

STATE OF NORTH CAROLINA
DURHAM COUNTY

FILED

2019 MAY 15 P 12:18

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19052885

STATE OF NORTH CAROLINA, ex. C.S.C.
rel. JOSHUA H. STEIN,
Attorney General,

Plaintiff,

v.

JUUL LABS, INC.,

Defendant.

**COMPLAINT AND MOTION
FOR PRELIMINARY
INJUNCTION**

JURY TRIAL DEMANDED

Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein, brings this action against Defendant JUUL Labs, Inc. (JUUL) pursuant to the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1, *et seq.* In support of its Complaint, Plaintiff alleges as follows:

INTRODUCTION AND SUMMARY

Nicotine, which is highly addictive, is a neurotoxin — meaning it is poisonous to the human brain. The brains of teenagers are particularly vulnerable to nicotine and have what one study describes as “exquisite sensitivity” to nicotine’s neurotoxic effects. Even small and brief exposures to

nicotine can cause lasting neurobehavioral damage in adolescents.¹ When a teenager gets addicted to nicotine, it makes it much more likely that he or she will later become a user of traditional cigarettes or illegal drugs.²

Distributing e-cigarettes to minors is illegal in North Carolina and most other states.³ Despite that, within the past year, use of e-cigarettes has increased among high-schoolers by 78%, and among middle-schoolers by 48%. In 2017, in North Carolina, nearly 17% of all high school students—and more than 5% of all middle-schoolers—reported using an e-cigarette within the previous 30 days.⁴ National studies show that the situation got even worse during 2018, with “alarming increases” in reported tobacco use among both middle and high school students between 2017 and 2018, primarily because

¹ Yael Abreu-Villaça, et al., *Nicotine is a neurotoxin in the adolescent brain: critical periods, patterns of exposure, regional selectivity, and dose thresholds for macromolecular alterations*, 979 *Brain Research* 114-28 (July 25, 2003), <https://www.ncbi.nlm.nih.gov/pubmed/12850578>.

² U.S. Department of Health, and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease, Prevention and Health Promotion, Office on Smoking and Health, *E-Cigarette Use Among Youth And Young Adults: A Report of the Surgeon General — Executive Summary* (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf.

³ North Carolina law makes it illegal to “distribute, or aid, assist, or abet any other person in distributing” electronic cigarettes to minors. N.C. Gen. Stat. § 14-313(b).

⁴ N.C. Department of Health and Human Services, Division of Public Health, Tobacco Prevention and Control Branch, *North Carolina Youth Tobacco Survey Middle & High School Fact Sheet* (2017), <https://www.tobaccopreventionandcontrol.ncdhhs.gov/data/yts/docs/2017-YTS-FactSheet-FINAL.pdf>.

of an increase in e-cigarette use.⁵ Both the U.S. Surgeon General and the federal Food and Drug Administration (FDA) Commissioner have described underage use of e-cigarettes as an “epidemic.”⁶

JUUL has played a central role in fostering the epidemic of e-cigarette use among youth. Over the past year, JUUL’s share of the e-cigarette market has risen from 24% to 75%,⁷ and its brand name is so well-known that it has become a verb (i.e., “Juuling,” also known as “vaping,” means to use an e-cigarette).

JUUL has long claimed that its e-cigarettes are intended only for adult smokers seeking to transition away from traditional cigarettes, even though it has not sought nor has the FDA granted a designation as an approved smoking cessation device. But the facts tell a very different — and sobering

⁵ U.S. Food and Drug Administration, *Youth Tobacco Use: Results from the National Youth Tobacco Survey* (2018), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey> (content current as of June 6, 2018).

⁶ U.S. Food and Drug Administration, FDA News Release: *FDA takes new steps to address epidemic of youth e-cigarette use, including a historic action against more than 1,300 retailers and 5 major manufacturers for their roles perpetuating youth access* (Sept. 12, 2018),

www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm; see also U.S. Department of Health and Human Services, Public Health Service, Surgeon General’s Advisory on E-cigarette Use Among Youth (Dec. 18, 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

⁷ Truth Initiative, *Behind the Explosive Growth of JUUL* (Jan. 3, 2019), <https://truthinitiative.org/news/behind-explosive-growth-juul>.

— story: teens aged 15 to 17 are far *more* likely to use JUUL than JUUL’s supposed target demographic of 25- to 34-year-olds.⁸

It is no accident that JUUL has achieved such striking success in attracting underage users. JUUL’s popularity among teens is the predictable result of JUUL’s youth-focused business strategy. That strategy drove the development and design of JUUL’s products, the ways in which they were marketed, and their methods of delivery.

In developing its e-cigarette products, JUUL deliberately designed the flavors, the look, and even the chemical composition of the e-cigarettes to appeal to youthful audiences, including minors. Belying its claimed “corporate mission” of helping experienced smokers wean themselves from traditional cigarettes, JUUL developed dessert- and fruit-like flavors calculated to introduce tobacco in an appealing way to non-smokers, especially young people. To further ease new smokers into the habit, JUUL manipulated the chemical content of its e-cigarettes to make the vapor less harsh on the throats of young and inexperienced smokers. JUUL also created a sleek design for its smoking device that it knew would be attractive to young people, in part because it is easily concealable.

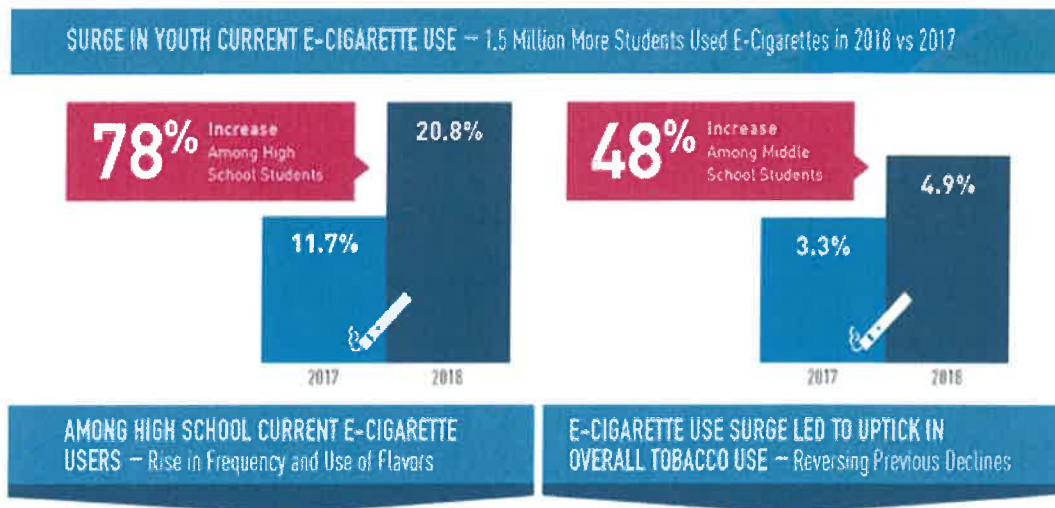
⁸ Truth Initiative, *The Youth E-Cigarette Epidemic: 5 Important Things to Know* (Nov. 14, 2018), <https://truthinitiative.org/news/youth-e-cigarette-epidemic-5-important-things-to-know>.

JUUL's focus on youth is also evident in its marketing. JUUL has consciously chosen social media platforms and marketing channels that are known to attract minors, has used models who look like teenagers or very young adults, and has sought out and paid youth-oriented sponsors and "influencers" popular among teenagers to spread the popularity of JUUL's youth-focused brand identity among the young.

