

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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SUPERIOR COURT-CIVIL
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COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

JUUL LABS, INC. and PAX LABS, INC.,

Defendants.

Civil Action No. _____

COMPLAINT

1. The Commonwealth of Massachusetts, by and through Attorney General Maura Healey, brings this action pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A § 4. Defendants JUUL Labs, Inc. and its corporate predecessor, Pax Labs, Inc., (together, “JUUL”) have engaged in unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2, and 940 C.M.R. 21.00 et seq. by willfully advertising and/or selling nicotine products to children, adolescents, and other consumers younger than the minimum legal sales age (“underage consumers”). JUUL’s misconduct has created a public health crisis and an epidemic of youth nicotine use and addiction, which constitutes a public nuisance for which JUUL is liable to the Commonwealth.

2. JUUL, more than any other company, bears responsibility for the fact that millions of young people nationwide are now addicted to e-cigarettes, reversing decades of progress in combatting underage tobacco and nicotine use and addiction.

3. JUUL has described itself as a “technology company,” but its chief technological innovation has been the creation of an e-cigarette that can deliver dramatically higher concentrations of a harmful, highly addictive chemical: nicotine.

4. Beginning with the advertising campaign that introduced the JUUL e-cigarette in 2015, JUUL has marketed its e-cigarette to consumers who cannot lawfully purchase the product.

5. JUUL explicitly identified its target audience as the “cool crowd,” a demographic of young people who were “fashionable, urban with a vibrant life,” and “enjoy[ed] going out to shows and events.”

6. To target this audience, JUUL’s artistic director developed an advertising campaign inspired by sexually provocative images of young, fashionable models and celebrities. JUUL hired youthful models to appeal to “millennial consumers.” Flirtatious, playful photographs of these models became the centerpiece of JUUL’s first advertisements. JUUL supplemented these images with pictures of the young “beautiful people” it recruited to attend its launch party.

7. JUUL purchased advertising space for these images on websites frequented by underage consumers, such as teen.com and seventeen.com; recruited celebrities and social media influencers with large numbers of underage followers, such as Miley Cyrus and an 18-year-old considered to be “the internet’s coolest teenager”; and promoted its youth-focused advertisements directly on social media platforms popular with underage consumers.

8. JUUL also directly sold its e-cigarettes to underage persons through its own e-commerce website.

9. JUUL made more than ten thousand shipments of e-cigarettes to recipients and addresses in Massachusetts for which it conducted no age verification whatsoever. As a result, JUUL shipped its e-cigarettes directly to adolescents, including to individuals as young as sixteen years old.

10. Moreover, in at least 38 towns and cities across Massachusetts, consumers younger than 21 were already prohibited from purchasing tobacco and nicotine when JUUL launched its products, in contrast to the otherwise applicable minimum legal sales age of 18. JUUL nevertheless sold its e-cigarettes to high school students and college students across the Commonwealth, even when they supplied dates of birth to JUUL that established they were younger than the local minimum legal sales age.

11. Through its youth-oriented advertising and unlawful sales practices, JUUL created a market for e-cigarettes among underage consumers. JUUL inspired competitors to launch their own copycat JUUL products, using JUUL hashtags and catchphrases to sell e-cigarettes in an array of sweet flavors with ever-increasing concentrations of nicotine.

12. E-cigarette use is now an epidemic among adolescents. In Massachusetts, 51.2% of high school students report having tried e-cigarettes, and 32% say they have used e-cigarettes in the past 30 days.¹ By contrast, less than six percent of high school students reported that they smoked conventional cigarettes in 2019.²

¹ Massachusetts Department of Public Health, *Youth Vaping and Cessation Data*, <https://www.mass.gov/files/documents/2019/11/27/youth-vaping-and-cessation-data-11-26-2019.pdf>.

² Center for Disease Control and Prevention, *Youth and Tobacco Use Fast Facts and Fact Sheet*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm.

13. JUUL, meanwhile, made approximately \$3.3 billion in U.S. retail sales between September 2018 and August 2019 and controls approximately three quarters of the e-cigarette market.

14. Adolescents are substantially more susceptible to nicotine addiction than adults, and nicotine poses particular risks to their cognitive development. JUUL nevertheless willfully engaged in an advertising campaign that appealed to adolescents, even though JUUL's e-cigarettes are both illegal for them to purchase and particularly unsafe for them to use. This conduct constitutes a violation of the Consumer Protection Act, G.L. c. 93A, for which the Commonwealth seeks the imposition of penalties and the payment of restitution to consumers.

15. JUUL's actions have, moreover, created a public health emergency of e-cigarette addiction among underage Massachusetts consumers. The Commonwealth must now act to remedy the harm resulting from JUUL's misconduct, using public resources for addiction treatment and to address the other negative health consequences of youth e-cigarette use. Worse yet, because young e-cigarette users are more likely to use combustible cigarettes, the Commonwealth will bear the increased cost of treating the devastating consequences of traditional tobacco use. By the tort of public nuisance, the Commonwealth seeks to hold JUUL accountable for the costs the Commonwealth has and will incur in combating the public health crisis JUUL created.

I. JURISDICTION AND VENUE

16. The Attorney General is authorized to bring this action, in this Court, under G.L. c. 93A, § 4 and pursuant to her authority to assert *parens patriae* claims on behalf of the Commonwealth and its citizens.

17. This Court has jurisdiction over the subject matter of this action by virtue, *inter alia*, of G.L. c. 93A, § 4.

18. This Court has personal jurisdiction over Defendants under G.L. c. 223A, § 3, because, among other things, Defendants have engaged in business with Massachusetts by selling products to Massachusetts consumers and retailers, and because Defendants' actions and inactions have harmed Massachusetts residents.

19. Venue is proper in Suffolk County under G.L. c. 93A, § 4, and G.L. c. 223, § 5, as the Commonwealth is the plaintiff.

20. The Attorney General notified Defendants of her intent to bring this action at least five days prior to the commencement of this action, as required by G.L. c. 93A, § 4.

II. PARTIES

21. The Plaintiff is the Commonwealth of Massachusetts, represented by its Attorney General, who brings this action in the public interest pursuant to G.L. c. 93A, § 4.

22. Defendant JUUL Labs, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 560 20th Street, San Francisco, California 94107.

23. Defendant PAX Labs, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 660 Alabama Street, 2nd Floor, San Francisco, California 94110.

24. JUUL Labs, Inc. was a corporate subsidiary of PAX Labs, Inc. until 2017. JUUL Labs, Inc. became an independent company in 2017. JUUL Labs, Inc. filed its first SEC statement and first offered securities in 2017.

25. Since 2015, PAX Labs, Inc. or JUUL Labs, Inc. has marketed, advertised, and sold its products in Massachusetts.

III. FACTS

A. JUUL Developed a New E-Cigarette Technology to Deliver Highly Concentrated, Vaporized Nicotine

26. Electronic cigarettes, or “e-cigarettes,” are battery-powered electronic devices that are filled with a liquid nicotine solution referred to as “e-liquid.” E-cigarettes heat this e-liquid until it transforms into an aerosol or vapor that users inhale. This inhaled aerosol contains nicotine.

27. The first e-cigarettes were widely available for purchase in the United States in approximately 2007.

28. Following their introduction to the market, e-cigarettes attracted a significant but limited group of users, mostly who used or formerly used traditional, combustible cigarettes. By 2014 and 2015, however, both the use and sales of e-cigarettes in the United States were decelerating or even declining.

29. E-cigarettes were of limited popularity at this time largely because they contained relatively little nicotine compared to combustible cigarettes. In 2014 and 2015, most e-cigarettes used a purified form of nicotine called freebase nicotine. Freebase nicotine, when turned into an aerosol and inhaled by the e-cigarette user, has a high alkalinity and often results in a “harsh” or “bitter” experience and causes some users to cough or develop a sore throat. These negative effects become more pronounced at higher concentrations of freebase nicotine. The effects of inhaling high concentrations of freebase nicotine are so unpleasant that e-cigarette manufacturers typically offered products with nicotine concentrations of 1% or 2%.³

³ Robert Jackler & Divya Ramamurthi, *Nicotine arms race: JUUL and the high-nicotine product market*, 28 Tobacco Control 623 (2019).

30. In 2014, JUUL achieved a technological breakthrough that would revitalize the e-cigarette industry. Instead of using freebase nicotine, JUUL developed an e-cigarette that uses nicotine in a salt form, created by adding benzoic acid to freebase nicotine. The chemical composition of JUUL's nicotine salt eliminated the harsh qualities and negative effects associated with freebase nicotine, making high nicotine concentrations palatable to users for the first time.

31. Moreover, users absorb the nicotine derived from nicotine salt far more rapidly than from freebase nicotine. As a result of the nicotine salt, the JUUL e-cigarette causes users to experience a rapid rise of nicotine levels in their bloodstream shortly after inhalation, comparable to the rate of traditional combustible cigarettes. The ultrafine particulates created by the JUUL e-cigarette almost immediately penetrate the user's arterial bloodstream, passing the blood-brain barrier into the pleasure center of the brain. This physiological experience is most often described by the user as a "head buzz" or "kick."

32. The JUUL e-cigarette has a small, rectangular shape, resembling a metallic grey USB drive. The following is an image of the JUUL device.



33. The JUUL e-cigarette uses a rechargeable battery. The JUUL device can be charged in a typical USB port, including the USB port in a laptop computer. The battery life of a JUUL device may last a user an entire day with moderate usage.

34. To use the JUUL e-cigarette, a user inserts a “pod” filled with e-liquid containing nicotine salt, flavoring, and other substances into the device. The JUUL device heats the e-liquid until it turns into aerosol that the user inhales into their mouth and lungs.

35. JUUL pods contain 59 milligrams of nicotine per milliliter in each 0.7-milliliter pod, which amounts to a concentration of 5% nicotine by weight and 5.9% by volume.

36. JUUL simply advertised its e-cigarette as “5% strength.” This is effectively an understatement of the amount of nicotine in a JUUL e-cigarette, since the typical industry practice among e-cigarette companies was to advertise nicotine concentration by volume.

37. When JUUL launched its e-cigarette, the nicotine concentration of its e-cigarettes was as much as three times the concentration of nicotine contained in most e-cigarettes for sale at that time in the United States.

B. JUUL Rejected a Technology-Focused Advertising Campaign and Instead Chose to Promote its Products with Images of “Cool” Young Models

38. Having created an e-cigarette capable of rapidly delivering more highly concentrated nicotine vapor than existing e-cigarettes, JUUL began developing an advertising strategy for selling its product.

39. Toward this end, in 2014, JUUL engaged a Calgary-based advertising agency, Cult Collective Ltd. (“Cult”), to complete a “diagnostic” evaluation of the JUUL brand and to make recommendations regarding the best advertising strategy to market the JUUL e-cigarette.

40. In a meeting in Calgary in December 2014, Cult presented the result of its evaluation to JUUL. Among those present at the meeting was Richard Mumby, who was or would eventually become JUUL’s chief marketing officer. Cult presented an overall “creative” concept to JUUL that included images, slogans, and scripts for a JUUL advertising campaign. Cult suggested that JUUL should present itself as “a technology company, not a tobacco

company” that had achieved “proprietary technological advances in both physics and chemistry.” These technological advances enabled JUUL to offer an e-cigarette that is a “satisfying alternative” that is “better than cigarettes.”

