10 § 1964(c).

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

15 III. PARTIES

16 A. The Plaintiff

17 15. Fond du Lac Band is a federally recognized sovereign Indian tribe who maintains
18 a government-to-government relationship with the United States and whose governing body is
19 recognized by the Secretary of the Interior. *See* Indian Entities Recognized by and Eligible To
20 Receive Services From the United States Bureau of Indian Affairs, 85 Fed. Reg. 5462, 5465
21 (Jan. 30, 2020). Fond du Lac Band is governed by its own Constitution and laws. Fond du Lac
22 Band exercises sovereign powers of self-governance and jurisdiction over the Fond du Lac
23 Band Reservation located in the State of Minnesota. The Fond du Lac Band Reservation was
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1 set aside for the Fond du Lac Band by virtue of a succession of treaties with the U.S.
2 Government starting in 1825 and culminating in the 1854 Treaty of LaPointe.

3 16. The Fond du Lac Band Tribal Council is the duly elected and recognized
4 government of the Fond du Lac Band that exercises the inherent governmental authority on
5 behalf of the health, safety, education, and welfare of the Fond du Lac Band and its members.
6 The Tribal Council is responsible for setting policy and making decisions on behalf of Fond du
7 Lac Band and its members. The Tribal Council oversees the operation of the Fond du Lac Band
8 Tribal government and assures quality programs and services are made available to Fond du
9 Lac Band tribal members.
10

11 17. Fond du Lac Band provides a wide range of government services and programs,
12 including public safety and police services; education; a fire department; a tribal court; a health
13 clinic and various treatment programs; community and family services, including vocational
14 rehabilitation, disabilities services, domestic violence/sexual assault shelter, family-centered
15 advocacy; various social services, including adult and child protective services, child support
16 enforcement services, foster care and adoption, Indian child welfare services, a group home,
17 and preventative services; economic development; planning and infrastructure; and other
18 programs and services.
19

20 18. Fond du Lac Band has inherent sovereignty to take appropriate action to deal with
21 any unlawful conduct that takes place on or has a direct impact on, land that constitutes Indian
22 Country within the Fond du Lac Band's territory. Federal law recognizes the Fond du Lac
23 Band's authority over its members and territory, specifically the authority to promote the
24 autonomy and the health and welfare of the tribe and its members. Defendants engaged in
25 activities and conduct that took place on or had a direct impact on land that constitutes Indian
26

1 Country within the Fond du Lac Band's territory. The design, marketing, and false and
2 misleading statements about Defendants' products into the State of Minnesota and onto the
3 Fond du Lac Band's lands and surrounding areas created the JUUL epidemic, which resulted in
4 a foreseeable crisis and significant harm to the Fond du Lac Band and its members.

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

14 20. In response to the public health concerns associated with Defendants' conduct,
15 Fond du Lac Band has been required to take action to protect the health, safety, education, and
16 welfare of the Fond du Lac Band and its members, including banning the sale of flavored e-
17 cigarette products and increasing the minimum age to purchase all products associated with e-
18 cigarettes to 21 years of age.

19 21. Members of Fond du Lac Band affected by Defendants' conduct described in
20 this Complaint live on the Fond du Lac Band's reservation, as well as throughout the State of
21 Minnesota.

23 22. Fond du Lac Band has standing to recover damages incurred as a result of
24 Defendants' actions and omissions.

25 **B. The Defendants**
26

1 23. Defendant JUUL is a Delaware corporation, having its principal place of
2 business in San Francisco, California. JUUL originally operated under the name PAX Labs,
3 Inc. In 2017, it was renamed JUUL Labs, Inc. JUUL manufactures, designs, sells, markets,
4 promotes, and distributes JUUL e-cigarettes, JUUL pods and accessories throughout the State
5 of Minnesota and the Fond du Lac Band's land that constitutes Indian Country within the Fond
6 du Lac Band's territory.

7 24. Defendant Altria Group, Inc. is a Virginia corporation, having its principal place
8 of business in Richmond, Virginia. Altria is one of the world's largest producers and marketers
9 of tobacco products. On December 20, 2018, Altria purchased a 35% stake in JUUL.
10

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

18 26. Defendant Altria Group Distribution Company is a Virginia corporation and
19 wholly-owned subsidiary of Altria Group, Inc., with its principal place of business in Henrico
20 County, Virginia. Altria Group Distribution Company provides sales, distribution, and
21 consumer engagement services to Altria's tobacco companies.
22

23 27. Defendant Nu Mark LLC is a Virginia corporation and wholly-owned subsidiary
24 of Altria Group, Inc. with its principal place of business in Richmond, Virginia. Nu Mark LLC
25 was engaged in the manufacture and sale of Altria's electronic vapor products. Shortly before
26

1 Altria purchased a 35% stake in JUUL in December 2018, Altria Group, Inc. announced that Nu
2 Mark LLC would be discontinuing the production and sale of all e-vapor products.

3 28. Defendant, Philip Morris USA, Inc. (“Philip Morris”), is a wholly-owned
4 subsidiary of Altria. Philip Morris is also a Virginia corporation that has its principal place of
5 business in Richmond, Virginia. Philip Morris is engaged in the manufacture and sale of
6 cigarettes in the United States. Philip Morris is the largest cigarette company in the United
7 States. Marlboro, the principal cigarette brand of Philip Morris, has been the largest selling
8 cigarette brand in the United States for over 40 years.

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

18 IV. FACTUAL ALLEGATIONS

19 A. The Youth Vaping Epidemic and the Rise of JUUL

20
21 30. One of the great public health success stories over the past decade has been a
22 reduction in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from
23 28% in 2000 to 7.6% in 2017.⁵ This success has been the result of years of litigation and strict
24

25 ⁵ *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I, Hearing Before the*
26 *Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th

1 regulation. It is also due to the widespread and mainstream public health message that smoking
2 kills people—a message that Big Tobacco can no longer dispute or contradict.

3 31. This incredible progress towards eliminating youth tobacco and nicotine use has
4 now largely been reversed due to e-cigarettes and vaping. Between 2011 and 2015, e-cigarette
5 use among high school and middle school students increased 900%.⁶ Between 2017 and 2018,
6 e-cigarette use increased 78% among high school students, from 11.7% of high school students
7 in 2017 to 20.8% of high school students in 2018.⁷ Among middle school students, e-cigarette
8 use increased 48% between 2017 and 2018.⁸ In 2018, 4.9 million middle and high school
9 students used tobacco products, with 3.6 million using e-cigarettes.⁹ Between 2017 and 2018,
10 the number of youth e-cigarette users increased by 1.5 million.¹⁰

12 32. In 2019, an estimated 27.5% of high school students and 10.5% of middle school
13 students reported current e-cigarette use. Among current e-cigarette users, an estimated 34.2%
14 of high school students and 18% of middle school students reported frequent use. An estimated
15

17 Cong. (2019) (statement of Meredith Berkman, Parents Against Vaping E-cigarettes),
18 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Berkman-PAVe%20Testimony.pdf>.

19 ⁶ Jerome Adams, *Surgeon General's Advisory on E-cigarette Use Among Youth*, Ctrs. for
20 Disease Control & Prevention (2018), [https://e-cigarettes.surgeongeneral.gov](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf)
21 [/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf).

22 ⁷ *Id.*

23 ⁸ *2018 NYTS Data: A startling rise in youth e-cigarette use*, U.S. Food & Drug Admin.,
24 [https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-](https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use)
25 [youth-e-cigarette-use](https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use) (last updated May 4, 2020).

26 ⁹ *Id.*

¹⁰ Ctrs. for Disease Control and Prevention, *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason* (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

21.4% of current e-cigarette users in high school and 8.8% of users in middle school reported daily e-cigarette use.¹¹

33. According to the CDC Director Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing youth tobacco use. It’s putting a new generation at risk for nicotine addiction.”¹² The U.S. Food and Drug Administration (FDA) Commissioner Scott Gottlieb described the above statistics as “astonishing” and both the FDA and the U.S. Surgeon General have appropriately characterized youth vaping as an “epidemic.”¹³ The National Institute on Drug Abuse found that the 2018 spike in nicotine vaping was the largest for any substance recorded in 44 years, and Alex Azar, Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”¹⁴

¹¹ Cullen, Ph.D., Gentzke, Ph.D., et al., “e-Cigarette Use Among Youth in the United States, 2019”, *JAMA* (Nov. 5, 2019); <https://jamanetwork.com/journals/jama/fullarticle/2755265> (last visited May 29, 2020).

¹² *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019, 9:50 PM), https://m.cnn.com/en/article/h_b4cf0b92fd821251a4ae48df9b717145.

¹³ Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use doesn’t slow*, CNBC (Nov. 16, 2018, 8:16 AM), <https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html>; Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation, new enforcement*, USA Today (Sept. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/09/12/fda-%20scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/> (last updated Sept. 23, 2018).

¹⁴ Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

34. Teenage vaping is rampant on the Fond du Lac Band's reservation and other lands, as well as in the State of Minnesota. Now, with the current COVID-19 pandemic in the United States, teenage vapers are much more susceptible to the Coronavirus than other teenagers due to vaping damage to the lungs of these teenagers. "Young adults and teens who vape will not only be at increased risk for COVID-19 infection, but intensity of presentation will be worse.... Vaping causes interstitial lung disease and is additive to any toxicity from the virus. This is already reflected by the higher mortality in VZV Pneumonitis, encountered in smokers."¹⁵

35. A major cause of the vaping epidemic and its consequences to teenagers are the activities of JUUL Labs, Inc., the maker of the JUUL e-cigarette. JUUL entered the e-cigarette market in 2015 and controlled a substantial majority of that market, as high as 76%.¹⁶ Over a million JUUL e-cigarettes were sold between 2015 and 2017.¹⁷ JUULs are available at over 12,000 retail stores and online.¹⁸ In 2017, JUUL generated over \$224 million in retail sales, a

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

¹⁶ Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem Journal (Jan. 8, 2019), https://www.journalnow.com/business/juul-ends-2018-with-76-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html#:~:text=Juul%20Labs%20Inc.'s%20dominance,maker%20as%20a%20major%20investor.

¹⁷ Melia Robinson, *How a startup behind the 'iPhone of vaporizers' reinvented the e-cigarette and generated \$224 million in sales in a year*, Bus. Insider (Nov. 21, 2017), <https://www.businessinsider.sg/juul-e-cigarette-one-million-units-sold-2017-11>.

¹⁷ *Id.*

¹⁸ *Id.*

621% year-over-year increase.¹⁹ By June 2018, sales had skyrocketed another 783%, reaching \$942.6 million.²⁰ The e-cigarette category as a whole grew 97% to \$1.96 billion in the same period, largely based on JUUL's market success.²¹ JUUL's dominance of the e-cigarette market has been so rapid, and so complete, that the act of vaping is now referred to as "JUULing."

36. JUUL's market dominance has attracted the attention and alarm of government regulators, including the FDA, the U.S. Surgeon General, and the CDC. On April 24, 2018, the FDA sent a letter to JUUL expressing concern about the popularity of its products among youth and demanding that JUUL produce documents regarding its marketing practices.²² On September 12, 2018, the FDA sent letters to JUUL and other e-cigarette manufacturers, putting them on notice that their products were being used by youth at disturbing rates.²³ In October 2018, the FDA raided JUUL's headquarters and seized more than a thousand documents relating to the company's sales and marketing practices.²⁴ As of October 2019, the FDA, the Federal Trade Commission, multiple state attorney generals, and the U.S. House of

¹⁹ *Id.*

²⁰ Angelica LaVito, *Popular e-cigarette Juul's sales have surged almost 800 percent over the past year*, CNBC Health & Sci., (July 2, 2018, 2:33 PM), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html> (last updated Sept. 11, 2018).

²¹ *Id.*

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

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

²⁴ Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

Representatives Committee on Oversight and Reform had all commenced investigations into JUUL's role in the youth vaping epidemic and whether JUUL's marketing practices purposefully targeted youth.

37. The decline of cigarette use and the rise of JUUL is far from a coincidence. The company was founded by Adam Bowen and James Monsees, both product designers, by education and experience. Bowen and Monsees met in Stanford University's famed graduate product design program, where the first iteration of JUUL was their final project.²⁵ Monsees has described the cigarette as "the most successful consumer product of all time . . . an amazing product."²⁶

38. Years of litigation, regulation, and education by public health advocates, the medical community, and elected officials against Big Tobacco had severely tarnished the popularity of cigarettes. Monsees and Bowen thus set out to "deliver solutions that refresh the magic and luxury of the tobacco category."²⁷ Monsees saw "a huge opportunity for products that speak directly to those consumers who aren't perfectly aligned with traditional tobacco products."²⁸ Seeking to recreate the lost "ritual and elegance that smoking once exemplified," Monsees set out to re-design the cigarette "to meet the needs of people who want to enjoy

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

²⁶ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited May 30, 2020).

²⁷ *Onboardly Interview with Ploom Cofounder and CEO James Monsees*, Pax.com (Apr. 30, 2014), <https://web.archive.org/web/20160307151834/http://onboardly.com/entrepreneur-interviews/an-interview-with-james-monsees/>.

²⁸ *Id.*

1 tobacco but don't self-identify with—or don't necessarily want to be associated with—
2 cigarettes.”²⁹ In essence, the objective of JUUL was to build a newer, more attractive cigarette.
3 One that could deliver nicotine and addict a new generation of smokers. By design, a
4 cornerstone of the product's commercial success is its addictive nature that compels those who
5 use these products to keep buying and using them.

6 39. JUUL, in many ways, has all the markings of Silicon Valley success: staggering
7 profit margins, meteoric growth, and status as a cultural phenomenon. This Silicon Valley-
8 savvy company used the framework and ideology of startup culture to catapult itself to success
9 by every metric in the startup industry. In 2018, JUUL's gross profit margins were 70%³⁰ and it
10 represented 76.1% of the national e-cigarette market.³¹ It shattered previous records for
11 reaching decacorn status, reaching valuation of over \$10 billion in a matter of months, or four
12 times faster than Facebook.³² This all came just three years after its product launch.

14 40. JUUL's staggering commercial success did not come from a blank slate. Under
15 the Master Settlement Agreement between Big Tobacco and the States, the public has access to
16 hundreds of thousands of Big Tobacco's internal documents. In creating JUUL, Monsees and
17 Bowen carefully studied the marketing strategies, advertisements, and product design of Big
18

19 ²⁹ *Id.*

20 ³⁰ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018),
21 <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

22 ³¹ Robert K. Jackler, et al., *JUUL Advertising Over Its First Three Years on the Market 2*,
23 Stanford Research into the Impact of Tobacco Advertising (2019) (“JUUL Advertising”),
24 http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

25 ³² Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo!
26 Finance (Oct. 9, 2019), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

1 Tobacco. As Monsees candidly acknowledged, the internal tobacco documents “became a very
2 intriguing space for us to investigate because we had so much information that you wouldn’t
3 normally be able to get in most industries. And we were able to catch up, right, to a huge, huge
4 industry in no time. And then we started building prototypes.”³³

5 41. Some of the Big Tobacco records that Monsees and Bowen reviewed showed
6 documents on how to manipulate nicotine pH to maximize nicotine delivery in a vapor while
7 minimizing the “throat hit” that may potentially deter new smokers. Other records relate to
8 tobacco industry market strategies and advertisements designed to lure non-smoking youth.
9 Monsees and Bowen were able to take advantage of an extensive online tobacco advertising
10 research database maintained by the Stanford Research into the Impact of Tobacco Advertising
11 (SRITA), an interdisciplinary research group devoted to researching the promotional activities
12 of the tobacco industry. SRITA’s database contains approximately 50,000 original tobacco
13 advertisements. According to Monsees, JUUL’s advertising was informed by traditional
14 tobacco advertisements, and SRITA in particular had been very useful to JUUL.³⁴

16 42. Put simply, the marketing and product design of the JUUL e-cigarette, and its
17 incredible commercial success, are based upon tactics and strategies originally developed by
18 Big Tobacco. As set forth below, while Big Tobacco was prohibited from employing these
19 tactics and strategies to market traditional cigarettes by virtue of the Master Settlement
20 Agreement and subsequent regulations, nothing in that settlement prevented JUUL from doing
21 so.
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24 ³³ Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground,
25 <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited
26 May 30, 2020).

