

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION**

Matthew Divello,
Plaintiff,

v.

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

Civ. Action No.
2:19-cv-16915

**FIRST AMENDED
COMPLAINT AND
DEMAND FOR JURY
TRIAL**

Plaintiff Matthew Divello, by and through his attorneys, The Lanier Law Firm, PLLC, alleges that:

I. INTRODUCTION

1. This is a products liability action alleging personal injuries arising from Defendants' design, manufacturing, marketing, and distribution of JUUL e-cigarettes and JUUL pods ("JUUL e-cigarettes"), which contain three times more nicotine than is necessary to satisfy the nicotine cravings of an adult smoker and deliver these extreme doses of nicotine in an aerosolized vapor that is intentionally designed to taste like candy.

2. Though purportedly designed for adult smokers, Defendants' marketing of JUUL e-cigarettes, much of which occurred on youth-heavy social media platforms, used imagery that appealed to under-aged consumers, such as Matthew Divello. JUUL use ("JUULing") has become wildly pervasive in middle schools and high schools throughout the United States.

3. Matthew Divello, an 18-year-old, set to begin college this coming fall, first tried JUUL e-cigarettes in approximately February 2017 as a high school junior and a minor child of

16 years of age. Matthew quickly grew intensely addicted to nicotine. Despite measures taken by Matthew's mother to get him to quit JUULing, Matthew continued to JUUL. Matthew cannot stop JUULing, despite wanting to quit. Matthew experiences withdrawal symptoms when he does not JUUL, including bad headaches. Matthew is battling addiction to nicotine, which has altered his brain physically and chemically, and has put him at risk for a lifetime of life-long health problems¹, to say nothing of the economic costs of nicotine addiction.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 based on diversity of citizenship of the parties and the amount in controversy exceeding \$75,000.

5. This Court has personal jurisdiction over Defendants based on Defendants' marketing and distribution of JUUL e-cigarettes throughout the State of New Jersey.

6. Venue is proper in the United States District Court, District of New Jersey pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to the claim occurred in this district.

III. THE PARTIES

7. Plaintiff Matthew Divello is domiciled in Medford, New Jersey.

8. Defendant PAX Labs, Inc. ("PAX") is a Delaware corporation, having its principal place of business in San Francisco, California.

9. Defendant JUUL Labs, Inc. ("JUUL") is a Delaware corporation, having its principal place of business in San Francisco, California. JUUL was originally a part of PAX but was spun out as a separate company in 2017. A substantial portion of the conduct cited here

¹L.J. England, et al., *Developmental Toxicity of Nicotine: A Transdisciplinary Synthesis and Implications for Emergin Tobacco Products*, 72 NEUROSCI. BEHAV. REV. 176-189 (2017).

occurred while JUUL was a part of PAX.

IV. **ALLEGATIONS OF FACT**

10. The JUUL e-cigarette is a two-piece system that, combined, is about the size and shape of a USB thumb drive. It consists of a rectangular enclosure containing a rechargeable battery and heating element (the “JUUL device”), and a pre-filled pod of JUUL’s patented nicotine solution (the “JUULpod”), which slides into the end of the JUUL device.² The JUUL e-cigarette is a proprietary system that is incompatible with other e-cigarette components or liquids.

11. When a sensor in the JUUL e-cigarette detects the movement of air caused by suction on the JUUL pod, the battery in the JUUL device activates the heating element, which in turn converts the nicotine solution in the JUUL pod into a vapor consisting principally of nicotine, glycerine, and propylene glycol³ that is inhaled into the lungs.

12. A light embedded in the JUUL device serves as a battery level indicator. The light embedded in the JUUL device gratuitously lights up in a display of rainbow of colors when the JUUL device is waved around.

13. At the time Matthew Divello began using the JUUL products, there were no warnings about the existence of nicotine or the risks of nicotine addiction anywhere on the JUUL products or JUUL packaging. Specifically:

- a. There were no nicotine warnings on the JUUL device;
- b. There were no nicotine warnings on the JUULpods;

²*Cool-Looking and Sweet JUUL Is a Vice Teens Can’t Resist*, N.Y. Times, <https://www.nytimes.com/2018/02/16/nyregion/juul-teenagers-vaping-ecigarettes-dangers.html> (last visited August 19, 2019).

³A. Bhatnagar, *E-Cigarettes and Cardiovascular Disease Risk: Evaluation of Evidence, Policy Implications, and Recommendations*, 10:24 CURR. CARDIOVASC. RISK REP. (2016).

- c. There were no nicotine warnings on the JUUL device packaging; and
- d. There were no nicotine warnings on the JUULpod packaging.

A. DEFENDANTS DESIGNED A PRODUCT THAT POSES UNPRECEDENTED RISKS OF NICOTINE ADDICTION, AND MANUFACTURED AN EVEN MORE ADDICTIVE PRODUCT THAN THE ONE THEY DESIGNED

14. What distinguishes the JUUL e-cigarette from competing e-cigarettes is Defendants' patented nicotine formulation, which is used in every JUULpod.

15. JUUL's nicotine formulation is directly derived from decades of research by cigarette companies seeking to create and foster addiction.

16. JUUL's formulation uses a combination of nicotine salts and benzoic acid—an organic acid—to deliver a palatable dose of nicotine with stronger narcotic effects than a cigarette.

17. The role of organic acids in JUUL's formulation is best explained by a 1973 tobacco company memorandum titled Cigarette Concept to Assure RJR a Larger Segment of the Youth Market, which provided that the use of organic acids to alter the pH of an inhaled nicotine product gives the product an “additional nicotine ‘kick’” that youth find appealing—i.e., addictive.⁴ This kick is the result of increased nicotine absorption associated with altered pH levels.⁵

18. The benzoic acid in JUULpods serves to alter the pH of the nicotine salt in the JUULpods and creates an even more potent nicotine kick than cigarettes. In U.S. patent No.