41. Cult recommended that JUUL position its e-cigarette itself as the “hero” or focus of advertisements. Cult presented JUUL with advertisements that used “retro” images of a boom box, a joy stick, and a mobile phone from the 1980s juxtaposed against the JUUL e-cigarette, captioned “JUUL/The evolution of smoking/Finally, a truly satisfying alternative.” These images featured products that were readily recognizable by older consumers – products that teenagers today might only recognize from old movies. Cult presented these advertisements, including the following examples below, to JUUL in December 2014 in presentation slides attached hereto as Exhibit A.





42. JUUL rejected Cult’s proposed advertising campaign in its entirety.

43. JUUL decided to market its e-cigarette in an entirely different fashion. JUUL set out to claim “cool equity” that “combustible cigarettes ... own.” JUUL sought to “win with the cool crowd in critical markets” by portraying the JUUL e-cigarette as a “cool, cutting-edge tech life style product that advances [a user’s] image.” JUUL explicitly sought to appeal to consumers who were “fashionable, urban with a vibrant life,” and “enjoy[] going out to shows and events.”

44. Richard Mumby engaged Steven Baillie as JUUL’s interim artistic director and directed him to develop a new creative concept for a fashion-influenced advertising campaign.

45. In developing this new creative concept, Baillie made multiple “mood boards,” which consisted of compilations of images designed to illustrate his vision for the JUUL advertising campaign. Baillie’s mood boards were composed of pictures of fashionable young people, frequently in a sexually provocative context. Baillie presented mood boards including the

mood board reproduced below to JUUL in a document dated Jan. 13, 2015 and attached hereto as Exhibit B.



46. JUUL responded positively to this mood board and to Baillie’s youth-oriented approach to advertising the JUUL brand and e-cigarette.

47. JUUL directed Baillie to proceed with developing an advertising campaign for the launch of the JUUL product in accordance with this new creative approach. Baillie conceived of the slogan for this launch campaign: “vaporized” (hereinafter, the “Vaporized Campaign”).

48. Having settled on an approach that would feature “cool” young models, Baillie and JUUL sought out the services of a photographer and a casting director for a photoshoot for the Vaporized Campaign.

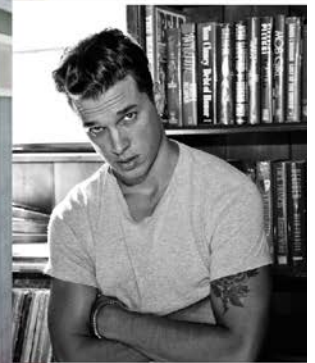
49. Baillie and JUUL selected a number of photographers for consideration for the JUUL photoshoot and compiled representative images from each photographer to assist in their final selection. The following is a selection of images compiled by JUUL and Baillie and taken by the photographer ultimately chosen for the JUUL photoshoot.



50. Baillie and JUUL hired a casting director to identify models for the photoshoot. The following are images from a compilation, attached as Exhibit C, of some of the models considered by JUUL for the photoshoot for the Vaporized Campaign.



Cassie Ventura
Singer 27



Nicolas Coucke
Co-founder of Temple and Spring
26

51. Ultimately, JUUL decided to cast ten models who, by JUUL’s description, were “New York trendsetters who embody the JUUL brand and speak to millennial consumers.”

52. JUUL provided a document, attached as Exhibit D, to individuals managing and participating in the photoshoot. JUUL shared this document, which included the following images, to guide the hair, makeup, clothing, and general aesthetic of the photoshoot for the Vaporized Campaign.



53. At the photoshoot, JUUL took photographs and videos of models posing with the JUUL e-cigarette for use in the Launch Campaign. The following is a selection of creative “assets” generated for the Vaporized Campaign using photographs from the photoshoot.





54. JUUL knowingly used images of models that “registered” or appeared in photographs to be inappropriately or unsuitably young. JUUL’s employees and its board of directors acknowledged concern that models photographed for the Vaporized Campaign appeared to be too young, particularly the models Nicole Winge and Peter Giang.

55. JUUL nonetheless used images of Ms. Winge and Mr. Giang in the Launch Campaign. The following images are photographs of Ms. Winge and Mr. Giang that JUUL used in the Vaporized Campaign.



56. JUUL knew, or should have known, that the Vaporized Campaign images would appeal to underage consumers and would induce underage consumers to buy and use its e-cigarettes.

57. JUUL first offered its product for sale and initiated the Vaporized Campaign in June 2015. JUUL sold its products, in Massachusetts and other states, directly by means of its own website and through physical retail stores such as gas stations and convenience stores.

58. Playful and provocative photographs of the youthful models from the photoshoot were the primary source of images for the Vaporized Campaign. JUUL used these images to generate numerous different advertisements of various sizes and formats.

59. JUUL placed advertisements featuring images of the models from the photoshoot on millions of websites, in mobile applications on smartphones, and on social media platforms.

60. JUUL displayed videos of the models from the photoshoot in its product display cases at physical retail stores.

61. JUUL placed advertisements featuring images of the models from the photoshoot in physical, print magazines, newspapers and other publications.

62. JUUL even used images and videos of these models in an electronic billboard installation in Times Square, New York City.

C. JUUL Purchased Advertising Space for the Vaporized Campaign on Millions of Websites Across the Internet, Including Websites that Appeal to Children

63. Having developed advertisements for the Vaporized Campaign featuring youthful, fashionable models, JUUL engaged the services of numerous companies to place advertisements, including static “banner” advertisements and video advertisements, on websites across the internet. These companies, known as programmatic media buyers, purchased “impressions” (i.e. the appearance of an advertisement on a particular website when visited by a single user or

device) from online advertising exchanges. Advertisements from the Vaporized Campaign began appearing on websites as early as June 2015.

64. Although these online advertisements linked to JUUL's website, where JUUL sold its e-cigarette directly, the primary purpose of initial online media purchases for the Vaporized Campaign was not to drive sales of e-cigarettes on JUUL's website. Instead, the primary purpose of the initial online media purchases was to create "brand awareness" for the JUUL e-cigarette.

65. JUUL used these programmatic media buyers to purchase space for JUUL advertisements on websites that were highly attractive to children, adolescents in middle school and high school, and underage college students. These advertisements included the images of models from the Vaporized Campaign

66. JUUL purchased advertisements on websites designed for young children.

67. JUUL marketed its products by purchasing banner advertisements and video advertisements on nick.com. The company also purchased banner advertisements on nickjr.com. These two Nickelodeon websites feature shows and games from the Nickelodeon television network, which is a television network for children.

68. JUUL purchased banner advertisements on the Cartoon Network's website at cartoonnetwork.com. This website offers children's television programs and games for children.

69. JUUL purchased banner advertisements on other websites generally designed for children, including allfreekidscrafts.com, hellokids.com, and kidsgameheroes.com.

70. JUUL also purchased banner advertisements on websites providing games targeted to younger girls, such as dailydressupgames.com, didigames.com, forhergames.com, games2girls.com, girlgames.com, and girlsgogames.com.

71. JUUL also purchased advertisements on a range of websites designed to help middle school and high school students develop their mathematics and social studies skills. JUUL purchased tens of thousands of impressions for video and banner advertisements on coolmath-games.com. JUUL also purchased advertisements on basic-mathematics.com, coolmath.com, math-aids.com, mathplayground.com, mathway.com, onlinemathlearning.com, and purplemath.com. JUUL also displayed video advertisements on socialstudiesforkids.com.

72. JUUL purchased banner advertisements on websites designed for teenagers, such as teen.com, seventeen.com, justjaredjr.com, and hireteen.com.

73. JUUL purchased advertisements on websites for high school students hoping to attend college such as collegeconfidential.com and collegeview.com.

74. JUUL targeted college students with its paid online advertisements and purchased video advertisements on websites such as collegehumor.com and thecollegeprepster.com, as well as banner ads on survivingcollege.com.

75. Beginning in 2015, JUUL tracked consumers who visited JUUL's website but did not complete a purchase. JUUL then purchased advertising space on other websites that those same consumers subsequently visited. Many of JUUL's website visitors who did not complete a purchase were underage and did not complete or even failed JUUL's age verification process.

76. Facebook and Instagram, two of the largest social media platforms, maintain policies that their platforms do not accept paid advertisement for tobacco products, including e-cigarettes such as JUUL. Beginning in 2015, however, JUUL circumvented these restrictions by paying online publishers such as UrbanDaddy and Gawker to promote youth-oriented advertising content for JUUL through their social media accounts on Instagram, Facebook, and YouTube.

77. For example, in 2015, JUUL paid a website called Hypebeast for custom youth-oriented Instagram content that associated the JUUL device with the fashion designer Akomplice.

78. Finally, JUUL maintained its own social media accounts on Twitter, Instagram, and Facebook until November 2018. JUUL posted advertisements from the Vaporized Campaign to Twitter, Instagram, and Facebook.

79. JUUL employed no age-gating on its social media accounts to prevent underage consumers from viewing its advertisements.

80. JUUL knew that young people visit, monitor, and use these social media platforms. Nearly all teenagers in the United States have access to a smart phone and the internet. Instagram is one of the most popular online platforms among teenagers.

81. JUUL knew, or should have known, that its advertising on social media would be viewed by underage consumers.

82. JUUL labelled its social media posts with hashtags such as #juul, #juulvapor, #vaporized, and #juulallnight.

83. Social media users can search for and follow posts that are labelled with hashtags. Users are also able to label their own posts with hashtags of their own choosing, including #juul and JUUL's other hashtags.

84. By 2018, JUUL's premier hashtag, #juul, had over a quarter of a million followers and hundreds of thousands of associated posts.⁴

⁴ Robert K. Jackler et al., *JUUL Advertising Over its First Three Years on the Market*, Stanford Research into the Impact of Tobacco Advertising 1, 19 (2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

85. Many of the posts containing the #juul hashtag or JUUL’s other hashtags were created by underage consumers and featured underage consumers using JUUL e-cigarettes.⁵

86. JUUL monitored the use of JUUL-related hashtags and the social media posts that contained those hashtags.

87. JUUL knew, or should have known, that underage consumers were following their social media accounts, advertising posts, and sponsored hashtags.

88. Based on the photographs, comments, and other content posted to social media platforms featuring underage consumers, JUUL knew, or should have known, its product was used by and extremely popular with underage consumers.

89. JUUL also sought out individual consumers with large numbers of Facebook and Instagram followers to participate in JUUL’s “affiliate program.” JUUL “affiliates” posted content promoting JUUL on Facebook, Instagram, YouTube, and other social media platforms and provided followers and other consumers with discounts to entice them to purchase JUUL e-cigarettes from the JUUL website. JUUL compensated affiliates for any resulting sales completed on JUUL’s website.

90. Andy Flynn, who goes by the name of “AVANDY” on YouTube, was a JUUL affiliate who promoted JUUL e-cigarette products on his popular YouTube channel. The following is an image of Andy Flynn posted to his YouTube channel.



⁵ *Id.*

D. JUUL Sought to Enlist “Influencers” With Large Numbers of Underage Social Media Followers to Promote JUUL Products

91. To further awareness of the JUUL brand, JUUL sought to enlist celebrities or individuals with large numbers of young followers on social media platforms, called “influencers,” to promote JUUL e-cigarettes.