³⁴ JUUL Advertising at 27.

B. Big Tobacco and E-Cigarettes

43. While JUUL revolutionized and dominated the e-cigarette market, it did not create the first one. Prior to JUUL, Big Tobacco—including Altria—was also heavily involved in the manufacture and promotion of e-cigarettes. Altria has been one of the biggest losers in the fight against smoking. Altria estimates that the cigarette industry declined by -4% in 2017 and by -4.5% in 2018. For 2019 through 2023, Altria estimated the average annual U.S. cigarette industry volume decline is (or would be) -4% to -5%.³⁵ Altria later revised this estimate in the second quarter of 2019 to 4-6%, in light of efforts to increase the legal age for cigarette smoking to 21.³⁶

44. In the face of these declining profits, Altria turned to e-cigarettes, along with other “non-combustible products,” to “enhance” its business platform.³⁷ Altria boasted to shareholders that it “aspire[d] to be the U.S. leader in authorized, non-combustible, reduced-risk products.”³⁸

³⁵ *Presentation for Altria’s Fourth-Quarter 2018 Earnings Conference Call*, Altria, at p. 6 (Jan. 31, 2019), <http://investor.altria.com/Cache/IRCache/3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5.PDF?O=PDF&T=&Y=&D=&FID=3ec9cf77-9d83-04fe-1ea2-1e2b8437afa5&iid=4087349>.

³⁶ *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Business (July 31, 2019), <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

³⁷ *Presentation for Altria’s Second-Quarter 2019 Earnings Conference Call*, Altria, at p. 24 (July 30, 2019), <http://investor.altria.com/Cache/IRCache/cbf69f8f-c60c-52e3-0a5c-c9c76833c670.PDF?O=PDF&T=&Y=&D=&FID=cbf69f8f-c60c-52e3-0a5c-c9c76833c670&iid=4087349>.

³⁸ *Presentation for Annual Meeting of Shareholders*, Altria, at p. 11 (May 17, 2018), <http://investor.altria.com/Cache/IRCache/2ead25b7-a790-f74f-51a6-4c5e2194d3b2.PDF?O=PDF&T=&Y=&D=&FID=2ead25b7-a790-f74f-51a6-4c5e2194d3b2&iid=4087349>.

1 45. In early 2014, Altria entered the e-cigarette market with its own e-cigarette
2 product sold under the brand MarkTen.³⁹ Following a phased roll-out of MarkTen in Indiana
3 and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive
4 marketing campaign, eclipsing the advertising expenditures for Imperial Tobacco's e-vapor
5 product, blu.⁴⁰

6 46. E-cigarette advertising spending for 2014 totaled \$88.1 million, a 52% increase
7 from 2013.⁴¹ Of that \$88.1 million spent in 2014, nearly 40% was Altria's MarkTen campaign,
8 at \$35 million.⁴²

9 47. Altria's MarkTen advertising tag line, "Let It Glow," was criticized by public
10 health advocates for playing off Disney's popular children's movie "Frozen" and its hit song
11 "Let it Go."⁴³

12 48. Even the then-president of R.J. Reynolds Vapor Company, Stephanie Cordisco,
13 criticized Altria for irresponsible marketing, calling this tag line "terrible" and saying that the
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17 ³⁹ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen*
18 *enters the marketplace*, Tobacco Control, Vol. 25, e16 (2016),
<https://pubmed.ncbi.nlm.nih.gov/26530219/>.

19 ⁴⁰ *Id.*; John Reid Blackwell, *Decision to expand e-cigarette sales and acquire Green Smoke*
20 *may indicate more optimism about 'e-vapor' category*, Richmond Times-Dispatch (Feb. 20,
21 2014), https://www.richmond.com/markten-to-roll-out-in-2q/article_f1dcaa85-ccdf-577b-8b48-d1e05c0cf14b.html.

22 ⁴¹ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria's MarkTen*
23 *enters the marketplace*, Tobacco Control, Vol. 25, e16 (2016),
<https://pubmed.ncbi.nlm.nih.gov/26530219/>.

24 ⁴² *Id.*

25 ⁴³ Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. TIMES (June 17, 2014),
[https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-](https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html)
26 [cigarettes.html](https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html).

1 companies “running the most irresponsible campaigns are the ones who know better.”⁴⁴ At the
2 time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were
3 using “exactly the same themes we saw work with kids in the U.S. for decades with
4 cigarettes.”⁴⁵

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

12 50. Altria also took full advantage of its distribution network, reaching 60,000 stores
13 in a month.⁴⁶ In Arizona, for example, Altria’s distribution network allowed MarkTen to
14 achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO
15 Marty Barrington’s statements on an earnings call.⁴⁷ Altria was clear in its intent to dominate
16 the e-cigarette market as it has the traditional cigarette one: “We are the market leader today
17 and we will continue to be,” Barrington told investors.⁴⁸
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20 ⁴⁴ *Id.*

21 ⁴⁵ *Id.*

22 ⁴⁶ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store
News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

23 ⁴⁷ Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall Street Journal (Feb. 19,
24 2014, 12:57 PM), <https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>.

25 ⁴⁸ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July
26 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

1 51. Altria began acquiring small companies in the vaping industry, starting in 2014
2 with Green Smoke, Inc., whose e-cigarettes were designed as “battery-powered devices that
3 turn nicotine-laced liquid into vapor.”⁴⁹ In 2017, Altria acquired a vaping product called Cync,
4 from Vape Forward. Cync is a small vapor device that uses prefilled pods, similar to the ones
5 offered by JUUL. It also made a minority investment in Avail Vapor, one of the largest vape
6 store chains in the U.S., which also produces and sells its own branded e-liquids for so-called
7 open-system devices, which are refillable.⁵⁰

8
9 52. In February 2018, Altria announced that it would enter the closed-tank market
10 with the MarkTen Elite: “a pod-based product with a premium, sleek battery design” and
11 having the “convenience of pre-filled, magnetic click pods.” At an analyst conference in
12 February 2018, former Altria chief Marty Barrington boasted that the Elite’s pods held more
13 than twice as much liquid as JUUL’s.⁵¹

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

15 54. Because e-cigarettes are subject to more relaxed regulation than cigarettes, Altria
16 was able to market its products in ways it could not have done for traditional tobacco products.
17 Altria marketed its e-cigarettes in flavors that would appeal to youth: Strawberry Brulee, Apple
18 Cider, Hazelnut Cream, Spiced Fruit, Piña Colada, Glacier Mint, and Mardi Gras (apparently a
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21 ⁴⁹ Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall Street
22 Journal (Feb. 19, 2014, 12:57 PM), [https://www.wsj.com/articles/altria-to-launch-](https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378)
23 [markten-e-cigarette-nationally-1392832378](https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378).

24 ⁵⁰ Timothy S. Donahue, *At the Forefront*, Tobacco Reporter (Dec. 1, 2017),
25 <https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

26 ⁵¹ Marty Barrington, *Remarks by Marty Barrington, Altria Group, Inc.’s (Altria) Chairman, Chief Executive Officer (CEO) and President, and other members of Altria’s senior management team*, US SEC (Feb. 21, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000076418018000020/exhibit992-2018cagnyremarks.htm>.

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

3 55. Altria's push to gain the youth market gained the attention of the FDA. On
4 September 12, 2018, the FDA sent a warning letter to Altria, requesting that Altria respond with
5 a "detailed plan" to address and mitigate the widespread use of its e-cigarette products by
6 minors.⁵² Due to the "epidemic rate of increase in youth use" of e-cigarettes, the FDA had
7 recently conducted an "enforcement blitz" of retailers nationwide and confirmed that Altria's
8 MarkTen products were often being sold to minors. The FDA did not mince words, telling
9 Altria that "[t]his is unacceptable, both legally and as a matter of public health." The FDA
10 warned Altria that it has a responsibility to ensure minors are not getting access to its products
11 and that it was "crucial" that manufacturers like Altria take steps to prevent youth from using its
12 products. First and foremost, the FDA asked Altria to "take prompt action to address the rate of
13 youth use of MarkTen products." The FDA suggested that Altria could revise its current
14 marketing practices, eliminate online sales, and remove flavored products from the market. The
15 FDA's expectation and motivation was clear: "steps must be taken to protect the nation's young
16 people."⁵³

17
18 56. On October 25, 2018, Altria responded to the FDA, claiming to have "serious
19 concerns" about youth access to e-vapor products.⁵⁴ It admitted that the use of e-cigarettes by
20 youth had risen to "epidemic levels." In response, Altria agreed to remove its pod-based e-
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23 ⁵² Scott Gottlieb, *Letter to Altria Client Services*, U.S. Food and Drug Admin. (Sep. 12, 2018),
<https://www.fda.gov/media/119666/download>.

24 ⁵³ *Id.*

25 ⁵⁴ Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, Altria (Oct. 25, 2018),
26 <https://www.altria.com/-/media/Project/Altria/Altria/about-altria/federal-regulation-of-tobacco/regulatory-filings/documents/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

1 cigarettes from the market and stop selling any flavored traditional e-cigarettes other than
 2 tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly-available information
 3 from FDA and others, we believe pod-based products significantly contribute to the rise in
 4 youth use of e-vapor products. Although we do not believe we have a current issue with youth
 5 access to or use of our pod-based products, we do not want to risk contributing to the issue.”
 6 Altria’s letter went on to disclaim a number of practices that it associated with marketing to
 7 youth that were key components of JUUL’s marketing strategy. Altria specifically identified
 8 the use of flavors that go beyond traditional tobacco flavors, digitally advertising on websites
 9 with a large percentage of youth visitors, using social media to promote the brand, allowing
 10 online purchases and promotional sign-ups without age verification, advertising e-cigarettes on
 11 billboards, advertising with models who appear to be under 25 years old, distributing branded
 12 merchandise, and paying celebrities or other third parties to market or use a particular brand’s
 13 e-cigarette. Altria also claimed to support “banning vaping in schools” in order to reduce
 14 “social access.” Altria ended the letter by committing to “reverse the current use trend among
 15 youth.”⁵⁵

17 57. Less than two months later, Altria changed its tune. On December 20, 2018,
 18 Altria announced that it would be making a \$12.8 billion-dollar investment in JUUL, the
 19 biggest equity investment in United States history.⁵⁶ The deal gave Altria a 35% stake in
 20 JUUL.
 21

22 **C. JUUL and Altria Join Forces to Protect JUUL’s Market Share**

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 24 ⁵⁵ *Id.*

25 ⁵⁶ Cromwell Schubarth, *Vaping Unicorn Juul Opens Lab in Mountain View Amid Furor in S.F.*,
 26 *Silicon Valley Bus. J.* (Feb. 5, 2019), <https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html>.

58. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United States senators wrote JUUL's CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL device and JUUL pods "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."⁵⁷ Less than a week later, then FDA Commissioner Gottlieb announced a crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against JUUL in particular.⁵⁸ At the same time, the FDA sent JUUL a request for documents relating to marketing, product design, and public health impact.⁵⁹ In July 2018, Massachusetts Attorney General Maura Healey announced an investigation into JUUL regarding marketing and sale to minors.⁶⁰ In September 2018, FDA Commissioner Gottlieb called youth vaping an "epidemic" and sent letters to JUUL, Altria, and other e-cigarette manufacturers demanding a plan to reduce youth use.⁶¹ Then, in September 2018, as alleged

⁵⁷ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*, United States Senate (Apr. 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

⁵⁸ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes* (Apr. 23, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention>.

⁵⁹ *Id.*

⁶⁰ Press Release, Office of Attorney General Maura Healey, AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to Minors (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

⁶¹ See CTP Letters to Industry, <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

1 above, the FDA raided JUUL’s headquarters and seized more than a thousand documents
 2 relating to JUUL’s sales and marketing practices.⁶²

3 59. On November 13, 2018, JUUL responded with an “Action Plan,” declaring its
 4 intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those
 5 flavors on the JUUL website to adults age 21 and over, and shut down its social media
 6 accounts.⁶³

7 60. As the pressure on JUUL intensified, Altria stepped in to assist. Despite the
 8 clear criticism of JUUL’s conduct in its October 25th letter to the FDA, Altria announced its
 9 \$12.8 billion investment in JUUL on December 20, 2018.⁶⁴ Altria characterized its investment
 10 as one intended to “accelerate harm reduction and drive growth.”⁶⁵ In an investor presentation
 11 in 2019, Altria described JUUL as having a “unique” and “compelling” product.⁶⁶
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18 ⁶² Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of*
 19 *headquarters*, Wash. Post (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

20 ⁶³ Juul Labs Action Plan, *Message From Kevin Burns, CEO, Juul Labs* (Nov. 13, 2018),
 21 <https://newsroom.juul.com/juul-labs-action-plan/>.

22 ⁶⁴ *Atria Makes \$12.8 Billion Minority Investment in Juul to Accelerate Harm Reduction and*
 23 *Drive Growth*, Business Wire (Dec. 20, 2018), [https://www.businesswire.com](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate)
 24 [/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL- Accelerate](https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate).

25 ⁶⁵ *Id.*

26 ⁶⁶ Howard Willard, *Remarks of Chairman and CEO at 2019 CAGNY Investor Presentation*,
 Altria (Feb. 20, 2019), Altria Group, Inc., <http://investor.altria.com/Cache/IRCache/5847584a-8e53-e0a3-f166-7d5bc7bfe495.PDF?O=PDF&T=&Y=&D=&FID=5847584a-8e53-e0a3-f166-7d5bc7bfe495&iid=4087349>.