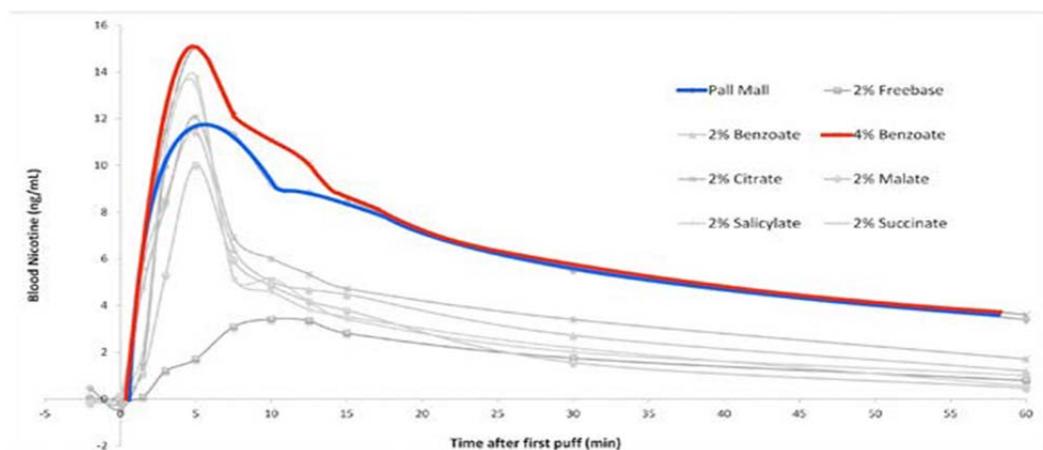
⁴R.J. Reynolds Tobacco Co., “Cigarette concept to assure RJR a larger segment of the youth market” (1973).

⁵N. Benowitz, et al., Nicotine Chemistry, Metabolism, Kinetics and Biomarkers, 192 *Nicotine Psychopharmacology* 22-29, *Handbook of Experimental Pharmacology* (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953858/>.

9,215,895 (“the ‘895 patent”), assigned to “Pax Labs, Inc.” and listing JUUL executive Adam Bowen as an inventor, JUUL details a process for combining benzoic acids with nicotine salts to create an aerosolized nicotine vapor that is more potent than a cigarette.

19. Specifically, the JUULpods’ formula is more potent than a cigarette in three respects: (1) JUUL’s formula causes physiologically perceptible amounts of nicotine to enter the bloodstream faster than a cigarette; (2) JUUL’s formula causes a higher peak nicotine-blood concentration (“cMax”) than a cigarette; and (3) JUUL’s formula delivers more total nicotine into the bloodstream than a cigarette.⁶

20. The following figure from the ‘895 patent shows that a 4% solution of benzoic acid and nicotine salt, which is the formula used in JUULpods, causes a peak nicotine-blood concentration (“Cmax”) of approximately of approximately 15 ng/mL, compared to a Cmax of 11 ng/mL for a Pall Mall cigarette. (To make the figure more readable, JUUL’s 4% nicotine benzoate data is highlighted in red, and the Pall Mall data is highlighted in blue.)



21. As high as the nicotine dose reported for JUULpods is, the actual dose is likely

⁶*Truth Initiative Inspiring Tobacco-Free Lives*, TRUTHINITIATIVE.COM, <https://www.truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul> (last visited August 19, 2019).

far higher. Though the strongest benzoic acid concentration mentioned in the '895 patent is 4% (i.e., 40 mg/mL of benzoic acid), one study tested four flavors of JUULpods and found a 4.5% benzoic acid (44.8 ± 0.6) solution. The study also found that JUULpods contained a concentration of 6.2% nicotine salt (about 60 mg/mL), rather than the 5% nicotine (about 50 mg/mL) advertised. Because even “a small percentage [pH change from an organic acid] can double, triple, or quadruple the amount of free nicotine available,” these deviations from the '895 patent's formula result in massive variations in the amount of nicotine absorbed into the bloodstream.

B. THE JUUL E-CIGARETTES' CANDY-LIKE FLAVORS AND YOUTH-CENTRIC MARKETING EFFORTS, COUPLED WITH DEFENDANTS' SALES PRACTICES, HAVE CREATED A CRISIS

22. Though the JUUL e-cigarette has been on the market for just over four years, a recent study of more than 1,000 12 to 17-year-olds found that 6.5% admitted to using a JUUL e-cigarette.

23. Public health authorities, independent studies, and expert witnesses found credible by courts have found that marketing is a substantial contributing factor to youth tobacco initiation.⁷

24. Ubiquitous advertisements of tobacco products normalize and legitimize youth tobacco use among youth, who are unequipped to grasp the implications of addiction to tobacco. Because youth are particularly susceptible to imagery, tobacco companies have preyed upon young people for decades by creating advertising images that exhibit images portraying independence, adventurousness, sophistication, glamour, social inclusion, sexual attractiveness,

⁷J.F. Pankow, et al., *Benzene Formation in Electronic Cigarettes*, 12(3) PLOS One e0173055 (2017), available at <https://doi.org/10.1371/journal.pone.0173055>.

thinness, popularity, rebelliousness, and being “cool.”⁸

25. Defendants’ release of the JUUL e-cigarette in June 2015 was accompanied by a multimillion dollar “Vaporized” marketing campaign. The campaign included a massive 12-screen billboard advertisement over New York’s Times Square, and a full spread in Vice magazine, which promotes itself to advertisers, like JUUL, as the “#1 youth media in the world.”⁹ A few images from that campaign are reproduced below.



26. To the extent that any nicotine or addiction warnings accompanied the Vaporized advertisements, they were relegated to fine print against low-contrast backgrounds.

27. Images from the Vaporized campaign and similar images were broadly and repeatedly disseminated through Defendants’ unusually active social media accounts on platforms frequented by the overwhelming majority of youth in the United States, such as

⁸*United States v. Philip Morris*, Case No. 99-cv-02496, 972-1209 (D.D.C. Aug. 17, 2006).

⁹VICE Digital Media Kit, VICE.COM, <https://uploadassets.vice.com/files/2016/01/15/1452894236compressed.pdf> (last visited August 19, 2019).

