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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SANTA BARBARA**  
13 (UNLIMITED JURISDICTION)

14 CREE WITMER,

15 *Plaintiff,*

16 vs.

17 JUUL LABS, INC.; and PAX LABS, INC.,

18 *Defendants.*

Case No. 20CV01597

**COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL**

1. Strict Products Liability – Design Defect (Consumer Expectation Test)
2. Strict Products Liability – Design Defect (Risk-Utility Test)
3. Strict Products Liability – Failure to Warn
4. Negligence and/or Gross Negligence
5. Negligent Failure to Recall
6. Fraudulent Concealment
7. Intentional Misrepresentation
8. Intentional Infliction of Emotional Distress
9. Violations of Unfair Competition Law

19 Plaintiff, Cree Witmer, by and through their undersigned counsel, bring this Complaint against  
20 Defendants JUUL Labs, Inc. and PAX Labs, Inc. and allege as follows:

21 **INTRODUCTION**

22  
23 1. Plaintiff Cree Witmer is presently nineteen (19) years old and began using JUUL pods at  
24 the age of sixteen (16). Cree Witmer developed a severe nicotine addiction, the ramifications of which he  
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1 will deal with for the rest of his life. Defendants' wrongful conduct in marketing, promoting,  
2 manufacturing, selling, designing, and distributing JUUL substantially contributed to Cree Witmer's  
3 injuries.

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5 **STATEMENT OF THE PARTIES**

6 2. Plaintiff, Cree Witmer is at all times relevant herein was a resident of the State of  
7 California.

8 3. Defendant JUUL Labs, Inc. ("JUUL") is incorporated in Delaware with its principal place  
9 of business in San Francisco, California. Prior to 2017, JUUL was known as PAX Labs, Inc.

10 4. JUUL manufactures, designs, sells, markets, promotes, and distributes JUUL e-cigarettes.

11 5. JUUL ratified each and every act or omission alleged herein in proximately causing the  
12 injures and damages incurred by Plaintiff.

13 6. PAX manufactures, designed, promoted, marketed, and distributed JUUL e-cigarettes.

14 7. PAX ratified each and every act or omission alleged herein in proximately causing the  
15 injuries and damages incurred by Plaintiff.

16 8. Plaintiff is informed and believes and on that basis alleges that each defendant named  
17 herein are those persons, corporations, other legal entities, and/or successor-in-interest of any of those  
18 entities described above whose wrongful conduct caused or contributed to cause the harms, injuries, and  
19 damages to Plaintiff.

20 **VENUE AND JURISDICTION**

21 9. This Court has subject matter jurisdiction over this case because the amount in controversy  
22 exceeds the statutory requirement.

23 10. This Court has personal jurisdiction over JUUL and PAX because their principal places of  
24 business are in San Francisco, California. JUUL and PAX purposefully avail themselves of the benefits,  
25 protections, and privileges of the laws of the State of California by conducting significant business  
26 activities within the State.

27 11. Venue is proper in this Court because JUUL and PAX regularly transacts and solicits  
28 business in Santa Barbara County, because its principal place of business is located in the City and County

1 of San Francisco, and because a substantial part of the events or omissions giving rise to the claims alleged  
2 herein occurred in Santa Barbara County.

### 3 FACTUAL BACKGROUND

#### 4 **A. History of JUUL and Its Products**

5 12. Since its launch in 2015, JUUL has grown rapidly and now dominates the e-cigarette  
6 market. Prior to 2017, JUUL was known as PAX Labs, Inc.

7 13. The JUUL e-cigarette is approximately the size and shape of a pack of chewing gum. It  
8 resembles a USB flash drive and consists of a rectangular enclosure containing a rechargeable battery and  
9 heating element and a pre-filled pod of JUUL's patented nicotine solution, which slides into the end of  
10 the JUUL device.

11 14. JUUL pods come in a variety of flavors, including but not limited to mango, mint, crème,  
12 fruit, and menthol.

13 15. The JUUL e-cigarette is a proprietary system incompatible with other e-cigarette  
14 components parts or liquids. It contains nicotine, a highly addictive substance particularly amongst teens.

15 16. JUUL has been described as the iPhone of e-cigarettes both because its use is so prevalent  
16 and because its packaging resembles that employed by Apple.

17 17. In November 2018, JUUL represented 76.1% of sales in the e-cigarette market.<sup>1</sup>

18 18. JUUL's dollar sales increased by 783% in 2018.<sup>2</sup>

19 19. JUUL is valued in excess of \$15 billion; it is recognized as the fastest growing startup to  
20 reach \$10 billion valuation, hitting this benchmark four times faster than Facebook.<sup>3</sup>

#### 21 **B. JUUL's Youth-Focused Marketing Practices and Business Model Mirror Those Employed** 22 **by Big Tobacco, Particularly Philip Morris, Who Owns a 35% Share of JUUL**

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25 <sup>1</sup> Carver R. Juul expands top US e-cig market share; traditional cigarettes volume continues to slip. Winston – Salem Journal.  
26 November 27, 2018. [https://www.journalnow.com/business/juul-expands-top-u-s-e-cig-marketshare-traditional/article\\_9bdfd55c-68b5-5c08-aeb8-edb4a616ca9e.html](https://www.journalnow.com/business/juul-expands-top-u-s-e-cig-marketshare-traditional/article_9bdfd55c-68b5-5c08-aeb8-edb4a616ca9e.html) (accessed December 5, 2018).

27 <sup>2</sup> Robert K. Jackler, *et al.*, *Juul Advertising Over it First Three Years on the Market*, STANFORD RESEARCH INTO THE IMPACT  
28 OF TOBACCO ADVERTISING (January 31, 2019)

[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf) (last visited August 5, 2019).

<sup>3</sup> *Id.*

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2 20. While JUUL represents itself publicly as a revolutionary company disrupting the tobacco  
3 industry and vehemently asserts it is not “big tobacco,” it partnered with one of the biggest tobacco  
4 companies in 2018 and has employed their marketing tactics since 2015.<sup>4</sup>

5 21. In December 2018, Altria, the parent company of Philip Morris and maker of Marlboro  
6 cigarettes, announced a \$12.8 billion-dollar investment to acquire a 35% equity interest in JUUL, giving  
7 the company a valuation of \$38 billion.<sup>5</sup>

8 22. JUUL’s advertising and marketing campaigns mirror those employed by big tobacco  
9 companies decades earlier, portraying young persons having fun while smoking, and in JUUL’s case,  
10 vaping. More specifically, internal tobacco industry documents contain claims by big tobacco that their  
11 advertising targets only adult smokers, while in reality the advertisements systematically targeted  
12 youthful “starter smokers.”<sup>6</sup> JUUL maintains the same position – that it targets only adult smokers while  
13 it employed a nationwide ad campaign that unquestionably targeted youth both in form and content.

14 23. In 1998, the Tobacco Master Settlement Agreement prevented Tobacco companies from  
15 (1) using outdoor advertising such as billboards; (2) sponsoring events; (3) giving free samples; (4)  
16 paying any person “to use, display, may reference to or use as a prop any Tobacco Products, Tobacco  
17 Product package...in any ‘media’ which includes any motion picture, television show, theatrical  
18 production or other live performance, and any commercial film or video;” and (5) paying any third party  
19 to conduct any activity which the tobacco manufacturer is prohibited from doing.

20 24. In 2015, Defendant launched its “Vaporized” campaign with a 12-panel billboard display  
21 over Times Square.<sup>7</sup> Photos used in its Vaporized campaign were again targeted toward youth, with  
22 young models and bright colors:



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25 <sup>4</sup> <http://>  
26 <sup>5</sup> Altria  
27 <sup>6</sup> U.S.  
28 <sup>7</sup> Jackler, et al., *supra* at n. 2.

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25. In launching JUUL, it held at least 25 youth-oriented JUUL sampling events in major cities such as New York and Las Vegas; the central purpose of said events was to distribute free samples of JUUL to a youth audience.