1 61. But as the president of the Campaign for Tobacco-Free Kids observed upon
2 announcement of the deal, “Altria has no interest in seriously reducing the number of people
3 who smoke cigarettes.”⁶⁷

4 62. Altria would not have made such an investment if it did not intend to grow
5 JUUL’s already enormous market even more. This is confirmed by Altria’s statement when
6 announcing its investment, explaining that its investment in JUUL “enhances future growth
7 prospects” and committing to applying “its logistics and distribution experience to help JUUL
8 expand its reach and efficiency[.]”⁶⁸ Since the deal was inked in December 2018, Altria’s
9 actions have clearly helped JUUL maintain, if not expand, its market share—a market share
10 that, based on Altria’s own October 25, 2018 letter to the FDA, it believes was gained by
11 employing marketing and advertising practices that contributed to youth vaping. Altria’s
12 Second Quarter 2019 Earnings Call reported that JUUL continued to grow in the first half of
13 2019, from a 33% category share in 2018 to 48% by the second quarter of 2019. JUUL’s
14 expected revenue for 2019 is \$3.4 billion, nearly triple what it was in 2018.⁶⁹

15 63. From JUUL’s beginnings, Altria had “followed JUUL’s journey rather
16 closely.”⁷⁰ Altria Chairman and CEO Howard Willard said that, for years, his company
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19 ⁶⁷ Shiela Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. Times (Dec.
20 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

21 ⁶⁸ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction*
22 *and Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

23 ⁶⁹ Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite*
24 *Flavored Vape Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

25 ⁷⁰ Howard Willard, *Remarks of Chairman and CEO at 2019 CAGNY Investor Presentation*,
26 Altria (Feb. 20, 2019), Altria Group, Inc., <http://investor.altria.com/Cache/IRCache/5847584a->

1 “watched JUUL carefully to see if it had staying power.”⁷¹ Altria decided it did. As Willard
 2 explained: “During 2018, we concluded that JUUL had not only become the retail share leader
 3 in the U.S. e-vapor category but that no other brand was close to it in share or future growth
 4 potential.”⁷² This was enough for Altria, one of the world’s largest producers and marketers of
 5 tobacco products, to call JUUL’s alleged smoking cessation device a “terrific product” and take
 6 a 35% stake in the company with its \$12.8 billion investment.⁷³ With this investment, Altria
 7 now owns both the number one youth initiation cigarette in the United States (the Marlboro
 8 cigarette) and the number one youth initiation e-cigarette in the United States, JUUL.
 9

10 64. Notwithstanding Altria’s statements to the FDA just two months previously
 11 about its concerns that JUUL was marketing and advertising its products in a way that
 12 contributed to the youth vaping epidemic, Willard stated that the deal would allow Altria to
 13 “work[] with JUUL to accelerate its mission.”⁷⁴ Altria committed to applying “its logistics and
 14 distribution experience to help JUUL expand its reach and efficiency” and offering JUUL the
 15 support of “Altria’s sales organization, which covers approximately 230,000 retail locations.”
 16 It also gave JUUL access to its “premier” retail shelf space while allowing it to continue to sell
 17 its flavored products online and provided JUUL with access to the databases of all of Altria’s
 18 companies. According to Willard, Altria was “excited to support JUUL’s highly-talented team
 19

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

21 ⁷¹ *Id.*

22 ⁷² *Id.*

23 ⁷³ *Id.*

24 ⁷⁴ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*
 25 *Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

1 and offer [Altria’s] best-in-class services to build on their tremendous success.” Altria admitted
2 that minors were using JUUL products and that “underage use of e-cigarette product is a
3 problem.” Nevertheless, it stated that it believed its investment in JUUL “strengthens its
4 financial profile and enhances future growth prospects.”⁷⁵

5 65. Altria’s decision to prioritize profits without regard to the dangers of youth
6 vaping did not go unnoticed. On February 6, 2019, former FDA Commissioner Scott Gottlieb,
7 sent Altria another letter “regarding representations” made by Altria acknowledging that it “has
8 an obligation to take action to help address the mounting epidemic of youth addiction to tobacco
9 products.”⁷⁶ Commissioner Gottlieb told Altria that its recent purchase of a 35% ownership of
10 JUUL “contradict[s] the commitments you made to the FDA.” The FDA demanded Altria be
11 prepared to explain itself regarding its “plans to stop marketing e-cigarettes and to address the
12 crisis of youth use of e-cigarettes.” Commissioner Gottlieb told Altria that “deeply concerning
13 data” shows that “youth use of JUUL represents a significant proportion of overall use of e-
14 cigarette products by children” and despite any steps, the companies had taken to address the
15 issue he “ha[d] no reason to believe these youth patterns of use are abating in the near term, and
16 they certainly do not appear to be reversing.”⁷⁷

17 66. The companies met with Gottlieb in March 2019 in a meeting the Commissioner
18 described as “difficult.” Gottlieb “did not come away with any evidence that public health
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23 ⁷⁵ *Id.*

24 ⁷⁶ Scott Gottlieb, *Letter to Howard Willard*, U.S. Food and Drug Admin. (Feb. 6, 2019),
25 <https://www.fda.gov/media/122589/download>.

26 ⁷⁷ *Id.*

1 concerns drove Altria's decision to invest in JUUL, and instead sa[id] it looks like a business
2 decision."⁷⁸ Just a few weeks later, Gottlieb resigned from his position.

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

15 68. Altria is closely intertwined with JUUL. Not only does Altria's investment also
16 allow it to appoint a third of JUUL's board, but in September 2019, JUUL's CEO resigned to
17 be replaced by a career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently
18 served as the vice president and chief growth officer of Altria Client Services LLC, overseeing
19 the company's work, including digital marketing, packaging design & innovation, product
20 development, and safety, health, and environmental affairs. Crosthwaite is a career Altria
21 executive who knows Big Tobacco's playbook all too well, having previously served as the
22

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25 ⁷⁸ Kate Rooney and Angelica LaVito, *Altria shares fall after FDA's Gottlieb describes 'difficult'*
26 *meeting on Juul*, CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

1 president and CEO of Philip Morris USA, the vice president and general manager at Marlboro,
2 and the vice president of strategy and business development at Altria Client Services LLC.

3 69. This arrangement was profitable for both companies. JUUL employees received
4 \$2 billion in bonuses, which, split among the company's 1,500 employees, was approximately
5 \$1.3 million per employee,⁷⁹ and Altria received millions of teen customers.

6 70. JUUL claims its mission is to "improve the lives of the world's one billion adult
7 smokers by eliminating cigarettes,"⁸⁰ and its advertising now encourages "making the
8 switch."⁸¹ Similarly, Altria's CEO Howard Willard claimed that it invested in JUUL to help
9 "switching adult smokers" and "reduce harm."⁸² But JUUL does not have FDA approval as a
10 cessation device. This may be because, as one company engineer said: "We don't think a lot
11 about addiction here because we're not trying to design a cessation product at all ... anything
12 about health is not on our mind."⁸³
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17 ⁷⁹ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20,
18 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

19 ⁸⁰ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and*
20 *Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

21 ⁸¹ Lyndsey Cambridge, *Thornton's Budgens links with Juul offer smoking cessation service*, The
22 Grocer, Sept. 9 2019, <https://www.thegrocer.co.uk/health/thorntons-budgens-links-with-juul-to-offer-smoking-cessation-service/597359.article>.

23 ⁸² *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction*
24 *and Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate>.

25 ⁸³ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-*
26 *Cigarette*, The Verge (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

1 71. JUUL also does not have authority **or any basis** to claim that its product is
2 healthier than cigarettes. On September 9, 2019, the FDA warned JUUL that has it violated
3 federal law by making unauthorized representations that JUUL products are safer than
4 cigarettes.⁸⁴

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

11 73. To be clear, a key part of revenue growth like JUUL’s is addicting youth to
12 nicotine, as the tobacco industry has long known. Beginning in the 1950s, JUUL’s now
13 corporate affiliate, Philip Morris, intentionally marketed cigarettes to young people under the
14 age of 21 to recruit “replacement smokers” to ensure the economic future of the tobacco
15 industry.⁸⁵ Philip Morris knew that youth smoking was essential to the tobacco industry’s
16 success and longevity, as an internal Philip Morris document makes clear: “It is important to
17 know as much as possible about teenage smoking patterns and attitudes. Today’s teenager is
18 tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin
19 to smoke while still in their teens.”⁸⁶ For this reason, tobacco companies focused on the 14-24-
20

21 ⁸⁴ *Juul Labs, Inc. Warning Letter*, U.S. Food and Drug Admin. (Sept. 9, 2019),
22 [https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019)
23 [letters/juul-labs-inc-590950-09092019](https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019).

24 ⁸⁵ Amended Final Opinion at 972, ECF. No. 5750, *U.S. v. Philip Morris*, No. 99-cv-2496
(D.D.C. Sept. 8, 2006).

25 ⁸⁶ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free
26 Kids (May 14, 2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

1 year-old age group, because “younger adult smokers have been the critical factor in the growth”
 2 of tobacco companies and the 14-18-year-old group was an increasing segment of the smoking
 3 population.⁸⁷ As the Vice-President of Marketing at R.J. Reynolds Tobacco Company [“RJR”]
 4 explained in 1974, the “young adult market . . . represent[s] tomorrow’s cigarette business. As
 5 this 14-24 age group matures, they will account for a key share of the total cigarette volume—
 6 for at least the next 25 years.”⁸⁸ RJR’s now-infamous Joe Camel “ambassador of Cool”
 7 advertising campaign, which ran from 1988 through 1997, exemplifies the importance the
 8 tobacco industry placed on hooking young smokers early.⁸⁹

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

11 74. It is clear that JUUL, like Philip Morris and RJR before it, targeted youth as a
 12 key business demographic. A recent study showed that 15-17-year-olds are *16 times* more
 13 likely to use JUUL than 25-34-year-olds.⁹⁰

14 75. Indeed, JUUL was well aware from the beginning that its products would appeal
 15 to youth. A former JUUL manager, who spoke to *The New York Times* on the condition that his
 16 name not be used, said that within months of JUUL’s 2015 introduction, it became evident that
 17 teenagers were either buying JUULs online or finding others who made the purchases for them.
 18 Some people bought more JUUL kits on the company’s website than they could individually
 19

20 ⁸⁷ *Id.*

21 ⁸⁸ C.A. Tucker, *Marketing Plans Presentation to RJRI B of D*, Truth Tobacco Industry
 22 Documents, U. of S.F. (Sept. 30, 1974),
<https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=ypmw0091> at 2.

23 ⁸⁹ *Joe Camel: Character of the Year Advertisement*, Stanford U. Res. into the Impact of Tobacco
 24 Advert. (1990), [http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.
 24 php&token1=fm_img4072.php&theme](http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.php&token1=fm_img4072.php&theme).

25 ⁹⁰ Joyce Frieden, Medpage Today, *Vaping Companies Marketing to Teens, House Panel Told*,
 26 (July 24, 2019), <https://www.medpagetoday.com/primarycare/smoking/81210>.

1 use—sometimes 10 or more devices at a time. “First, they just knew it was being bought for
2 resale,” said the former senior manager, who was briefed on the company’s business strategy.
3 “Then, when they saw the social media, in the fall and winter of 2015, they suspected it was
4 teens.”⁹¹

5 76. This “suspicion” has been studied by researchers, who estimated that over 44
6 percent of JUUL’s Twitter account was being followed by underage youth.⁹²

7 77. Because of Big Tobacco’s demonstrated effectiveness at addicting youth to
8 nicotine, cigarette manufacturers, under the Master Settlement Agreement, and subsequent
9 regulations must operate under tight restrictions regarding their advertising and marketing
10 activities. By way of example, cigarette companies may not: use outdoor advertising such as
11 billboards; sponsor events; give free samples; pay any person to “use, display, make reference
12 to or use as a prop any Tobacco Product, Tobacco Product package . . . in any “Media;” pay any
13 third party to conduct any activity which the tobacco manufacturer is prohibited from doing; or
14 sell “flavored” cigarettes.
15

16 78. All of these above activities were prohibited because of their effectiveness at
17 appealing to youth. As described below, all of these activities figured prominently in JUUL’s
18 marketing campaign.

19 79. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford
20 University School of Medicine and principal investigator for SRITA, JUUL’s initial marketing
21

22
23 ⁹¹ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?*
24 N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

25 ⁹² Annice Kim et al., *Estimated Ages of JUUL Twitter Followers*, JAMA Network (May 20,
26 2019), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2733855>.

was “patently youth-oriented.”⁹³ The JUUL’s 2015 ad campaign, called “Vaporized” was designed to create a “cult-like following.”⁹⁴ Its imagery featured a vivid color scheme and models in their twenties in poses that researchers note are evocative of behaviors more characteristic of underage teens than mature adults.⁹⁵ Dr. Jackler and his colleagues found it “clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young adults.⁹⁶

80. Tobacco advertisers have long understood that teens are attracted to such imagery. The Vaporized campaign was featured on the front page of VICE magazine, which claims to be “the #1 youth media company in the world.”⁹⁷



⁹³ Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic*, Testimony of Robert Jackler before the House Subcommittee on Economic and Consumer Policy (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf> at 2 (“Jackler Testimony”).

⁹⁴ *Id.* at 4.

⁹⁵ JUUL Advertising at 7.

⁹⁶ *Id.*

⁹⁷ *Id.* at 17.

1 81. In the summer of 2015, an animated series of Vaporized billboards, with the
2 campaign's youth-appealing imagery, was displayed in New York's Times Square.⁹⁸

3 82. Over the first year after JUUL launched its ad campaign in June 2015, it held a
4 series of at least 50 highly stylized parties, typically with rock music entertainment, in cities
5 across the United States.⁹⁹ Thousands of young people were given free nicotine-filled
6 JUULpods (appropriately named "JUUL starter kits"), and JUUL posted photos of various
7 young people enthusiastically puffing on JUULs across their social media channels.¹⁰⁰ JUUL
8 also featured popular stars such as Katy Perry holding a JUUL at the Golden Globes.¹⁰¹
9

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

18 84. JUUL used Big Tobacco's advertising imagery but coupled it with a modern,
19 state-of-the-art marketing campaign designed to target youth. It relied heavily on social media,
20 crafting a powerful online presence, which persists even after JUUL deleted its accounts in the
21

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23 ⁹⁸ *Id.*

24 ⁹⁹ *Id.* at 27.

25 ¹⁰⁰ *Id.*

26 ¹⁰¹ *Jackler Testimony* at 8.

1 face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the
 2 most popular social media site among teens.¹⁰² JUUL cultivated hashtags, allowing the
 3 company to blend its ads in with a wide range of user content, increasing exposure while
 4 concealing the commercial nature of the content.¹⁰³ JUUL then used hashtags to reinforce the
 5 themes it crafted in its product design, like #style, #technology, #smart, and #gadget. JUUL's
 6 hashtags attracted an enormous community of youthful posts on a wide array of subjects.
 7 According to Dr. Jackler, #Juul contains literally thousands of juvenile postings, and numerous
 8 Instagram hashtags contain the JUUL brand name.¹⁰⁴ Even after JUUL halted its own social
 9 media posts in November 2018, viral peer-to-peer promotion among teens insured continued
 10 corporate and product visibility among youth.¹⁰⁵ In fact, community posts about JUUL
 11 increased after JUUL itself quit using social media in the fall of 2018. Prior to November 2018,
 12 over a quarter of a million posts appeared. In the eight months *after* JUUL halted its
 13 promotional postings, the rate of community postings increased significantly, resulting in the
 14 number of posts doubling to over half a million.¹⁰⁶

16 85. JUUL also paid social media influencers to post photos of themselves with
 17 JUUL devices and to use the hashtags that it was cultivating.¹⁰⁷ JUUL entered a contract with
 18 an advertising agency specifically to identify and recruit social media influencers that had at
 19 least 30,000 followers to, according to an internal JUUL email, "establish a network of
 20

21 ¹⁰² JUUL Advertising at 33.

22 ¹⁰³ *Id.* at 34.

23 ¹⁰⁴ Jackler Testimony at 10.

24 ¹⁰⁵ *Id.* at 11.