Instagram and Twitter.

28. On information and belief, JUUL maintains active accounts on most social media platforms, including Instagram, Facebook, and Twitter, where JUUL tweeted nearly 5,000 times in 2017 alone.

29. As of 2016, 76 percent of American teens age 13-17 used Instagram, 66 percent of teens used Facebook, and 44 percent of teens used Twitter.¹⁰

30. A recent study explored the growth of JUUL's sales and its presence on social media platforms.¹¹ The study found that JUUL grew nearly 700% in 2017 yet spent "no recorded money" in the first half of 2017 on major advertising channels, and spent only \$20,000 on business-to-business advertising. Despite JUUL's apparently minimal advertising spending in 2017, the study found a significant increase in JUUL-related tweets in 2017.

31. On Instagram, the study found seven JUUL-related accounts, including DoIt4JUUL and JUUL.girls, which accounted for 4,230 total JUUL-related posts and had more than 270,000 followers.

32. In addition to JUUL's explosive growth on individual social media platforms, the study found JUUL products being marketed across social media platforms in an apparently coordinated fashion, including smaller targeted campaigns and affiliate marketing, all of which caused the authors to question whether JUUL was paying for positive reviews and JUUL-related social media content.

¹⁰*Instagram and Snapchat are Most Popular Social Networks for Teens*, APNORC.COM, <http://apnorc.org/projects/Pages/HTML%20Reports/instagram-and-snapchat-are-most-popular-social-networks-for-teens.aspx> (last visited August 19, 2019).

¹¹J. Huang, et al., *Vaping versus JUULing: How the Extraordinary Growth and Marketing of JUUL Transformed the US Retail E-cigarette Market*, TOBACCOCONTROL.BMJ.COM, <http://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382> (May 31, 2018).

33. Though the study could not demonstrate that JUUL paid social media “influencers” or automated twitter accounts to help promote JUUL or its products through social media channels, the authors did cite to a story about a popular YouTube e-cigarette reviewer claiming that JUUL has at least demonstrated a willingness to pay for favorable reviews or other forms of “native” coverage on unrestricted social media platforms.¹²

34. Some Twitter users have reported what appear to be JUUL bots – i.e., software-driven social media accounts that programmatically engage in social media activity to promote some end. Other Twitter users appear to either be bot accounts or native advertisers, in that they have a small number of followers, follow few other users, and post exclusively about JUUL content. An example of this variety of Twitter activity is @HenrytheJUUL.¹³

35. A significant amount of JUUL-related social media activity arises from manufacturers and sellers of JUUL clothing, JUUL “skins” (decorative vinyl wrappers for JUUL devices), and off-brand nicotine pods that are compatible with JUUL devices. These manufacturers sell JUUL products, including regulated nicotine products, directly through social media sites, auction sites like eBay, and sites without adequate age verification controls. Defendants’ apparent failure to protect their intellectual property rights directly benefit them by increasing the amount of exposure JUUL products receive, thereby normalizing the use of JUUL e-cigarettes. The imagery used on JUUL skins demonstrate, at a minimum, that an expansive market exists for youth-oriented JUUL accessories.

36. Defendants’ intent to market to young non-smokers is apparent from JUUL’s

¹² Ali Conti, *This 21-Year-Old is Making Thousands a Month Vaping on YouTube*, VICE.COM, https://www.vice.com/en_us/article/8xvjmk/this-21-year-old-is-making-thousands-a-month-vaping-on-youtube (last visited August 19, 2019).

¹³ Henry the JUUL, available at <https://twitter.com/henrythejuul> (Last updated June 18, 2018).

manufacturing and sale of JUUL pods in a variety of flavors that have no tobacco cigarette analog, including mango, “cool” cucumber, fruit medley, cool mint, and crème brulee. 86 percent of underage JUUL users report that they most recently used a JUULpod in fruit medley, mango, cool mint, or crème brulee.

37. JUUL’s selection of flavors that appeal to teens has a marked effect on e-cigarette adoption by underage “vapers.” A national survey found that 81 percent of youth aged 12 to 17 years old who had ever used e-cigarettes had used a flavored e-cigarette the first time they tried the product, and that 85.3 percent of current youth e-cigarette users had used a flavored e-cigarette in the past month. Moreover, 81.5 percent of current youth e-cigarette users said they used e-cigarettes “because they come in flavors I like.”¹⁴ The use of attractive flavors foreseeably increases the risk of nicotine addiction, as traditional cigarette product designs aimed at reducing the unpleasant characteristics of cigarette smoke (e.g., addition of menthol to mask unpleasant flavors) have previously been shown to contribute to the risk of addiction.¹⁵

38. Another peer-reviewed study concluded that “Young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes as their non-vaping peers, a new study has found.”¹⁶

39. JUUL e-cigarettes have become a “coveted teen status symbol and a growing problem in high schools and middle schools, spreading with a speed that has taken teachers

¹⁴B.K. Ambrose, et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, (October 26, 2015).

¹⁵Surgeon General, et al., *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease* (1964) available at <https://www.ncbi.nlm.nih.gov/books/NBK53018/>.

¹⁶B.A. Primack, et al., 131:4 *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults* 443.e1–.e9 available at [https://www.amjmed.com/article/S0002-9343\(17\)31185-3/fulltext](https://www.amjmed.com/article/S0002-9343(17)31185-3/fulltext) (last visited August 19, 2019)

parents and school administrators by surprise.”¹⁷

40. In a recent New York Times article concerning the pervasiveness of JUUL e-cigarettes among children, a Connecticut high school student was quoted as stating “you go to the bathroom. . . there’s a 50-50 chance that there’s five guys JUULing.” Amos Barshad, *The JUUL Is Too Cool*, N.Y. TIMES, [nytimes.com/2018/04/07/style/the-juul-is-too-cool.html](https://www.nytimes.com/2018/04/07/style/the-juul-is-too-cool.html) (last visited August 19, 2019). In the same article, a Kentucky high school student captured some of the appeal of JUUL e-cigarettes to children, “In my opinion it looks like the coolest thing ever. Almost futuristic ... It’s so small, so easy to hide in the palm of your hand,” he said. “And they’re rechargeable! I’ve lost track of the number of people I have found charging their JUULs in class through their laptops.” *Id.* A high school journalist quoted in the article stated “It’s ironic. This product was made to wean addicts off cigarettes, and in reality it’s attracting teenagers who would never smoke.” *Id.*

41. The notion that JUUL e-cigarettes are or were intended to wean addicts off cigarettes is a farce of JUUL’s creation. Because the JUUL e-cigarette puts more nicotine into the blood than a cigarette, JUUL use is likely to worsen nicotine addictions in smokers.