After knowingly creating an e-cigarette product that appeals to minors and knowingly marketing that product in a way that attracts minors, JUUL pursued a sales strategy with a strong emphasis on internet-based sales, where the seller does not typically see the customer face-to-face and cannot directly confirm her age. In selling e-cigarettes online, JUUL has relied on age-verification techniques that it knows are ineffective, and has been slow to change its techniques, despite evidence that they are not working, in an effort to avoid creating "friction" with customers. In some instances, JUUL's management has encouraged its employees to actively avoid "digging around" to ensure that underage users were not purchasing JUUL products. Because of JUUL's lackadaisical—and, at times, willfully blind—approach to age verification, enormous numbers of underage users have easily obtained JUUL products, often simply by ordering them online.

In a remarkably short span of time, JUUL has marketed, sold, and delivered millions of e-cigarette products to minors, helping reverse the

historic decline in teen tobacco use that had occurred over the previous two decades. From 2000 to 2017, cigarette use among teens dropped from 28% to just above 5%.⁹ But in 2018, due in large part to JUUL, there were 1.5 million new underage e-cigarette users.¹⁰ Now, 27.1% of high school students and 7.2% of middle school students use tobacco products.¹¹



2018 National Youth Tobacco Survey¹²

At the same time JUUL has pursued a youth-focused business strategy, it has also routinely understated the strength of the nicotine in its products and downplayed their health risks. JUUL entered the e-cigarette market

⁹ U.S. Department of Health & Human Services, Office of Adolescent Health, *Adolescents and Tobacco: Trends* (2018), <https://www.hhs.gov/ash/oah/adolescent-development/substance-use/drugs/tobacco/trends/index.html> (content current as of May 1, 2019).

¹⁰ A. LaVito, *CDC blames spike in teen tobacco use on vaping, popularity of Juul*, CNBC (Feb. 11, 2019), <https://www.cnbc.com/2019/02/11/e-cigarettes-single-handedly-drives-spike-in-teen-tobacco-use-cdc.html>.

¹¹ U.S. Food and Drug Administration, *2018 National Youth Tobacco Survey Finds Cause for Concern* (Nov. 2018) <https://www.fda.gov/media/120063/download>.

¹² *Id.*

with among the highest nicotine potency of any product, a nicotine level so high that, in some countries, it is illegal for consumers of any age. JUUL has deceived consumers about that nicotine strength, has misrepresented the nicotine equivalency of its products to traditional cigarettes, and has understated the risks of addiction that occur with such powerful levels of nicotine.

JUUL's actions—designing, marketing, and selling e-cigarettes in ways that it knows will attract minors and deceptively downplaying the potency and danger of the nicotine in its e-cigarettes—are unfair, deceptive, and illegal under North Carolina law. JUUL has harmed consumers throughout this State. The Attorney General brings this action on behalf of the State in an effort to put a stop to JUUL's wrongful actions and to hold JUUL accountable for them.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the State of North Carolina (“the State”), acting on relation of its Attorney General, Joshua H. Stein, brings this action pursuant to Chapters 75 and 114 of the North Carolina General Statutes. The Attorney General is charged, among other things, with enforcing North Carolina's Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1, *et seq.*, on behalf of the State.

2. Defendant JUUL is a foreign corporation, incorporated in the state of Delaware, with its principal place of business in San Francisco, California. JUUL can be served at its registered office at 176 Mine Lake Court, Suite 100, Raleigh NC 27615.

3. At all relevant times, JUUL has been engaged in trade or commerce in the State of North Carolina and subject to North Carolina's Unfair or Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1, *et seq.*

4. JUUL's marketing activities have specifically targeted North Carolina consumers. There are approximately 3,000 authorized JUUL retailers in the State who sell JUUL products pursuant to contractual arrangements with JUUL. JUUL also markets and sells to North Carolina consumers through the internet. JUUL has specifically targeted North Carolina, including Raleigh, Elizabethtown and Winston Salem, in its marketing activities, and sponsored a children's charity event in Pinehurst.

5. This Court has personal jurisdiction over JUUL.

6. The Attorney General's Office served a Civil Investigative Demand on JUUL on October 15, 2018, pursuant to N.C.G.S. §§ 75-9 *et seq.* In response, JUUL produced certain records and documents to the Attorney General's Office. JUUL contends that some of these documents contain business information that may be protected from disclosure as trade secrets.

7. The Court has subject matter jurisdiction over this dispute and venue is proper in Durham County pursuant to the Attorney General's selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

A. Cigarettes, E-Cigarettes and JUUL's Entry Into the E-Cigarette Market

1. Background: the "Traditional" Tobacco Industry

8. Before the 1990s, the tobacco industry frequently promoted cigarettes as a gateway to a glamorous—and sometimes even healthy—lifestyle. Marketing creations such as the cartoon figure Joe Camel, the Marlboro Man, and Willie the KOOL Penguin, became household names. Many of these tobacco marketing efforts attracted minors.¹³

9. Eventually the truth came out, not only about tobacco's dangers but also about some companies' intentional focus on marketing to minors. A wave of litigation resulted, culminating in the Master Settlement Agreement (MSA), **Ex. 1**, reached in November 1998 among the state Attorneys General of 46 states—including North Carolina—five U.S. territories, and the District of Columbia. The MSA includes significant restrictions on cigarette marketing, including forbidding cigarette manufacturers from targeting

¹³ Joseph DiFranza, et al., *RJR Nabisco's cartoon camel promotes camel cigarettes to children*, 266 JAMA 3149-53 (Dec. 11, 1991) (correction published at 268 JAMA 2034 (Oct. 21, 1992)), <https://www.ncbi.nlm.nih.gov/pubmed/1956102>.

youth, banning cartoons, transit advertising, most forms of outdoor advertising, product placement in media, branded merchandise, free product samples (except in adult-only facilities), and most sponsorships.

10. Beginning in the late 1990s, the marketing restrictions in the MSA combined with a variety of intensive public and private efforts — including legal restrictions, workplace policies, public-education campaigns, and other public health initiatives — led to a steep decline in tobacco use among the public as a whole, including minors.

11. By 2017, the prevalence of smoking had declined by approximately 67% from 1965, and only 14% of adults¹⁴ and approximately 5% of high-school students smoked cigarettes.¹⁵

2. The Emergence of Electronic Cigarettes

12. When the MSA was entered into in 1998, the technology that led to the creation of e-cigarettes was in its infancy. Most of the restrictions in the MSA—including the youth-oriented advertising restrictions—do not apply to certain types of e-cigarettes.

13. Over the next two decades, technological advances made e-cigarettes commercially viable.

¹⁴ American Cancer Society, *Cigarette Smoking at Record Low Among American Adults* (Nov. 9, 2018), <https://www.cancer.org/latest-news/cigarette-smoking-at-record-low-among-american-adults.html>.

¹⁵*Supra* fn. 9.