25 ¹⁰⁶ *Id.*

26 ¹⁰⁷ JUUL Advertising.

creatives to leverage as loyalists” for the JUUL brand.¹⁰⁸ One such influencer was Christina Zayas, whom JUUL paid \$1,000 for just one blog post and one Instagram post in the fall of 2017.¹⁰⁹

86. JUUL instituted an “affiliate program” to recruit those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL products.¹¹⁰ It even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and get a discount.”¹¹¹

87. Such tactics masked what were, in fact, JUUL advertisements as user content, further increasing exposure, and ultimately solidifying the company in teen pop culture as a form of cultural currency. JUUL’s strategy was so successful in embedding its products into pop culture that it entered the vernacular as a verb. The JUUL device and the term “juuling” are so pervasive that JUUL effectively eliminated not only competitors but also any potentially alarming terms like “smoking” or “e-cigarette,” which could alert users of the true nature of the device or activity. A recent study found that 63% of adolescent JUUL users did not know that JUUL pods contain nicotine.¹¹² This has worked to JUUL’s advantage and was, in fact, a

¹⁰⁸ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, Forbes (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#47785ce533e2>.

¹⁰⁹ Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, CNN Health (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

¹¹⁰ Jackler Testimony at 9-10.

¹¹¹ Jackler Testimony at 9.

¹¹² *Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low*, Truth Initiative (Apr. 18, 2018), <https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf>.

1 deliberate part of its strategy. In the first year after its launch, not one of JUUL's
2 171 promotional emails said anything about nicotine content,¹¹³ and it did not include nicotine
3 warnings on the JUUL packaging until August 2018, when it was forced to do so.

4 88. The design of JUUL's product is also acutely attractive to youth. Unlike most of
5 its predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and
6 seems like the latest tech invention. This is not surprising, given the founders' Silicon Valley
7 product design education and training. The evocation of technology makes the JUUL device
8 familiar and desirable to the younger tech-savvy generation, particularly teenagers. The JUUL
9 device even has features reminiscent of youth-oriented tech culture and gaming, like "secret"
10 features users can unlock, such as making the indicator light flash rainbow colors in "party
11 mode." JUUL has been so successful in emulating technology that the small, rectangular
12 devices are often mistaken for—or passed off as—flash drives.

14 89. The ability to conceal a JUUL is also part of the appeal for adolescents. The
15 devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and
16 simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it
17 possible to covertly use a JUUL behind a turned back, which has become a trend in many
18 schools. Finding new ways to hide the ever-concealable JUUL has spawned products designed
19 just for that purpose, such as apparel that allows the wearer to use the device while it is
20 concealed in the drawstring of a hoodie or the strap of a backpack.¹¹⁴

24 ¹¹³ JUUL Advertising at 25.

25 ¹¹⁴ Evie Blad, 'Juuling' and Teenagers: 3 Things Principals and Teachers Need to Know, Educ.
26 Wk. (July 18, 2018), <https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

1 90. JUUL also created special flavors that make its addictive, high-tech device even
 2 more attractive to adolescents. Tobacco companies have known for decades that flavored
 3 products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum
 4 entitled: “Youth Cigarette – New Concepts,” specifically noted the “well-known fact that
 5 teenagers like sweet products.”¹¹⁵ A 1979 Lorillard memorandum concluded that younger
 6 customers would be “attracted to products with ‘less tobacco taste,’ and even proposed
 7 borrowing data from the “Life Savers” candy company to determine which flavors enjoyed the
 8 widest appeal among youth.¹¹⁶ According to 2004 data, 17-year-old smokers were more than
 9 three times likely as those over 25 to smoke flavored cigarettes and viewed flavored cigarettes
 10 as safer.¹¹⁷ For this reason, in 2009, the FDA banned flavored cigarettes pursuant to its new
 11 authority under the Family Smoking Prevention and Tobacco Control Act of 2009. In
 12 announcing the ban, FDA Commissioner Dr. Margaret Hamburg declared that “flavored
 13 cigarettes are a gateway for many children and young adults to become regular smokers.”¹¹⁸

15 91. There is no reason to believe that flavors play any different role with respect to
 16 e-cigarettes and youth. In fact, a 2017 study of the cigarette flavor ban found that the ban was
 17 effective in lowering the number of smokers and the amount smoked by smokers, though it was
 18

20 ¹¹⁵ K. M. Cummings et al., *Marketing to America’s Youth: Evidence From Corporate*
 21 *Documents*, BMJ Journals Vol. 11, Issue Supp. 1 (Mar. 1, 2002),
https://tobaccocontrol.bmj.com/content/11/suppl_1/i5.info.

22 ¹¹⁶ Laurie Halverson & Kathy Sheran, *Big Tobacco Lurks Behind E-Cigarettes*, Star Tribune
 23 (Apr. 10, 2014, 6:40 PM), <https://www.startribune.com/big-tobacco-lurks-behind-e-cigarettes/254821801/>.

24 ¹¹⁷ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22,
 25 2009), <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

26 ¹¹⁸ *Id.*

1 associated with increased use of menthol cigarettes (the only flavor still available).¹¹⁹

2 According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored
3 varieties.¹²⁰ Studies also show that flavors motivate e-cigarette initiation among youth,¹²¹ and
4 that youth are much more likely to use flavored tobacco products than adults are.¹²² In fact, in
5 September 2019, the State of Michigan banned flavored e-cigarettes, a step the governor said
6 was needed to protect young people from the potentially harmful effects of vaping, Governor
7 Andrew Cuomo of New York announced that he would pursue emergency regulations to ban
8 the sale of flavored e-cigarettes,¹²³ and Governor Jay Inslee of Washington State ordered the
9 Washington State Department of Health to ban all flavored vapor products.¹²⁴ Despite JUUL's
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11
12 ¹¹⁹ Stanton A. Glantz, PhD, *More evidence to support eliminating flavors to reduce youth*
13 *cigarette and e-cigarette use*, UCSF Center for Tobacco Control Research and Education
14 (Aug. 17, 2017), [https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-](https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use)
15 [youth-cigarette-and-e-cigarette-use](https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use); Charles J. Courtemanche, et al., *Influence of the Flavored*
16 *Cigarette Ban on Adolescent Tobacco Use*, American Journal of Preventive Medicine Vol. 52,
17 Issue 5 (Jan. 9, 2017); MB. Harrell, et al., *Flavored e-cigarette use: Characterizing youth,*
18 *young adult, and adult users*, Prev Med Rep., Vol. 5 (Nov. 11, 2016).

19 ¹²⁰ E-Cigarette Use Among Youth and Young Adults, U.S. Dept. of Health and Human Services
20 (2016), [https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-](https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf)
21 [Among-Youth-And-Young-Adults.pdf](https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf).

22 ¹²¹ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*,
23 MarketWatch (Feb. 26, 2019), [https://www.marketwatch.com/story/flavored-vapes-lure-teens-](https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25)
24 [into-smoking-and-nicotine-addiction-study-shows-2019-02-25](https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25).

25 ¹²² AC Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the*
26 *First Wave of the PATH Study (2013-2014)*, 53 Am. J. of Preventative Med. 139 (2017),
<https://pubmed.ncbi.nlm.nih.gov/28318902/>.

¹²³ Jesse McKinley & Christina Goldbaum, *New York Moves to Ban Flavored E-Cigarettes by*
Emergency Order, N.Y. Times (Sept. 15, 2019),
[https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-](https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-ios-share)
[ios-share](https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-ios-share).

¹²⁴ Gov. Jay Inslee, Exec. Order No. 19-03 Addressing the Vaping Use Public Health Crisis
(Sept. 27, 2019), [https://www.governor.wa.gov/sites/default/files/19-03%20-](https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery)
[%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm-](https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery)
[medium=email&utm%20m_source=govdelivery](https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery).

1 claims that its target market is adult smokers, the company entered the market with flavors like
2 Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors were the reason
3 countless adolescents started using JUUL products.

4 92. The flavors pose dangers beyond luring young people into trying nicotine.
5 Studies now show these sweet and fruity flavors present distinct additional health hazards.
6 Researchers have found that some of the chemicals JUUL uses for flavor and perfume—
7 particularly in the Crème Brulee flavor—contain relatively high levels of acetals.¹²⁵ Acetals are
8 airway-irritating chemicals that may cause lung damage.¹²⁶ Dr. Robert Jackler said that test
9 results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of
10 evidence documenting toxicological effects of e-cig vapor”¹²⁷

12 93. On November 19, 2019, the American Medical Association (AMA) called for
13 the total ban on all e-cigarette and vaping products that do not meet FDA approval as cessation
14 tools. Physicians, residents, and medical students from across the country voted to adopt
15 policies on AMA’s longtime efforts to prevent another generation from becoming dependent on
16 nicotine. As part of the request for a ban, AMA President Patrice A. Harris, M.D., M.A., said
17 “It’s simple – we must keep nicotine products out of the hands of young people and that’s why
18 we are calling for an immediate ban on all e-cigarette and vaping products from the market.
19 With the number of young people using e-cigarettes spiking it is not only critical that there is
20

22
23 ¹²⁵ Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019),
24 [https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-](https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice)
[discovered-in-vape-juice](https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice).

25 ¹²⁶ *Id.*

26 ¹²⁷ *Id.*

research into nicotine addiction treatments for this population, but it is imperative that we continue efforts to prevent youth from ever using nicotine.”¹²⁸

E. The Cost of JUUL’s Success

94. In addition to designing its devices to be particularly attractive to youth, JUUL designed its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase nicotine, JUUL uses patented nicotine salts from which it makes liquid nicotine cartridges or JUULpods.¹²⁹ Each JUULpod is, according to the company, the equivalent of a pack of cigarettes. Each pod contains an alarming amount of nicotine, with up to 59 mg per ml—an amount that is roughly three times the amount of nicotine that can be sold to consumers in the European Union in a JUULpod. On top of ramping up the amount of nicotine, JUULpods enabled the company to increase the rate and amount of nicotine delivery to the JUUL user, roughly doubling the concentration and nearly tripling the delivery speed of nicotine of the average e-cigarette.¹³⁰

95. Big Tobacco spent decades manipulating nicotine in order to foster and maintain addiction in their customers. RJR developed and patented nicotine salt additives, including nicotine benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide an additional “nicotine kick” based on increased nicotine absorption associated with

¹²⁸ Press Release, American Med. Ass’n, *AMA calls for total ban on all vaping products not approved by FDA* (Nov. 19, 2019), <https://www.ama-assn.org/press-center/press-releases/ama-calls-total-ban-all-vaping-products-not-approved-fda>.

¹²⁹ Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>.

¹³⁰ *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>.

1 lower pH. JUUL uses this very same concept for its market-dominating e-cigarettes. The
2 company's patent for its nicotine salts describes a process for combining benzoic acids with
3 nicotine, a formulation that mimics the nicotine salt additive developed by RJR. JUUL's use of
4 benzoic acid and manipulation of pH affect the palatability of nicotine inhalation by reducing
5 the "throat hit" that users experience when vaping. Indeed, this was the objective behind using
6 nicotine salts (as compared to "free base nicotine" which has a higher pH). According to Ari
7 Atkins, one of the inventors of the JUUL device, "[i]n the tobacco plant, there are these organic
8 acids that naturally occur. And they help stabilize the nicotine in such a way that makes it . . .
9 I've got to choose the words carefully here: Appropriate for inhalation."¹³¹

11 96. Because smokers are already accustomed to a certain level of harshness and
12 throat hit, developing a product with low levels of harshness and minimal "throat hit" is only a
13 critical concern if your goal is to appeal to non-smokers, for example, youth. Minimizing the
14 harshness of nicotine also allows one to vape more frequently, and for longer periods of time
15 and masks, the amount of nicotine being delivered by eliminating the unpleasant throat hit
16 normally associated with large doses of nicotine. The harshness of freebase nicotine makes
17 prolonged vaping difficult; the use of nicotine salts solves that problem. Put another way, the
18 nicotine salt technology behind JUULpods makes JUUL "smoke" highly potent yet hardly
19 perceptible.
20

21 97. The increased nicotine exposure facilitated by the JUUL device has serious
22 health consequences. The ease of use and "smoothness" strip away external inhibitors and
23 enable extreme levels of unfettered use. Using JUUL's own calculations, consuming two
24

25 ¹³¹ David Pierce, *This Might Just Be the First Great E-Cig*, Wired.com (Apr. 21, 2015),
26 <https://www.wired.com/2015/04/pax-juul-ecig/>.

JUULpods in a day is the equivalent of consuming two to four packs of cigarettes a day. In this way, JUUL has not only created a new generation of e-cigarette smokers but has also pioneered a new style of smoking—vaping—that is more nicotine-saturated than ever before.

98. Increased rates and duration of smoking lead to greater overall exposure to nicotine. Nicotine is a neurotoxin. A highly addictive, 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.”¹³² Studies also show 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.¹³³

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

¹³² Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function*, 2(12) Cold Spring Harbor Persp. Med. 2 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/pdf/cshperspectmed-ADD-a012120.pdf>.

¹³³ Michelle Ren and Shahrdad Lotfipour, *Nicotine Gateway Effects on Adolescent Substance Use*, West J. Emerg Med. (Aug. 20, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6754186/>.

100. Nicotine addiction is a serious injury recognized by the medical community in the Diagnostic and Statistical Manual (DSM), categorized by “a problematic pattern of tobacco use, leading to clinically significant impairment or distress.”¹³⁴

101. Medical research has revealed the difficulty of ceasing use of nicotine through nicotine withdrawal. Nicotine withdrawal is categorized by irritability, anxiety, difficulty concentrating, restlessness, increased appetite, dysphoric or depressed mood, and insomnia.¹³⁵

102. According to the National Institute of Drug Abuse, 31% of the teen e-cigarette users will start smoking within six months, compared to 8% of non-e-cigarette users.¹³⁶

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

104. According to congressional testimony from Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco Research and Treatment Center, “[n]icotine addiction can take hold in only a few days, especially in the developing adolescent brain that is particularly vulnerable to addiction to nicotine. . . . Many of my patients find JUUL nearly impossible to stop. Nicotine withdrawal can cause headaches, insomnia, irritability, anxiety, and depression, and these withdrawal

¹³⁴ Psychology Today, *Tobacco-Related Disorders*, <https://www.psychologytoday.com/us/conditions/tobacco-related-disorders#:~:text=Symptoms,period%20of%20time%20than%20intended> (last visited June 1, 2020).

¹³⁵ Ian McLaughlin et al., *Nicotine Withdrawal*, U.S. Nat’l Library of Medicine, Nat’l Institutes of Health (Aug. 19, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4542051/>.

¹³⁶ National Institute on Drug Abuse, *Teens and E-cigarettes* (updated Feb. 2016), <https://www.drugabuse.gov/related-topics/trends-statistics/infographics/teens-e-cigarettes>.