42. Although framed as a safer alternative to smoking, Defendants’ JUUL e-cigarettes and JUUL pods still pose serious health risks to teenage users. According to a 2016 report of the United States Surgeon General, *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, (“Surgeon General Report”) besides nicotine addiction itself, the nicotine in JUULs and other e-cigarettes negatively influences adolescent brain development,

¹⁷ Anne Marie Chaker, *Schools and Parents Fight a JUUL E-Cigarette Epidemic*, WALL ST. J., <https://www.wsj.com/articles/schools-parents-fight-a-juul-e-cigarette-epidemic-1522677246> (last visited August 19, 2019).

specifically impairing cognitive, attention, and memory processes and increasing the risk of anxiety disorders and depression. Surgeon General Report at 106-107. Moreover, according to the Surgeon General, there is a “potential association [of e-cigarette use] with cardiovascular disease.” *Id.* at 101. Finally, the Surgeon General reported that nicotine use increases the risk the adolescent will use other unlawful drugs, *id.* at 106, and several studies have shown that e-cigarette users are more likely to start smoking.¹⁸

C. MATTHEW DIVELLO’S USE OF JUUL E-CIGARETTES RESULTED IN HIS ADDICTION TO NICOTINE.

43. Matthew Divello is an 18 year-old young adult who, at the time of the filing of this complaint, is set to begin college, this coming fall, at Rowan University in Glassboro, New Jersey, where he plans to major in communications and public speaking.

44. Matthew Divello was active and engaged athletically. He used to fish often and went to the gym to work out three times per week. He was also very socially active. Since becoming dependent on JUUL, Matthew’s activity and social levels have decreased significantly.

45. As a high school junior, Matthew Divello was in an environment in which JUUL e-cigarettes were pervasive. Students were JUULing on the campus, in bathrooms, outside school and even in class. Matthew Divello was offered and asked for JUUL “hits” throughout the day.

46. Matthew Divello visited JUUL.com, which promoted JUUL use and made the use of the product appear safe, enticing, and cool.

47. Matthew Divello took surveys on the JUUL site, JUUL.com, and subsequently received \$30.00 gift cards for taking surveys.

¹⁸NHI National Institute of Drug Abuse, DRUGABUSE.GOV, <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes> (Last updated June 2018).

48. Matthew Divello has lost ten (10)-twelve (12) pounds during the past year.

49. On August 4, 2019, Matthew Divello was hospitalized for three (3) days for a high fever, nausea, and vomiting. He threw up blood. This was the first time he had ever experienced illness of this extreme.

50. Matthew Divello's addiction had an extreme effect on his behavior. Matthew Divello became withdrawn, anxious, highly irritable and prone to angry outbursts. Matthew also experienced a drop in his GPA during his senior year of high school.

51. As a proximate result of Defendants' misconduct, Matthew Divello is addicted to nicotine, putting him at serious risk for life-long health problems including increased risk of heart disease and stroke, changes in brain functionality that lead to increased susceptibility to anxiety, depression and other addictions, decreased functionality of the endocrine system; heightened risk of cancer; and negative effects on fertility.¹⁹ Health risks aside, Matthew Divello

¹⁹S. A. Glantz & D.W. Bareham, *E-Cigarettes: Use, Effects on Smoking, Risks, and Policy Implications*, 39 ANNUAL REVIEW OF PUBLIC HEALTH 215-235 (2018) (explaining that e-cigarettes release aerosol ultrafine particles that are carried into the lungs, triggering inflammatory processes and contributing to cardiovascular disease and acute cardiovascular events); Kaisar, et al., *Offsetting the Impact of Smoking and E-cigarette Vaping on the Cerebrovascular System and Stroke Injury: Is Metformin a Viable Countermeasure*, 13 REDOX BIOLOGY 353-362 (2017) (explaining how e-cigarette smoking can initiate the loss of blood-brain barrier (BBB) integrity and vascular inflammation and act as a promoting factor for the onset of stroke); J.O. Tweed, et al., *The Endocrine Effects of Nicotine and Cigarette Smoke*, 23(7) TRENDS ENDOCRINOL. METAB. 334-342 (2013) (finding that nicotine exposure from cigarette smoking is found to alter hormonal levels and metabolic homeostasis); R. Philibert, et al., *A Quantitative Epigenetic Approach for the Assessment of Cigarette Consumption*, 6 FRONT PSYCHOL. 656 (2015) (finding that e-cigarette use is associated with changes in DNA methylation across the genome); M.C. Fadus, et al., *The Rise of E-cigarettes, Pod Mod Devices, and JUUL Among Youth: Factors Influencing Use, Health Implications, and Downstream Effects*, 201 DRUG AND ALCOHOL DEPENDENCE 85-93 (2019) (finding that adolescent nicotine exposure is associated with an increased risk of mood and attention symptoms); M. Rubinstein, et al., *Adolescent Exposure to Toxic Volatile Organic Chemicals from E-Cigarettes* 141(4) PEDIATRICS (2018) (explaining that e-cigarettes contain toxic volatile organic chemicals (VOCs), some of which are known carcinogens; VOC levels in adolescent e-cig users' urine and saliva samples significantly higher than non-smoking peers); L. Bourke, et al., *E-cigarettes and Urologic Health: A Collaborative Review of Toxicology, Epidemiology, and Potential Risks.*, 71 EUROPEAN UROLOGY 915-923 (2017) (explaining the negative impact of nicotine use on fertility by finding that nicotine use and sperm motility are negatively correlated); See *E-Cigarette Use Among Youth and Young Adults, A Report of the Surgeon General*, U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General, Rockville MD (2016) (discussing the many harms and injuries associated with youth and young adult e-cigarette use).

also faces a lifetime of economic losses needed to sustain a nicotine addiction for the remainder of his life.