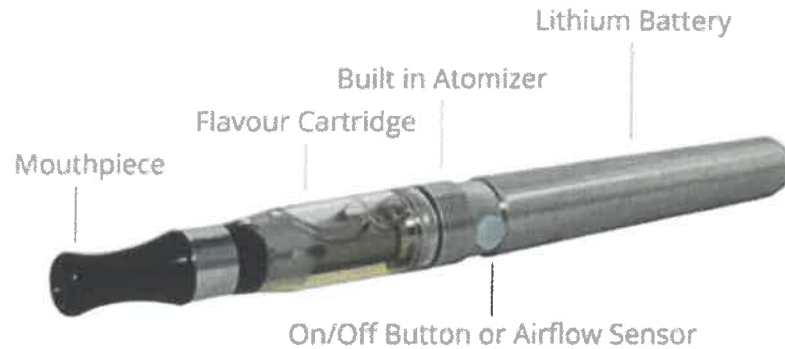
a. How E-Cigarettes Work

14. In recent years, and especially since 2015, companies offering e-cigarettes — led by JUUL — have moved into the void left by the decline of traditional tobacco. E-cigarettes, also known as vaporizers or electronic nicotine delivery systems (ENDS), are battery-operated, handheld smoking devices that create an aerosol from a liquid that typically contains nicotine, flavorings, and other chemicals, which the user inhales into their lungs, causing the nicotine and other chemicals to be absorbed rapidly into the user’s bloodstream.

15. E-cigarettes come in various designs. Some (called “cigalikes”) resemble traditional combustible tobacco cigarettes, while others have sleeker, more contemporary-looking designs that mimic everyday items such as pens or USB memory drives.¹⁶

16. E-cigarettes typically have four parts: (1) a cartridge or reservoir that contains a liquid solution of nicotine, flavorings, and various chemicals; (2) a battery or other power source; (3) a heating element or atomizer; and (4) a mouthpiece.

¹⁶ National Institute on Drug Abuse, *Electronic Cigarettes (E-cigarettes)*, <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes> (last updated June 2018).



17. The battery-powered heating element is typically activated by puffing on the mouthpiece. When the liquid solution heats up, it creates an aerosol that the user inhales through the mouthpiece.

b. How E-Cigarettes Harm the Human Body, and Especially Minors

18. Because e-cigarettes are non-combustible, they do not contain the full range of carcinogenic chemicals that cigarette smoke contains. As a result, e-cigarette manufacturers and their advocates often claim that e-cigarettes are safer than traditional cigarettes.

19. But e-cigarettes are not safe. The nicotine in e-cigarettes is highly addictive. In addition to nicotine, e-cigarettes contain numerous harmful chemicals that, when aerosolized and inhaled into the lungs, are linked to many negative health effects, including obstructive lung disease, blood vessel damage, and heart disease. E-cigarettes produce formaldehyde and acetaldehyde, which are considered probable carcinogens.

20. Exposure to nicotine and the other chemicals produced by e-cigarettes is especially harmful to young people.¹⁷ A teenager's developing brain is more sensitive to nicotine than an adult's brain. Research has shown that e-cigarettes are an "on-ramp" to smoking traditional cigarettes: teens who "vape" are seven times more likely to take up smoking regular cigarettes than those who never use e-cigarettes.¹⁸

21. Scientific research also shows that exposure to nicotine at a young age can increase the likelihood of abusing other addictive substances.¹⁹ Because of the way nicotine affects the development of the brain's reward system, teenage addiction to nicotine may make abuse of harder drugs like cocaine and methamphetamine more likely.²⁰ Even brief exposure to a low dose of nicotine can produce lasting change in adolescents and can lead to a greater likelihood of methamphetamine, alcohol, or cocaine abuse.²¹

¹⁷ Matt Richtel and Sheila Kaplan, *Did Juul Lure Teenagers and Get 'Customers for Life'?*, New York Times (Aug. 27, 2018),

<https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html?smid=tw-nytimes&smtyp=cur>.

¹⁸ Hallie Levine, *Teens Who Vape Are 7 Times More Likely to Turn to Regular Cigarettes*, Consumer Reports (Dec. 4, 2017),

<https://www.consumerreports.org/vaping/teens-who-vape-more-likely-to-turn-to-regular-cigarettes/>.

¹⁹ Lorena Sequeira, *Nicotine and Tobacco as Substances of Abuse in Children and Adolescents*, American Academy of Pediatrics, (Jan. 2, 2017),

<https://pediatrics.aappublications.org/content/pediatrics/139/1/e20163436.full.pdf>.

²⁰ *Supra* fn. 2.

²¹ Menglu Yuan, et al., *Nicotine and the adolescent brain*, 593 *Journal of Physiology* 3397-3412 (2015), <https://physoc.onlinelibrary.wiley.com/doi/pdf/10.1113/JP270492>.

22. Immediate side effects of nicotine exposure in teenagers range from lightheadedness, headaches, dizziness, and sleep disruption, to increased heart rate and blood pressure, coronary artery constriction, bronchospasms, nausea, and seizures. Longer term effects can include decreased focus and attention, impulse-control problems, memory and learning difficulties, and emotional disorders. Adolescent nicotine exposure may even lead to lasting alterations in the epigenome that can be passed down genetically.²²

23. One recent study found that eight flavors of JUUL pods contained toxic levels of nicotine.²³ JUUL's Mango and Crème Brûlée flavored pods were also found to contain toxic levels of a chemical called ethyl maltol.

24. Seizures or convulsions are known potential side effects of high doses of nicotine, but in the past they have generally been associated with the kind of ultra-high dose that results from swallowing nicotine in liquid form. In April 2019, the FDA announced an emerging public safety concern about nicotine-related seizures resulting from e-cigarette use.²⁴

²² *Id.*

²³ Esther E. Omaiye, et al., *High Nicotine Electronic Cigarette Products: Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations*, Chemical Research in Toxicology Article ASAP (Mar. 21, 2019), <https://pubs.acs.org/doi/10.1021/acs.chemrestox.8b00381>.

²⁴ U.S. Food and Drug Administration, Center for Tobacco Products, *Some E-cigarette Users Are Having Seizures, Most Reports Involving Youth and Young Adults* (April. 10, 2019), <https://www.fda.gov/tobacco-products/ctp-newsroom/some->

25. Independent studies have also found that e-cigarette users inhale toxic substances like lead, nickel, chromium, and manganese at levels higher than what the EPA has deemed safe. Inhalation of those metals has been tied to health problems affecting the lungs, liver, immune system, heart, and brain, and has been linked to cancer, according to the U.S. Department of Labor's Occupational Safety and Health Administration.²⁵

26. In an effort to counter independent scientific research revealing the dangers of e-cigarettes, JUUL has funded research of its own purporting to demonstrate the safety of e-cigarettes. Recently, a JUUL study claimed to “reaffirm the potential for vapor products as a viable alternative to combustible cigarettes.”²⁶ But the study had many limitations, including the fact that it did not analyze the overall health effects of using e-cigarettes, or the special dangers to teens.

3. JUUL's Rapid Rise to Dominance in E-Cigarettes

27. PAX Labs, the company that founded JUUL, introduced JUUL-branded e-cigarettes into the market in 2015, along with an aggressive, youth-focused marketing campaign. By 2017, JUUL's products had become so

[e-cigarette-users-are-having-seizures-most-reports-involving-youth-and-young-adults.](#)

²⁵ Erin Brodwin, *E-cigarette company Juul is now doing health research, but its first public study could bring more questions than answers*, Business Insider (Feb. 23, 2019), <https://www.businessinsider.com/juul-e-cig-marlboro-company-doing-health-research-2019-2>.

²⁶ *Id.*

popular and commercially successful that PAX Labs decided to spin JUUL off as its own company.

28. JUUL's e-cigarette device has a sleek, contemporary design that resembles a portable USB memory drive. Its battery can be charged by plugging it in to a computer's USB port, making it easily concealable as an e-cigarette product even in plain sight.

29. The JUUL device uses replaceable pods that contain liquid nicotine combined with flavors designed to appeal to young people, including crème brûlée, cucumber, and mango.