92. JUUL typically solicited influencers by sending them free JUUL e-cigarettes or discount codes that would enable influencers to obtain free e-cigarettes from JUUL’s website. JUUL intended that, after receiving these free or deeply discounted products, influencers would promote JUUL e-cigarettes by using them in public, post JUUL-related content on their social media accounts, or otherwise share positive impressions regarding JUUL with others. JUUL monitored influencer social media accounts for JUUL-related content and reposted JUUL-related social media content created by influencers.

93. The purpose of JUUL’s influencer program was to generate awareness of the JUUL brand, both with the influencers themselves but also with the influencers’ followers on social media platforms. JUUL knew, or should have known, that many of these followers, including followers in Massachusetts, were younger than the minimum legal sales age.

94. In the summer of 2015, JUUL ran an in-house influencer program, sending free JUUL e-cigarettes to individuals JUUL identified as potential influencers.

95. JUUL sent offers to redeem free JUUL products to over five hundred individuals it identified as influencers.

96. JUUL targeted influencers who were fashion bloggers, stylists, celebrities, and affiliated with certain television programs, networks, or movies filmed or produced in New York City and Los Angeles.

97. JUUL knew, or should have known, that many of the influencers it targeted were young and especially popular with adolescents.

98. JUUL's influencer target list included Tavi Gevinson, who was 19 years old in the summer of 2015. At age 11, Tavi Gevinson started the fashion blog The Style Rookie, which eventually became the online magazine Rookie Magazine when Gevinson was 15. Rookie's website states that "Rookie was... founded in 2011 as an online magazine for and by teenagers... Thank you for reading Rookie, and for growing up with us."⁶ In 2014, the magazine Rolling Stone called Tavi Gevinson "possibly the most influential 18-year-old in America."⁷

99. JUUL's influencer target list also included many celebrities with large numbers of teenage fans, such as Kristen Stewart and Robert Pattinson, stars of the film adaptations of the "Twilight" series of young adult novels; and Jennifer Lawrence, an actress who stars in the popular film adaptation of the "Hunger Games" young adult novels.

100. JUUL's influencer target list also included film industry professionals, including individuals responsible for product placements in various television shows and movies popular with teenagers and young audiences, such as Video Game High School and X-Men First Class.

101. Following the launch of the JUUL e-cigarette in June 2015, JUUL's marketing department tracked the use of JUUL products in public by celebrities. Employees of JUUL would periodically attempt to contact celebrities or their managers to offer them free JUUL e-cigarettes.

102. JUUL sent approximately 260 people free e-cigarettes between the summer of 2015 and August 2016.

⁶ ROOKIE, *About*, <https://www.rookiemag.com/us/>.

⁷ Alex Morris, *Tavi Gevinson: A Power Teen's New Direction*, ROLLING STONE (Aug. 14, 2014, 3:57 PM), <https://www.rollingstone.com/culture/culture-features/tavi-gevinson-a-power-teens-new-direction-232286/>.

103. JUUL invited influencers to its launch events during the summer of 2015. JUUL gave influencers free JUUL e-cigarettes at the launch events.

104. JUUL also separately contracted with Grit Creative Group, LLC (“Grit”) during the Vaporized Campaign to enlist influencers by sending them free JUUL e-cigarettes.

105. Grit provided free JUUL e-cigarettes to over one-hundred and fifty individuals identified as influencers, many of whom were DJs, nightlife personalities, fashion bloggers, and stylists.

106. All of Grit’s efforts to enlist influencers were conducted at JUUL’s direction and/or with JUUL’s knowledge.

107. JUUL knew, or should have known, that many of the individuals Grit targeted as influencers for JUUL e-cigarettes were very young and that many or most of their followers were younger than the minimum legal sales age.

108. Grit provided free e-cigarettes in person to Luka Sabbat. Sabbat, known as the “the Internet’s Coolest Teenager,”⁸ was, at most, 18 years old during the summer of 2015. Luka Sabbat had approximately 100,000 Instagram followers at the time Grit gave him free JUUL e-cigarettes. In an interview published in the summer of 2015, Luka Sabbat commented, “Being a kid, there are only two ways you can go: You’re either an influencer or you’re influenced. You’re either a leader or a follower.”⁹ The following is an image of Sabbat from 2015.

⁸ Alexis Barnett, *Who Is Luka Sabbat? Meet the Internet’s Coolest Teenager*, COMPLEX (Aug. 17, 2015), <https://www.complex.com/style/luka-sabbat-interview-on-youth-kanye-west-and-fashion>.

⁹ *Id.*



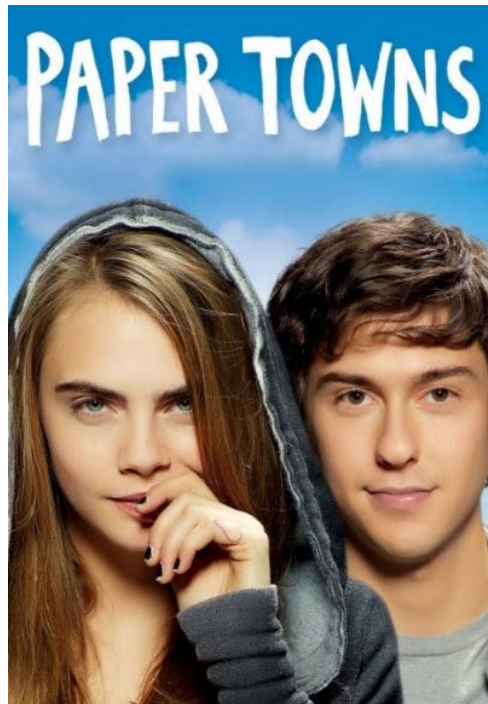
109. Grit targeted Claudia Oshry as a potential influencer for JUUL. Oshry was 21 years old during the summer of 2015. Oshry’s Instagram account handle was “girlwithnojob,” and she had over 2.3 million followers on Instagram at that time.¹⁰

110. Grit also targeted celebrities with large numbers of underage fans. Grit targeted the popular musician Miley Cyrus to be an influencer for JUUL e-cigarettes. Cyrus starred in a television show called “Hannah Montana,” which aired for four seasons on the Disney Channel and won 8 “Teen Choice Awards,” as voted upon by tens of millions of viewers in the United States aged 13 years and older. A photo of Miley Cyrus from the 2015 MTV Video Music Awards, which she hosted, appears below.

¹⁰ Claudia Oshry, @girlwithnojob, Instagram, <https://www.instagram.com/girlwithnojob/?hl=en>.



111. Grit provided the actress Cara Delevigne with free JUUL e-cigarettes to solicit her as an influencer. In 2015, Delevigne starred in a film adaptation of the young adult novel, “Paper Towns.” A promotional image for Paper Towns appears below.



E. JUUL Hosted Parties to Generate Brand Awareness Among Young People

112. JUUL held a party for the launch of its e-cigarette (the “Launch Party”) on June 4, 2015 at Jack Studios in New York City. JUUL and Grit invited guests to the Launch Party, including influencers employed in the fashion and music industries, as well as young, “beautiful people.” JUUL encouraged guests at the Launch Party to pose for photographs while using JUUL products and to compete for their image to be included in advertisements to be placed on billboards in Times Square. The following are selected photographs, attached as Exhibit E, of attendees at the Launch Party.





113. JUUL also encouraged these very young Launch Party attendees to create and post social media content featuring JUUL e-cigarettes. Over 200 attendees from the Launch Party posted content related to JUUL on their social media accounts, which were viewed by approximately 26,000 social media users.

114. For four weeks in June and July 2015, JUUL placed advertisements on numerous digital billboards in New York City's Times Square, effectively saturating Times Square with videos and photographs promoting JUUL products.

115. JUUL included photographs of Launch Party guests on its billboard advertisements in Times Square. The following is a selection of images displayed by JUUL on billboards in Times Square.



116. JUUL used such images from the Launch Party for advertisements it promoted on social media platforms and on websites across the internet. JUUL knew, or should have known, that these images would be viewed by underage consumers, would appeal to them, and would induce them to buy and use JUUL e-cigarettes.

117. In the summer of 2015, JUUL sponsored additional events in locations in New York City and Los Angeles to promote JUUL products and brand awareness among “cool” influencers and consumers. JUUL provided attendees at JUUL sponsored events JUUL products for sampling. JUUL encouraged event attendees to post about JUUL on social media.

118. For example, JUUL hosted a launch event in New York in partnership with InsideHook, a lifestyle website, on the Hudson River. The following photograph is from JUUL’s InsideHook event.



119. JUUL’s advertising strategy focused on New York and Los Angeles was intended to create strategic brand “buzz” that would raise brand awareness among young people across the country, including in Massachusetts.

F. JUUL Knowingly Advertised to Underage Persons by Email

120. From the outset of the Vaporized Campaign, JUUL collected the email addresses of visitors to its website for its email marketing list. JUUL regularly sent emails to its marketing list that promoted JUUL products and offered specials and discounts. However, JUUL sent these marketing emails to email addresses associated with consumers who had failed JUUL’s age verification process or did not complete JUUL’s age verification process after putting JUUL e-cigarettes in their online cart for purchase.

121. In the summer of 2017, JUUL engaged a company called Tower Data to determine the ages of the persons associated with email addresses on its email marketing list. According to this analysis, approximately 269,000 email addresses on JUUL’s email marketing list were not associated with a record of an individual who had “passed” JUUL’s age verification process. Additionally, approximately 40,000 email addresses on JUUL’s email marketing list were associated with records of individuals who had “failed” JUUL’s own age verification process. Tower Data informed JUUL that 83% of the approximately 420,000 email addresses on JUUL’s marketing list could not be matched with the record of an individual at least eighteen years of age.

122. JUUL nevertheless continued to send marketing emails to this list for a full year, until August 2018, even though it knew that a substantial majority of those on the list had not passed its own age verification process or had failed its age verification process.

123. On July 30, 2018, the Washington Post published an article describing JUUL's practice of sending marketing emails to people who had not passed or who had failed its age verification process. Only after publication of this article, in August 2018, did JUUL require consumers to complete its age verification process in order to continue to receive JUUL's marketing emails.

G. In Response to Criticism, JUUL Embarked on a New Advertising Campaign Emphasizing its Flavored E-Cigarettes.

124. Public health advocates and others criticized JUUL in 2015 for advertising its e-cigarettes in a manner appealing to underage consumers.

125. In response to criticism, JUUL removed the models from the Vaporized Campaign from its advertising content in early 2016.

126. However, JUUL continued to advertise its products on youth-oriented websites and on social media platforms. Moreover, JUUL's new advertising campaign focused on another feature of its product that is especially appealing to underage consumers: its flavored e-cigarettes. A 2018 survey found among U.S. adolescent and young adult e-cigarette users, 60% used flavored JUUL products, compared to 1.5% who used tobacco-flavored JUUL products.¹¹

127. The vast majority of children and adolescents who have ever used an e-cigarette started with a flavored e-cigarette.¹² Eight in ten current e-cigarette users who are adolescents cite flavors as a reason they use e-cigarettes, and three-quarters of adolescent and young adult users report that they would quit using e-cigarettes if flavors were unavailable.¹³ A survey

¹¹ UCSF Tobacco Ctr. of Reg. Sci. et al., Comment on Youth Tobacco Addiction and Cessation (May 31, 2019), <https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/wysiwyg/UCSF%20TCORS%20comment%20on%20youth%20tobacco%20addiction%20and%20cessation%20Docket%20No.%20FDA-2019-N-1107%20May%2031%202019%20%282%29.pdf> (citation omitted).