V. FIRST CAUSE OF ACTION
Strict Products Liability – New Jersey Products Liability Act - Design Defect

52. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

53. Defendants are liable under a theory of strict products liability as set forth in N.J.S.A. 2A:58C-1 et seq.

54. At all relevant times, JUUL Labs and PAX Labs, designed, engineered, developed, manufactured, assembled, equipped, tested or failed to test, inspected or failed to inspect, labeled, advertised, promoted, marketed supplied, distributed, wholesaled and/or sold the JUUL Devices and Pods (“JUUL Products”) that Matthew Divello consumed and which were intended by Defendants to be used as a method of ingesting nicotine and the other aerosolized components of JUUL’S nicotine solution.

55. JUUL Products were defective in design in that these products did not perform as safely as an ordinary consumer would have expected them to perform when used in an intended or reasonably foreseeable way.

56. Defendants had constructive notice and knowledge, and knew, or in the exercise of reasonable care should have known, that their JUUL Products under ordinary use were harmful or injurious, particularly to youths and those under the age of 26, including Matthew Divello. Defendants knew, or should have known, the risks inherent to minors ingesting nicotine, particularly severe lifelong nicotine addiction and decreased brain development. These are serious injuries in that they affect not only the short-term quality, but the remainder of the young

person's life.

57. The JUUL Defendants claim they designed JUUL for use by adult smokers. However, Defendants designed and marketed their products to appeal to nonsmokers, youths, and those under the age of 26 and to encourage them to buy and use the product. Defendants defectively designed JUUL in a number of ways.

58. JUUL Products are inherently defective because these products contain and deliver significantly more nicotine than JUUL represents and significantly more nicotine than traditional cigarettes. Moreover, JUUL is unreasonably dangerous and therefore defective in design because it is made to create and sustain addiction. JUUL designed the product to contain more nicotine than necessary to satisfy a cigarette smoker's nicotine craving with the intention of creating addiction. JUUL's nicotine salts enhance the risk and severity of addiction; it supplies nicotine at high levels without any of the intake harshness associated with other nicotine products. Furthermore, JUUL is defectively designed in that it uses flavors that appeal to minors and enhances minors' ability to intake dangerous amounts of nicotine. The risk inherent in the design of JUUL outweighs, significantly, any benefits of such design.

59. In addition, JUUL products are inherently defective in that the products are created to be easy to hide, a design that is enticing to minors. Lifelong smokers are accustomed to the open, notorious, and inconvenient act of smoking cigarettes – the smell and taste of cigarettes as well as the need to step outside and smoke. These are traditional properties of smoking a cigarette that smokers often appreciate and enjoy. A smoke has been valued for years by smokers. A device that is easy to hide, tastes good, and does not smell is not necessary to draw in lifelong smokers as customers, but it is entirely necessary to draw in first time smokers and minors. The physical appearance of JUUL makes it easy for minors to hide at school or at home

by concealing JUUL in their clothing, backpacks, markers or even in their hand, or by passing it off as a USB drive or similar device, a feature that would not be necessary or appealing to a lifelong smoker. However, this design is certainly convenient to a minor. JUUL also is designed in such a way as to look completely harmless. JUUL resembles a USB drive and tastes like candy. In this technology-drive age, JUUL is attractive to non-smokers of every age.

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

61. At all times relevant, Defendants could have employed reasonably feasible alternative designs to prevent the harms discussed in this complaint. Defendants could have created their products to not specifically appeal to minors and could have created products to appeal to active adult smokers. Defendants also could have significantly lowered the nicotine content while still satisfying an adult smoker's nicotine cravings, therefore maintaining the same need JUUL Products claim to meet. Defendants could have designed JUUL Products without flavors that appeal to minors.

62. At all times relevant, Matthew Divello was unaware of the design defects described in this Complaint. Further, Defendants knew or had reason to know that youths and those under the age of 26 would not fully realize the dangerous and addictive nature of the JUUL products and the long-term complications nicotine addiction can present, or that, due to their youth, inexperience and/or immaturity of judgment, youth, like Matthew Divello, would recklessly disregard such risks.

63. As a result of JUUL's conduct, Matthew Divello was harmed by Defendants'

defectively designed JUUL e-cigarette as described herein. Such harm includes significant exposure to toxic substances, which may cause or contribute to causing disease; seizures, mood disorders and severe nicotine addiction. Matthew Divello's exposure to such a high content of nicotine has also affected his brain development at a crucial age, an injury that cannot be undone; and economic harm in that he would have not purchased JUUL. Notably, addiction is a permanent injury that Matthew Divello will now struggle with for the rest of his life.

64. These defects were substantial factors in Plaintiff becoming addicted to nicotine and being at risk for the severe health problems set forth in Paragraphs 48-51, above.

65. Based on Defendants' misconduct, Matthew Divello demands compensatory and punitive damages as set forth below.

VI. SECOND CAUSE OF ACTION
Strict Products Liability - Defective Manufacturing

66. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

67. Defendants are under a theory of strict products liability as set forth in N.J.S.A. 2A:58C-2 et-seq.

68. According to JUUL's labels, JUULpods are supposed to contain 60 mg/mL of nicotine.

69. According to JUUL's '895 patent, JUULpods are intended to contain 4% benzoic acid by weight.

70. The JUULpods manufactured by Defendants contained more than 60mg/mL nicotine.

71. The JUULpods manufactured by Defendants contained more than 4% benzoic

acid.

72. As a result of these manufacturing defects, the already extreme risk of addiction posed by JUUL e-cigarettes was heightened to an extent that increased the already extreme addiction risks the JUUL e-cigarettes posed.