26. JUUL “deployed a sophisticated program to enter schools and convey its messages directly to teenage children” by offering \$10,000 to schools nationwide for the right to talk to students in classrooms or after school.<sup>8</sup>

27. JUUL paid a Baltimore charter school organization \$135,000 to set up a five-week wellness camp for kids.<sup>9</sup>

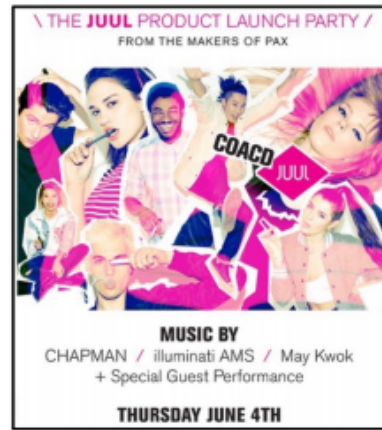
28. JUUL opened pop-up “JUUL bars” (also known as “launch parties” and “sampling events”) in Los Angeles, New York, and the Hamptons, imitating trendy pop-up shops and restaurants

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<sup>8</sup> Sheila Kaplan, *Juul Targeted Schools and Youth Camps, House Panel on Vaping Claims*, THE NEW YORK TIMES (July 25, 2019) <https://www.nytimes.com/2019/07/25/health/juul-teens-vaping.html>

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

1  
2 that attract young consumers.<sup>10</sup> Advertisements for these events were unabashedly targeted towards  
3 youth:



29. JUUL specifically advertised its products to impressionable teens by spending more than \$200,000 on online “influencers,” including celebrity chefs to provide pod “pairing” suggestions.<sup>11</sup>

30. Between 2015 and 2018, JUUL sent at least 200 promotional emails to customers and potential customers, regardless of age. These emails included coupons for the “starter kit” and a “refer a smoker” program.

31. JUUL’s emails also included surveys consumers could take in exchange for compensation, regardless of age. In some cases, JUUL paid customers up to \$30 to complete those surveys.

32. In 2006, the United States District Court for the District of Columbia issued a decision in *United States v. Philip Morris USA, Inc.*, after the federal government alleged big tobacco violated and continued to violate the Racketeer Influenced and Corrupt Organization Act (“RICO”) through its decades-long targeting of adolescents by using peer marketing, images and themes that appealed to teens, and promotional materials that would specifically reach them. The court found “overwhelming” evidence that tobacco companies intentionally exploited adolescents’ vulnerability to imagery by creating and advertising themes of independence, adventurousness, sophistication, glamour, athleticism, social

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<sup>10</sup> Kathleen Chaykowski, *The Disturbing Focus of Juul’s Early Marketing Campaigns*, FORBES (Nov. 16, 2018 2:38 p.m.), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#244eed1214f9>

<sup>11</sup> Letter from Raja Krishnamoorthi, Chairman for Subcommittee of Economic and Consumer Policy, to Kevin Burns, CEO of JUUL Labs, Inc. (June 7, 2019) (on file with United States House of Representatives Committee on Oversight and Reform).

1 inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being “cool.” *United States v.*  
2 *Philip Morris USA, Inc.*, (D.D.C. 2006) 449 F. Supp. 2d 1, 571.

3  
4 33. JUUL’s “Vaporized” campaign promoted JUUL products to teens in a strikingly similar  
5 fashion, using young, trendy models and bold colors, and showing JUUL products as being an essential  
6 part of a young, fun, and cool lifestyle.<sup>12</sup>

7 34. JUUL’s print advertisements continued the themes of the “Vaporized” campaign by  
8 showing young, attractive, trendy models having fun by “juuling.” These advertisements preyed on  
9 teenage vulnerability by making it seem like “juuling” would make someone attractive, popular,  
10 independent, fun, and cool.

11 35. JUUL primarily advertised through social media. It hired social media “influencers”<sup>13</sup> to  
12 promote JUUL and to influence teens to use them. Up until 2018, Defendant called for “influencers” with  
13 a “join the JUUL influencers” link on its website. Applicants were required to disclose their Instagram,  
14 Twitter, blog, and Facebook profiles for Defendant to assess if they could successfully reach the target  
15 teen market.

16 36. These “influencers” delivered the JUUL message to hundreds of thousands of teens.

17 37. JUUL used hashtags to reach the teen market, including, but not limited to, #JUUL,  
18 #JUULnation, #Mango, and #Coolmint. Additionally, Defendant allowed other accounts like  
19 @JUULnation to post tips and videos about “juuling,” including how to “juul in school.”

20 38. As of August 1, 2018, #juul has over 552,000 posts, #juulnation has over 57,200 posts,  
21 and #juulvapor has over 48,500 posts on Instagram.

22 39. A 2018 study concluded that JUUL’s marketing strategy is heavily dependent on its social  
23 media presence catering to a youthful demographic:

24 [O]ur study shows that the growth of JUUL was accompanied by innovative marketing  
25 across a variety of new media platforms. The marketing of other major retail e-cigarette  
26 brands, at least in their early stages, relied heavily on either advertising on TV (eg, Blu

27 <sup>12</sup> Declan Harty, *Juul Hopes to Reinvent E-cigarette Ads with ‘Vaporized’ Campaign*, ADAGE (June 23, 2015)  
<https://adage.com/article/cmo-strategy/juul-hopes-reinvent-e-cigarette-ads-campaign/299142>

28 <sup>13</sup> An “influencer” on social media is a person who has garnered hundreds of thousands to millions of followers to whom they  
can market and promote products often in partnership with companies like JUUL.

1 and Njoy) or promotional expenditures to retailers and consumers (eg, Vuse and  
2 MarkTen), or both. However, JUUL was one of the first major retail e-cigarette brands  
3 that relied heavily on social media to market and promote its products. In particular, we  
4 found the number of JUUL-related tweets was highly correlated with quarterly retail sales  
5 of JUUL. In addition to Twitter, JUUL was heavily marketed and promoted on Instagram  
6 and YouTube. The official JUUL account on Instagram, for example, used a variety of  
7 marketing and promotional schemes to attract, engage with and retain followers. The  
8 account used artsy, professional-grade photographs to display its products and evoke  
9 lifestyle feelings such as relaxation, freedom and sex appeal. Those posts also heavily  
10 emphasised JUUL’s variety of flavours.<sup>14</sup>

11 40. In 2009, the FDA banned flavored cigarettes because “flavored cigarettes are a gateway  
12 for many children and young adults to become regular smokers.”<sup>15</sup>

13 41. According to a recent study, 74 percent of teens indicated the first JUUL product they  
14 used was a flavored pod. Additionally, more than half of teens stated that they use e-cigarettes, such as  
15 JUUL, because they like the flavors.

16 42. A 2018 study found JUUL’s “cool mint” pod had nearly double the amount of nicotine  
17 than the 5% strength label indicates.<sup>16</sup>

18 43. JUUL had an advertising campaign titled “Save Room for JUUL” that included tag lines  
19 like “indulge in dessert without the spoon” and “have a sweet tooth, try brulee” (referencing the crème  
20 brûlée flavor).

21 44. In 2017, JUUL advertised its “cool mint” flavor by encouraging consumers to “start your  
22 week with cool mint juul pods,” and to “beat the August heat with cool mint.”

23 45. In 2018, JUUL announced it had stopped accepting retail orders for many flavored JUUL  
24 pods. However, the flavored pods are still available on Defendant’s website and the “cool mint” flavor  
25 is still available in stores.<sup>17</sup>

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26 <sup>14</sup> Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US*  
27 *retail e-cigarette market* (2018), available at [https://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-](https://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382)  
28 [054382](https://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382) (footnotes omitted).

<sup>15</sup> Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, THE NEW YORK TIMES (Sept. 22, 2009)  
<https://www.nytimes.com/2009/09/23/health/policy/23fda.html>

<sup>16</sup> See Duell et al., *Free-Base Nicotine Determination in Electronic Cigarette Liquids by tH NMR Spectroscopy* (Jun 18,  
2018) 31 *Chern. Res. Toxicol.* 431-434, [www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/) (as of August 19, 2019).

<sup>17</sup> Kaplan, *supra* note 24.



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2 46. In response to regulatory criticism of JUUL’s marketing practices, it announced in June  
3 of 2018 that only adult models would be used on its Instagram, Twitter, and Facebook who are former  
4 smokers who switched to JUUL.<sup>18</sup>

5 47. Despite JUUL’s repeated denials that it targeted youth in its advertising and marketing  
6 campaigns, its announcement in 2018 that it would only use adult, former-smokers on its website and  
7 social media platforms, and the fact that it expunged its social media profiles from advertisements  
8 containing youth models, belies JUUL’s credibility. JUUL’s denials are contradicted by its swift sweep  
9 of its social media content portraying youthful models.

10 **C. JUUL’s Youth-Focused Marketing Created a New Generation of Smokers Which Helped**  
11 **Drive JUUL’s Success**

12 48. Despite JUUL’s public statements that its business is targeted solely to adult smokers, a  
13 significant demographic driving JUUL’s success is sales and use by youth.