¹² *Id.*

¹³ *Id.*

conducted in the town of Wakefield, Massachusetts found that 44.4 percent of high school students cited “I was attracted to the flavor” as the main reason they tried an e-cigarette or a flavored cigar. More than 65 percent of the Wakefield high school students indicated that they would not use e-cigarettes or cigars if flavored products were not available.

128. JUUL sold e-cigarettes in multiple flavors, including mango, fruit medley, crème brulee, coco mint, cool mint, menthol, and cool cucumber. Until 2018, JUUL marketed these flavors with nonstandard spellings, including “miint,” “fruut,” and “brulee.”

129. JUUL marketed its flavored e-cigarettes using advertising content that made using flavored e-cigarettes appear cool and fun. These advertisements often made no mention of nicotine.

130. JUUL knew that its flavored products are especially popular with children and adolescents.

131. As a result of public criticism and anticipated federal action restricting the sale of flavored e-cigarette products, JUUL began to restrict the sale of some of its flavored e-cigarettes in retail stores in November 2018. However, JUUL continued to sell its most popular flavored e-cigarettes, such as mango, through its website. JUUL’s website sales of flavored e-cigarettes increased over 400% in Massachusetts around this time.

132. In response to restricted retail access to some flavored products, many underage consumers instead began using mint and menthol JUUL e-cigarettes. According to the 2019 National Youth Tobacco Survey, among high school students who use e-cigarettes, nearly 60% favor mint or menthol.¹⁴

¹⁴ Karen A. Cullen et al., *e-Cigarette Use Among Youth in the United States, 2019*, 322 JAMA Network 2099 (2019).

H. JUUL Successfully Made Underage Consumers Aware of the JUUL Brand and Induced Underage Consumers to Use JUUL E-Cigarettes

133. In sum, JUUL developed advertisements featuring models that resembled underage consumers; placed these advertisements on websites directed to or designed for children or adolescents; promoted these advertisements on social media platforms popular with underage consumers; sought to enlist celebrities and prominent social media users who were popular with underage consumers; and promoted most prominently the flavored e-cigarettes most likely to appeal to underage consumers.

134. As a result of this targeting, JUUL was extraordinarily successful in exposing underage consumers to its advertisements.

135. JUUL's advertising efforts achieved pervasive awareness of its brand among children and adolescents. The popular term among adolescents for using an e-cigarette is simply "JUULing."

136. JUUL's promotion of its e-cigarettes on social media platforms was especially attractive to underage consumers. According to an analysis in a journal published by the American Medical Association, 80.9% of Twitter users who followed the official JUUL Twitter account, @JUULVapor, were likely between the ages of 13 and 20; and 44.9% of JUUL's Twitter followers were likely between the ages of 13 and 17.¹⁵ When JUUL successfully delivered its advertisements to underage consumers, those advertisements made them more likely to use JUUL e-cigarettes.

137. Exposure to e-cigarette advertising on social media platforms among young consumers who have never used e-cigarettes increases the likelihood of subsequent e-cigarette

¹⁵ Kim. E. Annice et al., *Estimated Ages of JUUL Twitter Followers*, 173 JAMA Pediatrics 690 (2019).

use.¹⁶ Indeed, according to a study published by the British Medical Journal, JUUL's quarterly retail sales were highly correlated with the number of JUUL-related tweets that appeared on Twitter.¹⁷

138. Middle and high school students who are current users of e-cigarettes have seen more e-cigarette advertising than nonusers.¹⁸ Children and adolescents exposed to e-cigarette advertising also perceive e-cigarettes to be more socially acceptable and less harmful to their health than peers who are not exposed to the advertising.¹⁹

I. JUUL Sold its E-Cigarettes to Underage Massachusetts Consumers

139. On April 1, 2005, Needham, Massachusetts became the first town in the nation to raise the minimum legal sales age for tobacco and nicotine to 21 years old. At the time, the minimum legal sales age nationwide was 18 years old.

140. By June 1, 2015, about the time JUUL began selling its e-cigarettes in Massachusetts, at least 38 cities and towns in Massachusetts, including Lawrence, Foxborough, and Cambridge, had raised the minimum legal sales age for tobacco and nicotine products to 21 years old.

¹⁶ See e.g., Deepa Camenga et al., *E-cigarette advertising exposure in e-cigarette naïve adolescents and subsequent e-cigarette use: A longitudinal cohort study*, 81 *Addictive Behav.* 82 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5845830/>; Pallav Pokhrel et al., *Social media e-cigarette exposure and e-cigarette expectancies and use among young adults*, 78 *Addictive Behavior* 57 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5783750/>.

¹⁷ Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, 28 *Tobacco Control* 150 (2019).

¹⁸ Meda E. Pavkov et al., *Trends in Hospitalizations for Acute Kidney Injury – United States, 2000-2014*, 67 *Morbidity and Mortality Weekly Report* 289 (2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6710-H.pdf>.

¹⁹ See e.g., Benjamin Reinhold et al., *Associations of Attitudes towards electronic cigarettes with advertisement exposure and social determinants: a cross sectional study*, 15 *Tobacco Induced Diseases* 4-8 (2017), <https://tobaccoinduceddiseases.biomedcentral.com/articles/10.1186/s12971-017-0118-y>.

141. By January 1, 2017, at least 103 Massachusetts cities and towns, including the city of Boston, had raised the minimum legal sales age for tobacco and nicotine products to 21 years old.

142. Effective as of December 31, 2018, the Massachusetts Legislature imposed a minimum legal sales age for tobacco and nicotine products of 21 years statewide.

143. JUUL launched its e-commerce website in June 2015. On JUUL's website, consumers were able to purchase JUUL e-cigarettes from JUUL directly. The address for the JUUL e-commerce website was originally juulvapor.com, but later changed to juul.com.

144. Between June 2015 and July 10, 2019, Massachusetts consumers completed over 106,000 purchases from the JUUL e-commerce website, amounting to over \$6,795,600 in sales.

145. JUUL claims to comply with state and local laws regarding the minimum legal sales age for tobacco and nicotine products.

146. This is untrue. In fact, JUUL has, through its website, sold e-cigarettes to children and adolescents across the Commonwealth. Moreover, JUUL knew, or should have known, that consumers younger than the minimum legal sales age were purchasing JUUL e-cigarettes through its website.

i. JUUL Employed an Inadequate Age Verification Process

147. JUUL claims to use an age verification process that ensures that consumers seeking to purchase e-cigarettes directly from its website are of the minimum legal sales age in the jurisdiction in which they are located.

148. JUUL outsourced the age verification of prospective online purchasers to a company called Veratad Technologies, LLC ("Veratad"). Veratad purported to provide age verification services to JUUL from the start of its e-commerce website launch in June 2015

through the end of 2018. JUUL contracted with Veratad to provide a service called “AgeMatch” from 2015 through the end of 2018, and to provide digital document verification services for a short period in 2017.

149. In order to complete a purchase on JUUL’s e-commerce website, a consumer had to “pass” an age verification process.

150. From 2015 through the end of 2018, this age verification process typically consisted of the following:

- a. JUUL prompted prospective purchasers to submit certain personal identifying information, such as their name, address, and date of birth.
- b. JUUL forwarded a consumer’s personal information to Veratad. Veratad then attempted to match all or some limited part of the consumer’s information to a person of the minimum legal sales age in its database, which consisted of information drawn from governmental records and other sources. If Veratad was able to locate a sufficient match of the prospective purchaser to a person of the minimum legal sales age in its database, then it would return a “pass” result to JUUL. If Veratad was unable to make such a match, Veratad returned a “fail” result to JUUL.
- c. If Veratad returned a “fail” result to JUUL, rather than decline the person, JUUL would prompt the consumer to enter an “alternate” address. If Veratad still could not find a match based on this alternate address, JUUL would prompt the consumer to enter the last four digits of his or her social security number.

- d. If Veratad, supplied with the last four digits of a consumer's social security number, still could not match the consumer to a person of the minimum legal sales age in its database, JUUL would prompt the consumer to upload an image or photograph of his or her driver's license or another governmental identification document. A JUUL employee would then conduct a personal review of the image and decide whether the consumer was of the minimum legal sales age.

151. Crucially, JUUL, not Veratad, decided how closely a prospective purchaser's personal information had to match records in Veratad's database in order to "pass" the age verification process. For example, JUUL, not Veratad, decided whether a prospective purchaser's address had to match exactly the relevant address in Veratad's database or whether it would be sufficient for merely the zip code to match.

152. Similarly, JUUL, not Veratad, supplied the applicable minimum legal sales age for the age verification process.

153. Between June 2015 and August 2017, JUUL directed Veratad to "pass" prospective purchasers even if certain portions of the purchaser's personal information did **not** match the information corresponding to a person of the minimum legal sales age in Veratad's database. For example, JUUL directed Veratad to "pass" a prospective purchaser under certain circumstances even where the prospective purchaser's street address or date of birth did not match the information corresponding to a person of the minimum legal sales age in Veratad's database.

154. Similarly, between June 2015 and August 2017, JUUL directed Veratad to "pass" a prospective purchaser under certain circumstances even when the prospective purchaser's *year*

of birth did **not** match the information corresponding to a person of the minimum legal sales age in Veratad's database.

155. As a result of these lax requirements, underage consumers could "pass" JUUL's age verification process and purchase JUUL e-cigarettes directly from JUUL's website, simply by using their parent's name, home address, and a very approximate date of birth.

156. Even with these lax requirements, Veratad reported to JUUL that only approximately 70% of prospective e-cigarette purchasers on JUUL's website "passed" the age verification process.

157. JUUL repeatedly sought to make changes to the age verification process so that more prospective purchasers would "pass" the process. JUUL did so in an effort to increase direct sales of its e-cigarettes without regard to whether its less stringent age verification process would permit more underage consumers to purchase its e-cigarettes.

158. In response to criticism regarding the use of JUUL e-cigarettes by underage consumers, in September 2017, JUUL directed Veratad to require that a prospective purchaser's year of birth match exactly the year of birth corresponding to a person of the minimum legal sales age in Veratad's database. As a result of this change, Veratad informed JUUL that its age verification "pass rate" dropped 5-8%.

159. JUUL did not direct Veratad to require that the year of birth and last four digits of the social security number match exactly the information corresponding to a person of the minimum legal sales age in Veratad's database until August 2018.

ii. JUUL Completed Over Ten Thousand Shipments of E-Cigarettes to Massachusetts Consumers Without Verifying the Age of the Recipient

160. In order to purchase e-cigarettes from JUUL’s website, JUUL required consumers to create an account.

161. The process of creating an account required consumers to supply their email address, choose a password, and supply personal identifying information.

162. JUUL permitted consumers to create JUUL accounts using email addresses whose domain names were associated with high schools and colleges. JUUL allowed more than 1,200 JUUL accounts to be established for Massachusetts consumers using school email addresses, including email addresses associated with high schools in Beverly, Malden, and Braintree, more than 200 accounts ending in “bu.edu” (the domain associated for Boston University), and over 250 accounts ending in “umass.edu” (the domain associated with the University of Massachusetts). JUUL only disallowed accounts associated with school e-mail addresses starting in 2018.