73. These defects were a substantial factor in Matthew Divello's nicotine addiction and injuries.

VII. THIRD CAUSE OF ACTION
Strict Products Liability - Defective Design Failure to Warn

74. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

75. Defendants are liable under a theory of strict products liability as set forth in N.J.S.A. 2A:58C-1 et seq.

76. At all times relevant, Defendants were well-aware that JUUL is a dangerous product that contains highly addictive levels of nicotine and exposes users to severe nicotine addiction and other serious medical conditions. Further, the JUUL Products, that Matthew Divello consumed had other potential risks that were known or were knowable in light of the scientific and medical knowledge that was generally accepted in the scientific community well before and at the time of manufacture, market, distribution, and sale. Despite having that knowledge, Defendants failed to adequately warn Matthew Divello of the dangerous, addictive nature of JUUL Products as well as the multitude of health risks these products posed.

77. At all times relevant, Defendants were well-aware that JUUL poses potential risks and that JUUL Products presented a substantial danger when the JUUL Products were used or misused in an intended or reasonably foreseeable way.

78. At all times relevant, Defendants were well-aware that the ordinary consumer of JUUL Products would not have recognized the potential risks associated with use of the JUUL Products.

79. JUUL Products were defective and unreasonably dangerous when they left JUUL's possession because the products did not contain adequate warnings, including warnings that the products are not safe for anyone under 26 years old, may cause strokes, heart attacks and other cardiovascular injuries, are powerfully addictive, may cause permanent brain changes and mood disorders, may impair learning and cognition. Instead, as described herein, Defendants made their products available in youth-friendly colors and flavors. Defendants also designed their products to be more palatable to youth and non-smokers by increasing JUUL's inhale-ability and increased the level of nicotine that is absorbed by users, making the JUUL Products even more addictive and dangerous.

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

81. Defendants had constructive notice or knowledge and knew, or in the exercise of reasonable care should have known, that their JUUL Products were dangerous, had risks, and were defective without adequate warnings or instructions, including because delivering high doses of nicotine to a young person could cause addiction to nicotine, permanently alter the structure of the developing brain, and cause psychological disorders resulting in catastrophic, life-altering injuries.

82. Instead, as described herein, Defendants marketed their products to young people

and made these products available in youth-friendly colors and flavors. Defendants also designed their products to be more palatable to youth and nonsmokers by increasing JUUL's inhale-ability, incorporating appealing flavors, and increasing the level of nicotine that is absorbed by users, making them even more addictive and dangerous.

83. The defects in JUUL products, including the lack of warnings, existed at the time of the JUUL prods and devices were sold and/or when the JUUL pods and devices left JUUL's possession or control.

84. As a result of JUUL's failures to adequately warn and/or instruct, Matthew Divello was harmed as described herein in Paragraphs 48-51.

85. Moreover, many JUUL users such as Matthew Divello were offered hits of JUUL when the e-cigarettes were already opened and separated from the packaging and therefore the packaging was never seen by Matthew Divello. Matthew Divello did not visit the JUUL website until he had already become addicted to nicotine.

86. The lack of sufficient instructions and warnings was a substantial factor in causing Matthew Divello's health problems, as set forth in Paragraphs 48-51.

87. Based on Defendants' misconduct, Matthew Divello demands compensatory and punitive damages as set forth below.

VIII. FOURTH CAUSE OF ACTION
Negligent Products Liability – Design Defect

88. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

89. At all times relevant, Defendants designed, engineered, developed, manufactured, assembled, equipped, tested or failed to test, inspected or failed to inspect,

labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the JUUL devices and JUUL pods, which were intended by Defendant to be used as a method of ingesting nicotine and the other aerosolized components of JUUL's nicotine solution.

90. Defendants owed a duty to youths and those under the age of 26, who were reasonably foreseeable users of Defendant's JUUL Products, to design, develop, formulate, test, and manufacture a product reasonably free of defects.

91. At the time Defendants manufactured, distributed and sold JUUL devices and JUUL pods, Defendants were aware that the JUUL devices, when used in conjunction with JUUL pods, had risks that were known and knowable in light of scientific and medical knowledge that was generally accepted in the scientific community at the time of design, manufacture, distribution, and sale of the products, including that the JUUL devices and pods were particularly harmful to youths and those under the age of 26. Defendants had a duty to refrain from designing its products in a way that would appeal to youths and those under the age of 26 due to their increased vulnerability to nicotine addiction.

92. Defendants were negligent in that they knew or, by the exercise of reasonable care, should have known that JUUL's products under ordinary use were harmful or injurious to minors and those under the age of 26, including Matthew Divello, but failed to use reasonable care to design JUUL Products in a way to prevent minors and those under the age of 26 from buying and using them.

93. Instead, as described herein, Defendants negligently designed their products in ways that appeals to minors and those under the age of 26 and encourages this age group to buy and use the products, such as by designing fruit and candy flavored JUUL pods, reducing throat hit, and designing youthful and trendy packaging.

94. Defendants could have utilized cost effective, reasonably feasible alternative designs to prevent these harms, such as designing products without fruit and candy flavors, without reduction of the “throat hit,” and by designing less youthful and trendy packaging.

95. As described herein, Defendants were also negligent in that they knew or, by the exercise of reasonable care, should have known that its products contain and deliver significantly more nicotine than Defendants represents. As described herein, JUUL pods actually contain 6.3% nicotine salt rather than 5% nicotine as advertised, JUUL delivers up to 52-72% more nicotine per puff than a traditional cigarette, and the nicotine content of JUUL pods is closer to 24 cigarettes, or 20% more than one pack. These defects cause, maintain, or aggravate nicotine addiction and subject consumers, exposing consumers, including Matthew Divello, to harms caused by increased exposure to nicotine, which is particularly injurious to minors and those under the age of 26.

96. Defendants could have utilized cost effective, reasonably feasible alternative designs to prevent these harms, such as by designing products that delivered less nicotine per puff or used less potent and addictive forms of nicotine.

97. The risks inherent in the design of the JUUL device and JUUL pods significantly outweighs any benefits of such design.