14 49. In 2018, the Center for Disease Control and Prevention reported current e-cigarette use  
15 among high school students reached 20.8% (3.05 million users) representing a 78% increase from the  
16 previous year.<sup>19</sup>

17 50. A 2018 survey of 14, 379 teens and young adults between the ages of 15 and 34 years  
18 showed teens aged 15-17 were 16 times more likely to be current JUUL users than the 25-34-year-old  
19 demographic.<sup>20</sup>

20 51. JUUL is appealing to youth both because it is easily to conceal, its fruity and sweet flavors,  
21 and its status as the latest technology.<sup>21</sup>

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25 <sup>18</sup> Woolf J. E-Cig Maker Juul Won't Tempt Instagrammers With Models Anymore. Bloomberg. June 14, 2018.  
26 <https://www.bloomberg.com/news/articles/2018-06-14/e-cig-maker-juul-won-t-tempt-instagrammers-with-models-anymore>  
(accessed December 5, 2018).

27 <sup>19</sup> Robert K. Jackler, *et al.*, *Juul Advertising Over its First Three Years on the Market*, STANFORD RESEARCH INTO THE IMPACT  
28 OF TOBACCO ADVERTISING (January 31, 2019)  
[http://tobacco.stanford.edu/tobacco\\_main/publications/JUUL\\_Marketing\\_Stanford.pdf](http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf) (last visited August 5, 2019).

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

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

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2 52. The FDA noticed the rapid rise in JUUL use among teens and in April 2018 announced it  
3 was considering taking action to counter underage sales and requested documents from the company to  
4 evaluate underage use and targeting.

5 53. In October 2018, as part of its ongoing investigation, the FDA seized thousands of  
6 documents from JUUL's San Francisco headquarters and one month later announced a series of measures  
7 it would employ to curtail youth access to JUUL and other e-cigarettes.<sup>22</sup>

8 54. It seems improbable that a company with JUUL's resources, reach, and data could not  
9 have recognized that the underage youth demographic was a primary contributor to its phenomenal  
10 success. In fact, a New York Times article quoted a former JUUL manager stating the company was  
11 aware as early as 2015 that its products were reaching teenagers.<sup>23</sup>

#### 12 **D. The Effects of Nicotine on Adolescents**

13 55. Leading health authorities support two major conclusions from a 1998 report issued by the  
14 Surgeon General of the United States regarding nicotine and tobacco: (i) Nicotine is the drug in tobacco  
15 that causes addiction, and (2) the physiological and behavioral processes that determine tobacco addiction  
16 are similar to those that determine heroin and cocaine addiction.

17 56. The human brain is not fully developed until age 25. Nicotine from e-cigarettes, like JUUL,  
18 can lead to addiction, harm to brain development, and change the way brain functions in users under the  
19 age of 26 as supported by the Surgeon General's opinion.<sup>24</sup>

20 57. Nicotine fosters addiction through the brain's "reward" pathway. Nicotine, both a  
21 stimulant and a relaxant, affects the central nervous system; increases blood pressure, pulse, and metabolic  
22 rate; constricts blood vessels of the hair and skin; and causes muscle relaxation.

23 58. When nicotine is inhaled, it enters the bloodstream through membranes in the mouth and  
24 upper respiratory tract through the lungs. Once in the bloodstream, nicotine reaches the brain, binds to  
25 receptors, and triggers a series of physiologic effects in the user that are perceived as a "buzz" or "high"

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26 <sup>22</sup> Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to  
27 flavored tobacco products and banning menthol in cigarette (accessed December 5, 2018).

<sup>23</sup> Richtel M, Kaplan S. Did Juul Lure Teenagers and Get 'Customers for Life'? New York Times. August 27, 2018.

<sup>24</sup> Neal L. Benowitz, *Pharmacology of Nicotine: Addiction, Smoking-Induced Disease, and Therapeutics*, 49 ANNUAL  
28 REVIEW OF PHARMACOLOGY AND TOXICOLOGY 57 (2009).

1 that can induce happiness, arousal, and reduction of stress and anxiety. These effects are caused by the  
2 release of dopamine, acetylcholine, epinephrine, norepinephrine, vasopressin, serotonin, and beta  
3 endorphin. With regular nicotine use, these feelings diminish over time and the user must consume  
4 increasingly larger amounts of nicotine to achieve the same pleasurable effect.

5  
6 59. The neurological changes caused by nicotine lead to addiction. Repeat exposure to nicotine  
7 causes neurons in the brain to adapt to the action of the drug and return brain function back to normal.  
8 This process, called neuroadaptation, leads to increasing tolerance of nicotine, whereby a given level of  
9 nicotine begins to have less of an effect on the user.

10 60. Once the brain is addicted to nicotine, the absence of it causes compulsive, drug-seeking  
11 behavior. It also causes withdrawal symptoms, which include but are not limited to suicidal ideation,  
12 anxiety, depression, irritability, mood swings, stress, difficulty concentrating, restlessness, headaches,  
13 insomnia, heart palpitations, and tremors.

14 61. The aforementioned effects of nicotine are particularly pronounced amongst adolescents,  
15 whose brains are still developing.<sup>25</sup>

16 62. Nicotine affects neurological development in adolescents, and exposure to nicotine during  
17 adolescence produces an increased vulnerability to nicotine addiction.<sup>26</sup>

18 63. Adolescent nicotine addiction causes “substantial neural remodeling,” including those  
19 parts of the brain governed by dopamine or acetylcholine, which play central roles in reward functioning  
20 and cognitive function. Adolescent smokers are found to have weakened neural responses including  
21 “diminished sensitivity to non-drug rewards.”<sup>27</sup> This effect becomes even more severe in adolescents who  
22 smoke more than 5 cigarettes, or a quarter of a JUUL pod, per day.

23 64. Other brain changes from nicotine include increased sensitivity to other drugs and  
24 heightened impulsivity. “Brain imaging on adolescents suggest that those who begin smoking regularly  
25 at a young age have markedly reduced activity in the prefrontal cortex and perform less well on tasks

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27 <sup>25</sup> Mariam Arain *et al.*, *Maturation of The Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE AND TREATMENT 449  
(2013).

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

<sup>27</sup> *Id.*

1 related to memory and attention compared to people who don't smoke."<sup>28</sup>

2  
3 65. One JUUL pod contains approximately 200 puffs, which delivers nearly as much nicotine  
4 as a pack of cigarettes, according to the product website. Thus, if a teen consumes one pod a week, in five  
5 weeks, it is equivalent to about 100 cigarettes (5 packs of cigarettes). This makes the teen equivalent to  
6 an established smoker.<sup>29</sup>

7 66. Because adolescent brains are still developing, youth and young adults are uniquely at risk  
8 for long-term, long-lasting effects of nicotine exposure, including addiction, mood disorders, permanent  
9 lowering of impulse control, and changes in brain synapses which harm the parts of the brain that control  
10 attention and learning.<sup>30</sup>

11 67. Adolescents develop nicotine dependence and addiction at a faster rate than adults, find  
12 nicotine more rewarding, underestimate the risks of smoking, and are more influenced by social smoking  
13 behaviors of persons in their age group.<sup>31</sup>

14 **E. JUUL's Nicotine Warning Fails to Disclose Its Highly Addictive Nature**

15 68. According to the National Institutes of Health, the "amount and speed of nicotine delivery  
16 plays a critical role in the potential for abuse of tobacco products."<sup>32</sup> The cigarette industry has long  
17 known that "nicotine is the addicting agent in cigarettes"<sup>33</sup> and that "nicotine satisfaction is the dominant  
18 desire" of nicotine addicts.<sup>34</sup>

19 69. In U.S. patent No. 9,215,895 ("the '895 patent"), JUUL describes a process for combining

20 <sup>28</sup> Erin Brodwin, *An E-Cigarette with Twice the Nicotine of Comparable Devices is Taking Over High Schools - and*  
21 *Scientists are Sounding the Alarm*, Business Insider (April 30, 2018), <https://www.businessinsider.com/juul-e-cig-vaping-health-effects-2018-3>

22 <sup>29</sup> Ana B. Ibarra et al., *The Juul's So Cool, Kids Smoke It In School*, WASH. POST (Mar. 26, 2018), available at  
23 [https://www.washingtonpost.com/national/health-science/the-juuls-so-cool-kids-smoke-it-in-school/2018/03/26/32bb7d80-30d6-11e8-b6bd-0084a1666987\\_story.html?utm\\_term=.d664213cde10](https://www.washingtonpost.com/national/health-science/the-juuls-so-cool-kids-smoke-it-in-school/2018/03/26/32bb7d80-30d6-11e8-b6bd-0084a1666987_story.html?utm_term=.d664213cde10).