1 symptoms are one of the primary reasons a nicotine addiction is difficult to overcome.”¹³⁷

2 Moreover, there is a lack of effective tools to help adolescents overcome nicotine addiction:

3 there is no good data on how to treat adolescents with e-cigarette dependence; there has not

4 been enough research on youth tobacco cessation strategies, and most of the pharmacological

5 therapies approved for adults have been shown to be ineffective or only marginally effective in

6 adolescents.¹³⁸

7
8 105. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is
9 much more likely to continue than daily cigarette smoking. Out of the surveyed students who
10 reported ever using cigarettes, only 17% indicated that they remained daily smokers. Out of the
11 surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This
12 data “demonstrates that e-cigarette use in teens is very persistent, a result consistent with the
13 addictiveness of JUUL and the difficulty teens have in trying to quit.”¹³⁹

14 106. E-cigarette use also puts adolescents at increased risk for cigarette smoking.
15 Compared to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to
16 begin smoking cigarettes.¹⁴⁰

17 107. The dangerous and destructive nature of nicotine is no recent discovery. As a
18 key ingredient in tobacco products, the drug and its deleterious effects have been the subject of
19

20
21 ¹³⁷ *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I, Hearing Before the*
22 *Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th
23 Cong. (2019) (statement of Jonathan P. Winickoff, American Academy of Pediatrics)
24 (“Winickoff Testimony”), [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf)
25 [2019.07.24%20Winickoff%20AAP%20Testimony.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf), at 2-3.

26 ¹³⁸ *Id.* at 3.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

1 scientific research and public health warnings for decades. Nicotine causes cardiovascular,
2 reproductive, and immunosuppressive problems with devastating effects. Part of the reason the
3 national decline in cigarette use in recent years was such a victory for public health was because
4 there was a corresponding decline in teen exposure to nicotine. From 2000 to 2017, the
5 smoking rate among high school students fell by 73%.¹⁴¹

6 108. That trend has been completely reversed. In 2018, more than one in four high
7 school students in the United States reported using a tobacco product in the past thirty days, a
8 dramatic increase from just one year before.¹⁴² But there was no increase in the use of
9 cigarettes, cigars, or hookahs during that same time period.¹⁴³ There was only increased use in
10 a single tobacco product: e-cigarettes. While use of all other tobacco products continued to
11 decrease as it had been for decades, e-cigarette use among high school students increased 78%
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20 ¹⁴¹ Press Release, Matthew L. Myers, President, Campaign for Tobacco-Free Kids, *Press*
21 *Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for Bold Action*
22 *to Finish the Fight Against Tobacco, Campaign for Tobacco-Free Kids* (Nov. 26, 2018),
https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

23 ¹⁴² Press Release, Ctrs. For Disease Control and Prevention, *Progress Erased: Youth*
24 *Tobacco Use Increased During 2017-2018* (Feb. 11, 2019),
<https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

25 ¹⁴³ Ctrs. for Disease Control and Prevention, *Tobacco Use By Youth Is Rising: E-Cigarettes are*
26 *the Main Reason* (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

1 in just one year.¹⁴⁴ This drastic reversal caused the CDC to describe youth vaping an
 2 “epidemic.”¹⁴⁵

3 109. The teen vaping epidemic of which JUUL is the architect has and will continue
 4 to have significant costs, both for individual users and for society. Nicotine addiction alone has
 5 significant health care costs, and these costs are exacerbated when adolescents are involved.
 6 Adolescent nicotine addiction leads to memory and attention problems, and increased chances
 7 of addiction later in life, all of which will continue to have long-lasting impacts on society.
 8

9 110. Science is also beginning to show that e-cigarettes have the potential to cause
 10 even more distinct health risks and costs. The very same liquids that enable e-cigarettes to
 11 deliver nicotine with such potency are proving to be increasingly dangerous. When heated, the
 12 vape liquid turns into aerosol, which may contain, in addition to nicotine, ultrafine toxic
 13 particles such as heavy metals, additional chemicals, and volatile organic compounds.¹⁴⁶ These
 14 chemicals have the potential to be deadly. Vaping is now linked to conditions like chronic
 15 obstructive pulmonary disease and seizures, and there were 193 possible cases of severe lung
 16 illness associated with e-cigarette product use in 22 states in less than two months in the
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 18

19 ¹⁴⁴ Scott Gottlieb, U.S. Food & Drug Admin., *Statement from FDA Commissioner Scott Gottlieb,*
 20 *M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products*
 21 *and banning menthol in cigarettes*, U.S. Food & Drug Admin. (Nov. 15, 2018),
[https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)
[gottlieb-md-proposed-new-steps-protect-youth-preventing-access.](https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access)

22 ¹⁴⁵ Jerome Adams, Ctrs. For Disease Control and Prevention, *Surgeon General’s Advisory on E-*
 23 *cigarette Use Among Youth 2* (Dec. 2018), [https://e-cigarettes.surgeongeneral.gov/documents/](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf)
[surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf](https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf).

24 ¹⁴⁶ Lena H. Sun, *He went from hiking enthusiast to ‘on death’s door’ within days. Doctors*
 25 *blamed vaping*, Wash. Post (Aug. 24, 2019), [https://www.washingtonpost.com/health/one-](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true)
[mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true)
[11e9-9986-1fb3e4397be4_story.html?arc404=true](https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true).
 26

1 summer of 2019 alone.¹⁴⁷ Public health officials reported the first known death from a vaping-
 2 related illness on August 23, 2019.¹⁴⁸ As of February 18, 2020, U.S. health officials had
 3 reported 68 deaths from respiratory illness tied to vaping and the number of people hospitalized
 4 to 2,807.¹⁴⁹

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

7
 8 Counseling teens and preteens on e-cigarette use is challenging. Many of my
 9 patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes
 10 are dangerous, but assume that Juul—since it’s ubiquitous, comes in child-friendly
 11 flavors, and is marketed as a healthier alternative to smoking— must be harmless.
 I have to explain to kids that e-cigarettes do not have the same positive health
 benefits as the fruits whose flavors they copy. Even the term vapor calls to mind
 harmless water vapor. There is no water in these products.

12 Winickoff Testimony at 2.

13 112. A peer-reviewed medical article published by *JAMA Pediatrics* on January 21,
 14 2020 analyzed the prevalence, patterns and factors associated over time with e-cigarette use
 15 among adolescents and younger adults in the United States. The conclusions were in part as
 16 follows: “This study found that the e-cigarette device JUUL appears to be associated with the
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 21 ¹⁴⁷ Press Release, Ctrs. For Disease Control and Prevention, *CDC, FDA, States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes* (last updated Aug. 23, 2019), <https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html>.

22 ¹⁴⁸ Matt Richtel & Sheila Kaplan, *First Death in a Spate of Vaping Sicknesses Reported by Health Officials*, N.Y. Times (Aug. 23, 2019, updated Oct. 8, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

23
 24 ¹⁴⁹ Ctrs. for Disease Control and Prevention, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html (last updated Feb. 25, 2020).
 25
 26

1 youth e-cigarette epidemic, attracting new users and facilitating frequent use with their highly
 2 addictive nicotine content and appealing flavors.”¹⁵⁰

3 113. The JAMA study further revealed that while JUUL products were claimed to be
 4 designed for adults to try to quit smoking cigarettes, nearly 8% of 15- to 17-year-olds had used
 5 JUUL within the past month, compared to just under 3% of older Americans.¹⁵¹

6 114. The research was conducted by the anti-tobacco advocacy group *Truth Initiative*.
 7 “Youth tobacco use is at its highest in nearly 20 years, primarily driven by e-cigarettes resulting
 8 in over 5 million youth now vaping across America,” Robin Koval, CEO and president of *Truth*
 9 *Initiative*, said in a news release. “Years of progress in the fight against youth tobacco [use]
 10 have been reversed with millions of teens, most of whom were not smokers, now using a high
 11 nicotine tobacco product.”¹⁵²

13 **F. JUUL’s Remedial Measures**

14 115. In the face of increasing public scrutiny and pressure, JUUL has taken some
 15 action to curb underage use of its products, but its efforts have been ineffective at best and
 16 aggravating at worst. After media and researchers brought JUUL’s advertising tactics front and
 17 center, it launched a new ad campaign focusing on former smokers, and it deleted social media
 18 accounts. But, JUUL designed its social media campaign to flourish from user-made content,
 19

20 ¹⁵⁰ Donna M. Vallone et al., *Electronic Cigarette and JUUL Use Among Adolescents and Young*
 21 *Adults*, 174(3) JAMA Pediatrics (published online Jan. 21, 2020).

22 ¹⁵¹ Robert Preidt, *Vape Devices Like Juul ‘Reversing’ Efforts to Keep Youth from Tobacco:*
 23 *Study*, U.S. News and World Report (Jan. 21, 2020, 12:00 PM),
 24 <https://www.usnews.com/news/health-news/articles/2020-01-21/vape-devices-like-juul-reversing-efforts-to-keep-youth-from-tobacco-study>.

25 ¹⁵² Truth Initiative, *New Truth Initiative Study Finds JUUL Use Doubled in One Year as*
 26 *Tobacco and Nicotine Use Among Youth Reaches Highest Level in Decades* (Jan. 21, 2020),
<https://truthinitiative.org/press/press-release/new-truth-initiative-study-finds-juul-use-doubled-one-year-tobacco-and-nicotine>.

1 which remains unaffected by the absence of a JUUL-run account. In fact, as noted above, posts
2 relating to JUUL increased after it stopped its direct social advertising campaign.

3 116. JUUL's efforts to curb underage use through alterations to the product itself are
4 similarly either ineffective or potentially damaging. JUUL's approach to its flavored products
5 illustrates this point. In response to serious concerns about flavored products and youth vaping,
6 JUUL did the following: (1) it slightly modified the flavor names (i.e., "Cool Mint" is now
7 "Mint," "Crème Brulee" is now "Creme"); and (2) it limited the flavors carried by retail stores to
8 tobacco and mint, while continuing to offer the full range of flavors (including popular ones such
9 as Mango) online—a market which teens are particularly aware of and adept at navigating. As
10 Dr. Winickoff testified before Congress:
11

12 [it is] completely false to suggest that mint is not an attractive flavor to children.
13 From candy canes to toothpaste, children are introduced to mint flavor from a
14 young age. Not only do children enjoy mint, but it has special properties that make
15 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.

16 Winickoff Testimony at 4.

17 117. Similarly, restricting other flavors to online sales is of limited effectiveness.
18 According to Dr. Winickoff, 80% of children get e-cigarettes from social sources, such as older
19 friends, meaning that if the products are available for sale somewhere, children will get them.¹⁵³
20

21 118. In October 2019, JUUL suspended the sale of non-tobacco, non-menthol-based
22 flavors (Mango, Crème, Fruit, and Cucumber) in the U.S. pending FDA review.
23
24
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26 ¹⁵³ *Id.*

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

G. JUUL and the Federal Response

120. In September 2019, President Trump, the first lady and two of his top health officials gathered in the Oval Office to announce they would take what Mr. Trump called “very, very strong” action against the fast-growing epidemic of teenage vaping: a ban on the sale of most flavored e-cigarettes.¹⁵⁴

121. In late December 2019, the President’s administration announced they would forbid the sale of most flavored e-cigarette cartridges but would exempt menthol and tobacco flavors, as well as flavored liquid nicotine sold in open tank systems at vape shops.¹⁵⁵

122. In late December 2019, the Food and Drug Administration ordered companies to stop manufacturing, distributing and selling most cartridge-based e-cigarette flavors—including mint and fruity flavors—by early February 2020, saying the crackdown was urgently needed to stem a surge in teen vaping.¹⁵⁶

123. On December 20, 2019, the President signed legislation amending the Federal Food, Drug and Cosmetic Act and raising the federal minimum age of sale of tobacco products

¹⁵⁴ Abby Goodnough, Maggie Haberman, Sheila Kaplan, *With Partial Flavor Ban, Trump Splits the Difference on Vaping*, N.Y. Times (updated Feb. 12, 2020), <https://www.nytimes.com/2020/01/02/health/flavor-ban-e-cigarettes.html>.

¹⁵⁵ *Id.*

¹⁵⁶ Wash. Post News Serv., *FDA bars sales of most e-cigarette pod flavors after 30 days*, Herald and News (Jan. 3, 2020), https://www.heraldandnews.com/fda-bars-sales-of-most-e-cigarette-pod-flavors-after/article_2c51c3da-c953-56fa-99dd-857d266d621e.html.

1 from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product, including e-
2 cigarettes, to anyone under 21.

3 124. A bipartisan group of US senators on January 22, 2020 announced that they had
4 introduced legislation that would mandate e-cigarette companies to pay user fees to the U.S.
5 Food and Drug Administration to fund stronger oversight over the industry. The senators—
6 including Jeanne Shaheen, D-N.H., and Mitt Romney, R-Utah—said that the Resources to
7 Prevent Youth Vaping Act authorizes the FDA to collect user fees from all makers of tobacco
8 products, including e-cigarettes. While makers of traditional tobacco products currently pay
9 FDA user fees, e-cigarette companies are currently exempt, according to the senators. The
10 proposed bill increases the total amount of user fees that will be collected in fiscal year 2020 by
11 \$100 million, the senators said. “This legislation gives FDA the authority and resources the
12 agency needs to hold e-cigarette companies accountable, crack down on e-cigarette sales to
13 minors and raise awareness among youth about the dangers of vaping,” Shaheen said in a
14 statement.¹⁵⁷

16 125. On January 22, 2020, Congress announced that in early February 2020, JUUL
17 representatives, and those of other leading e-cigarette companies, would be called to testify about
18 their role in creating the youth vaping crisis. “While consumers remain in the dark of the
19 possible health consequences, these companies are making billions of dollars as they lure a new
20 generation of young people into a lifetime of nicotine addiction,” Rep. Diana DeGette (D-Colo.),
21 the chair of the oversight panel conducting the hearing, wrote in a press release. Despite
22 spending more than \$4 million lobbying Congress in 2019, JUUL has been criticized by
23

24
25 ¹⁵⁷ Emily Field, *Senators Unveil Bill Requiring Vape Cos. To Pay FDA*, Law360 (Jan. 22, 2020,
26 3:41 PM), <https://www.law360.com/articles/1236604>.

1 everyone from former FDA Commissioner Scott Gottlieb to Sen. Elizabeth Warren (D-Mass.)
 2 for its role in fueling the youth vaping epidemic.¹⁵⁸

3 **H. JUUL and the States' Response**

4 126. Many states have taken action against JUUL, including banning the sale of
 5 flavored e-cigarettes and vaping products.

6 127. One leading governor has stated that: "The dangers of vaping and flavored e-
 7 cigarettes are becoming more apparent by the day, and it would be a tragedy if our successful
 8 efforts to combat the tobacco industry were reversed by allowing the vaping industry to get a
 9 whole new generation hooked on their products."¹⁵⁹

10 128. Upon information and belief, some state Attorneys General have instituted
 11 investigations and remediation efforts targeted at JUUL.

12 **I. JUUL and AIANs**

13 129. Smoking rates have continued to remain disproportionately high among
 14 American Indian and Alaska Natives. According to the CDC, "American Indians/Alaska
 15 Natives have the highest prevalence of cigarette smoking compared to all other racial/ethnic
 16 groups in the United States," but the progress made in recent years is quickly vanishing due to
 17 the explosion of JUUL vaping devices.¹⁶⁰

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 21 ¹⁵⁸ *Congress calls Juul, four other vape companies to testify about youth vaping*, STAT (Jan. 22, 2020), <https://www.statnews.com/2020/01/22/juul-other-vape-makers-testify/>.