30. As JUUL's e-cigarette became more popular, the company grew quickly, quadrupling in size from September 2017 to September 2018. By July 2018, during just one round of fundraising, JUUL raised more than \$650 million from investors. At that time, JUUL was valued at approximately \$15 billion.

31. In December 2018, JUUL struck a deal with Altria, one of the world's largest cigarette manufacturers. Altria is the parent company of Philip Morris USA, a traditional tobacco company and original party to the 1998 MSA.

32. As part of the deal, Altria invested \$12.8 billion in JUUL in exchange for a 35% stake in the company and the authority to appoint one-third of JUUL's board. Altria agreed to discontinue its own e-cigarette

products and offer JUUL prime shelf-space with Philip Morris’s traditional Marlboro cigarette products.

33. Since JUUL’s launch, the company has frequently claimed that its “corporate mission” is to help adult smokers transition from traditional combustible tobacco cigarettes to a “safer” alternative. JUUL also claims that its “target” demographic is adults ages 25 to 34.

34. The reality of JUUL does not match these claims. There is overwhelming evidence that JUUL has targeted a very young demographic, well aware that its efforts would inevitably appeal to minors. In reality, JUUL products are doing exactly the opposite of what JUUL claims, serving not as an “off-ramp” from traditional cigarettes for experienced smokers, but as an enticing “on-ramp” for young, inexperienced, and frequently underaged users.²⁷

B. JUUL Targets Underage Users.

35. In North Carolina, it is illegal to “distribute, or aid, assist, or abet any other person in distributing tobacco products . . . to any person under the age of 18 years.” N.C. Gen. Stat. § 14-313(b).

²⁷ See Hanae Armitage, *5 Questions: Robert Jackler says JUUL spurs ‘nicotine arms race’*, Stanford Medicine News Center (Feb. 6, 2019), available at: <https://med.stanford.edu/news/all-news/2019/02/5-questions-robert-jackler-says-juul-spurs-nicotine-arms-race.html>.

36. Despite that legal prohibition, JUUL has become enormously popular and is used widely by underage teens. In 2017, 17% of high school students and 5% of middle school students reported that they had used JUUL within the previous 30 days.²⁸

37. JUUL's prevalence among underage users is a direct and foreseeable result of its overall business and marketing strategy. JUUL pursued that strategy despite knowing that it would inevitably lead to significant underage use of JUUL e-cigarettes.

1. JUUL Created E-Cigarette Products it Knew Would Appeal to Underage Users

38. JUUL's e-cigarettes appeal to youth through, among other things, their kid-friendly flavors, their altered chemical composition, and their appearance and design.

a. JUUL's Child-Friendly Flavors

39. One way JUUL has designed its e-cigarettes to appeal to young and inexperienced smokers was by offering a variety of candy-, dessert- and fruit-like flavors.

40. Because flavored cigarettes were known to attract underage users, products containing any artificial or natural flavoring (other than

²⁸ *Supra* fn. 4.

tobacco or menthol) were banned in 2009. But that ban currently does not apply to e-cigarettes.

41. JUUL's original flavored pods came in four flavors: "Miint," "Fruut," "Bruule," and "Tobaac." Soon, JUUL began offering other flavors, including "Cool Cucumber," "Coco Mint" and "Apple Orchard." JUUL's most popular flavor to date is "Mango." Other flavors JUUL has registered with the FDA include "Peanut and Jam," "Apple Crumble," "Apple Cran," "Peach Ginger Tea," "Cinnamon Snap," and "Spicy Watermelon."

42. JUUL did not create or promote these flavors in an attempt to appeal to experienced cigarette smokers who wanted to transition to a less dangerous tobacco product. Rather, JUUL developed and promoted these flavors because it knew they would appeal to new users who were inexperienced with tobacco, particularly young people.

43. Flavored e-cigarettes are an enticing gateway for underage users. One survey found that 81% of 12-17 year olds who had used e-cigarettes began with a flavored version.²⁹ In another study, 81.5% of youth who reported vaping said they use e-cigarettes because they like the flavors.³⁰

²⁹ See American Academy of Pediatrics et al., Campaign for Tobacco-Free Kids, *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars* (Mar. 15, 2017),

https://www.tobaccofreekids.org/microsites/flavortrap/full_report.pdf.

³⁰ *Supra* fn. 4.

44. Many underage users do not realize that e-cigarettes are a nicotine-based product. One 2018 study found that 11.5% of 8th-12th graders who use e-cigarettes believe they are inhaling flavored water vapor. A separate 2018 study found that 63% of JUUL users aged 15 to 24 did not know that all JUUL products contain nicotine.³¹

45. Reacting to public concern, JUUL announced in November 2018 that it would no longer fill orders from retailers for its Mango, Crème Brûlée, Cucumber and Fruit pods, but it would still allow purchases of those flavors through its website. **Ex. 2.** JUUL did not recall inventory of these products from retailers, but allowed them to continue to sell off their existing stock.

b. JUUL's Child-Friendly Chemical Formula

46. In addition to flavoring its nicotine with a variety of child-friendly flavors, JUUL also appeals to youthful users by altering the chemical composition of the nicotine in its products to be less harsh on the throats of new users.

47. The smoke from traditional combustible cigarettes contains nicotine that is unprotonated, which often causes irritation, especially in new

³¹ N.C. Department of Health and Human Services, Press Release: *Growing Number of North Carolina Teens at Risk of Addiction to Nicotine, Study Finds* (Apr. 11, 2019), <https://www.ncdhhs.gov/news/press-releases/growing-number-north-carolina-teens-risk-addiction-nicotine-study-finds>.

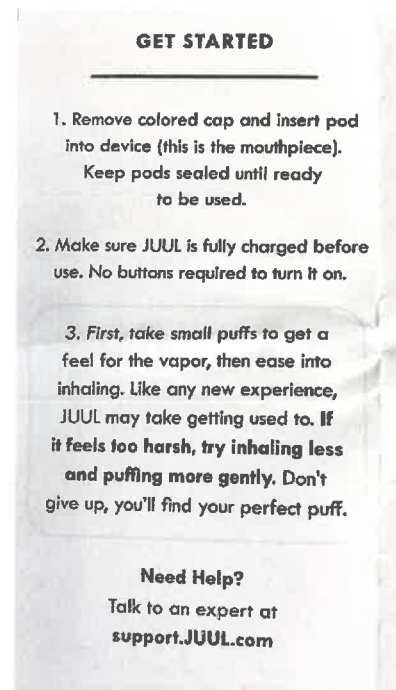
users. Experienced smokers are frequently already tolerant to this irritation to the throat and respiratory tract.

48. To enhance its appeal to new users and young people, JUUL changes the pH level of the nicotine in its e-cigarettes to convert unprotonated nicotine into protonated nicotine. That conversion results in a “decrease in the perceived harshness of the aerosol to the user and thus a greater abuse liability.”³²

49. The instructions that JUUL includes with its devices demonstrate the desire to appeal to inexperienced smokers. The instructions encourage users, at the start, to “take small puffs” and “get a feel” for the vapor, “then ease into inhaling.”

50. The instructions continue: “[i]f it feels too harsh, try inhaling less and puffing more gently. Don’t give up, you’ll find your perfect puff.”

51. JUUL’s decisions to manipulate the pH level of the nicotine in its products, and to



³² Anna K. Duell, et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by ¹H NMR Spectroscopy*, 31 *Chemical Research in Toxicology* 431-34 (published online May 18, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/pdf/tx8b00097.pdf>.

include instructions encouraging users to “take small puffs,” “get a feel for the vapor then ease into inhaling,” and “don’t give up,” were not made for the purpose of appealing to experienced smokers. JUUL took these steps to appeal to young and inexperienced smokers, and knew this would include many minors.

c. JUUL’s Sleek and Concealable Design

52. In addition to the flavor and chemical composition of JUUL’s products, JUUL also designed the look of its e-cigarette device in a way it knew would appeal to young users.