24 <sup>30</sup> Know the Risks; E-Cigarettes and Brain Development, <https://e-cigarettes.surgeongeneral.gov/knowtherisks.html>.

25 <sup>31</sup> Goriounova NA, Mansvelder HD. Short- and long-term consequences of nicotine exposure during adolescence for prefrontal  
26 cortex neuronal network function. *Cold Spring Harb Perspect Med.* (Dec. 2012).

27 <sup>32</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HOW TOBACCO SMOKE CAUSES DISEASE: THE BIOLOGY AND  
28 BEHAVIORAL BASIS FOR SMOKING ATTRIBUTABLE TO DISEASE (2010) <https://www.ncbi.nlm.nih.gov/books/NBK53018/>

29 <sup>33</sup> *Tobacco Industry Quotes on Nicotine Addiction*, OK.GOV,  
30 <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf> (last visited  
31 August 5, 2019).

32 <sup>34</sup> *Id.*; John Schwartz, *1973 Cigarette Company Memo Proposed New Brands For Teens*, WASHINGTONPOST.COM  
33 (October 4, 1995) [https://www.washingtonpost.com/archive/local/1995/10/04/1973-cigarette-company-memo-proposed-new-brands-for-teens/eaf66416-3939-4c5f-9fbf-1db1897673ab/?noredirect=on&utm\\_term=.d4d274af09a2](https://www.washingtonpost.com/archive/local/1995/10/04/1973-cigarette-company-memo-proposed-new-brands-for-teens/eaf66416-3939-4c5f-9fbf-1db1897673ab/?noredirect=on&utm_term=.d4d274af09a2).

1 benzoic acids with nicotine to produce nicotine salts, a formulation that mimics the nicotine salt additive  
2 developed by RJ Reynolds decades earlier.

3  
4 70. The JUUL patent included a blood plasma study comparing the pharmacokinetic effects of  
5 nicotine benzoate through an e-cigarette as compared to nicotine through a Pall Mall traditional cigarette.

6  
7 71. The study revealed that ingesting nicotine benzoate through an e-cigarette substantially  
8 increases nicotine delivery as compared to a traditional cigarette, *i.e.* that the e-cigarette delivered higher  
9 amounts of nicotine than a traditional combustible cigarette.

10  
11 72. JUUL is delivering doses of nicotine that are several times higher than those allowed in  
12 normal cigarettes. Blood test results in JUUL's 2014 patent application show that JUUL's nicotine  
13 solution delivers more nicotine to the bloodstream than a Pall Mall cigarette, creates a peak nicotine blood  
14 concentration that is 36% higher than a Pall Mall cigarette, and increases the heart rate faster than a Pall  
15 Mall cigarette. Yet JUUL has failed to disclose to consumers that its pods nicotine salt formulation delivers  
16 an exceptionally potent dose of nicotine.

17  
18 73. In a 2015 interview, Ari Atkins, JUUL's research & development engineer and one of the  
19 inventors of the JUUL device, said this about the role of acids: "In the tobacco plant, there are these  
20 organic acids that naturally occur. And they help stabilize the nicotine in such a way that makes it, I've  
21 got to choose the words carefully here: Appropriate for inhalation."

22  
23 74. JUUL's manipulation of nicotine pH directly affects the palatability of nicotine inhalation  
24 by reducing the "throat hit" users experience when vaping. Benzoic acid reduces the pH of solutions of  
25 nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form. This reduction in pH converts  
26 naturally-occurring unprotonated nicotine, which causes irritation in the throat and respiratory tract, to  
27 protonated nicotine, which is not be absorbed in the throat or upper respiratory tract and, therefore, does  
28 not irritate the throat. A recent study found that JUUL's e-liquid had a pH of under 6.0, suggesting that  
the JUUL contains almost no freebase (*i.e.*, non-salt form) nicotine.<sup>35</sup>

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<sup>35</sup> Lauterbach, One More Time Unprotonated Nicotine in E-Cigarette Aerosols: Is It Really There? (2018) [www.coresta.org/sites/default/files/abstracts/2018\\_TSRC83\\_Lauterbach.pdf](http://www.coresta.org/sites/default/files/abstracts/2018_TSRC83_Lauterbach.pdf) (as of July 5, 2019); Other studies have confirmed the low ratio of freebase nicotine in JUUL products. See Duell et al., Free-Base Nicotine Determination in Electronic Cigarette Liquids by <sup>1</sup>H NMR Spectroscopy (Jun 18, 2018) 31 *Chem. Res. Toxicol.* 431-434, [www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6008736/) (as of July 5th, 2019).

1  
2 75. JUUL lowers the pH of nicotine, which prevents the harsh throat irritation usually  
3 associated with cigarettes. This reduction in pH converts naturally occurring nicotine, which causes  
4 irritation in the throat and respiratory tract, into salt nicotine.<sup>36</sup>

5 76. A recent study found JUUL's e-liquid had a pH of under 6.0, suggesting JUUL contains  
6 almost no freebase (non-salt) nicotine.<sup>37</sup>

7 77. High overall nicotine levels and low freebase nicotine levels allow JUUL users to vape  
8 aerosols with minimal harshness when they inhale.<sup>38</sup> The study concluded "[t]his may well contribute to  
9 the current prevalence of JUUL products among youth."<sup>39</sup>

10 78. Similarly, a recent study of JUUL pods found "[t]he nicotine levels delivered by the JUUL  
11 are similar to or even higher than those delivered by cigarettes."<sup>40</sup> JUUL delivers up to 36% more nicotine  
12 per puff than a Marlboro.<sup>41</sup>

13 79. Because "nicotine yield is strongly correlated with tobacco consumption," a JUUL pod  
14 with its greater absorbable nicotine will strongly correlate with higher rates of consumption of JUUL pods,  
15 generating more revenue for JUUL.

16 80. The high nicotine levels found in JUUL create a greater addiction potential than traditional  
17 cigarettes.

18 81. JUUL PRODUCTS amplify the health risks associated with nicotine consumption because  
19 their users receive a far more potent dose than if they smoked a traditional cigarette.

20 82. JUUL's design allows them to be consumed anywhere, including indoors. Therefore, the  
21 traditional "smoke breaks" do not apply.

22 83. Since a JUUL pod contains approximately 20 cigarettes and has no automatic off switch,

23 <sup>36</sup> Anna K. Duell, *et al.*, *Free Base Nicotine Determinations in Electronic Cigarette Liquids by <sup>1</sup>H NMR Spectroscopy*, 31(6)  
24 CHEM. RES. TOXICAL 431 (2018)

25 <sup>37</sup> *Id.*

26 <sup>38</sup> *Id.*

27 <sup>39</sup> *Id.*

28 <sup>40</sup> Samantha M. Reilly *et al.*, *Free Radical, Carbonyl, and Nicotine Levels Produced by JUUL Electronic  
Cigarettes*, NICOTINE AND TOBACCO RESEARCH, (October 20, 2018), <https://www.ncbi.nlm.nih.gov/pubmed/30346584>

<sup>41</sup> *E-Cigarettes*, EC.EUROPA.EDU, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs\\_ecigarettes\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/fs_ecigarettes_en.pdf) (last visited  
August 5, 2019); Ronny Linder, *JUUL Warns it Will Fight Israel Over Potential Ban on Its E-cigarettes*,  
HAARETZ.COM (June 3, 2018 9:52 p.m.), <https://www.haaretz.com/israel-news/business/juul-warns-it-will-fight-israel-over-potential-ban-on-its-e-cigarettes-1.6140058>

1 JUUL users can inhale JUUL regularly without having to relight or grab another cigarette.

2 84. Unlike combustible cigarettes that have a definite and natural stopping point, JUUL only  
3 stops when the device runs out of battery or the pod runs out of liquid. This leads JUUL users to have  
4 less awareness of their total nicotine consumption and a greater amount of nicotine consumed.

5 85. The amount of 12th grade students who reported vaping nicotine nearly doubled from 11  
6 to 21 percent in 2018. Sixty-three percent of JUUL users did not know JUUL pods always contain  
7 nicotine.

8 86. Despite making numerous revisions to its packaging since 2015, JUUL did not add nicotine  
9 warnings to the JUUL device, JUUL pods, or their product labels until very recently when the exterior  
10 packaging was changed to add the following language: “Warning: This product contains nicotine.  
11 Nicotine is an addictive chemical.”