22 ¹⁵⁹ *Governor Cuomo Launches Campaign to Ban Flavored Nicotine Vaping Products and Restrict Vaping Ads Aimed at Youth*, N.Y. State Governor (Feb. 20, 2020),
 23 <https://www.governor.ny.gov/news/governor-cuomo-launches-campaign-ban-flavored-nicotine-vaping-products-and-restrict-vaping-ads>.

24 ¹⁶⁰ Centers for Disease Control & Prevention, *American Indians/Alaska Natives and Tobacco Use*, <https://www.cdc.gov/tobacco/disparities/american-indians/index.htm> (last visited May 29, 2020).
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 26

1 130. More than 22% of American Indian and Alaska Native adults currently smoke
 2 cigarettes compared to about 13.7% of American adults overall.¹⁶¹ The reasons for the
 3 discrepancies are numerous and attributed to the fact that American Indians “suffer from the
 4 effects of historical trauma and stressors in our lives, and have problems in the areas of poverty,
 5 housing, all of these social determinants of health.”¹⁶²

6 131. E-cigarette use is a growing problem for American Indian youth. According to
 7 National Youth Tobacco Survey data, 16.1% of American Indian and Alaska Native middle
 8 school students and 40.4% of American Indian and Alaska Native high school students were
 9 current users of e-cigarette products.¹⁶³ This is much higher than the general population rate of
 10 27.5% of high school students and 10.5% of middle school students who use e-cigarette
 11 products.¹⁶⁴

12 132. JUUL has specifically targeted the American Indian population with false and
 13 misleading statements about its products. On February 5, 2020, the United States House of
 14 Representatives Subcommittee on Economic and Consumer Policy found that, among other
 15 damaging things, “JUUL’s targeting of Native American Tribes was more pervasive than
 16 initially known[.]”¹⁶⁵ The Subcommittee “exposed JUUL’s pervasive targeting of children by
 17
 18

19 ¹⁶¹ Truth Initiative, *Tobacco use in the American Indian/Alaska Native communities* (May 28,
 20 2020), <https://truthinitiative.org/research-resources/targeted-communities/tobacco-use-american-indianaalaska-natives-community>.

21 ¹⁶² Jamie Ducharme, ‘It’s Insidious’: How Juul Pitched E-Cigs to Native American Tribes, TIME
 22 (Feb. 6, 2020, 11:38 AM), <https://time.com/5778534/juul-native-american-tribes/>.

23 ¹⁶³ Truth Initiative, *Tobacco use in the American Indian/Alaska Native communities* (May 28,
 24 2020), <https://truthinitiative.org/research-resources/targeted-communities/tobacco-use-american-indianaalaska-natives-community>.

25 ¹⁶⁴ *Id.*

26 ¹⁶⁵ Subcommittee Staff, *Memorandum re Update on the Subcommittee’s E-Cigarette Investigation, Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and*

obtaining testimony about JUUL: (1) presenting to kids in school and falsely claiming that JUUL was “totally safe”; (2) sponsoring summer camps for kids as young as eight; (3) targeting Native Americans as guinea pigs for its product; (4) targeting other vulnerable populations, including veterans and minority communities; and (5) implementing a vast and sophisticated network of social media influencers . . .”¹⁶⁶

133. In particular, between December 2018 and February 2019, the Congressional Subcommittee accepted testimony from JUUL indicating that it had specifically targeted at least eight Indian tribes: (a) the Moapa Band of the Paiute Tribe; (b) the Lummi Nation; (c) the Nooksack Tribe; (d) the Cheyenne River Sioux Tribe; (e) the S’Klallam Tribe; (f) the Chickasaw Nation; (g) the Muckleshoot Tribe; and (h) the Kalispel Tribe.¹⁶⁷ JUUL also admitted that it contacted an undisclosed additional number of tribes with marketing pitches, but has refused to identify those additional tribes or even indicate how many tribes were contacted.¹⁶⁸

134. The Congressional Subcommittee found that representatives of JUUL have appeared at tribal council meetings of various Indian tribes offering free JUUL vaping devices.¹⁶⁹ JUUL representatives told tribal members they were better off without cigarettes

Reform, 116th Cong. (Feb. 5, 2020), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-04.RK%20Memo%20re%20JUUL.pdf>, at 8.

¹⁶⁶ *Id.* at 4.

¹⁶⁷ *Id.* at 9.

¹⁶⁸ *Id.*

¹⁶⁹ *Examining JUUL’s Role in the Youth Nicotine Epidemic: Part I, Hearing Before the Subcomm. on Econ. and Consumer Policy of the H. Comm. on Oversight and Reform*, 116th Cong. (2019) (statement of Rae O’Leary, Public Health Analyst, Missouri Breaks Industries Research), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20O%27Leary%20Testimony.pdf>.

1 and could replace them with JUUL's cool electronic vaping devices and cartridges as part of a
2 so-called "switching program."¹⁷⁰

3 **J. Impacts on Fond du Lac Band**

4 135. Fond du Lac Band and its members have been directly impacted by the e-
5 cigarette epidemic and surge in youth vaping created by Defendants' misconduct. Vaping use
6 by youth members of Fond du Lac Band has reversed the positive trend of decreased cigarette
7 use and nicotine addiction.

8 136. Defendants' marketing strategy, advertising, and product design directly targets
9 minors, especially teenagers, and has dramatically increased the use of JUUL products amongst
10 youth and underage members of Fond du Lac Band.

11 137. Defendants' activities have caused youth and underage members of Fond du Lac
12 Band to become addicted to Defendants' e-cigarette products.

13 138. Fond du Lac Band's current available resources to address Defendants'
14 misconduct are extremely limited. Significant further resources will be required now and in the
15 future to continue to respond to the widespread vaping by youth members of Fond du Lac Band
16 and the addictive habits and behavior that it has caused.

17 139. The specific potential adverse health effects for youth who inhale e-cigarette
18 aerosol, including those on the body from acute administration of nicotine, flavorants,
19 chemicals, other particulates, and additional effects are: (1) nicotine addiction; (2) development
20 effects on the brain from nicotine exposure, which may have implications for cognition,
21 attention, and mood; (3) e-cigarette influence initiating or supporting use of conventional
22 cigarettes and dual use of conventional cigarettes and e-cigarettes; (4) e-cigarette influence on
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26 ¹⁷⁰ *Id.*

1 subsequent illicit drug use; (5) e-cigarette effects on psychosocial health, particularly among
2 youth with one or more comorbid mental health disorders; and (6) battery explosion and
3 accidental overdose of nicotine.

4 140. The Fond du Lac Band's steps cannot fully address the existing widespread use
5 of vaping projects and resulting nicotine addiction among its youth. Because of the potency of
6 JUUL's nicotine and ease of delivery—allowing youth to discreetly and frequently use the
7 product—widespread use of JUUL products has created a problem of addiction much greater
8 than the Fond du Lac Band can address with its current level of resources.
9

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

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

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

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

24 145. The costs that the Fond du Lac Band has incurred and will incur in the future in
25 responding to the vaping epidemic among its youth and in providing the public services
26

1 described in this Complaint are recoverable pursuant to the causes of action asserted by the
2 Fond du Lac Band. Defendants' misconduct alleged herein is not a series of isolated incidents,
3 but instead involves a sophisticated and complex marketing scheme and related cover-up that
4 has caused a continuing, substantial, and long-term burden on the services provided by the Fond
5 du Lac Band to its youth. Additionally, the public nuisance created by Defendants and the Fond
6 du Lac Band's requested relief in seeking abatement further compels Defendants to reimburse
7 and compensate the Fond du Lac Band for the substantial resources it has expended and will
8 need to continue to expend to address the youth vaping epidemic created by Defendants'
9 misconduct.
10

11 146. The creation and maintenance of the youth e-cigarette epidemic directly harms the
12 Fond du Lac Band by imposing costs on its members and territory. As a result of Defendants'
13 misconduct, the Fond du Lac Band has been, and will be, forced to go far beyond what a
14 governmental entity would be expected to pay to enforce the laws to promote the general health
15 and welfare of the Fond du Lac Band and its members in order to combat the youth vaping
16 crisis. This includes providing new programs and services in direct response to the damage
17 caused by the Defendants' misconduct.
18

19 147. Defendants' actions and omissions have substantially, unreasonably, and
20 injuriously interfered with the functions and operations of the Fond du Lac Band and have
21 affected the public health, safety, and welfare of the Fond du Lac Band's community. Without
22 the youth and underage vaping epidemic within the Fond du Lac Band's community, more time,
23 money, and resources could have been used for the Fond du Lac Band's goal of increasing the
24 health and welfare of its members.

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

1
2 148. Fond du Lac Band hereby incorporates by reference the allegations contained in
3 the preceding paragraphs of the Complaint.

4 149. At all relevant times, each Defendant is and has been a “person” under 18 U.S.C.
5 § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in
6 property.”

7 150. Fond du Lac Band is a “person,” as that term is defined in 18 U.S.C. § 1961(3),
8 and has standing to sue as it was and is injured in its business and/or property as a result of
9 Defendants’ wrongful conduct described herein.

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

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

21 153. Section 1962(d) makes it unlawful for “any person to conspire to violate”
22 § 1962(a) and (c), among other provisions.
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1 154. JUUL Enterprise: RICO defines an “enterprise” as “any individual, partnership,
2 corporation, association, or other legal entity, and any union or group of individuals associated
3 in fact although not a legal entity.” 18 U.S.C. § 1961(4).

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

8 156. Defendants formed an enterprise comprised of JUUL, Altria Group, Inc., Altria
9 Client Services, Altria Group Distribution Company, Nu Mark LLC, Philip Morris US, Inc., and
10 John Does 1-100 (collectively, the “JUUL Enterprise”).

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

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

1 159. The JUUL Enterprise misrepresented or failed to adequately disclose that its
2 products contained nicotine or how much nicotine JUUL products deliver to a user's
3 bloodstream, including as compared to a combustible cigarette, as well as the benzoic acid
4 levels JUULpods contain. JUUL further omitted the increased risk of addiction, physiological
5 effects, and other severe health risks, the higher-than-disclosed levels of nicotine delivery pose
6 to a JUUL user. Instead, JUUL intentionally created a misleading impression that JUUL's
7 products were intended for youth, were totally safe or at least safer than combustible cigarettes,
8 and were not a nicotine delivery device but, rather, a trendy tech product that should be
9 associated with products like the popular iPhone. The JUUL Enterprise violated the Federal
10 Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 387b(8), 387k(a), as amended by the Tobacco
11 Control Act, by advertising its e-cigarettes and nicotine juice as modified risk tobacco products
12 without an appropriate FDA Order in effect, *i.e.*, widely disseminating misleading statements
13 about the safety of JUUL products.
14

15 160. These deceptive acts were taken with the express intent of growing JUUL's
16 market share and increasing JUUL's revenue, thereby causing financial gain to each of the
17 JUUL Enterprise's members. In addition to enhancing the fortunes of its members, some of the
18 increased revenues were used to operate and expand the JUUL Youth Marketing Enterprise.
19

20 161. Each member of the JUUL Enterprise was associated with an illegal enterprise,
21 and conspired, conducted, and participated in that enterprise's unlawful affairs, through a
22 pattern of racketeering activity consisting of numerous and repeated uses of the interstate mail
23 and wire facilities to execute a scheme to defraud, in violation of 18 U.S.C. § 1341 (relating to
24 mail fraud) and § 1343 (relating to wire fraud), all in violation of the RICO Act, 18 U.S.C.
25 §§ 1962(a), (c)-(d). These acts, committed by interstate wire and through the mails, include: (1)
26

1 sending and receiving thousands of statements over a number of years that contained deceptive
 2 statements regarding JUUL's e-cigarettes and JUULpods, the effects of nicotine use, the
 3 likelihood of becoming addicted to nicotine use, the design of JUUL's e-cigarettes, the amount
 4 of nicotine and other chemicals in JUULpods, and that JUUL's e-cigarettes were intended for
 5 use by adults who were already addicted to nicotine use rather than by teens who were new
 6 nicotine users; and (2) sending payments over that same time to further and guarantee the
 7 success of the deceptive acts described in (1).
 8

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

- 12 A. "Here at JUUL we are focused on driving innovation to eliminate cigarettes, with
 13 the corporate goal of improving the lives of the world's one billion adult smokers."
 (JUUL Twitter Feed, July 5, 2017);¹⁷¹
- 14 B. "JUUL Labs was founded by former smokers, James and Adam, with the goal of
 15 improving the lives of the world's one billion adult smokers by eliminating
 16 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." (JUUL Website as of Oct. 7, 2019);¹⁷²
- 17 C. "JUUL Labs exists to help adult smokers switch from combustible cigarettes."
 18 (Ted Kwong, a company spokesman);¹⁷³

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 22 ¹⁷¹ Jackler Testimony at 25 (noting that this was the first mention of the term "adult" or "adult
 23 smoker" on JUUL's Twitter Feed).

24 ¹⁷² JUUL, *Our Mission*, <https://web.archive.org/web/20191009012430/https://www.juul.com/mission-values> (last visited May 31, 2020).

25 ¹⁷³ Joseph P. Williams, *Vaping: From 'Safer Than Cigarettes' to Public Health Crisis*, U.S.
 26 News and World Report (Sept. 30, 2019, 9:00 AM).

1 D. “JUUL was designed with adult smokers in mind. . . . JUUL provides satisfaction
2 to meet the standards of adult smokers looking to move away from smoking
cigarettes.” (JUUL Website as of May 31, 2020);¹⁷⁴

3 E. “Our Intent[:] . . . [W]e believe that vaping can have a positive impact when used
4 by adult smokers, and can have a negative impact when used by nonsmokers. Our
5 goal is to maximize the positive and reduce the negative.” (JUUL Website as of
May 31, 2020);¹⁷⁵

6 F. “We market our products responsibly, following strict guidelines to have material
7 directly exclusively toward adult smokers and never to youth audiences.” (JUUL
Social Media Post, Mar. 14, 2018);¹⁷⁶

8 G. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL
9 products. We certainly don’t want youth using the product. It is bad for public
10 health, and it is bad for our mission. JUUL Labs and FDA share a common
11 goal – preventing youth from initiating on nicotine. To paraphrase Commissioner
Gottlieb, we want to be the off-ramp for adult smokers to switch from cigarettes,
12 not an on-ramp for America’s youth to initiate on nicotine. We won’t be successful
13 in our mission to serve adult smokers if we don’t narrow the on-ramp. Our intent
14 was never to have youth use JUUL products. But intent is not enough, the numbers
are what matter, and the numbers tell us underage use of e-cigarette products is a
problem. We must solve it.” (Statement of Former CEO of JUUL, Ken Burns,
15 posted on the JUUL website Nov. 13, 2018);¹⁷⁷

16 H. “We are taking significant action to prepare for a future where adult smokers
17 overwhelmingly choose non-combustible products over cigarettes by investing
\$12.8 billion in JUUL, a world leader in switching adult smokers. We have long
18 said that providing adult smokers with superior, satisfying products with the
potential to reduce harm is the best way to achieve tobacco harm reduction.”
(Statement of Howard Willard, Altria Chairman and Chief Executive Officer in
Altria Press Release, Dec. 20, 2018);¹⁷⁸

19 ¹⁷⁴ JUUL, *Shop: Our Devices*,
20 [https://www.juul.com/shop/devices#:~:text=With%20its%20unique%20satisfaction%20profile,
move%20away%20from%20smoking%20cigarettes](https://www.juul.com/shop/devices#:~:text=With%20its%20unique%20satisfaction%20profile,move%20away%20from%20smoking%20cigarettes) (last visited May 31, 2020).