53. JUUL created its device to resemble an inconspicuous USB drive. In addition to being rechargeable through a computer’s USB port, this design makes JUUL devices easily concealable, a feature that is attractive to many underage users.



54. Students report that the sleek design allows them to use the product in locker rooms, hallways, lunchrooms, and—in particular—bathrooms.³³

³³ Safe Kids Worldwide, *10 Things School Principals Need to Know About JUUL* (2018), http://www.kdheks.gov/tobacco/download/juul_fact_sheet.pdf.

2. JUUL Knew its Methods of Promoting E-Cigarettes Would Attract Underage Users

55. After designing e-cigarette hardware and liquid products it knew would be appealing to underage users, JUUL proceeded to market those products in ways it knew would stoke their popularity among teens.



56. JUUL launched its smoking device in June 2015, throwing a party and sharing pictures on social media with young models who resembled teenagers.³⁴ JUUL's guests were encouraged to share photos on their own social media accounts using the hashtag



#LightsCameraVapor and #Vaporized.³⁵

³⁴ Erin Brodwin, *Silicon Valley e-cig startup Juul 'threw a really great party' to launch its devices, which experts say deliberately targeted youth*, Business Insider (Sept. 4, 2018), <https://www.businessinsider.com/juul-e-cig-startup-marketing-appealed-to-teens-2018-7>.

³⁵ *Id.*

57. Images from the #Vaporized campaign belie JUUL's claim that its advertising only uses images of adults using their products in a "mature setting."



58. As part of its campaign, JUUL used images of young people in digital and hard copy advertising materials, including a massive 12-screen

billboard over New York's Times Square and a full spread in Vice magazine, which promotes itself as the "#1 youth media company in the world."³⁶

59. Following the initial launch party, JUUL sponsored at least 25 other social events to promote its products. JUUL distributed thousands of free JUUL products and "starter kits" at these events. None of the invitations to these events touted JUUL's claimed "corporate mission" of helping adult cigarette smokers, nor did any of them indicate that JUUL contains nicotine, or that nicotine is addictive.

60. Part of JUUL's strategy with its series of launch parties was to use event attendees to serve as brand ambassadors, spreading JUUL's message to their friends via word of mouth and on social media, using JUUL-related hashtags, to generate "buzz" about the product. The JUUL hashtag was used thousands of times by underage social media account holders to tag photos and videos of themselves using the product.



³⁶ VICE, Digital Media Kit (January 2016), <https://upload-assets.vice.com/files/2016/01/15/1452894236compressed.pdf>.

61. JUUL monitored JUUL-related social media activity and knew that underage consumers were using and promoting their products.



62. Even as its promotional blitz was starting in June 2015, JUUL was already being warned that its campaign amounted to “irresponsible marketing” that would inevitably appeal to underage users.³⁷

63. Despite these warnings, JUUL continued to use marketing strategies that targeted young people, up through at least 2018.

64. Researchers and public-health experts note that JUUL’s advertising campaign—including holding launch parties and emphasizing

³⁷ Declan Harty, *Juul Hopes to Reinvent e-Cigarette Ads with ‘Vaporized’ Campaign*, AdAge (June 23, 2015), <http://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142/>.

dessert-like flavors—had the effect of making its products appealing to young people who might not have otherwise used tobacco products.³⁸

65. Despite these and other warning signs in the early months of its promotional launch, JUUL took little to no action to address the rising use and popularity of JUUL products among underage users.

66. Indeed, JUUL continued with its youth-oriented marketing, and focused on social media platforms especially popular among youth, such as Instagram, Facebook, YouTube and Twitter. As of August 2017, Instagram had approximately 20 million users under age 18.³⁹

67. JUUL's decision to focus its social media marketing campaign on youth-oriented platforms was not made to appeal to experienced smokers in JUUL's supposed "target demographic" of 25 to 34-year-olds. Rather, JUUL focused on these platforms specifically because of their popularity among youth.

68. A former JUUL senior manager admitted that the company already knew in 2015 that teenagers were widely using its products, in part

³⁸ Erin Browdin, *See how Juul turned teens into influencers and threw buzzy parties to fuel its rise as Silicon Valley's favorite e-cig company* (Nov. 26, 2018), <https://www.businessinsider.com/stanford-juul-ads-photos-teens-e-cig-vaping-2018-11>.

³⁹ Statista, *Number of child, teen and young adult Facebook, Instagram, and Snapchat users in the United States as of August 2017 (in millions)* (Oct. 2017), <https://www.statista.com/statistics/250176/social-network-usage-of-us-teens-and-young-adults-by-age-group/> (last visited May 14, 2019).

because teens were posting images of themselves vaping on social media, using JUUL-related hashtags (e.g., #JUULLife, #JUULNation, #JUULTricks, #JUULChallenge, #JUULGang). JUUL often amplified these teen-oriented messages by reposting them on JUUL’s own social media pages, which had hundreds of thousands of followers.⁴⁰

69. Another technique JUUL has used to promote its youth-oriented brand is to pay social media personalities — known as “influencers” — who are popular among youth to promote JUUL products online. In September 2017, JUUL contracted with one influencer named Christina Zayas. In an interview with the New York Times, Zayas acknowledged that her value to JUUL was that she attracted a younger market.⁴¹

70. JUUL’s use of “influencers” of young people has been a central part of its marketing strategy. At its 2015 launch party, there were [REDACTED]

[REDACTED] and “[REDACTED]

[REDACTED]

[REDACTED]”

71. JUUL encourages third party promoters and retailers to use influencers to promote JUUL products to youthful audiences.

⁴⁰ *Supra* fn. 17.

⁴¹ Michael Nedelman, et al., *#JUUL: How social media hyped nicotine for a new generation* (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

72. JUUL also uses



“affiliates” to market its products. Affiliates are individuals who contract with JUUL to promote its products. Each affiliate is assigned a unique link to JUUL’s online

store to share with followers. Affiliates are compensated by JUUL for every purchase initiated through that affiliate’s link.

73. Until approximately 2017, when JUUL received an affiliate application, it automatically approved the application without asking for the applicant’s date of birth or confirming that the applicant was at least over 18.

3. JUUL Took a Lax Approach to Age Verification to Avoid Creating “Friction” With Customers

74. After having intentionally designed a product that was particularly appealing to minors and marketing that product in channels that particularly appeal to minors, JUUL also knowingly created a youth-friendly method for distributing its products: internet sales, with age-verification techniques that JUUL knew to be ineffective. Instead of shoring up the deficiencies in its age-verification system, however, JUUL continued to take a lax attitude toward enforcing effective age-verification techniques. In the

words of its head of customer service, JUUL employees were instructed to “avoid digging around looking” for evidence of underage purchases. **Ex. 3.**

75. JUUL claims that its online store is “restricted to people 21 and over” and utilizes “industry leading” third-party verification.⁴²

76. At least until June 2018, JUUL’s online age verification system frequently allowed consumers under age 21, and often under age 18, to purchase devices and flavored pods. JUUL has long been aware of the system’s defects but has resisted instituting more effective systems out of fear that it will create “friction” with customers and result in negative press coverage.