163. After consumers supplied their email address, password, and personal information, JUUL performed the age verification process described above, using the “AgeMatch” service supplied by Veratad.

164. Once a consumer successfully established an account on the JUUL website, any person could use those account credentials to purchase JUUL e-cigarettes and ship them to any recipient and to any address.

165. However, from 2015 through the end of 2018, JUUL only performed the age verification process using the personal information supplied by a consumer at time they created an account.

166. When a consumer used account credentials to purchase and ship JUUL e-cigarettes to a different recipient or address than the name and address associated with the account, JUUL nevertheless did **not** verify the age of the new recipient and did **not** confirm that the new address corresponded to a person of the minimum legal sales age.

167. Between 2015 and 2018, JUUL shipped e-cigarettes to over ten thousand recipients and addresses in Massachusetts that did not match the names and addresses supplied by consumers at the time they created their accounts.

168. Accordingly, JUUL sent e-cigarettes to over ten thousand recipients and addresses in Massachusetts for which JUUL performed no age verification whatsoever.

169. As a result of failing to conduct any age verification of shipping recipients or addresses, JUUL shipped e-cigarettes to numerous underage consumers in Massachusetts, including many who were under eighteen years old and as young as sixteen years old.

170. JUUL shipped e-cigarettes to underage high school students, including students attending Cambridge Rindge and Latin School, Falmouth High School, Lowell High School, and Newton North and South High Schools.

iii. JUUL Sold E-Cigarettes to Underage High School Students, Underage College Students, and Recipients with Obviously Fabricated Names

171. As result of its inadequate age verification practices, and in violation of Massachusetts law, JUUL sold its e-cigarettes directly through its website to underage consumers throughout Massachusetts.

172. According to JUUL's own sales records, JUUL sold e-cigarettes through its website to Massachusetts consumers who provided dates of birth that indicated they were younger than the minimum legal sales age in the city or town to which JUUL shipped its e-cigarettes.

173. JUUL shipped e-cigarettes to underage high school students across the Commonwealth, including students enrolled in Longmeadow High School, Weston High School, Bridgewater-Raynham Regional High School, Bishop Fenwick High School in Peabody, and Northeast Metro Regional Vocational Technical High School in Wakefield.

174. JUUL shipped e-cigarettes to underage recent high school graduates, including recent graduates from Brookline High School, Hanover High School, Mount Everett High School in Sheffield, and the Tri-County Regional Vocational Technical High School in Franklin.

175. JUUL shipped e-cigarettes to underage college freshmen at numerous Massachusetts colleges, including Babson College, Boston College, Boston University, Northeastern University, Stonehill College, Suffolk University, Tufts University, and the University of Massachusetts Amherst.

176. JUUL completed numerous e-cigarette shipments to underage students living in school buildings associated with many Massachusetts colleges, including Babson College, Boston College, Harvard University, Holy Cross College, Lasell College, Northeastern University, Stonehill College, Tufts University, Worcester Polytechnic Institute, and the University of Massachusetts at Amherst. JUUL delivered many of these e-cigarette shipments to college dormitories or mailrooms.

177. JUUL customer service representatives even provided consumers with advice on how to evade minimum legal sales restriction requirements by shipping JUUL Products to another person with an address in a town with a lower minimum legal sales age. In an email from support@juulvapor.com dated February 21, 2018, “Don” from the “JUUL Care Team” told a consumer whose order had been cancelled due to an age verification failure, “The legal age to

purchase nicotine products in Milton, MA is 21 years old and above. If you have friends or relatives in Quincy, MA, you may use their address as a shipping address for your order.”

178. JUUL also delivered e-cigarettes to recipients whose names were plainly fabricated or intentionally omitted, such as “Pod God,” “Prepaid Gift Card,” and “Gift Recipient.”

179. In sum, JUUL displayed a brazen disregard for its obligation to prevent underage consumers from purchasing its products. Instead, JUUL sold e-cigarettes to numerous underage Massachusetts consumers.

J. JUUL Partnered with Retail Stores that Sold Tobacco and Nicotine Products to Underage Consumers

180. Beginning in 2015, JUUL authorized physical retail stores, such as gas stations and convenience stores, to sell JUUL products. JUUL promoted these retailers through a feature on its website that allowed consumers to locate an authorized retailer closest to the consumer’s location.

181. According to a 2019 survey by the Massachusetts Department of Public Health, 43.8% of high school students who use e-cigarettes obtain them from a retail store.

182. JUUL also sold large quantities of JUUL e-cigarettes to retailers in Massachusetts through the JUUL website without officially authorizing retailers to resell JUUL products. JUUL conducted no oversight of these “unofficial” retailers who resold e-cigarettes purchased from the JUUL website.

183. JUUL permitted consumers to purchase large numbers of its e-cigarettes or pods containing its e-liquids through its website. JUUL knew, or should have known, that such “bulk” purchases were often resold to underage consumers.

184. JUUL provided authorized retailers with specific directions regarding the way in which JUUL e-cigarettes should be displayed and advertised. JUUL directed retailers to display

JUUL e-cigarettes in a clear case on top of their sales counter, near their cash register, to draw the attention of consumers in the check-out line. These product display units featured a video display that played JUUL advertisements, including advertisements from the Vaporized Campaign. JUUL also provided retailers with advertising materials to promote JUUL product awareness, including “take away cards” and gas station “pump toppers.”

185. JUUL conducted trainings with store managers and staff for authorized retailers to develop “brand ambassadors” for their e-cigarettes.

186. The Federal Food and Drug Administration (“FDA”) regularly conducts undercover inspections of tobacco retailers to determine whether those retailers are adequately preventing sales of tobacco and nicotine products, including e-cigarettes, to individuals younger than the minimum legal sales age.

187. During these inspections, a trained underage consumer, working with an FDA inspector, attempts to purchase a tobacco product. If the underage consumer is successful in purchasing a tobacco product, the FDA issues a warning letter to the retail store and/or imposes a civil monetary penalty. The names of retail stores inspected and the result of FDA inspections, including warning letters and penalties, are publicly available on the FDA’s website.

188. JUUL authorized approximately 850 retail stores in Massachusetts to sell its products, even though the FDA had already sent a public warning letter to these retail stores and/or assessed a penalty against them for selling tobacco products to underage consumers during an undercover inspection.

189. For example, JUUL authorized the Racing Mart, a retail store located at 475 St. James Avenue in Springfield, to sell JUUL products. The FDA issued warning letters to Racing Mart in July 2016 and June 2017 and assessed civil monetary penalties in May 2018 and October

2018 for selling cigarettes to underage consumers during FDA inspections. JUUL nevertheless authorized the Racing Mart to sell JUUL e-cigarettes in December 2018.

190. JUUL authorized Wheeler's Convenience Store, a retail store located at 954 State Street in Springfield, to sell JUUL e-cigarettes. The FDA issued a warning letter to Wheeler's Convenience Store in October 2014, and assessed civil monetary penalties in May 2015, May 2016, and April 2018 for selling cigarettes and cigars to underage consumers during FDA inspections. JUUL nevertheless authorized Wheeler's Convenience Store to sell JUUL products in August 2018.

191. JUUL authorized Oak Street Convenience Store, a retail store located at 350 Oak Street in Brockton, to sell JUUL e-cigarettes. The FDA issued a warning letter to Oak Street Convenience Store in August 2015 and assessed civil monetary penalties in April 2017, January 2018, and August 2018, for selling cigarettes and e-cigarettes to underage consumers during FDA inspections. JUUL nevertheless authorized Oak Street Convenience Store to sell JUUL e-cigarettes in September 2018.

192. Beginning in 2017, JUUL began conducting its own "secret shopper" inspections of its authorized retailers. During these inspections, JUUL determined that underage consumers were able to purchase JUUL e-cigarettes at many of its authorized retailers in Massachusetts. Nevertheless, JUUL continued to authorize retailers to sell JUUL e-cigarettes after stores failed in some cases multiple inspections.

193. For example, the FDA issued a warning letter to a JUUL-authorized retailer, New England Meat Market in Peabody, in January 2017 for selling cigarettes to an underage consumer during an FDA inspection. JUUL authorized the store to sell JUUL e-cigarettes in October 2018. JUUL conducted its own inspection of New England Meat Market in January

2019, during which it observed store personnel attempting to sell JUUL e-cigarettes to an underage consumer. JUUL nevertheless continued to authorize New England Meat Market to sell its e-cigarettes.

K. JUUL Made Thousands of Shipments of E-Cigarettes to Massachusetts without Requiring an Adult Signature at Receipt

194. Beginning on September 25, 2015, Massachusetts law mandated the “use of a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released” for any online sale of e-cigarettes. 940 CMR 21.04(4).

195. JUUL delivered the vast majority of its e-cigarette shipments to Massachusetts using the United States Postal Service (“USPS”).

196. JUUL knew that USPS was not properly obtaining adult signatures upon delivery of JUUL e-cigarettes. In an email dated August 14, 2015, JUUL employee Kelly Long wrote to her colleagues, “USPS does not seem to be delivering adult signature packages consistently or following the law...Reports where the mailman didn’t acquire signature and left on doorsteps. A few reports where the mailman signed for it himself (!) left in mailboxes.”

197. JUUL retained USPS mail carrier notes from deliveries of its e-cigarettes in Massachusetts.

198. Notes from USPS deliveries of JUUL e-cigarette to Massachusetts addresses routinely failed to indicate the name of the recipient or confirm that a person of the minimum legal sales age signed for the delivery. USPS notes for deliveries in September 2017 include:

- a. “Your item has been delivered to the mail room at 12:55 pm on September 9, 2017 in MEDFORD, MA 02155. The item was signed for by J FRONTDESK;”

- b. “Your item was delivered in or at the mailbox at 10:44 am on September 13, 2017 in ROXBURY CROSSING, MA 02120;”
- c. “Your item was delivered in or at the mailbox at 12:54 pm on September 25, 2017 in MALDEN, MA 02148.”

199. Other delivery services, such as FedEx and UPS, also offer delivery services that require the signature of a person over the age of 21 upon receipt. Nevertheless, JUUL did not use these other services despite knowing that USPS was not properly obtaining adult signatures. JUUL continued to use USPS for the vast majority of its deliveries of e-cigarettes to Massachusetts.

200. JUUL also delivered thousands of packages to consumers in Massachusetts without obtaining any signature upon delivery.

201. JUUL permitted consumers to sign up for regular, periodic automatic deliveries of e-cigarettes, which JUUL described as “auto-ship” deliveries. When consumers signed up for “auto-ship” deliveries, JUUL did not require the signature of a person of the minimum legal sales age upon delivery of the consumers’ periodic shipments of e-cigarettes.

202. As a result, JUUL sent thousands of packages of e-cigarettes to Massachusetts through its “auto-ship” program without requiring the signature of a person of the minimum legal sales age.

203. Moreover, when consumers purchased e-cigarettes from JUUL’s website, they sometimes entered a shipping “address” and “zip code” in Massachusetts but a “state” other than Massachusetts. In these instances, JUUL did not require the signature of a person of the minimum legal sales age upon delivery in Massachusetts of its shipment of e-cigarettes.

204. As a result of this practice, JUUL made numerous shipments of e-cigarettes to Massachusetts without requiring the signature of person of the minimum legal sales age.