21 ¹⁷⁵ JUUL, *Our Intent*, <https://www.juul.com/mission-values> (last visited May 31, 2020).

22 ¹⁷⁶ Jackler Testimony at 36.

23 ¹⁷⁷ Kevin Burns, *Juul Labs Action Plan*, <https://newsroom.juul.com/juul-labs-action-plan/> (last
visited May 31, 2020).

24 ¹⁷⁸ JUUL, *JUUL Statement About Altria Minority Investment and Service Agreements*,
25 [https://newsroom.juul.com/juul-statement-about-altria-minority-investment-and-service-
agreements/](https://newsroom.juul.com/juul-statement-about-altria-minority-investment-and-service-agreements/) (last visited May 31, 2020).

- 1 I. “First of all, I’d tell them that I’m sorry that their child’s using the product... It’s
2 not intended for them. I hope there was nothing that we did that made it appealing
3 to them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy
4 for them, in terms of what the challenges they’re going through.” (JUUL CEO Ken
5 Burns, CNBC Interview, July 13, 2019);¹⁷⁹
- 6 J. “We never wanted any non-nicotine user, and certainly nobody under the legal age
7 of purchase, to ever use Juul products. . . .That is a serious problem. Our company
8 has no higher priority than combatting underage use.” (Testimony of JUUL
9 Founder James Monsees Before the House Committee on Oversight and Reform
10 Subcommittee on Economic and Consumer Policy, July 25, 2019);¹⁸⁰
- 11 K. “[W]e have no higher priority than combating youth use... we have taken a series
12 of escalating steps to combat youth access, appeal, and use of vapor products ”
13 (JUUL statement in response to lawsuits, Aug. 29, 2019);¹⁸¹
- 14 L. James Monsees, one of the company’s co-founders, said selling JUUL products to
15 youth was “antithetical to the company’s mission.” (Quoted in New York Times
16 article, *Did JUUL Lure Teenagers and Get ‘Customers for Life’?*, Aug. 27,
17 2018);¹⁸²
- 18 M. “Our focus is and will remain entirely on helping adult smokers switch away from
19 combustible cigarettes, the leading cause of preventable death in the world.”
20 (Joshua Raffel, JUUL spokesperson, quoted in New York Times article, *Philip
21 Morris and Altria Are in Talks to Merge*, August 27, 2019);¹⁸³

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

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

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

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

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

1 N. “We have never marketed to youth and we never will.” (JUUL statement quoted
2 in Los Angeles Times article, *Studies show how Juul exploited social media to get
teens to start vaping*, Sep. 24, 2019).¹⁸⁴

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

15 164. The JUUL Enterprise has existed and operated since at least 2015. It has
16 functioned as a continuing entity and maintains an ascertainable structure separate and distinct
17 from the pattern of racketeering activity. Each member’s participation in the JUUL Enterprise
18 is necessary for the successful operation of the deceptive marketing scheme and the financial
19 gains that resulted therefrom.
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21 165. Fond du Lac Band has sustained injury by reason of the acts and conduct of
22 Defendants alleged in this Complaint, including its loss of money in funding mitigation and
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25 ¹⁸⁴ Michael Hiltzik, *Studies show how Juul exploited social media to get teens to start vaping*,
26 Los Angeles Times (Sep. 24, 2019), <https://www.latimes.com/business/story/2019-09-24/hiltzik-juul-target-teens>.

1 remedial programs regarding JUUL use by youth which but for the deceptive marketing and
2 other acts of the JUUL Enterprise, it would not have incurred.

3 166. Fond du Lac Band and its youth were the direct target of Defendants' scheme.

4 167. But for the conduct of Defendants alleged herein, Fond du Lac Band would not
5 have suffered the injuries alleged in this Complaint. These injuries suffered by Fond du Lac
6 Band were a foreseeable and natural consequence of the scheme to defraud. The injuries of
7 Fond du Lac Band were directly and proximately caused by Defendants' racketeering activity
8 that deceived and defrauded consumers and resulted in a meteoric rise of tribal youth-vaping.
9

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

14 169. In addition, as set forth above, Defendants have violated 18 U.S.C. §§ 1962(c),
15 and (d), and will continue to do so in the future unless they are enjoined not to do so.

16 170. Enjoining Defendants from committing these RICO violations in the future and/or
17 declaring their invalidity and disgorging ill-gotten gains is appropriate pursuant to 18 U.S.C. §
18 1964(a), which authorizes the district courts to issue appropriate orders to provide equitable
19 relief to Fond du Lac Band and enjoin violations of 18 U.S.C. § 1962.
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21 171. Fond du Lac Band seeks compensatory damages, disgorgement, equitable relief,
22 injunctive relief, treble damages, and attorneys' fees.
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COUNT II – VIOLATION OF MINNESOTA PUBLIC NUISANCE LAW

172. Fond du Lac Band hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

173. Fond du Lac Band brings this public nuisance claim under Minnesota law as to all Defendants. A public nuisance under Minnesota law exists when there is a substantial interference with a public right. Under Minnesota law, a private party bringing a public nuisance tort claim must allege: (1) the existence of a public nuisance; (2) conduct or omissions by a defendant that create, contribute to, or maintain that public nuisance; and (3) particular harm suffered by the plaintiff that is different in kind from that suffered by the community at large.

174. Fond du Lac Band has the power and authority to take action for abatement or removal of a public nuisance as its public health, safety, or welfare may require.

175. Fond du Lac Band has made it unlawful to sell flavored vaping and e-cigarette products in the Fond du Lac Band's territory and increased the age to purchase vaping and e-cigarette products to 21 years of age.

176. Minnesota law also makes it unlawful to sell tobacco products, liquid nicotine, and electronic cigarettes to persons under the age of 21.

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

178. Defendants, through the actions described in this Complaint, have created and maintained or were a substantial factor in creating and maintaining a public nuisance by

1 unreasonably interfering with a right that is common to the general public and that harms the
2 health, safety, peace, comfort, or convenience of the general community.

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

6 180. Fond du Lac Band has a right to be free from substantial injury to the public
7 health, safety, peace, comfort, or convenience that has resulted from Defendants' wrongful
8 conduct.

9 181. Fond du Lac Band has a right to educate its children in a safe, healthy, peaceful,
10 comfortable, and convenient setting.

11 182. The health and safety of the Fond du Lac Band' youth who use, have used, or will
12 use JUUL products, as well as members of the Tribe affected by others' use of JUUL products,
13 are matters of substantial public interest and of legitimate concern to the Fond du Lac Band.

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

19 184. Defendants’ conduct has been continuous and has occurred over a span of years
20 and is ongoing. Defendants’ conduct has affected and continues to affect a substantial number
21 of people within Fond du Lac Band and is likely to continue causing significant harm to them.
22

23 185. But for Defendants’ actions, JUUL and other e-cigarette use by tribal youth and
24 other minors would not be as widespread as it is today, and the vaping public health epidemic
25 that currently exists as a result of the Defendants’ conduct would have been averted.
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1 186. The significant time and resources necessary for Fond du Lac Band to combat the
2 epidemic, maintain the safety of its youth members, and achieve its educational goals are harms
3 that are unique from the harm suffered by the general public.

4 187. The particular harms suffered by Fond du Lac Band are different than those
5 suffered by the community at large, both in kind and quality. Fond du Lac Band has incurred
6 and will continue to incur significant expenditures of time and resources to combat rampant use
7 of Defendants' nicotine products by its members. The true scope and nature of the harm and
8 the extent of resources that are going to be required to abate the harm continues to evolve as the
9 epidemic still exists and best practices to combat it are still being developed.

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

22 189. Defendants' unfair and deceptive conduct has caused the damage and harm
23 described in this Complaint. Defendants knew or reasonably should have known that their
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1 statements regarding the risks and benefits of JUUL were false and misleading, that their
2 marketing methods were designed to appeal to minors that their products would be particularly
3 addictive and harmful to children, that Native American children were particularly susceptible
4 to addictive substances, specifically nicotine, and that their false and misleading statements,
5 marketing to minors, and active efforts to increase the accessibility of JUUL products and grow
6 JUUL's market share were causing harm to minors, including members of Fond du Lac Band.
7 Thus, the public nuisance caused by Defendants was reasonably foreseeable, including the
8 economic losses incurred by Fond du Lac Band.
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10 190. Alternatively, Defendants' conduct was a proximate cause in bringing about the
11 public nuisance. By directly marketing to youth and continuing marketing practices after it was
12 evident that children were using JUUL products in large numbers and were specifically using
13 these products in school, JUUL directly facilitated the spread of the youth vaping epidemic and
14 the public nuisance affecting the Fond du Lac Band. By investing billions of dollars in JUUL
15 and actively working to promote the sale and spread of JUUL products with knowledge of the
16 JUUL practice of marketing its products to youth and failure to control youth access to its
17 products, Defendants directly facilitated the spread of the youth vaping epidemic and the public
18 nuisance affecting Fond du Lac Band.
19

20 191. The public nuisance created and maintained by Defendants has resulted, and
21 continues to result, in significant damage and annoyance to Fond du Lac Band. Again, the FDA
22 and others have recognized that teen vaping is an epidemic and that Defendants' actions are at
23 the heart of that epidemic.

24 **COUNT III – NEGLIGENCE**
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1 192. Fond du Lac Band hereby incorporates by reference the allegations contained in
2 the preceding paragraphs of this Complaint.

3 193. Fond du Lac Band brings this negligence claim under Minnesota law as to all
4 Defendants. Under Minnesota law, the elements of a cause of action for negligence are: (1) the
5 existence of a duty on the defendant's part as to the plaintiff; (2) a breach of the duty; and (3) an
6 injury to the plaintiff as a result of the breach of duty.

7 194. Defendants owed Fond du Lac Band and its children a duty to not expose the
8 Fond du Lac Band and/or its children to an unreasonable risk of harm.

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

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

22 197. At all times relevant to this litigation, Defendants knew or, in the exercise of
23 reasonable care, should have known of the hazards and dangers of JUUL products and
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1 specifically, the health hazards posed by vaping JUULpods and continued use of nicotine,
2 particularly among adolescents.

3 198. Accordingly, at all times relevant to this litigation, Defendants knew or, in the
4 exercise of reasonable care, should have known that use of JUUL e-cigarettes and JUULpods
5 by minors, especially Native American children, could cause the tribe's injuries and thus
6 created a dangerous and unreasonable risk of injury to the Fond du Lac Band.

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

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

19 201. Despite its ability and means to investigate, study, and test its products and to
20 provide adequate warnings, Defendants have failed to do so. In fact, the Defendants did just the
21 opposite. The Defendants plotted, schemed, and investigated a marketing strategy designed to
22 attract children to use the highly addictive product, especially Native American youth, including
23 the youth of the Fond du Lac Band. Moreover, Defendants have wrongfully concealed
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1 information and has further made false and/or misleading statements concerning the safety
2 and/or use of JUUL products and nicotine vaping.

3 202. Defendants' negligence also included: (a) manufacturing, producing, promoting,
4 formulating, creating, developing, designing, selling, and/or distributing its JUUL products
5 without thorough and adequate pre- and post-market testing; (b) failing to undertake sufficient
6 studies and conduct necessary tests to determine whether or not JUUL products were safe for
7 their intended use; (c) failing to use reasonable and prudent care in the design, research,
8 manufacture, formulation, and development of JUUL products so as to avoid the risk of serious
9 harm associated with the prevalent use of JUUL products and nicotine; (d) failing to provide
10 adequate instructions, guidelines, and safety precautions to those persons who Defendants could
11 reasonably foresee would use its JUUL products; (e) failing to disclose to the Fond du Lac
12 Band, users, consumers, and the general public that the use of JUUL products presented severe
13 health risks including nicotine addiction; (f) misrepresenting that its JUUL products were safe
14 for their intended use when, in fact, Defendants knew or should have known that the products
15 were not safe for their intended use; (g) declining to make or propose any changes to JUUL
16 products' labeling or other promotional materials that would alert the consumers and the general
17 public of the true risks of JUUL products; (h) advertising, marketing, and recommending the
18 use of JUUL products, while concealing and failing to disclose or warn of the dangers known
19 by Defendants to be associated with or caused by the use of JUUL products; (i) continuing to
20 disseminate information to its consumers, which indicates or implies that Defendants' products
21 are not unsafe for their intended use; and (j) continuing the manufacture and sale of its products
22 with the knowledge that the products were unreasonably unsafe and dangerous.
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1 211. A motivation behind Defendants' corporate acts was to place its desire and greed
2 for profits ahead of the well-being and safety of Fond du Lac Band and its youth members.

3 212. Defendants' corporate acts were outrageously reprehensible.

4 213. Defendants' corporate acts have the character of outrage frequently associated
5 with crime.

6 214. Defendants intentionally targeted Fond du Lac Band's young members when they
7 knew that their brains were not fully developed, that they were particularly vulnerable and that
8 they were more susceptible to marketing and more easily addicted to nicotine than adults.

9 215. Defendants intentionally marketed to the Fond du Lac Band' young members
10 when they knew that nicotine was especially harmful to children's developing brains.

11 216. Defendants knowingly and intentionally sold JUULpods to minors through the
12 use of an internet sales platform and allowed internet websites to sell to minors without controls
13 on whether purchasers were of the legal age to purchase.

14 217. Defendants knew that children under the age of 18, including Fond du Lac Band's
15 youth members, were obtaining and using their products at disturbing levels yet failed to act in a
16 timely manner to stop the illegal diversion of its products.

17 218. Defendants knew that there was a high risk of substantial harm to Fond du Lac
18 Band's youth members but deliberately proceeded to act and failed to act in conscious disregard
19 of those risks.

20 219. Defendants knew that it was not legal to target minors and intentionally did so
21 anyway for purposes of maximizing profit.

22 220. Defendants knew JUUL's products were the types of products that could
23 endanger children if negligently made, promoted, or distributed. Defendants knew the risks that
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1 young people would be attracted to their e-cigarettes and JUUL pods and knew the importance
2 of ensuring that the products were not sold and/or distributed to anyone under age 26, but
3 especially to minors.

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

7 222. As a powerfully addictive and dangerous nicotine-delivery device, Defendants
8 knew JUUL's products needed to be researched, tested, designed, advertised, marketed,
9 promoted, produced, packaged, labeled, manufactured, inspected, sold, supplied and distributed
10 properly, and without defects to avoid needlessly causing harm. Defendants knew that their
11 products could cause serious risk of harm, particularly to young persons like Fond du Lac
12 Band's youth members.

13 223. Defendants failed to perform adequate testing of the JUUL products prior to
14 marketing to ensure safety, including long-term testing and research of the product, and testing
15 for injury to the brain and cardiovascular systems, and other related medical conditions.

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

18 225. Defendants used flavors and design to appeal to young people under age 26 and
19 especially to minors.

20 226. Defendants designed the products to smell good, look cool, and easy to conceal
21 from adults.

1 227. Defendants were aware of social media on the internet encouraging the use of
2 JUUL, explaining how to use JUUL, and explaining how to conceal JUUL, and products
3 created by others to facilitate concealing JUUL.