77. To complete a purchase on JUUL’s website, consumers must provide their name, date of birth, permanent address, and the last four digits of their social security number. JUUL then uses a third-party verification system that cross-references the information submitted by a consumer with publicly available records to confirm the consumer is of legal age to purchase its products. According to JUUL, if public records do not match the information submitted by a consumer, the sale is rejected.⁴³ In practice,

⁴² JUUL, Company News, Youth Prevention, *JUUL Labs Action Plan, Message from Kevin Burns, CEO JUUL Labs* (Nov. 13, 2018), <https://newsroom.juul.com/2018/11/13/juul-labs-action-plan/>.

⁴³ Section 14-313(b2) of the North Carolina General Statutes requires that any entity that sells tobacco over the internet must “perform an age verification through an independent, third-party age verification service that compares information

however, JUUL's age-verification system contains numerous loopholes. For example, JUUL does not appear to require a 100% match between the information a customer enters into the system and public records.

Accordingly, many sales are completed even though the information in the public records do not match the information submitted by a customer.

78. Because of the failings in JUUL's implementation of its age verification, its process is insufficient to "establish" that the individual ordering the tobacco online is an adult. N.C. Gen. Stat. § 14-313(b2). Therefore, JUUL does not satisfy the statutory requirements for online sales of tobacco in North Carolina.

79. JUUL has been notified repeatedly by parents, employees, third-party consultants, and consumers that its age-verification process is insufficient. Yet, JUUL has knowingly continued to use a system that it knows to be ineffective because it does not want to risk suppressing sales.

80. In August 2018, a JUUL Director reminded other upper-level managers within JUUL's United States and United Kingdom operations about an experiment he had conducted that allowed him to circumvent JUUL's online age verification process using an incorrect address and zip

available from public records to the personal information entered by the individual during the ordering process to establish that the individual ordering the tobacco products is 18 years of age or older." N.C. Gen. Stat. § 14-313(b2).

code. He reported that the information he submitted on JUUL's website did not match the information contained in public records, but that JUUL's website had allowed the sale to go through anyway. **Ex. 4.**

81. Veratad, the company JUUL hired to conduct its third-party age verification, has notified JUUL that the number of minors attempting to purchase JUUL products through its website was higher than other online access points in the industry.

82. Parents have frequently complained of JUUL's age-verification processes being insufficient. JUUL has often been slow to act on requests to delete minors from their sales database, or to improve their age verification processes. **Exs. 5-7.**

83. JUUL's goal has not truly been to stop underage use. Rather, JUUL intentionally turned a blind eye toward known inadequacies in its age-verification process, attempting to ensure that the legal requirement of not selling to minors not be so onerous that it creates friction for consumers trying to order its products. **Ex. 8.**

84. One way in which JUUL reduced "friction" was to create another back door to circumvent age-verification tools. If, while placing an online order, a customer input a date of birth that reflected an age of under 21, JUUL still permitted the sale, so long as any consumer over the age of 21 was registered with the same public records information. This allows underage

customers who share the same name, for example, as a parent or other adult relative in the same household to circumvent the age-verification process and purchase JUUL products—even though the customer performing the transaction is underage.⁴⁴

85. Veratad informed JUUL about this possible “father/son scenario.” But instead of taking steps to tighten age verification measures, JUUL concluded that these failed date of birth matches “were most likely adults who met the age requirement and had data source matches, but for whatever reason supplied an incorrect YOB [year of birth].”

86. Another way in which JUUL reduces “friction” for consumers trying to order age-restricted products through its website is by allowing users multiple opportunities to submit appropriate credentials, even if the user has previously failed the age verification process.

87. For example, if a customer’s information does not match the initial public records search in the age-verification process, the customer is allowed to modify the information submitted to generate a closer match to the source data.

⁴⁴ JUUL, Support, *How JUUL Labs is Combating Underage Use of Our Product*, <https://support.juul.com/home/learn/combating-underage-use> (last visited May 14, 2019).

88. JUUL knew that many failed birthdate matches were not rare occurrences of “user input error,” but were instead underage users attempting to enter an acceptable age. One JUUL manager acknowledged to Veratad and other JUUL managers that failed birthdate matches “represent[] 13% of all our transactions in a 24 hour period.”

89. Even when a consumer is screened out by the age-verification process, JUUL often still subscribes the consumer to JUUL’s marketing emails.

90. In many cases, even after discovering that some of its customers were under the legal age to purchase its products, JUUL has not removed those customers’ email addresses from its marketing target lists.

91. Because of JUUL’s lack of diligence in ensuring that marketing targets are adults, JUUL’s email marketing list contains a large number of underage customers or potential customers. Accordingly, JUUL has directed and continues to direct a substantial amount of marketing directly to consumers it knows or should know are underage.

92. Internal data from JUUL shows that only 40-50% of email addresses matched records showing that those addresses belong to an individual over the age of 21. JUUL has estimated internally that JUUL could not confirm the age of nearly 500,000 recipients of JUUL’s marketing emails.

93. A JUUL manager has estimated that removing email addresses that could not be verified as belonging to an adult would result in removing up to 30% of the email addresses from the marketing list. For that reason, the manager suggested continuing to send emails to non-age-verified consumers or risk “losing leads.”

94. JUUL has been reluctant to ask those on its marketing list to complete age-verification because doing so would reveal that age verification had not been required up to that point. JUUL was concerned that this would be “a massive red flag to press.”

95. Through at least late 2018, JUUL neglected to cull its marketing lists of potentially underage marketing targets and continued to send them marketing emails, survey invitations, product discounts, and other promotional materials.

C. JUUL Deceives the Public About the Nicotine Potency of its E-Cigarette Products.

96. In addition to leading thousands of minors to use e-cigarettes and become addicted to nicotine, JUUL has also engaged in other unfair or deceptive practices.

97. For example, JUUL has deceived its consumers about the strength of the nicotine in its products and misrepresented the nicotine equivalency of its products to traditional cigarettes.

98. These deceptions caused harm to underage non-smokers, many of whom have been led to believe that using JUUL products is a safe alternative to traditional cigarettes.

1. JUUL’s Deceptive Statements About Nicotine.

99. JUUL product labeling indicates that its replaceable pods are “5% strength,” but does not explain that the company calculates the “strength” of a pod in a way that understates the nicotine strength of JUUL’s products.

100. Until JUUL was introduced into the market, it was standard practice for e-liquid manufacturers to advertise their products’ nicotine concentration (the “strength” of the product) by volume, as the number of milligrams (mg) of nicotine per milliliter (mL) of liquid in a pod.⁴⁵ JUUL, however, calculates and labels its product “strength” by weight, *i.e.*, as the number of mg of nicotine per *mg* of liquid in a pod. The ratio of concentration of nicotine by weight (mg) tends to be



⁴⁵ *Supra* fn. 27.

smaller than the ratio of concentration by volume (mL). As a result, JUUL's practice gives the impression that its product is actually weaker in nicotine concentration than an industry-standard calculation would indicate.⁴⁶

101. Had JUUL followed the industry standard approach, it would have had to label the concentration of nicotine as 5.9%, not 5%. At 5.9% strength, JUUL pods have a nicotine level approximately three times higher than was common among other products in the market before JUUL's emergence.

102. JUUL's exceptionally high nicotine potency has been described by a tobacco marketing expert as creating a "nicotine arms race."⁴⁷

103. E-cigarette products exceeding 20 mg of nicotine per mL—slightly more than one-third of what JUUL's products contain—are banned in the European Union and the United Kingdom.