12 87. The exterior packaging also contains, in small print, the phrase “The Alternative for Adult  
13 Smokers.”

14 88. The recently added warning fails to disclose the highly addictive nature of the product  
15 itself, including, *inter alia*, that the JUUL pods’ nicotine salt formulation delivers an exceptionally potent  
16 dose of nicotine, that JUUL is delivering doses of nicotine that are several times higher than those allowed  
17 in normal cigarettes, that the efficiency with which the product delivers nicotine into the bloodstream  
18 increases its addictiveness, that it can be more addictive than traditional cigarettes and that it poses serious  
19 health risks.

20 89. JUUL never disclosed to consumers that its e-cigarettes and pods are at least as addictive  
21 as, if not more addictive than, traditional cigarettes and pose serious health risks.

22 90. Instead, JUUL marketed its products as an “alternative to cigarettes,” thereby giving the  
23 false impression that they are a healthy alternative to cigarette use.

24 91. JUUL’s deceitful advertising campaign has proven successful, as use of JUUL products  
25 is widespread, particularly among vulnerable youth.

26 92. JUUL actively concealed the nicotine content and nicotine potency of JUUL e-cigarettes  
27 from Plaintiff while simultaneously disclosing false or misleading evidence concerning nicotine content.  
28

1  
2 93. JUUL concealed material information regarding the effect of JUUL e-cigarettes and made  
3 misrepresentations from the time the JUUL e-cigarette was announced to this day. Defendant still has not  
4 disclosed the truth about JUUL e-cigarettes.

5 94. JUUL operates an “auto ship” subscription service through its website that allows for the  
6 routine shipment of its pods. Every time a subscriber purchases five, four-packs of JUUL pods, the next  
7 four-pack is shipped free of charge. This business model plays into the hands of adolescents who often  
8 hide their JUUL use from parents and allows for a continuous stream of pods without the need for adult  
9 intervention so long as an adolescent has access to a credit card for the initial purchase.

10 **F. Plaintiff’s Injuries**

11 95. Plaintiff Cree Witmer is presently nineteen (19) years old and began using JUUL pods at  
12 the age of sixteen (16).

13 96. Cree Witmer unknowingly developed a severe nicotine addiction. When he began using  
14 JUUL pods, he was unaware of and could not appreciate the dangers posed by nicotine and other chemicals  
15 contained in JUUL pods. Cree Witmer was unaware of the amount of nicotine a JUUL pod contained,  
16 and that JUUL had been specifically designed to maximize its addictive effects, containing high doses of  
17 nicotine that, when absorbed, gets distributed through the vaper’s bloodstream.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**  
20 **Strict Products Liability – Design Defect -Consumer Expectation Test**  
21 **(against Defendants JUUL and PAX Labs, Inc.)**

22 97. Plaintiff incorporates the above and below allegations by reference as if fully set forth herein.

23 98. At all relevant times, JUUL, in concert with and aided by PAX Labs, Inc., manufactured,  
24 distributed, and/or sold the JUUL devices and pods that Plaintiff Cree Witmer consumed.

25 99. JUUL products were defective in design in that they did not perform as safely as an  
26 ordinary consumer would have expected them to perform when used in an intended or reasonably  
27 foreseeable way.

28 100. JUUL and PAX Labs, Inc. had constructive notice or knowledge and knew, or in the  
exercise of reasonable care should have known, that its JUUL Products were dangerous, had risks, and



1 were defective in design, including because delivering high doses of nicotine to a young person could  
2 cause addiction to nicotine, permanently alter the structure of the developing brain, significantly increase  
3 blood pressure, and repeatedly expose users to toxic chemicals, resulting in permanent, life-altering  
4 injuries.

5  
6 101. As a result of JUUL's conduct, Plaintiff was harmed directly and proximately by  
7 Defendants' defectively designed JUUL e-cigarette as described herein. Such harm includes significant  
8 exposure to toxic substances, which may cause or contribute to causing severe nicotine addiction, all  
9 permanent injuries Cree Witmer will now struggle with for the rest of his life. His exposure to such a high  
10 content of nicotine has also affected his brain development at a crucial age, an injury that cannot be  
11 undone.

12 102. The defect(s) in JUUL products was a substantial factor in causing Plaintiff's harms.

13 **SECOND CAUSE OF ACTION**  
14 **Strict Products Liability – Design Defect -Risk Utility Test**  
15 **(against Defendants JUUL and PAX Labs, Inc.)**

16 103. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
17 herein.

18 104. At all relevant times, JUUL, in concert with and aided by PAX Labs, Inc., manufactured,  
19 distributed, and/or sold the JUUL devices and pods that Plaintiff Cree Witmer consumed.

20 105. The benefits of JUUL products' design are not outweighed by their risks, considering the  
21 gravity of the potential harm resulting from the use of the products, the likelihood that the harm would  
22 occur, the feasibility and cost of an alternative safer design at the time of manufacture, and the  
23 disadvantages of an alternative design.

24 106. Instead, as described herein, Defendants JUUL and Pax Labs, Inc. made their products  
25 available in youth-friendly colors and flavors. Defendants also designed their products to be more  
26 palatable to youth and nonsmokers by increasing JUUL's inhale-ability and increased the level of nicotine  
27 that is absorbed by users making them even more addictive and dangerous.

28 107. There were and are alternative designs available to JUUL. For example, Defendants could  
have designed the product to appeal to adult smokers over age 26 who smoked conventional cigarettes

1 without using the flavors or reduced “harshness” to attract young people and create their addiction to  
2 nicotine.

3  
4 108. Further, Defendants could have significantly lowered the nicotine content, while still  
5 delivering sufficient levels to cigarette smokers, to reduce the risks from high exposure to nicotine and  
6 repeated exposures to the toxic chemicals in JUUL.

7  
8 109. JUUL and PAX Labs, Inc. had constructive notice or knowledge and knew, or in the  
9 exercise of reasonable care should have known, that its Products were dangerous, had risks, and were  
10 defective in design, including because delivering high doses of nicotine to a young person could cause  
11 addiction to nicotine, permanently alter the structure of the developing brain, significantly increase blood  
12 pressure, repeatedly expose users to toxic chemicals, and cause other cardiovascular injuries resulting in  
13 permanent, life-altering injuries.

14  
15 110. As a result of JUUL’s conduct, Plaintiff was harmed directly and proximately by  
16 Defendants' defectively designed JUUL e-cigarette as described herein. Such harm includes significant  
17 exposure to toxic substances, which may cause or contribute to causing severe nicotine addiction, all  
18 permanent injuries that Cree Witmer will now struggle with for the rest of his life. His exposure to such a  
19 high content of nicotine has also affected their brain development at such a crucial age, an injury that  
20 cannot be undone; and economic harm in that they would not have purchased JUUL or would have paid  
21 less for it if they had known the true facts and that they have paid a premium as a result of Defendants'  
22 defective products harms.

23 111. The defect(s) in JUUL’s products was a substantial factor in causing Plaintiff’s harm.

24  
25  
26 **THIRD CAUSE OF ACTION**  
27 **Strict Products Liability – Failure to Warn**  
28 **(against Defendants JUUL and PAX Labs, Inc.)**

112. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
herein.

113. At all relevant times, JUUL, in concert with and aided by PAX Labs, Inc., manufactured,  
distributed, and/or sold the JUUL devices and pods that Plaintiff Cree Witmer consumed.

1  
2 114. The JUUL Products that Plaintiff consumed had potential risks that were known or  
3 knowable in light of the scientific and medical knowledge that was generally accepted in the scientific  
4 community at the time of manufacture, distribution, or sale.

5 115. The potential risks presented a substantial danger when the JUUL Products were used or  
6 misused in an intended or reasonably foreseeable way. The ordinary consumer of JUUL Products would  
7 not have recognized the potential for risks. JUUL Products were defective and unreasonably dangerous  
8 when they left JUUL's possession because they did not contain adequate warnings, including warnings  
9 that the products are not safe for anyone under 26 years old, may cause strokes, heart attacks and other  
10 cardiovascular injuries, are powerfully addictive, may cause permanent brain changes and mood disorders,  
11 may impair learning and cognition. Instead, as described herein, Defendants JUUL and PAX Labs, Inc.  
12 made their products available in youth-friendly colors and flavors. Defendant also designed their products  
13 to be more palatable to youth and nonsmokers by increasing JUUL's inhale-ability and increased the level  
14 of nicotine that is absorbed by users; making them even more addictive and dangerous.