98. Matthew Divello was not aware of the aforementioned defects at any time prior to recent revelations regarding problems with JUUL products and devices. Further, JUUL knew or had reason to know that youths and those under the age of 26 would not fully realize the dangerous and addictive nature of the JUUL Products and the long-term complications nicotine addiction can present, or that, due to their youth, inexperience and/or immaturity of judgment, would recklessly disregard such risks.

99. Matthew Divello suffered harm as a result of Defendants conduct, as detailed in Paragraphs 48-51.

100. As an direct and proximate result of the aforementioned defects of the Defendants' products, Matthew Divello sustained injuries and damages set forth herein while using the subject JUUL devices and JUULpods in a reasonably foreseeable manner.

IX. FIFTH CAUSE OF ACTION
Negligent Products Liability – Failure to Warn

101. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

102. At all times relevant, Defendants owed a duty to all persons, including youths and those under the age of 26, who were reasonably foreseeable users of Defendants' products, to design, develop, formulate, test, and manufacture a product reasonably free of defect. JUUL had a duty to disclose to consumers, including youths and those under the age of 26, the foreseeable risks associated with the use of JUUL devices and pods, including that the JUUL devices and pods were particularly unsafe for youths and those under the age of 26 due to their increased vulnerability to nicotine addiction.

103. At the time Defendants manufactured, distributed and sold JUUL devices and JUULpods, Defendants were aware that the JUUL devices, when used in conjunction with JUULpods, had risks that were known and knowable in light of scientific and medical knowledge that was generally accepted in the scientific community at the time of design, manufacture, distribution, and sale of the products, including that the JUUL devices and pods were particularly harmful to youths and those under the age of 26.

104. Defendants were negligent in that they knew or, by the exercise of reasonable

care, should have known that their products under ordinary use were harmful or injurious to non-smokers, minors and those under the age of 26, including Matthew Divello, but failed to use reasonable care to warn Matthew Divello of the potentially harmful and injurious effects in the manner that a reasonable person would under the same or similar circumstances.

105. The users of JUUL devices and JUUL pods presented a substantial danger of causing persons, particularly youths and those under the age of 26, the harms of nicotine exposure and addiction as described herein when a JUUL device was used or misused with a JUUL pod in an intended or reasonably foreseeable way by youths and those under the age of 26. Matthew Divello was not aware and would not have recognized the risks of using a JUUL device with a JUUL pod because Defendants intentionally downplayed, misrepresented, concealed, and failed to warn of the heightened risks of nicotine exposure and addiction that the JUUL device and JUUL pods pose, particularly to youths and those under the age of 26. Due to Defendants' conduct, Matthew Divello was unable to appreciate the potential dangers, risks, and consequences of using a JUUL device with a JUUL pod; Matthew Divello and other young people were especially unable to so appreciate these risks because of their youth, inexperience, and/or immaturity of judgment.

106. Defendants failed to exercise reasonable care and give adequate warnings or instructions to consumers, particularly youths and those under the age of 26, including Matthew Divello, about the reasonably foreseeable dangers that could result from using JUUL's devices and pods under reasonably foreseeable conditions. Defendants knew or had reason to know that youths and those under the age of 26 would not fully realize the dangerous and addictive nature of the JUUL products and the long-term complications nicotine addiction can present, or that, due to their youth, inexperience and/or immaturity of judgment, would recklessly disregard such

risks.

107. In all forms of advertising as well as social media communications, Defendants failed to adequately warn or instruct foreseeable users, particularly youth and adolescent users, that JUUL Products were unreasonably dangerous to them and created a high level of risk of harms caused by nicotine exposure and addiction as explained herein. Defendants failed to adequately warn in its advertising, social media communications, or anywhere on the product label that the product was not safe for minors and should not be used or consumed by them. Instead, as described herein, Defendants marketed its products to minors and made them available in youth-friendly colors and flavors on youth-heavy social media platforms.

108. As described herein, JUUL products are also inherently defective and fail to conform to Defendant's affirmations of fact about JUUL pods' nicotine content, the pharmacokinetics of JUUL use, and JUUL pods' cigarette equivalence. JUUL products contain and deliver significantly more nicotine than JUUL represents. As described herein, JUUL pods actually contain 6.3% nicotine salt rather than 5% nicotine as advertised, JUUL delivers up to 52-72% more nicotine per puff than a traditional cigarette, and the nicotine content of JUUL pods is closer to 24 cigarettes, or 20% more than one pack. These defects cause, maintain, or aggravate nicotine addiction and subject consumers, including Matthew Divello, to harms caused by increased exposure to nicotine.

109. By selling JUUL Products containing defects to consumers like Matthew Divello, and when Defendants already knew of the unreasonable dangers and defects through internal testing and published reports, Defendants failed to change the formulation of JUUL Products and breached its duty to warn consumers, including Matthew Divello, that the JUUL Products were inconsistent with its affirmations of fact.

110. Matthew Divello relied on JUUL's representations and advertising.

111. Matthew Divello was harmed by Defendants' failure to warn. Defendants' lack of sufficient instructions or warnings were a substantial factor in causing harm to Matthew Divello.

112. Matthew Divello was injured as a direct and proximate result of Defendants' breach because: (a) he would not have purchased JUUL products if he had known the true facts; (b) he purchased JUUL products that did not have the characteristics, qualities, or value affirmed and promised by Defendants; and (c) he become addicted to nicotine and may need to undertake nicotine cessation treatments.

X. SIXTH CAUSE OF ACTION
Negligent and/or Gross Negligence

113. Plaintiff alleges and incorporates by reference the allegations contained in the preceding paragraphs.

114. Defendants had a duty and owed a duty to Matthew Divello to exercise a degree of reasonable care including, but not limited to: ensuring that JUUL marketing does not target minors; ensuring that JUUL devices and JUULpods are not sold and/or distributed to minors and are not designed in a manner that makes them unduly attractive to minors; designing a product that is not defective and unreasonably dangerous; designing a product that will not addict youth or other users to nicotine; adequately warning of any reasonably foreseeable adverse events with respect to using the product.