L. As a Result of JUUL’s Advertising and Sales to Underage Consumers, Millions of Underage Consumers Use JUUL and Other E-Cigarettes

205. JUUL’s advertising efforts were pervasively appealing to and targeted at underage consumers. JUUL also sold its e-cigarettes directly to underage consumers. As an entirely foreseeable result, millions of underage consumers in Massachusetts and nationwide use JUUL e-cigarettes.

206. Adolescents now use e-cigarettes in extraordinarily large numbers. According to a 2019 survey conducted by the National Institute on Drug Abuse, one in four U.S. high school seniors has used e-cigarettes in the last 30 days.²⁰ The same survey shows that more than one in nine U.S. high school seniors use e-cigarettes on a daily or near-daily basis, an indication of nicotine addiction.²¹ Similarly, a 2019 study published in the Journal of the American Medical Association found that 27.5 percent of U.S. high school students and 10.5 percent of U.S. middle school students say they have used e-cigarettes in the past month.²²

207. In Massachusetts, the use of e-cigarettes among children and adolescents is even more prevalent. According to the 2019 Massachusetts Youth Health Survey conducted by the Massachusetts Department of Public Health, 51.2% of Massachusetts high school students report that they have used e-cigarettes and 32% have used e-cigarettes in the last 30 days.²³ Recent local surveys show similar results. For example, in the town of Bedford, Massachusetts, 28

²⁰ Richard Miech et al., *Trends in Adolescent Vaping, 2017-2019*, 381 New Eng. J. of Med. 1490 (2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

²¹ *Id.*

²² Cullen et al., *supra* at 14.

²³ Mass. Dep’t of Pub. Health, *Youth Vaping and Cessation Data* (2019), <https://www.mass.gov/files/documents/2019/11/27/youth-vaping-and-cessation-data-11-26-2019.pdf>.

percent of high school students reported current use of e-cigarettes in 2018,²⁴ and in a survey of nine school districts in and around Franklin County, approximately 32 percent of eighth, tenth, and twelfth graders reported that they were current e-cigarette users in 2019.²⁵ While these surveys indicate alarming rates of e-cigarette use by adolescents in Massachusetts, they likely underestimate the rate of e-cigarette use because young people underreport their use of e-cigarettes.

208. When underage consumers use e-cigarettes, their e-cigarette brand of choice is overwhelmingly JUUL. Among current e-cigarette users, almost 60 percent of U.S. high school students and 55 percent of U.S. middle school students named JUUL as their usual e-cigarette brand.²⁶

209. The rates of JUUL use by adolescents far surpass those of adults. According to a study by the Truth Initiative, 15- to 17-year-olds are 16 times more likely to be current JUUL users than 25- to 34-year-olds.²⁷

210. JUUL's practices have inspired competing e-cigarette companies to sell copycat JUUL e-cigarettes and to use the JUUL brand to advertise those e-cigarettes to underage consumers, further amplifying JUUL's appeal to and impact on underage consumers.

²⁴ Bedford Youth and Fam. Serv., *Summary of Results from the 2018 Bedford Youth Risk Behavior Survey* (2018), https://www.bedfordma.gov/sites/bedfordma/files/uploads/bedford18_summarybrief_2pg.pdf.

²⁵ Communities that Care Coalition, *Youth Health Surveys*, <http://www.communitiesthatcarecoalition.org/surveys>.

²⁶ Cullen et al., *supra* at 14.

²⁷ Truth Initiative, *Behind the explosive growth of JUUL* (Jan. 3, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul>.

M. The Highly-Concentrated Nicotine in JUUL’s E-Cigarettes is Especially Addictive and Harmful for Underage Consumers

211. JUUL’s e-cigarettes cause underage consumers to absorb large amounts of nicotine, a toxic and addictive substance that is especially detrimental to the health of adolescents and young adults.

212. Nicotine is a central nervous system stimulant and, once ingested, travels quickly to the brain, where it triggers the release of chemicals and ultimately feelings of reward.²⁸ As a result, users come to associate nicotine with pleasurable feelings.²⁹ As Bonnie Halpern-Fisher, professor of pediatrics at Stanford University’s medical school puts it, “[r]ather than your brain getting pleasure from exercising or relationships, your brain becomes rewired to get pleasure from nicotine.”³⁰ Nicotine addiction is the most common and most harmful effect of nicotine use. Regular use of nicotine leads to uncomfortable symptoms upon withdrawal, which, in turn, perpetuate continued use regardless of adverse consequences.³¹

213. Nicotine creates stronger feelings of reward in adolescents than in adults and, as a result, adolescent smokers are more likely than adult smokers to become dependent on nicotine.³²

²⁸ Ctr. on Addiction, *Understanding and Addressing Nicotine Addiction: A Science-Based Approach to Policy and Practice* (Oct. 2015), <https://www.centeronaddiction.org/addiction-research/reports/understanding-and-addressing-nicotine-addiction-science-based-approach> (citations omitted).

²⁹ *Id.*

³⁰ Chris Kirkham, *Juul disregarded early evidence it was hooking teens*, REUTERS (Nov. 5, 2019, 11:00 AM), <https://www.reuters.com/investigates/special-report/juul-ecigarette/>.

³¹ Center on Addiction, *supra* at 28.

³² Lucinda J. England et al., *Nicotine and the Developing Human: A Neglected Element in the Electronic Cigarette Debate*, 49 Am. J. of Preventative Med. 286, 290 (2015) (citations omitted).

214. A young person may become addicted to nicotine by absorbing approximately 5 mg of nicotine per day. By consuming just one quarter of a JUUL e-cigarette pod per day, a young person may exceed the threshold for nicotine addiction.³³

215. Due to the prevalence of the high-nicotine concentration e-cigarettes pioneered by JUUL and the ease of their use, many teenagers who use e-cigarettes have higher levels of nicotine in their bodies than teenagers who smoke combustible cigarettes.³⁴

216. Once addicted, many young people are driven to use their JUUL e-cigarettes from the moment they wake up until they go to sleep, sometimes even waking in the middle of the night to feed their addiction.³⁵

217. Moreover, human brain development, including areas of the brain involved in higher cognitive function, such as the prefrontal cortex, continues throughout adolescence and well past the age of 20.³⁶ According to the Center for Disease Control, “[u]sing nicotine in adolescence can harm the parts of the brain that control attention, learning, mood, and impulse control.”³⁷

218. Perhaps most disturbing, e-cigarettes can lead users, especially adolescent users, to initiate use of traditional combustible cigarettes or other dangerous substances.³⁸ Underage

³³ Jackler & Ramamurthi, *supra* note 3, at 626.

³⁴ Stony Brook U. News, *Adolescent Users of E-Cigarettes Exposed to Nearly as Much Nicotine as Smokers* (Sept. 7, 2018), <https://news.stonybrook.edu/newsroom/adolescent-users-of-e-cigarettes-exposed-to-nearly-as-much-nicotine-as-smokers/>.

³⁵ See Jan Hoffman, *The Price of Cool: A Teenager, a Juul and Nicotine Addiction*, N. Y. TIMES (Nov. 16, 2018), <https://www.nytimes.com/2018/11/16/health/vaping-juul-teens-addiction-nicotine.html>.

³⁶ England et al., *supra* at 32 (citations omitted).

³⁷ Ctr. for Disease Control and Prevention, *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html.

³⁸ See e.g., Kathleen Stratton et al., Nat'l Acad. of Sci., Eng'g, and Med., *Public Health Consequences of E-Cigarettes* (2018), <https://doi.org/10.17226/24952>.

consumers who use JUUL products are more likely to use or become addicted to traditional cigarettes.³⁹ This increased risk of transition from vaping to smoking is true even for low-risk youth, heightening concerns that JUUL and other e-cigarette companies are contributing to the renormalization of smoking behaviors once thought passé and reversing decades of progress in moving young people off tobacco.⁴⁰ The increased risk is dramatic: among young people with no prior nicotine use, those who become e-cigarette users are four times more likely to start smoking cigarettes.⁴¹

219. Youth who become addicted to nicotine through JUUL products experience a range of negative social, emotional, behavioral, and physical effects. Teenagers describe wild mood swings, violent outbursts, shouting, and emotional confrontations with family and friends.⁴² They express feelings of self-hatred for being dependent on a JUUL device and intense anxiety at the thought of doing without it.⁴³ Young people also resort to stealing from their parents or selling e-cigarette paraphernalia or clothing items to support their habits. They also find themselves feeling winded – coined “JUUL lung” – and unable to keep up with their regular

³⁹ Kaitlyn M. Berry et al., *Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths*, 2 JAMA 1 (2019); Richard Miech et al., *E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow-up of a national sample of 12th grade students*, 26 Tobacco Control 106 (2017), <https://tobaccocontrol.bmj.com/content/26/e2/e106>; Jessica L. Barrington-Trimis et al., *E-Cigarettes and Future Cigarette Use*, 138 Pediatrics 1 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4925085>; Jonathan Fielding, *The e-cigarette epidemic – recognizing Big Tobacco’s Trojan horse*, THE HILL (Feb. 11, 2019, 6:30 PM), <https://thehill.com/opinion/healthcare/429484-the-e-cigarette-epidemic-recognizing-big-tobaccos-trojan-horse>; Truth Initiative, *Behind the explosive growth of JUUL* (Jan. 3, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul>; Nat’l Acad. of Sci., Eng’g, and Med., *supra* note 38.

⁴⁰ Berry et al., *supra* note 39.

⁴¹ Barrington-Trimis et al., *supra* note 39; Berry et al., *supra* note 39; Miech et al., *supra* note 39.

⁴² Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, WASH. POST (July 26, 2019, 7:00 AM), https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html; Hoffman, *supra* note 35.

⁴³ Hoffman, *supra* note 35.

physical activity.⁴⁴ Young JUUL users report increased anxiety and physical symptoms such as uncontrollable shaking when withdrawing from nicotine.⁴⁵

220. Youth who become addicted to nicotine through JUUL use are harmed in other ways, including by altering school and social schedules in order to use JUUL devices and diverting their limited resources to pay for JUUL devices and pods.⁴⁶ A JUUL addiction can cause serious harm to school performance and grades.⁴⁷

221. Families of young people addicted to e-cigarettes struggle to identify treatment options, must respond to school disciplinary matters, and monitor their children to ensure that they are not continuing to use e-cigarettes. Some families expend significant sums of money to place their children in private drug treatment programs.

222. The full extent of negative health effects to underage consumers from widespread use of JUUL e-cigarettes is still unknown. Scientists warn that the long-term health effects of JUUL and other e-cigarettes may not be known for decades.⁴⁸

223. While the full range of health effects is still unknown, the existing and growing body of research and clinical observations show cause for significant concern, particularly related to lung health. Studies, observations by specialists at Boston-area hospitals, and anecdotal reports increasingly indicate that the use of JUUL and other e-cigarettes may have a serious and negative impact on lungs and lung function.

224. Exposure to secondhand aerosol is another concern, the health impacts of which

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Kirkham, *supra* note 30.