15 116. JUUL Products were defective and unreasonably dangerous when they left JUUL's  
16 possession because they lacked sufficient instructions, including instructions that the products should not  
17 be used by anyone under age 26, and instructions regarding how many pods are safe to consume in a day.

18 117. JUUL and PAX Labs, Inc. had constructive notice or knowledge and knew, or in the  
19 exercise of reasonable care should have known, that its Products were dangerous, had risks, and were  
20 defective without adequate warnings or instructions, including because delivering high doses of nicotine  
21 to a young person could cause addiction to nicotine, permanently alter the structure of the developing  
22 brain, significantly increase blood pressure, repeatedly expose users to toxic chemicals, and cause other  
23 cardiovascular injuries resulting in permanent, life-altering injuries.

24 118. JUUL and PAX Labs, Inc. failed to adequately warn or instruct concerning the potential  
25 risks of the JUUL Products.

26 119. As a result of JUUL' s conduct, Plaintiff was harmed directly and proximately by  
27 Defendants' failure to warn/instruct on the use of JUUL e-cigarettes as described herein. Such harm  
28 includes significant exposure to toxic substances, which may cause or contribute to causing severe nicotine

1 addiction, all permanent injuries that Cree Witmer will now struggle with for the rest of his life. His  
2 exposure to such a high content of nicotine has also affected his brain development at a crucial age, an  
3 injury that cannot be undone.

4 120. The lack of sufficient instructions and warnings was a substantial factor in causing  
5 Plaintiff's harms.

6  
7 **FOURTH CAUSE OF ACTION**  
8 **NEGLIGENCE AND/OR GROSS NEGLIGENCE**  
9 **(against JUUL and PAX Labs, Inc.)**

10 121. Plaintiff incorporates the above and below allegations by reference as if fully set forth herein.

11 122. Defendant JUUL, and/or their predecessors-in-interest, in concert with and aided by PAX  
12 Labs, Inc. designed, produced, manufactured, assembled, packaged, labeled, advertised, promoted,  
13 marketed, sold, supplied and/or otherwise placed JUUL Products into the stream of commerce, and  
14 therefore owed a duty of reasonable care to avoid causing harm to those that consumed it, such as Plaintiff.

15 123. JUUL's products could endanger others if negligently made or promoted. Defendants knew  
16 the risks, and that young people would be attracted to their electronic cigarette devices and JUUL pods  
17 and knew or should have known the importance of ensuring that the products were not sold and/or  
18 distributed to anyone under age 26.

19 124. Defendants were negligent in designing, manufacturing, supplying, inspecting, testing (or  
20 not testing), marketing, promoting, advertising, packaging, and/or labeling JUUL's products.

21 125. As a powerfully addictive and dangerous nicotine-delivery device, Defendants knew or  
22 should have known that JUUL Products needed to be researched, tested, designed, advertised, marketed,  
23 promoted, produced, packaged, labeled, manufactured, inspected, sold and supplied properly, without  
24 defects and with due care to avoid needlessly causing harm. Defendants knew or should have known that  
25 its JUUL Products could cause serious risk of harm, particularly to young persons like Plaintiff.

26 126. JUUL and/or their predecessors-in-interest, along with Defendants PAX Labs, Inc., were  
27 negligent, reckless and careless and failed to take the care and duty owed to Plaintiff, thereby causing  
28 Plaintiff to suffer harm.

127. The negligence and extreme carelessness of JUUL and/or their predecessors in interest,

1  
2 along with Defendant PAX Labs, Inc. includes, but is not limited to, the following:

- 3 a. Failure to perform adequate testing of the JUUL Products prior to marketing to  
4 ensure safety, including long-term testing of the product, and testing for injury to  
5 the brain and cardiovascular systems, respiratory, pulmonary and immune systems,  
6 and other related medical conditions, as well as its effect on mental health;
- 7 b. Failure to take reasonable care in the design of JUUL's products;
- 8 c. Failure to use reasonable care in the production of JUUL's products;
- 9 d. Failure to use reasonable care in the manufacture of JUUL's products;
- 10 e. Failure to use reasonable care in the assembly of JUUL's products;
- 11 f. Failure to use reasonable care in supplying JUUL's products;
- 12 g. Failure to use reasonable care in advertising, promoting, and marketing JUUL's  
13 products;
- 14 h. Promotion of JUUL to young people under age 26;
- 15 i. Use of flavors and design to appeal to young people under age 26, in that the  
16 products smell good, look cool and are easy to conceal from parents and teachers;
- 17 j. Use of design that maximizes nicotine delivery while minimizing "harshness,"  
18 thereby easily creating and sustaining addiction;
- 19 k. Failure to prevent JUUL from being sold to young people under age 26;
- 20 l. Failure to prevent JUUL use among young people under age 26;
- 21 m. Failure to curb JUUL use among young people under age 26;
- 22 n. Failure to develop tools or support to help people addicted to JUUL cease
- 23 o. Failure to reasonably and properly test and properly analyze the testing of  
24 JUUL's products under reasonably foreseeable circumstances;
- 25 p. Failure to warn its customers about the dangers associated with use of  
26 JUUL's Products, in that it was unsafe for anyone under age 26, significantly  
27 increases blood pressure, causes vascular damage, carries risks of stroke, heart  
28

1 attacks, and cardiovascular events, is powerfully addictive, can cause permanent  
2 brain changes, mood disorders, and impairment of thinking and cognition.

- 3 q. Failure to instruct customers not to use the product if they were under 26,  
4 and failing to provide any instructions regarding a safe amount of JUUL pods to  
5 consume in a day.
- 6 r. Failure to warn customers that JUUL had not adequately tested or researched  
7 JUUL Products prior to marketing to ensure safety, including long-term testing of  
8 the product, and testing for injury to the brain and cardiovascular systems, and other  
9 related medical conditions;
- 10 s. Failure to utilize proper materials and components in the design of JUUL's  
11 Products to ensure they would not deliver unsafe doses of nicotine;
- 12 t. Failure to use due care under the circumstances;
- 13 u. Failure to take necessary steps to modify JUUL's Products to avoid  
14 delivering high doses of nicotine to young people and repeatedly exposing them to  
15 toxic chemicals;
- 16 v. Failure to recall JUUL's Products; and
- 17 w. Failure to inspect JUUL's Products for them to operate properly and avoid  
18 delivering unsafe levels of nicotine to young persons.

19  
20 128. Defendants' acts and omissions constitute gross negligence, because they constitute a  
21 complete lack of care and an extreme departure from what a reasonably careful person would do in the  
22 same situation to prevent foreseeable harm to young persons, like Plaintiff.

23 129. Defendants acted and/or failed to act willfully, and with conscious and reckless disregard  
24 for the rights and interests of Plaintiff. Defendants' acts and omissions had a great probability of causing  
25 significant harm and in fact resulted in such harm.

26 130. Based on their strategic and intentional marketing history, Defendants reasonably should  
27 have foreseen that young people would try JUUL products and quickly become addicted to JUUL  
28 products, resulting in teenagers and young adult's developing lifelong addictions. After placing

1  
2 unnecessarily massive amounts of nicotine into their products, Defendants reasonably should have  
3 foreseen the emotional distress this would cause on the individuals who would get addicted, as well the  
4 stress this would place on their loved ones around them.

5 131. As a result of Defendants' negligence and/or gross negligence, Plaintiff was harmed  
6 directly and proximately as described herein. Such harm includes significant exposure to toxic substances,  
7 which may cause or contribute to causing disease; mood disorders and severe nicotine addiction, all  
8 permanent injuries that Cree Witmer will struggle with for the rest of his life. Cree Witmer's exposure to  
9 such a high content of nicotine has also affected his brain development at a crucial age, an injury that  
10 cannot be undone; and economic harm in that he would not have purchased JUUL or would have paid less  
11 for it if he had known the true facts and that he have paid a premium as a result of Defendants' negligence  
12 and/or gross negligence.

13 132. Defendants' negligence and/or gross negligence were a substantial factor in causing  
14 Plaintiff's harms.

15 **FIFTH CAUSE OF ACTION**  
16 **Negligent Failure to Recall**  
17 **(against Defendants JUUL and PAX Labs, Inc.)**

18 133. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
19 herein.

20 134. Defendants acted negligently by failing to recall the JUUL products prior to Plaintiff's  
21 development of severe addiction.

22 135. JUUL, in concert with and aided by Defendants PAX Labs, Inc., designed, manufactured,  
23 assembled, produced, distributed, maintained and/or sold the JUUL products.