104. After learning about the relative nicotine content in JUUL pods in late 2018, Israel banned all imports and sales of JUUL products, noting that "a product that contains a concentration of nicotine that is almost three times the level permitted in the European Union constitutes a danger to

⁴⁶ *Id.*

⁴⁷ *Id.*

public health and justifies immediate and authoritative steps to prevent it from entering the Israeli market.”⁴⁸

105. Several studies have revealed that JUUL products actually contain concentrations of nicotine even higher than stated and significantly higher than other e-cigarette products.⁴⁹

106. JUUL does not disclose to consumers that its product delivers an exceptionally potent dose of nicotine, and it continues to advertise its “5% strength” when it knows JUUL pods may contain even higher nicotine concentrations according to standard industry calculations.

2. JUUL Misrepresents the Nicotine Equivalency of its Product to Traditional Cigarettes.

107. JUUL also deceives consumers in comparing the amount of nicotine in a JUUL pod to the amount of nicotine in a pack of cigarettes. On its website, in advertisements, and in comments to media, regulatory authorities, and the public, JUUL has repeatedly claimed that the amount of nicotine in one JUUL pod is approximately equivalent to the amount of nicotine contained in one pack of cigarettes or 200 puffs.⁵⁰

⁴⁸ Ronny Linder Ganz, *JUUL Warns it Will Fight Israel Over Its Potential Ban on E-Cigarettes*, Haaretz (June 3, 2018), <https://www.haaretz.com/israel-news/business/juul-warns-itwill-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058>.

⁴⁹ *Supra* fn. 23.

⁵⁰ *See, e.g.*, JUUL, *JUUL Savings Calculator*, <https://www.juul.com/calculator> (last visited May 15, 2019).

108. This comparison is deceptive. While the nicotine contained in each pod, *by weight*, might be approximately equal to the amount of nicotine contained in a pack of cigarettes, the true amount of nicotine that a consumer takes into her bloodstream from a JUUL pod is significantly more than if she had smoked a pack of cigarettes.

YOUR SAVINGS
TOTAL *EARLY SAVINGS
\$365.00

One 5% strength JUULpod is designed to replace one pack of cigarettes in both amount (20 cigarettes ~200 puffs) and nicotine strength. If you consume JUULpods in a manner consistent with your current cigarette consumption, you may save \$365.00* a year by switching to JUUL. Usage patterns may vary by user.

DID YOU KNOW?
One JUULpod is intended to last ~200 puffs. However, individual smoking and vaping patterns may vary.

*does not include applicable taxes

109. This is because the chemical reaction that occurs in a JUUL pod when it transfers nicotine into a consumer's bloodstream causes the JUUL user to absorb more nicotine in her bloodstream than if she were to smoke cigarettes containing an equivalent amount of nicotine by weight.

110. In fact, according to scientific research on pH levels and nicotine absorption when nicotine is combined with benzoic acid, each JUUL pod actually delivers approximately twice the amount of nicotine than a pack of combustible cigarettes.⁵¹

⁵¹ See Neil L. Benowitz, et al., *Nicotine Chemistry, Metabolism, Kinetics and Biomarkers*, 192 Handbook of Experimental Pharmacology 29-60 (Oct. 13, 2010), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

111. When JUUL founder Adam Bowen patented JUUL's e-cigarette device, he described the process for combining benzoic acids with nicotine to produce nicotine salts, which mimics the nicotine salt additives developed by tobacco giant R.J. Reynolds Tobacco Company in the 1970s to give cigarettes an "additional nicotine 'kick.'"⁵²

112. As the patent filing (US-9215895-B2) shows, the JUUL product's 4% benzoic acid concentration coupled with a 5% concentration of nicotine salts causes the level of nicotine in a consumer's bloodstream to be approximately 30% *higher* than if the consumer had smoked a combustible cigarette.

113. In 1994, the Food and Drug Administration (FDA) recognized nicotine as a drug that produces chemical dependency. Since that time, countless studies have shown that nicotine is highly addictive and that people who consume nicotine and then suddenly stop experience a range of harmful withdrawal symptoms.

114. In addition, many studies have also shown that a person's tolerance for nicotine increases with the amount of nicotine consumed. This

⁵² See Myron Levin, *Efforts to Boost Nicotine's Potency Revealed* (Feb. 5, 1998), <https://www.latimes.com/archives/la-xpm-1998-feb-05-fi-15638-story.html> (describing documents unsealed in tobacco litigation, including a "1973 R.J. Reynolds memo stating that 'any desired additional nicotine "kick" could be easily obtained through pH regulation.'").

leads people to require higher and higher doses to experience the same initial effects.

115. As a result, and as the American Heart Association has acknowledged, nicotine is one of the hardest addictions to break.⁵³

116. At all relevant times, JUUL has been well aware of these findings and others about the addictiveness of nicotine.

117. Nevertheless, JUUL has frequently understated not only the nicotine potency but also the increased risks of addiction resulting from use of JUUL products.

D. JUUL Profits Soar While A New Generation Becomes Addicted to Nicotine.

118. JUUL's deceptive marketing tactics have created a surge in nicotine use by North Carolinians, particularly among youth.

119. In 2017 in North Carolina, nearly 17% of high schoolers and more than 5% of middle schoolers have used an e-cigarette in the last thirty days.⁵⁴ Upon information and believe, these figures underrepresent the current usage rates among young people.

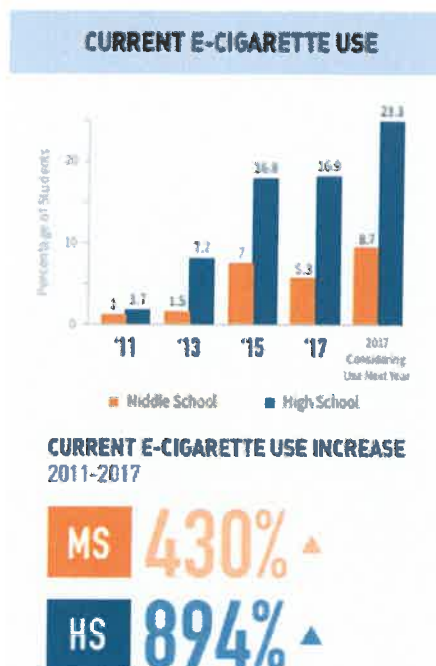
⁵³ See American Heart Association News, *Why It's So Hard to Quit Smoking* (Oct. 17, 2018), <https://www.heart.org/en/news/2018/10/17/why-its-so-hard-to-quit-smoking>.

⁵⁴ *Supra* note 3.

120. While North Carolina has recorded significant declines in traditional cigarette use by young people in the last fifteen years, the use of e-cigarettes has increased by 894% for high schoolers and 430% for middle schoolers since 2011.⁵⁵

121. Nearly one in four high schoolers and one in ten middle schoolers are considering e-cigarette use in the next year.⁵⁶

122. The CDC reported that, in 2017, 2.1 million high schoolers and middle schoolers used e-cigarettes.⁵⁷ By September of 2018, that number had nearly doubled, prompting then-FDA Commissioner Scott Gottlieb to threaten to remove flavored liquid nicotine products from the market altogether in order to curb the “epidemic of e-cigarette use among teenagers.”⁵⁸



⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Supra* note 17.

⁵⁸ Laurie McGinley, *FDA Chief Calls youth e-Cigarettes an 'Epidemic'*, The Washington Post (Sept. 12, 2018), https://www.washingtonpost.com/national/health-science/fda-chief-calls-youth-use-of-juul-other-e-cigarettes-an-epidemic/2018/09/12/ddaa6612-b5c8-11e8-a7b5-adaaa5b2a57f_story.html?utm_term=.7f720e2a6f29.