⁴⁸ See e.g., Jeffrey E. Gotts et al., *What are the respiratory effects of e-cigarettes?*, 366 *BMJ* 1 (2019), available at <https://doi.org/10.1136/bmj.15275>.

are largely unknown.⁴⁹ While the number of young people exposed to secondhand smoke has decreased, the exposure to secondhand aerosol produced by e-cigarettes has increased.⁵⁰ Fumes from e-cigarettes contain chemicals such as nicotine, aerosols, toxins, and flavoring substances that may pose a health risk to bystanders, especially young people. A recent study showed that teens with asthma who do not vape and are exposed to secondhand aerosol are more likely to have an asthma attack.⁵¹ Past research proves links between nicotine exposure and sudden infant death syndrome, attention deficit hyperactivity disorder, ear infections, pneumonia, and influenza.⁵²

N. There are Insufficient Treatments Available for Nicotine-Addicted Youth in Massachusetts

225. Massachusetts adolescents and young adults who are addicted to e-cigarettes struggle to quit. Matt Murphy, a teenager from Reading, who started using JUUL products in high school, described the challenge: “Once I realized I was brutally addicted, I wanted to quit – and then you can’t quit.”⁵³ His quest to quit took two years and many failed attempts.⁵⁴

226. Resources available for treating underage nicotine addiction from e-cigarette use

⁴⁹ Michael O. Schroeder, *Secondhand Vaping: What Risks Does Aerosol From E-Cigarettes Pose for Kids?*, U.S. News (Jul. 9, 2019, 12:11 PM), <https://health.usnews.com/conditions/articles/secondhand-vaping-risks-for-kids>; WVLT News, *1 in 3 teens breathe secondhand e-cigarette vapors* (Oct. 15, 2019, 10:59 AM), <https://www.wvlt.tv/content/news/1-in-3-teens-breathe-secondhand-e-cigarette-vapors--563135011.html>.

⁵⁰ Andy S. L. Tan et al., *Trends in the Prevalence of Exposure to e-Cigarette Aerosol in Public Places Among US Middle and High School Students, 2015 to 2018*, 2 JAMA Network Open 1 (2019), available at https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2749049?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=082819.

⁵¹ Jennifer E. Bayly et al., *Secondhand Exposure to Aerosols From Electronic Nicotine Delivery Systems and Asthma Exacerbations Among Youth With Asthma*, 155 CHEST Journal 88 (2019), available at [https://journal.chestnet.org/article/S0012-3692\(18\)32584-4/fulltext](https://journal.chestnet.org/article/S0012-3692(18)32584-4/fulltext).

⁵² See Winickoff Aff. ¶ 28, Doc. No. 39, at Ex. I (filed August 28, 2018) in *American Academy of Pediatrics v. Food and Drug Administration*, Civil Action No. 18-cv-00883 (D. Md. 2018).

⁵³ CBS Boston, *Teens Helping Peers Kick Vaping Habit As Use & Suspensions Spike* (Sept. 4, 2019, 5:16 PM), <https://boston.cbslocal.com/2019/09/04/teen-vaping-quitting-use-suspensions-spike/>.

⁵⁴ *Id.*

are extremely limited.

227. Multiple years into the epidemic, youth-focused screening and treatment guidelines for youth nicotine addiction are only just becoming available and have not been widely adopted. Physicians at Boston Medical Center and the University of Montreal published preliminary guidelines in December 2019 to help clinicians screen, counsel, and treat youth for e-cigarette use.⁵⁵ The Massachusetts Department of Public Health and the University of Massachusetts Medical School are in the process of developing and providing intervention training for school nurses across Massachusetts.

228. There are insufficient treatment facilities or programs focused solely on youth nicotine addiction treatment in Massachusetts to meet the exploding need. Cognitive behavioral therapy (CBT) offers one of the leading forms of treatment for nicotine addiction, but there is limited availability of CBT providers in the state with the appropriate experience or specialization.⁵⁶

229. The research regarding the treatment of young people addicted to e-cigarettes is limited. While cessation options like the nicotine patch and varenicline have proven effective with adults seeking to quit, there is little evidence that they are effective cessation options for young people.⁵⁷

⁵⁵ Science Magazine, *Guidelines For Clinicians To Address Youth Vaping* (Dec. 19, 2019), <https://sciencemag.com/guidelines-for-clinicians-to-address-youth-vaping/>.

⁵⁶ See Winickoff Aff. ¶ 28, Doc. No. 39, at Ex. I (filed August 28, 2018) in *Am. Acad. of Pediatrics v. Food and Drug Admin.*, Civil Action No. 18-cv-00883 (D. Md. 2018).

⁵⁷ Balingit, *supra* note 42.

O. Youth Nicotine Addiction Burdens Massachusetts Schools

230. JUUL’s advertising and sales practices created a market for e-cigarettes among young people, addicting tens of thousands of students in Massachusetts to e-cigarettes and causing substantial harm to Massachusetts schools. Teachers and school administrators are expending valuable and limited time and resources to stop students from using JUUL e-cigarettes on school grounds.⁵⁸

231. Massachusetts school administrators and students report that the use of e-cigarettes in schools is disruptive. Administrators report that more and more of their time is consumed by the problem of e-cigarette use in school and that they are struggling to manage the problem. For example, in the Foxborough school district, 81 percent of seventh graders and 80 percent of eighth graders said that e-cigarette use was a problem during the school day.⁵⁹ The numbers declined only slightly at the high school level.⁶⁰ In Foxborough, students identified bathrooms, the gym locker rooms, and the school parking lots as areas where student vaping typically occurs.⁶¹

232. Students across Massachusetts refer to school bathrooms as the “JUUL lounge,” and some students report that they avoid the bathrooms because of rampant JUUL use. Administrators are spending upwards of \$995 per unit on vaping detection devices or “vape

⁵⁸ Denisa R. Superville & Arianna Prothero, *The Student Vaping Crisis: How Schools Are Fighting Back*, Education Week (Aug. 27, 2019), <https://www.edweek.org/ew/articles/2019/08/28/the-student-vaping-crisis-how-schools-are.html>; Julie Bosman, *At School, ‘Everyone Vapes,’ and Adults Are in Crisis Mode*, N.Y. TIMES (Sept. 20, 2019), <https://www.nytimes.com/2019/09/20/us/Vaping-Schools.html>; Pat Eaton-Robb, *Discipline or treatment? Schools rethinking vaping response*, Boston.com (May 26, 2019), <https://www.boston.com/news/local-news/2019/05/26/discipline-or-treatment-schools-rethinking-vaping-response>.

⁵⁹ Jeff Peterson, *Survey finds differing opinions over responses to bullying, vaping, student support in Foxboro schools*, SUN CHRONICLE (Oct. 13, 2019), https://www.thesunchronicle.com/news/local_news/survey-finds-differing-opinions-over-responses-to-bullying-vaping-student/article_b16afa98-7716-5540-bd0f-40b0f337f136.html.

⁶⁰ *Id.*

⁶¹ *Id.*

detector” for placement in school bathrooms.⁶² The state’s Fiscal Year 2020 budget earmarked \$50,000 for the public schools in Haverhill to purchase vaping sensors and related technology.⁶³ Some school districts are applying for and receiving grant funding to help support the cost of such technology. When a vape detector is triggered, an administrator receives a text or e-mail message and must immediately deploy to the location of the detector, interrupting whatever other school activity was occurring at the time. Detectors can sound up to 10 or 20 times during the school day.⁶⁴ Other school districts conduct random bathroom checks⁶⁵ or have purchased substance detection kits that can determine whether the substance in a JUUL cartridge is nicotine or tetrahydrocannabinol (THC), the main psychoactive chemical compound in marijuana.⁶⁶ Administrators in Massachusetts schools are confiscating JUUL and other e-cigarette products in large quantities, but they are still contending with the problem on a daily basis.

233. Students caught with a JUUL device may be suspended from school because of a violation of tobacco or chemical health policies. Punishments escalate from in-school suspension for a few hours or days to short- and long-term out-of-school suspension. The rates of suspensions related to e-cigarette use are spiking. For example, the town of Brookline had no e-

⁶² Mary Markos, *Massachusetts schools installing detectors to address growing vape problem*, BOSTON HERALD (updated May 31, 2019, 11:03 AM), <https://www.bostonherald.com/2019/05/30/ma-schools-installing-detectors-to-address-growing-vape-problem/>.

⁶³ FY 2020 Final Budget, Acts Ch. 41, 191st General Court (Mass. 2019), <https://malegislature.gov/Budget/FinalBudget>.

⁶⁴ Markos, *Massachusetts schools installing detectors to address growing vape problem*, *supra* note 62.

⁶⁵ Mary Markos, *North Shore schools combat vaping craze*, SALEM NEWS (Jan. 14, 2018), https://www.salemnews.com/news/local_news/north-shore-schools-combat-vaping-craze/article_af7ac530-4f6e-516d-a5bd-368d0a854771.html (“The fruity scent of vape pens tricked many school administrators into thinking the janitors were doing a fabulous job cleaning the bathrooms, only to later realize that students were “Juuling,” or smoking electronic cigarettes behind the stalls.”).

⁶⁶ Elaine Thompson, *Central Mass. schools, health officials clamp down on teen vaping*, Telegram.com (updated Sept. 7, 2019, 4:05 PM), <https://www.telegram.com/news/20190903/central-mass-schools-health-officials-clamp-down-on-teen-vaping/1>.

cigarette-related suspensions in the 2015-16 school year and 33 in the 2018-19 school year.⁶⁷

Holliston had a similar increase, with one suspension in the 2015-16 school year and 45 in the 2018-19 school year. Not only do discipline processes require meaningful time and attention of school administrators, but students who are excluded from school often fall behind their peers and, unsupervised, may engage in the same behavior for which they were excluded.⁶⁸

234. Recognizing that students are often unaware of the health consequences and are sometimes grappling with addiction, schools are also working to develop alternatives to suspension, such as mandatory education programs. Some school districts have contracted with private, for-profit programs to run e-cigarette cessation education and support programs.⁶⁹

235. Schools have hired additional personnel and devoted substantial staffing resources to work with students to address their needs. For example, the Worcester Public Schools hired a drug and health educator to educate staff, parents, and students as young as third grade about the dangers of e-cigarette use.⁷⁰ School personnel report that students show up in their offices unexpectedly and sometimes highly emotional about their inability to stop e-cigarette use, requiring substantial staff time.

236. Schools are also developing materials and working to disseminate information to educate students and families on the harms of e-cigarette use. School officials, teachers, and health professionals hold parent information events during off-school hours, draft and distribute

⁶⁷ CBS Boston, *supra* note 53.

⁶⁸ *Id.*

⁶⁹ Sam Chase et al., *Youth Risk Behavior Survey: Presentation of 2019 Results*, Monomoy Regional High School (Oct. 7, 2019), <https://www.monomoy.edu/site/handlers/filedownload.ashx?moduleinstanceid=7089&dataid=9315&FileName=Youth%20Risk%20Survey%20Parent%20Presentation%202019%20Annotated%20PowerPoint%20-%20srcfinal-jj-10.4.19.pdf>.

⁷⁰ Thompson, *supra* note 66.

information flyers and electronic communications, and respond to outreach from parents desperate for help for their children.