24 136. JUUL and PAX Labs, Inc. knew or reasonably should have known that, when used as  
25 intended, the JUUL products presented or were likely to present a danger to users, including young persons  
26 like Plaintiff. Defendants knew or reasonably should have known that its products were unsafe for anyone  
27 under the age of 26, delivered excessive doses of nicotine, significantly increase blood pressure, cause  
28 vascular damage, cause addiction, permanent brain changes, mood disorders, strokes, heart attacks, and  
other cardiovascular injuries.

1  
2 137. After JUUL products were placed on the market in 2015, and before July 8, 2017,  
3 Defendants knew or reasonably should have known its products were being consumed by young people  
4 under age 26, that such use was unsafe, that its products delivered excessive doses of nicotine, significantly  
5 increase blood pressure, cause vascular damage, cause addiction, permanent brain changes, mood  
6 disorders, strokes, heart attacks, and other cardiovascular injuries. Nevertheless, at no point during this  
7 time period did Defendants recall, repair, or warn of the danger posed by its products.

8 138. A reasonable designer, manufacturer, distributor, or seller facing the same or similar  
9 circumstances as JUUL and PAX Labs, Inc, in the exercise of reasonable care, would have recalled JUUL  
10 products to ensure young people, including Plaintiff, were not harmed.

11 139. Defendants' failure to timely recall its products was a substantial factor in causing harm to  
12 Plaintiff. Had Defendants recalled its products when it knew or should have known of the risks to young  
13 people like Plaintiff, he would not have had access to it, would not have used it, and would not have  
14 become so addicted to the product.

15 **SIXTH CAUSE OF ACTION**  
16 **Fraudulent Concealment**  
17 **(against Defendants JUUL and PAX Labs, Inc.)**

18 140. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
19 herein.

20 141. Defendants had a duty to disclose material facts about JUUL to Plaintiff, as:

- 21 a. Defendants disclosed some facts to Plaintiff and the public about the nature and  
22 safety of its products but intentionally failed to disclose other facts, making the  
23 disclosures it did make misleading or deceptive; and
- 24 b. Defendants intentionally failed to disclose certain facts about the nature and safety  
25 of JUUL products that were known only to Defendants and that Defendants knew  
26 Plaintiff could not have known or reasonably discovered.

27 142. At all times relevant, Defendants fraudulently and deceptively sold or partnered to sell  
28 JUUL products to Plaintiff as safe or not harmful, when Defendants knew it to be untrue.



1  
2 143. Defendants fraudulently and deceptively downplayed or minimized any risk associated  
3 with e-cigarettes generally and JUUL in particular for young persons under age 26. At all relevant times,  
4 Defendant JUUL represented its products on its website as a "smarter" choice. Defendant JUUL pitched  
5 investors by claiming that the product was not harmful, and therefore any concern about addiction was  
6 irrelevant. Defendants and/or others worked together to pitch news stories or other media content designed  
7 to downplay the risks of e-cigarettes, suggesting that any concern was overblown, or a panic. These tactics  
8 mimic those used by the tobacco industry to sow seeds of doubt and confusion among the public, to initiate  
9 new users, to keep customers buying JUUL products, and to avoid regulation or legislative efforts to  
10 control sales.

11 144. Defendants failed to disclose to Plaintiff that the JUUL is powerfully addictive,  
12 significantly increases blood pressure, and poses other adverse health effects.

13 145. Defendants failed to disclose that they had not adequately researched or tested JUUL to  
14 assess its safety before placing it on the market and promoting it to young people under age 26.

15 146. At all times relevant to Plaintiff, Defendants failed to disclose that JUUL was addictive  
16 and that its design inherently demanded dependency.

17 147. Defendants also failed to disclose to Plaintiff that the JUUL nicotine salts are highly  
18 addictive in nature, making it extremely difficult for one to cease purchasing and using JUUL products.

19 148. Defendants further failed to disclose to Plaintiff that JUUL is designed to create and  
20 sustain an addiction to nicotine. Defendants also manipulated the formulations of JUUL devices and pods  
21 in ways that could and would impact their potency and addictiveness. Defendants did so without notifying  
22 Plaintiff or the public. Defendants actively concealed the nicotine content and nicotine potency of JUUL  
23 e-cigarettes. Defendants fraudulent misrepresented to user the amount of nicotine consumed by using  
24 JUUL.

25 149. Each of these misrepresentations and omissions were material at the time they were made.  
26 In particular, each of the misrepresentations and omissions concerned material facts that were essential to  
27 the analysis undertaken by Plaintiff as to whether to purchase or consume JUUL products.

28 150. Plaintiff did not know of the facts that Defendants concealed.

1 151. Defendants intended to deceive Plaintiff and the public by concealing these facts.

2  
3 152. Defendants had a duty to accurately provide this information to Plaintiff and the public. In  
4 not doing so, Defendants breached their duty. Defendants also gained financially from, and as a result of  
5 their breach. Defendants had ample opportunities to disclose these facts to Plaintiff and the public through  
6 packaging, advertising, retail outlets, on its website, and on social media.

7 153. Defendants concealed material information at all relevant times, through today. Defendants  
8 have yet to disclose the truth about JUUL products.

9 154. Plaintiff relied to his detriment on Defendants' fraudulent omissions. Had Plaintiff been  
10 adequately informed of the material facts concealed from him regarding the safety of JUUL, and had not  
11 been intentionally deceived by Defendants, he would not have purchased or used JUUL products.

12 155. Defendants' fraudulent concealment was a substantial factor in Plaintiff's harms as  
13 described herein, including: significant exposure to toxic substances, which may cause or contribute to  
14 the development of future disease and has caused and contributed to severe nicotine addiction, all  
15 permanent injuries Cree Witmer will now struggle with for the rest of their life.

16 156. Defendants' acts and omissions as described herein were committed maliciously,  
17 oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's rights, interests,  
18 and well-being to enrich Defendants.

19 157. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient  
20 to deter such conduct in the future, which amount is to be determined according to proof.

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22 **SEVENTH CAUSE OF ACTION**  
23 **Intentional Misrepresentation**  
**(against Defendants JUUL and PAX Labs, Inc.)**

24 158. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
25 herein.

26 159. At all times relevant, Defendants represented to Plaintiff via the media, advertising,  
27 website, social media, packaging, and promotions that:

28 a. JUUL products were safe or not harmful; and



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**Intentional Infliction of Emotional Distress  
(against Defendants JUUL and PAX Labs, Inc.)**

169. Plaintiff incorporates the above and below allegations by reference as if fully set forth herein.

170. Defendants' conduct herein, preying on youth and poisoning kids for profit, is so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. Defendants' conduct is atrocious and utterly intolerable. Defendants' outrageous conduct caused and/or substantially contributed to Plaintiff' injuries alleged herein.

171. Defendants' egregious conduct toward Plaintiff was both intentional and reckless. Defendants' conduct of intentionally addicting teenagers to nicotine to create lifelong customers was directed primarily at young people like Cree Witmer, through their manipulation of advertisements, social media, warnings, and even use of social media influencers indirectly to target America's youth.

172. Defendant also acted with reckless disregard when they knew that JUUL products were powerfully addictive, contained more nicotine than necessary, and carried serious physical, mental and emotional health risks, especially when used by young people, yet they marketed the products to young people with reckless disregard of young consumers like Plaintiff and with reckless disregard of the probability that their conduct would cause severe emotional distress to Plaintiff.

173. Defendants' intentional and reckless conduct caused, and continue to cause harm and severe emotional distress to Cree Witmer. Defendants interjected their product and themselves into Cree Witmer's personal life, causing severe stress and dependence on their product, and invading Cree Witmer's mental and emotional tranquility.

174. Defendant invaded Plaintiff's peace of mind, without any right or privilege to do so. The severe nicotine addiction caused by Defendant's product resulted in behavior and symptoms so severe as to interfere with Plaintiff' everyday life and health, creating even more stress for Plaintiff. Cree Witmer can no longer function without JUUL. Cree Witmer's JUUL use and addiction also resulted in a loss of emotional and mental control for an addiction he never intended to develop and that he is now unable to control.

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2 175. Further, as described herein, Plaintiff's addiction is a physical injury that has damaged and  
3 altered his developing brain. Cree Witmer's addiction is no accident; rather, it is the result of Defendant's  
4 intentional, calculated behavior to addict young people like Cree Witmer to nicotine to create a life-long  
5 customer. Now, for the rest of his life, Cree Witmer will either fight a nicotine addiction or sustain a  
6 nicotine addiction, in addition to other injuries, all because of Defendants' outrageous conduct.