115. Defendants' products were the type of products that could endanger others if negligently made, promoted, or distributed. Defendants knew the risk that young people would be attracted to their electronic cigarette devices and JUULpods and knew or should have known

the importance of ensuring that the products were not sold and/or distributed to anyone under 26, but especially not to minors.

116. Defendants knew the risks that minors would be attracted to their electronic cigarette devices and JUULpods and knew or should have known the importance of ensuring that the products were not sold and/or distributed to minors.

117. Defendants knew or should have known that their marketing, distribution, and sales practices did not adequately safeguard Matthew Divello from the sale and/or distribution of electronic cigarette devices and JUULpods and, in fact, induced minors to purchase JUUL products.

118. The negligence and extreme carelessness of Defendants includes but is not limited to the following:

- a) Failure to perform adequate testing of the JUUL Products prior to marketing to ensure safety, including long-term testing of the product, and testing for injury to the brain and cardiovascular systems, and other related medical conditions;
- b) Failure to take reasonable care in the design of JUUL's products;
- c) Failure to use reasonable care in the production of JUUL's Products;
- d) Failure to use reasonable care in the manufacture of JUUL's Products;
- e) Failure to use reasonable care in the assembly of JUUL's Products;
- f) Failure to use reasonable care in supplying JUUL's Products;
- g) Failure to use reasonable care in distributing JUUL's Products;
- h) Failure to use reasonable care in advertising, promoting, and marketing JUUL's Products;

- i) Promotion of JUUL to young people under the age of 26, and especially to minors;
- j) Use of flavors and design to appeal to young people under the age of 26, and especially minors, in that the products smell good, look cool, and are easy to conceal from parents and teachers;
- k) Use of design that maximizes nicotine delivery while minimizing 'harshness', thereby easily creating and sustaining addiction;
- l) Failure to prevent JUUL from being sold to young people under the age of 26, particularly to minors;
- m) Failure to prevent JUUL use among people under the age of 26, particularly for minors;
- n) Failure to curb JUUL use among young people under the of 26, particularly minors;
- o) Failure to develop tools or support to help people addicted to JUUL cease using the product, including manufacturing lesser amounts of nicotine;
- p) Failure to reasonably and properly test and properly analyze the testing of JUUL's Products under reasonably foreseeable circumstances;
- q) Failure to warn its customers about the dangers associated with use of JUUL's Products under reasonably foreseeable circumstances;
- r) Failure to warn customers about the dangers associated with use of JUUL's Products, in that it was unsafe for anyone under the age of 26, significantly increases blood pressure, carriers risks of stroke, seizures, heart attacks, and cardiovascular events, is powerfully addictive, can cause permanent brain

changes, mood disorders, and impairment of thinking and cognition;

s) Failure to instruct customers not to use the product if they were under 26, particularly minors, and failing to provide any instruction regarding a safe amount of JUULpods to consume in a day;

t) Failure to ensure that JUUL's Products would not be used by persons like Matthew Divello who were not smokers and who were under the age of 26, particularly minors;

u) Failure to warn customers that JUUL had not adequately tested or researched JUUL Products prior to marketing to ensure safety, including long-term testing of the product, and testing for injury to the brain and cardiovascular systems, and other related medical conditions;

v) Failure to utilize proper materials and components in the design of JUUL's Products to ensure they would not deliver unsafe doses of nicotine;

w) Failure to use due care under the circumstances;

x) Failure to take necessary steps to modify JUUL's Products to avoid delivering high doses of nicotine to young people and repeatedly exposing them to toxic chemicals;

y) Failure to inspect JUUL's Products in order for these products to properly operate and avoid delivering unsafe levels of nicotine to young persons.

119. Defendants breached the duties they owed to Matthew Divello.

120. But for Defendants' duties and breaches thereof, Matthew Divello would not have been harmed as alleged in this Complaint.

121. Matthew Divello was harmed directly and proximately by Defendants'

negligence.

XI. SEVENTH CAUSE OF ACTION
Negligent Misrepresentation

122. Matthew Divello incorporates the above and below allegations by reference.

123. As alleged above, Defendants have misrepresented the nicotine content of JUULpods on its label. And as alleged above, Defendant has also misrepresented the potency and addictiveness of its nicotine salt formulation, the suitability of JUULpods as a “treat” to be enjoyed with meals, the nicotine content of JUULpods, and the use of JUULpods as a cool, fun, healthy activity rather than a means of delivering a highly addictive dose of nicotine.

124. When making these statements, Defendants were aware that these representations were false or made them without knowledge of their truth or veracity.

125. The negligent misrepresentations and omissions made by Defendants, upon which persons like Matthew Divello reasonably and justifiably relied, were intended to induce, and actually induced, Matthew Divello to purchase the products at issue.

126. Matthew Divello would not have purchased the products on the same terms, if he had known the truth of the facts misrepresented by the defendants.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Matthew Divello respectfully requests that this Court grant the following relief:

- A.** Award Plaintiff compensatory damages in an amount to be determined at trial;
- B.** Award Plaintiff punitive damages in an amount to be determined at trial;
- C.** Award Plaintiff attorneys’ fees and the costs of this action; and;
- D.** Such other relief as the Court deems necessary and proper.

XIII. DEMAND FOR TRIAL BY JURY

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
August 22, 2019

Respectfully submitted,

THE LANIER LAW FIRM, PLLC

BY:

/s/Richard D. Meadow
Richard D. Meadow
W. Mark Lanier
Zarah Levin-Fragasso
126 East 56th Street, 6th Floor
(212) 421-2800

Robert Dassow
Hovde Dassow + Deets
10201 N. Illinois Street
Suite 500
Indianapolis, IN 46290
(317) 669-9721

Susan Scovern
Scovern Law
201 Spear Street
Suite 1105
San Francisco, CA 94105

Tor Hoerman
TorHoerman Law, LLC
227 West Monroe Street
Suite 2650
Chicago, IL 60606
(312) 313-2273

Attorneys for Plaintiffs