237. JUUL pods litter the grounds of local schoolyards, parks, and playgrounds. While JUUL pods are often discarded as litter much like cigarette butts, they raise additional concerns because of their chemical components, which can leach into the water and ground and pose a biohazard risk.⁷¹ Experts suggest that used pods should be treated like hazardous waste and that proper disposal requires either bringing them to hazardous waste or recycling centers⁷² or rinsing them until all residue is removed and wrapping them in a scrap of biodegradable material.⁷³ Other JUUL components, including the battery, constitute electronic waste and threaten environmental health. There is currently no legal way to recycle JUUL products,⁷⁴ and experts say that “none of the [e-cigarette] companies so far have taken the necessary action,” such as a product deposit system.⁷⁵

P. The Commonwealth Bears the Cost of Youth Nicotine Addiction

238. The Commonwealth must now respond to the public health crisis caused by JUUL. The Commonwealth has borne and will continue to bear the costs of developing

⁷¹ Carolyn Crist, *E-cigarette policy should consider environmental effects, expert says*, REUTERS (Oct. 29, 2018), <https://www.reuters.com/article/us-health-ecigarettes-waste/e-cigarette-policy-should-consider-environmental-effects-expert-says-idUSKCN1N403P>; John Daley, *Don't Toss That E-Cig: Vaping Waste Is A Whole New Headache For Schools and Cities*, NPR (Nov. 29, 2019, 7:01 AM), <https://www.npr.org/sections/health-shots/2019/11/29/780865248/dont-toss-that-e-cig-vaping-waste-is-a-whole-new-headache-for-schools-and-cities>.

⁷² *Id.*

⁷³ Kari Paul, *Vaping's other problem: are e-cigarettes creating a recycling disaster?*, Guardian (Aug. 27, 2019, 1:00 AM), <https://www.theguardian.com/society/2019/aug/26/vapings-other-problem-are-e-cigarettes-creating-a-recycling-disaster>; Pegex Hazardous Waste Experts, *Do E-Cigarettes Require Hazardous Waste Management* (Jul. 17, 2017), <https://www.hazardouswasteexperts.com/hazardous-waste-management-e-cigarettes/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

appropriate treatment and prevention measures as well as the public health costs associated with a generation of young people addicted to nicotine.

239. Early available resources were insufficient to address the magnitude of the problem. For example, while the Massachusetts Department of Public Health offered a Smokers' Helpline, it was not geared towards adolescents or young adults. The Commonwealth is developing several new programs specifically targeted at young people who use e-cigarettes and the adults in their lives, including parents, school nurses, and school administrators. These resources and programs are intended to provide education and access to cessation support and nicotine replacement therapies.

IV. CAUSES OF ACTION

COUNT ONE

Violation of G.L. c. 93A

Marketing of E-Cigarettes to Underage Consumers

240. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

241. The Consumer Protection Act, G. L. c. 93A, § 2, prohibits unfair or deceptive acts or practices by any person in the conduct of any trade or commerce. JUUL is a "person" as defined by G.L. c. 93A, § 1, which includes "natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity." JUUL is engaged in "trade" or "commerce" as defined by G.L. c. 93A, § 1, which includes "the advertising, the offering for sale...of any services and any property...directly or indirectly affecting the people of this commonwealth."

242. JUUL has willfully, knowingly, and repeatedly violated the Consumer Protection Act, G.L. c. 93A by engaging in the following practices:

- a. Marketing e-cigarette products to underage consumers in Massachusetts, including, but not limited to the following instances:
 - i. JUUL's 2015 Vaporized Campaign featuring young models in playful and suggestive poses;
 - ii. Placement of paid advertisements on websites that are designed for and frequently visited by underage consumers;
 - iii. Targeting paid advertisements at underage consumers;
 - iv. Engaging on social media platforms frequently used by underage consumers to promote e-cigarettes through advertising content that is particularly appealing to underage consumers, including the Vaporized Campaign models and e-cigarette flavors; and
 - v. Targeting influencers who are appealing to underage consumers to create brand awareness among underage consumers.

- b. Making false or misleading claims to consumers or failing to disclose material facts to consumers, regarding the nicotine concentration of JUUL's e-cigarette products, including, but not limited to the following:
 - i. Misrepresenting the nicotine concentration of JUUL e-cigarette products when the standard industry practice for disclosing nicotine concentration would have resulted in disclosure of a higher nicotine concentration by volume; and
 - ii. Failing to disclose the fact that JUUL e-cigarette products contain nicotine.

- c. Marketing and selling e-cigarette products that are particularly attractive to consumers who cannot lawfully purchase such products, including but not limited to the following products:
 - i. E-cigarettes that are shaped like USB drives and are small, concealable, and customizable; and
 - ii. Flavored pods containing a high concentration of nicotine;
- d. Selling e-cigarette products to Massachusetts consumers under the Minimum Legal Sales Age by, among other things, failing to verify the age of online purchaser, permitting deliveries to go to addresses other than that of the “age-verified” purchaser, and failing to require signature by an adult upon receipt;
- e. Contributing to the pervasive underage use of JUUL’s e-cigarette products, which causes young people to suffer significant harm, including addiction and negative health effects associated with the use of nicotine; and
- f. Causing other harm to communities, the Commonwealth, and the public health.

COUNT TWO

**Violation of G.L. c. 93A and 940 C.M.R. 21.00 *et seq.*
Selling and Shipping E-cigarette products Without Age Verification**

The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

243. Pursuant to her authority under G.L. c. 93A, § 2(c), the Attorney General has promulgated regulations defining specific unfair or deceptive acts and practices relating to

manufacturers and retailers of cigarettes, smokeless tobacco products, and electronic smoking devices. See 940 C.M.R. 21.00 *et. seq.*

244. The explicit purpose of 940 C.M.R. 21.00 is to eliminate deception and unfairness in the way cigarettes, smokeless tobacco products, and electronic smoking devices are marketed, sold, and distributed in Massachusetts in order to minimize cigarette smoking, and the use of smokeless tobacco and electronic smoking devices, by young people.

245. Through 940 CMR 21.00, the Attorney General imposes specific requirements and restrictions on the sale and distribution of cigarettes, smokeless tobacco products, and electronic smoking devices in Massachusetts in order to prevent access to such products by underage consumers and accidental injury to children as a result of ingestion of or contact with liquid nicotine.

246. 940 CMR 21.00 applies to any person who manufactures, packages, imports for sale, distributes, or sells within Massachusetts cigarettes, smokeless tobacco products, or electronic smoking devices as defined in 940 CMR 21.00.

247. “Retailer” is defined as “any person who sells cigarettes, smokeless tobacco products, or electronic smoking devices to individuals in Massachusetts for personal consumption, or who operates a facility located within Massachusetts where vending machines are located.” 940 C.M.R. 21.01.

248. “Electronic Smoking Device” is defined as “any product that can deliver nicotine to the user through inhalation of vapor. Electronic Smoking Device includes any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately, and does not include any product that has been approved

by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.” 940 C.M.R. 21.01.

249. Beginning on June 1, 2015, JUUL sold products that deliver nicotine to users through inhaled vapor, as well as pods containing liquids for use in such devices, to individuals in Massachusetts for personal consumption through its websites, including www.juulvapor.com and www.juul.com.

250. JUUL is a “retailer” that sells “electronic smoking devices,” as defined by 940 C.M.R. 21.01.

251. 940 C.M.R. 21.04(4)(a) states that for mail-order and internet sales that are subject to age verification, such as the sale of e-cigarette products on JUUL’s website(s), the age verification “shall consist of, at a minimum: 1. verification that the purchaser is of the Minimum Legal Sales Age through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification; and 2. use of a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released.”

252. The Massachusetts Minimum Legal Sales Age to buy e-cigarette products is 21 as of December 31, 2018, exempting anyone who turned 18 years of age by December 31, 2018 and could already legally purchase tobacco products. 2018 Mass. Acts, c. 157.

253. Between September 25, 2015 and December 31, 2018, the Minimum Legal Sales Age in Massachusetts to buy e-cigarette products was 18 years of age, except in municipalities requiring purchasers to be at least 21 years of age. G.L. c. 270, § 6.

254. JUUL has knowingly, repeatedly, and systematically violated the Consumer Protection Act, G. L. c. 93A, and 940 C.M.R. 21.04(4)(a) by:

- a. Failing to verify that the recipients of e-cigarette products in thousands of transactions through its website(s) are of the Minimum Legal Sales Age through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification; and
- b. Failing to use a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released.

COUNT THREE

Public Nuisance

255. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

256. The common law tort of public nuisance is the unreasonable interference with a right common to the general public, such as interference with public health, public safety, public peace, and public comfort or convenience.

257. The Massachusetts Attorney General is empowered to bring a *parens patriae* action on behalf of the Commonwealth for abatement of a public nuisance.

258. JUUL's conduct as described in this Complaint contributes to and/or is the predominant cause of the continuing public nuisance of youth nicotine use and addiction that significantly interferes with the public health, safety, peace, comfort, and convenience.

259. Specifically, JUUL engaged in deceptive and unfair marketing and sale of its e-cigarette products to youth, contributing directly to the epidemic of youth nicotine use and addiction, which has resulted in substantial public injuries.

260. The injuries that JUUL is causing in Massachusetts are significant and long-lasting, both for the Commonwealth and the public, including: a) youth nicotine addiction resulting from the use of e-cigarette products containing nicotine; b) health care costs for prevention, treatment, and recovery to youth, families, schools, the Commonwealth, and its subdivisions; c) public education costs borne by schools, communities, the Commonwealth, and its subdivisions; and d) special public costs borne solely by the Commonwealth in its efforts to abate the nuisance and to support the public health, safety, and welfare.

261. The Commonwealth must pay the public costs associated with youth nicotine use and addiction, including treatment, prevention, intervention, and recovery initiatives to abate the harms of nicotine addiction in youth.

262. The Commonwealth has a special relationship with, and responsibility to, its residents, including its responsibility to uphold the public health, safety, and welfare.

263. JUUL, at all times, had reason to know of the public nuisance created by its ongoing conduct.

264. JUUL's unfair and deceptive conduct was, at a minimum, negligent and reckless with regard to the known risks of nicotine to underage consumers; JUUL's targeting of underage consumers with advertising on websites and on social media platforms frequently monitored and used by underage consumers; the appeal of JUUL's e-cigarette products to underage consumers, especially its flavored products; JUUL's deceptive and misleading advertising; JUUL's sale of e-cigarette products to Massachusetts consumers without proper age verification; and JUUL's sale of e-cigarette products to Massachusetts consumers under the Minimum Legal Sales Age.

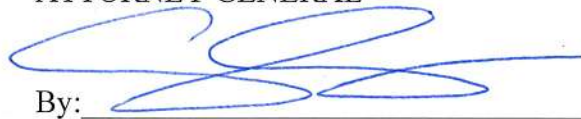
VI. PRAYER FOR RELIEF

WHEREFORE, pursuant to G.L. c. 93A, § 4, the Commonwealth requests that this Court enter judgment in its favor and grant the following relief after trial on the merits:

- 265. Award restitution to consumers injured by JUUL's unfair or deceptive acts or practices;
- 266. Award civil penalties of \$5,000 for each violation of G.L. c. 93A;
- 267. Award attorneys' fees, costs and other relief available under G.L. c. 93A;
- 268. Enter injunctive relief preventing JUUL from continuing to engage in the unfair and deceptive practices set forth herein;
- 269. Award reimbursement to the Commonwealth for expenses incurred abating the nuisance of youth nicotine addiction; and
- 270. Grant such other relief as permitted by law and as the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
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