7 176. If it weren't for Defendant's intentional and reckless conduct, Cree Witmer would have  
8 never tried JUUL, would not be dependent on nicotine as they are today and would be free to live their  
9 life in peace without the stress of having to constantly satisfy an unwanted addiction.

10 **NINTH CAUSE OF ACTION**  
11 **Violations of the Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.***  
12 **(against Defendants JUUL, and PAX Labs, Inc.)**

13 177. Plaintiff incorporates the above and below allegations by reference as if fully set forth  
14 herein.

15 178. The UCL prohibits acts of "unfair competition" including any "unlawful, unfair or  
16 fraudulent business act or practice."

17 179. Defendants have engaged in unlawful, unfair and fraudulent business acts and practices  
18 in violation of the UCL. Defendants conduct violates the UCL in at least the following ways:

- 19 a. By concealing the health risks associated with JUUL products, including, but not  
20 limited to, increased blood pressure, strokes, heart attacks and other  
21 cardiovascular events, addiction, permanent brain changes, mood disorders and  
22 learning and cognitive impairments;
- 23 b. By concealing that JUUL is unsafe for anyone under age 26;
- 24 c. By downplaying and minimizing the risks of JUUL products and promoting  
25 them as safe and not harmful;
- 26 d. By conspiring with others in the tobacco industry to downplay and minimize  
27 the risks of e-cigarette products, create confusion and doubt in the public  
28 regarding the safety of e-cigarettes, overstate the benefits of nicotine and e-

1 cigarette products, and undermine the public health efforts to prevent and curb use  
2 of e-cigarettes by those under age 26;

- 3  
4 e. By misrepresenting the delivery of nicotine as "approximately equivalent to  
5 one pack of cigarettes" when in fact, as consumed, JUUL products deliver much  
6 higher quantities of nicotine;
- 7 f. By concealing that JUUL is designed to create and sustain addiction among young  
8 people rather to transition adult smokers from conventional cigarettes;
- 9 g. By knowingly and intentionally designing the JUUL device and JUUL pods in a  
10 way that deliberately appeals to young people:
- 11 (i) making the pods available in flavors that JUUL knew that teens  
12 would find irresistible and would not associate with tobacco or  
13 smoking;
  - 14 (ii) Intentionally advertising and marketing its products in ways that  
15 make the device appear deceptively harmless, including concealing  
16 that product is highly addictive, poses long-term risks to  
17 developing brains (mood disorders, permanent impairment of  
18 impulse control, concentration and learning), significantly  
19 increases blood pressure, causes repeated exposure to toxic  
20 chemicals and can cause cardiovascular events, such as strokes and  
21 heart attacks;
  - 22 (iii) Designing the JUUL so that it maximizes nicotine delivery, while  
23 minimizing "harshness", so as to recruit and retain young people as  
24 the next generation of customers;
  - 25 (iv) Designing the JUUL device so that it is small and can easily be  
26 concealed;
  - 27 (v) Designing the JUUL device so that it resembles a USB flash drive,  
28 which can be charged in the USB port of laptop, so that parents

1 and teachers will have trouble identifying when a young person is  
2 JUULing;

- 3 (vi) Making the smell emitted when a young person exhales  
4 indistinguishable from other common scents, so that parents and  
5 teachers will not be any the wiser; and  
6  
7 (vii) Promoting the JUUL device on social media sites such as Twitter  
8 and Instagram in order to appeal to the younger generation.

9 180. Defendants' unfair and fraudulent business acts and practices caused Plaintiff to purchase  
10 the JUUL device and/or JUUL pods.

11 181. Defendants' conduct is unfair because Defendants deceive and mislead consumers by  
12 inducing young persons under age 26 to purchase a product that is unsafe for them, delivers high amounts  
13 of nicotine, is incredibly addictive, causes repeated exposure to toxic chemicals, carries risks of stroke  
14 and other cardiovascular events, and has no benefit to them, while making it appear that the product is  
15 harmless. Defendants were and are aware that young persons are unable to appreciate the risk of JUULing  
16 to their health and welfare, and that many young people do not even know that the product always contains  
17 nicotine, is addictive, or unsafe for them in any amount. In this way, Defendants unfairly target young  
18 persons in order to get customers for life.

19 182. Defendants' business practices are also fraudulent because Defendants deceptively sell  
20 JUUL products to Plaintiff as harmless, and a "safer" alternative to cigarettes, while concealing that JUUL  
21 is unsafe for anyone under age 26, delivers a more potent dose of nicotine than conventional cigarettes, is  
22 highly addictive, significantly increases blood pressure, and can cause strokes, heart attacks and other  
23 deleterious effects.

24 183. Defendants' misrepresentations and omissions as alleged herein were consistent with and  
25 part of its scheme to lure young persons into becoming customers for life and to maximize profits at the  
26 expense of public health.

27 184. Accordingly, Plaintiff has suffered injury in fact including lost money as a result of  
28 Defendants' unlawful, unfair and fraudulent business practices.

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2 185. Plaintiff seeks to enjoin further unlawful, unfair and fraudulent acts or practices by  
3 Defendants under Bus. & Prof. Code§ 17200.

4 186. Plaintiff request that this Court enter such orders or judgments as may be necessary to  
5 enjoin Defendants from continuing their unfair and deceptive practices and to restore to Plaintiff any  
6 money it acquired by unfair competition, including restitution and/or disgorgement, as provided in Bus.  
7 & Prof. Code § 17203 and Bus. & Prof. Code § 3345; and for such other relief set forth below.

8 187. Defendants' conduct, as described herein, is unfair because it is immoral, unethical,  
9 unscrupulous, oppressive, and substantially injurious. Under the auspices of creating an alternative for  
10 adult cigarette smokers, Defendants developed a highly addictive and dangerous product and marketed it  
11 to young people as cool, fun, and harmless. Their scheme worked, attracting millions and millions of  
12 teens, including Plaintiff, who have become powerfully addicted to their product and have been exposed  
13 to massive amounts of nicotine and other toxic chemicals. As a result of Defendants' conduct, Plaintiff  
14 suffered harms as described herein, and others are at risk of the same or similar injuries. Defendants  
15 created this epidemic and bear responsibility for its consequences.

16 188. The gravity of the harm resulting from Defendants' conduct far outweighs any conceivable  
17 utility of this conduct. There are reasonably available alternatives that would further Defendants'  
18 legitimate business interests in offering an alternative to adult cigarette smokers over age 26, including,  
19 but not limited to: using only tobacco flavoring, designing the products to deliver far less nicotine-only as  
20 much as would be sufficient to attract a nicotine-addicted cigarette smoker-so as to reduce the nicotine-  
21 related harms and reduce the exposure to other toxic chemicals, and offering the products "behind the  
22 counter" at pharmacies. Instead, Defendants used kid-friendly flavors and design, promoted the products  
23 as harmless and cool, conspired with others in the industry to downplay the risks and inflate the benefits,  
24 and has done nothing to curb or prevent young people from starting and continuing to use its products,  
25 despite the known risks of harm.

26 189. Plaintiff could not have reasonably avoided injury from Defendants' unfair conduct.  
27 Plaintiff did not know, and had no reasonable means of learning, that JUUL could harm him as it did. Nor  
28 did Plaintiff know that JUUL had been designed to lure and trap him into becoming a customer for life.



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2 190. Plaintiff was harmed, and Defendants' misleading statements and omissions were a  
3 substantial factor in causing Plaintiff's harms.

4 191. The requested injunction under the UCL will primarily benefit the interests of the general  
5 public. It will have the primary purpose and effect of prohibiting acts that threaten injury to members of  
6 the public who have or will be exposed to JUUL's conduct.


7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully request that the Court:

- 9 1. Award Plaintiff compensatory, restitutionary, rescissory, general, consequential, punitive,  
10 and exemplary damages in an amount to be determined at trial, and also including, but  
11 not limited to:
- 12 a. General Damages;
  - 13 b. Special Damages, including all expenses, including incidental past and  
14 future expenses, including medical expenses, and loss of earnings and  
15 earning capacity;
- 16 2. Award prejudgment interest as permitted by law;
- 17 3. Enter an appropriate injunction against Defendants and their officers, agents, successors,  
18 employees, representatives, and assigns;

19 Dated: April 2, 2020

DOUGLAS & LONDON, P.C.

20   
21 Brian Perkins (ID 315870)

22 *Attorneys for Plaintiff*

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