123. There is a strong correlation between underage use of e-cigarettes and use of traditional combustible tobacco cigarettes. Multiple studies have found that vaping frequently leads to traditional cigarette use among teenagers, even among those who never intended to try combustible cigarettes.⁵⁹

124. Each day, more than 4,000 teenagers try a cigarette for the first time. Nearly half of them will become regular, daily smokers; of those, about half will eventually die from a smoking-related disease.⁶⁰ Cigarettes remain the leading cause of preventable death in the United States, killing more than 480,000 people a year.⁶¹

125. Meanwhile, business is booming for JUUL. The company is preparing to open 19 new offices across the United States, in addition to its San Francisco headquarters.⁶² Sales increased by 800% in 2017.⁶³ JUUL's

⁵⁹ *Supra* note 18.

⁶⁰ N.C. Department of Health and Human Services, Division of Public Health, Tobacco Prevention and Control Branch, *Youth Tobacco Prevention*, <https://www.tobaccopreventionandcontrol.ncdhhs.gov/youth/index.htm> (last visited May 14, 2019).

⁶¹ Centers for Disease Control and Prevention, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, *Smoking & Tobacco Use: Fast Facts – Tobacco Related Mortality*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm (page last reviewed Jan. 17, 2018).

⁶² *Supra* note 34.

⁶³ Tim Bradshaw and Lindsay Fortado, *Vape Start-up Juul Raises \$650m at \$15bn valuation*, Financial Times (July 10, 2018), <https://www.ft.com/content/ec3c8b8c-845f-11e8-96dd-fa565ec55929>.

market share has steadily increased, from two-thirds of the market in 2017 to more than 72% market share in September 2018.⁶⁴

126. JUUL is now valued at approximately \$38 billion and continues to dominate the e-cigarette market.

C. JUUL’s “Action Plan” to Address Underage Vaping is Too Little and Too Late

127. After rapidly building its business based on appealing to young people, including minors, and addicting millions of underage users to nicotine, JUUL has recently claimed to have recognized that it needed to change its ways.

128. On November 13, 2018, JUUL announced an “action plan” to deter underage use of JUUL products, and claimed that it wants to “be the off-ramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.”

129. Part of JUUL’s “action plan” was to stop accepting retail orders for four of the flavors JUUL knew were especially attractive to minors—Mango, Fruit, Crème, and Cucumber.

130. JUUL stated that it would no longer provide these four flavors to the 90,000 retail stores that sell the product. But JUUL did not recall

⁶⁴ *Supra* note 10.

existing inventory of these kid-friendly flavors from those retail stores, nor did it stop offering them over the internet.

131. JUUL also promised to strengthen age verification in online ordering, announced that it would limiting online customers to two devices and 15 pod packages per month and no more than 10 devices per year, and said that it would more aggressively monitor retailers and third parties selling JUUL products to underage customers.

132. JUUL also says it has changed its social media strategy. JUUL stopped using its U.S.-based social media accounts on Facebook and Instagram, but remains on Twitter for non-promotional communications and YouTube for posting testimonials of former adult smokers who have switched to JUUL.

133. All of the changes that JUUL has forecast in its action plan are voluntary. Absent court action, JUUL can decide to modify its behavior at any time.

134. JUUL has not announced plans to change how it describes the nicotine content of its products or to reduce the nicotine content of its products. JUUL's action plan does not envision third-party monitors or validators to ensure compliance.

135. JUUL has also not announced any plans for corrective advertising that would attempt to deter teens and young adults from taking up e-cigarettes.

136. JUUL also cannot confirm that its new age-verification measures are sufficient to prevent e-cigarettes from being delivered to minors.

137. JUUL has not announced any plans to fund addiction therapy initiatives for people who have become addicted to its products.

CLAIM FOR RELIEF

Violations of the Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1

1. The allegations contained in paragraphs 1-137 are incorporated by reference as if they were set out at length herein.

2. JUUL, in the course of marketing its e-cigarette devices and flavored nicotine inserts, engaged in unfair or deceptive trade practices affecting North Carolina consumers that violated N.C.G.S. § 75-1.1. JUUL's unfair or deceptive omissions, acts, and practices include, but are not limited to, the following:

a. Knowingly marketing, selling, and delivering addictive nicotine-based products to minors, including by:

a. Designing its products, including their flavors, appearance, and chemical composition, to appeal to

- youthful audiences, knowing that that would include many minors;
- b. Pursuing marketing strategies and campaigns that it knew would attract minors;
 - c. Using ineffective age-verification techniques for internet sales, thereby allowing many underage users to easily obtain JUUL products;
- b. Deceiving consumers about the nicotine potency of its e-cigarette products, including by understating the strength of the nicotine in JUUL's products.

JURY DEMAND

3. The State demands trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, for the reasons outlined above, the State requests that the Court:

1. Preliminarily and permanently enjoin JUUL, its officers, directors, employees, and agents, and all those acting in concert with them, as follows:
 - a. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products to minors within this State.

- b. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner providing e-cigarette products to minors within this State.
- c. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products within this State in any flavors other than tobacco or menthol through online sales.
- d. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner providing e-cigarette products within this State in any flavors other than tobacco or menthol through online sales.
- e. JUUL shall not engage in or participate in any marketing or advertising activities within this State, including on social media accessed within this State, involving e-cigarette products that are intended to or are known to be likely to appeal to minors, nor shall JUUL retain, facilitate, assist, enable, or encourage any other person or entity to engage or participate in such marketing or advertising activities within this State. Accordingly,

JUUL, without limitation, shall not:

- i. Send marketing emails to any minors within this State;
- ii. Advertise outdoors (including window advertisement visible from the street or sidewalk) within 1,000 feet of schools and playgrounds in North Carolina;
- iii. Sponsor sports, entertainment, or charity events held in North Carolina;
- iv. Provide free or discounted samples, starter kits, or e-cigarette products to consumers. In addition, JUUL may not provide automatic renewals or bulk orders to recipients less than 18 years of age;
- v. Advertise in any fashion in media or outlets that primarily target or serve consumers under 30 years of age.
- f. Within 30 days of entry of this order, JUUL shall produce to the State a confidential database containing all customer-related information, including but not limited to names, addresses, email addresses, telephone numbers, and any other information in JUUL's possession

regarding any individual consumer that is under age 18 or that JUUL is unable to confirm is at least 18 years of age. Within 10 days of providing such information to the State, JUUL shall permanently delete all such information in its possession, including but not limited to all account information on JUUL's website and inclusion of such individuals on JUUL's email marketing lists.

- g. JUUL shall not offer, sell, deliver, or in any manner provide e-cigarette products within this State that describe the nicotine potency of such products as calculated by weight rather than by volume, or in a manner that misrepresents the nicotine potency of e-cigarette products as compared to combustible cigarettes.
- h. JUUL shall not facilitate, assist, or enable any individual or entity in offering, selling, delivering, or in any manner providing e-cigarette products within this State that describe the nicotine potency of such products as calculated by weight rather than by volume or that misrepresents the nicotine potency of e-cigarette products as compared to combustible cigarettes.

2. Award civil penalties to the State from JUUL pursuant to

N.C.G.S. § 75-15.2;


3. Disgorge JUUL's profits from its unfair or deceptive acts and practices to the State;

4. Award the State its costs, including a reasonable attorneys' fee, incurred by the investigation and litigation of this matter pursuant to N.C.G.S. § 75-16.1; and

5. Any and all further legal and equitable relief as the Court deems the State is entitled to receive.

This the 15th day of May, 2019.

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