4 228. Defendants knew of products designed to help conceal JUUL, including hoodies
5 and backpacks.

6 229. Defendant used design that maximizes nicotine delivery while minimizing “throat
7 hit” thereby easily creating and sustaining addiction and causing deep inhalation into the child’s
8 lungs.

9 230. Defendants failed to prevent JUUL’s products from being sold to young people
10 under age 26, particularly to minors, including youth of Fond du Lac Band.

11 231. Defendants failed to prevent use of JUUL’s products among young people under
12 age 26, particularly for minors.

13 232. Defendants failed to curb use of JUUL’s products among young people under age
14 26, particularly for minors.

15 233. Defendants failed to develop tools or support to help people addicted to JUUL’s
16 products cease using the products, including manufacturing lesser amounts of nicotine.

17 234. Defendants failed to reasonably and properly test and properly analyze the testing
18 of JUUL’s products under reasonably foreseeable circumstances.

19 235. Defendants failed to warn its customers about the dangers associated with use of
20 JUUL’s products, in that it was unsafe for anyone under age 26, significantly increases blood
21 pressure, carries risks of stroke, heart attacks, and cardiovascular events, is powerfully addictive
22 especially in Native Americans, causes damages to the lungs, increases the risk of respiratory
23

1 failure, can cause permanent brain changes, mood disorders, and impairment of thinking and
2 cognition.

3 236. Defendants failed to instruct customers not to use the product if they were under
4 26, particularly minors and Native Americans, and failing to provide any instructions regarding
5 a safe amount of JUULpods to consume in a day.

6 237. Defendants failed to ensure that JUUL's products would not be used by persons
7 like Fond du Lac Band's youth members who were not smokers.

8 238. Defendants failed to warn customers that JUUL had not adequately tested or
9 researched JUUL products prior to marketing to ensure safety, including long-term testing of
10 the product, and testing for injury to the brain, lungs, and cardiovascular systems, susceptibility
11 to respiratory viruses and bacteria, and other related medical conditions.

12 239. Defendants failed to utilize proper materials and components in the design of
13 JUUL's products to ensure they would not deliver unsafe doses of nicotine in unsafe pathways
14 to the lungs.

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

17 241. Defendants failed to recall JUUL's products.

18 242. Defendants failed to inspect JUUL's products for them to operate properly and
19 avoid delivering unsafe levels of nicotine to a young person.

20 243. Defendants either (a) intentionally knowing of the susceptibility of Native
21 Americans to nicotine addiction and other addictive substances, or (b) grossly negligently
22 making themselves unaware of said susceptibility directly targeted and marketed to Native
23 American children and minors. Defendants thus engaged in reprehensible conduct either
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1 intentionally calculated to harm Native Americans, or in total and utter disregard for the health
2 of Native Americans.

3 244. A responsible company, whose claimed primary purpose is to help adult smokers,
4 would not design a product to appeal to minors and nonsmokers nor market their products to
5 minors and nonsmokers. If aware of the dangers of smoking and nicotine ingestion enough to
6 create a device to help people stop smoking, then Defendants should have been aware of the
7 dangers enough to know that it would be harmful to young people, children, Native Americans,
8 and/or nonsmokers to use.

9
10 245. Responsible management personnel within the Defendants' corporations had
11 knowledge of wrongdoing on the part of lower-level employees or were involved in the
12 wrongful acts themselves.

13 246. The governing officers and leadership representatives of Defendants directed,
14 participated, and ratified the wrongful acts of corporate agents of Defendants herein described.

15 247. As a foreseeable consequence of Defendants' aforementioned conduct, Fond du
16 Lac Band suffered direct and consequential economic injuries as described in this Complaint as
17 a result of dealing with the JUUL epidemic within the tribe.

18 248. Fond du Lac Band is therefore entitled payment of punitive damages from
19 Defendants meant to punish them, deter their future conduct, and to send a message to the
20 community at large that the Defendants' outrageous conduct will not be tolerated.

21
22 **COUNT V – UNLAWFUL TRADE PRACTICES**
23 **MINN. STAT. § 325D.09, et seq.**

24 249. The Fond du Lac Band re-alleges and incorporates by reference the foregoing
25 paragraphs.
26

1 250. Minnesota Statutes §§ 325D.09, *et seq.*, provide in pertinent part: “No Person
2 shall, in connection with the sale of merchandise, knowingly misrepresent, directly or
3 indirectly, the true quality, ingredients or origin of such merchandise.” Defendants are persons
4 for purposes of this statute.

5 251. As alleged herein, Defendants have misrepresented JUUL. The Defendants
6 engaged in an aggressive and deceptive marketing campaign, which in part sought to attract
7 children to vaping.
8

9 252. As alleged herein, each Defendant wrongfully represented that JUUL had
10 characteristics, uses, or benefits that it did not have.

11 253. The Defendants also wrongfully misrepresented that vaping was “cool,” and a
12 safe and effective alternative to cigarettes, when such representations were untrue, false, and
13 misleading.

14 254. The Defendants also used exaggeration and/or created ambiguity as to material
15 facts and omitted material facts, which tended to deceive and/or did, in fact, deceive, especially
16 as to children and minors.

17 255. Because of the unlawful and deceptive marketing by the Defendants and the allure
18 of flavors intended to attract children, JUUL lacked any redeeming social value, and in fact,
19 caused nicotine addiction in children and vast consequences and damages to the educational
20 system of the Plaintiff; therefore, Defendants’ sales and marketing tactics constituted a violation
21 of State Law.
22

23 256. The Fond du Lac Band and Band Members have been damaged by Defendants’
24 violations of this statute.
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1 257. Plaintiff seeks injunctive relief and actual damages under Minn. Stat. §§ 325D.15,
 2 as well as under Minn. Stat. § 8.31, which creates a private right of action when the action
 3 would benefit the public. The present action benefits the public, both in Plaintiff's Community,
 4 as well as all of Minnesota, by stemming the flow of JUUL to minors, abating the nuisance of
 5 JUUL on the property and in the schools of the tribe, and providing The Fond du Lac Band the
 6 necessary resources, both monetary and non-monetary, to redress the nuisance and treat its
 7 victims.

8
 9 **COUNT VI – UNIFORM DECEPTIVE TRADE PRACTICES ACT**
 MINN. STAT. § 325D.43, *et seq.*

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 11 258. The Fond du Lac Band re-alleges and incorporates by reference the foregoing
 12 paragraphs.

13 259. Minnesota Statutes §§ 325D.09, *et seq.*, provide in pertinent part: “A person
 14 engages in a deceptive trade practice when, in the course of business, vocation, or occupation,
 15 the person: . . . (5) represents that goods or services have sponsorship, approval, characteristics,
 16 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
 17 approval, status, affiliation, or connection that the person does not have; . . . (7) represents that
 18 goods or services are of a particular standard, quality, or grade, or that the goods are of a
 19 particular style or model, if they are of another; . . . (13) engages in any other conduct which
 20 similarly creates a likelihood of confusion or of misunderstanding.”

21
 22 260. Defendants' unfair, deceptive, and unconscionable representations, concealments,
 23 and omissions were reasonably calculated to create confusion and misunderstanding as to the
 24 nature and addictiveness of JUUL and other vaping products, as well as to use of same by
 25 children.

1 261. Defendants engaged in an aggressive marketing campaign that targeted children
2 and in particular Native American children.

3 262. Defendants wrongfully represented that the JUUL they manufactured, marketed,
4 and sold had characteristics, uses, or benefits that it does not have.

5 263. Defendants used exaggeration and/or created ambiguity as to material facts and
6 omitted material facts, which tended to deceive and/or did in fact deceive children to use their
7 products.

8 264. Because of the dangerously addictive nature of JUUL in children, which
9 Defendants concealed and misrepresented, Defendants' sales and marketing of JUUL
10 constituted a violation of Minnesota law.

11 265. As a result of Defendants' omissions and misrepresentations regarding the use
12 and characteristics of JUUL to the tribe and its members, including children, Fond du Lac Band
13 has incurred significant harms and damages.

14 266. Plaintiff seeks injunctive relief as well as costs and fees incurred in pursuing this
15 claim, pursuant to Minn. Stat. § 325D.45.

16
17 **COUNT VII – FALSE STATEMENT IN ADVERTISEMENT**
18 **MINN. STAT. § 325F.67**

19 267. The Fond du Lac Band re-alleges and incorporates by reference the foregoing
20 paragraphs 1 through 303.

21 268. Minn. Stat. § 325F.67 provides in pertinent part: "Any person, firm, corporation,
22 or association who, with intent to sell...or with intent to increase the consumption
23 thereof,...makes, publishes, disseminates, circulates, or places before the public...an
24 advertisement of any sort regarding merchandise...for sale, consumption, purchase, or sale,
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1 which advertisement contains any material assertion, representation, or statement of fact which
2 is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to
3 any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is
4 declared to be a public nuisance and may be enjoined as such.”

5 269. Defendants engaged in a systemic campaign designed to promote the belief that
6 JUUL could safely be used in a non-addictive manner and that JUUL was appropriate for
7 minors.
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9 270. Defendants’ false and deceptive advertising practices resulted in increased usage
10 of JUUL and other vaping devices by Fond du Lac Band’s children, increasing addiction in
11 Plaintiff’s community and damages to its school system.

12 271. Plaintiff seeks injunctive relief and actual damages under Minn. Stat. §8.31,
13 which creates a private right of action when the action would benefit the public. The present
14 action benefits the public, both in Plaintiff’s Community, as well as all of Minnesota, by
15 stemming the acquisition of vaping devices and products by children, and providing Fond du
16 Lac Band with the necessary resources, both monetary and non-monetary, to abate and
17 remediate the vaping by minors, and to treat its victims.
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19 **COUNT VIII – MINNESOTA PREVENTION OF CONSUMER FRAUD ACT**
20 **MINN. STAT. § 325F.68, et seq.**

21 272. The Fond du Lac Band re-alleges and incorporates by reference the foregoing
22 paragraphs.

23 273. Minnesota Statutes §§ 325.13, 325D.44, 325F.69 prohibit misrepresenting the
24 quality of goods as well as sales sounding in fraud, misrepresentation, or deceptive practices,
25 providing in pertinent part: “The act, use, or employment by any person of any fraud, false
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1 pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the
2 intent that others rely thereon in connection with the sale of any merchandise, whether or not
3 any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in
4 section 325F.70.”

5 274. Defendants committed repeated and willful unfair or deceptive acts or practices,
6 and unconscionable trade practices, in connection with the sale of merchandise.

7 275. Defendants’ unfair, deceptive, and unconscionable representations, concealments,
8 and omissions were reasonably calculated to deceive the children of the Fond du Lac Band.

9 276. As described more specifically above, Defendants’ representations, concealments,
10 and omissions constitute a willful course of conduct which continues.

11 277. Defendants omitted material facts, causing confusion or misunderstanding as to
12 approval or certification of goods or services.

13 278. Defendants wrongfully represented that JUUL had characteristics, uses, or
14 benefits that it does not have.

15 279. Defendants also used exaggeration and/or ambiguity as to material facts and
16 omitted material facts, which had a tendency to deceive and/or did, in fact, deceive.

17 280. Because of the dangerously addictive nature of JUUL in children, which
18 Defendants concealed and misrepresented, JUUL lacked any medical value, and in fact, caused
19 addiction; therefore, Defendants’ sales and marketing of JUUL constituted a violation of
20 Minnesota law.

21 281. The damages which Plaintiff seeks to recover were sustained as a direct and
22 proximate cause of Defendants’ intentional and/or unlawful actions and omissions. Because of
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1 Defendants' omissions and deceptive misrepresentations, Fond du Lac Band has incurred
2 significant costs, and its children have become addicted to nicotine and JUUL.

3 282. Plaintiff seeks injunctive relief and actual damages under Minn. Stat. § 8.31,
4 which creates a private right of action when the action would benefit the public. The present
5 action benefits the public, both in Plaintiff's Community, as well as all of Minnesota.

6 **COUNT IX – PUBLIC NUISANCE**

7 **MINN. STAT. § 609.74**

8 283. The Fond du Lac Band re-alleges and incorporates by reference the foregoing
9 paragraphs.

10 284. Defendants, individually and acting through their employees and agents, through
11 fraudulent and deceptive marketing and other fraudulent schemes as described herein, have
12 caused a threat to the safety, health, morals, comfort, or repose of Fond du Lac Band's
13 community.

14 285. Defendants knew and should have known that their promotion of JUUL to
15 children was false, misleading, and dangerous and that their fraudulent and deceptive marketing
16 schemes and/or other unlawful, unfair, and fraudulent actions would create or assist in the
17 creation of a public nuisance. Defendants' acts and omissions significantly and unreasonably
18 interfere with and cause damage to the public health, public safety, and the public comfort. The
19 public nuisance caused by Defendants has significantly harmed Fond du Lac Band and a
20 number of its members.

21 286. All Defendants' actions were, at the very least, a substantial factor in JUUL
22 becoming available and used by children in Fond du Lac Band's community.

23 287. Defendants knew the public health hazard their conduct would create.

24 288. Defendants' conduct is unreasonable, intentional, and unlawful.
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290. Defendants' conduct is likely to continue to cause significant harm to the Fond du Lac Band and its members.

292. The public nuisance created, perpetuated, and maintained by Defendants can be abated, and further recurrence of such harm and inconvenience can be abated. Furthermore, pursuant to Minn. Stat. § 325F.67 (False Statement in Advertisement), Defendants’ dissemination of deceptive, false, and misleading marketing materials, messaging, and statements, as described herein, constitutes a public nuisance for which the Fond du Lac Band is entitled to receive injunctive relief.

WHEREFORE, the Fond du Lac Band of Lake Superior Chippewa prays to the Court and/or jury for judgment from and against the Defendants, jointly and severally, as follows:

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2. Entering an Order that Defendants' conduct as alleged herein constitutes a violation of RICO and entitles Fond du Lac Band to compensatory damages, disgorgement, equitable relief, injunctive relief, treble damages, and attorneys' fees;
3. Entering an Order that Defendants' conduct as alleged herein constitutes a public nuisance under applicable law;
4. Entering an Order that Defendants shall be required to abate and remediate the public nuisance described herein;
5. Entering an Order that Defendants were negligent, and that said negligence caused the harm and damages herein alleged and to be proven at trial;
6. Enjoining Defendants from engaging in further actions causing or contributing to the public nuisance as described herein;
7. Awarding Fond du Lac Band equitable relief to fund prevention education and addiction treatment, as well as to abate the nuisance;
8. Entering an Order that Defendants engaged in a civil conspiracy to commit and promote the wrongful conduct herein alleged;
9. Awarding Fond du Lac Band actual and compensatory damages as determined by the trier of fact;
10. Awarding Fond du Lac Band punitive damages as determined by the trier of fact;
11. Awarding Fond du Lac Band statutory damages in the maximum amount permitted by law;
12. Awarding reasonable attorneys' fees and the costs and expenses of this civil action and lawsuit;
13. Awarding pre-judgment and post-judgment interest; and

1 14. Such other and further relief as the Court and/or jury deems just and proper under the
2 circumstances.

3 **JURY TRIAL DEMANDED**

4 The Fond du Lac Band of Lake Superior Chippewa hereby demands a trial by jury.

5
6 Respectfully submitted,

7 Dated: June 16, 2020.

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