



April 29, 2019

Kevin Burns  
President and Chief Executive Officer  
Juul Labs, Inc.  
660 Alabama St. Fl. 2  
San Francisco, CA 94110

Dear Mr. Burns:

I write to set forth a claim for unfair and deceptive trade practices against Juul Labs, Inc. (“Juul”) pursuant to the Massachusetts General Laws. c. 93A, §§ 2. 9. I am writing to request relief as outlined in the statute and to request that you enter into negotiations to settle the claim. This claim is asserted by Matthew Murphy, Cade Beauparlant, and Marianne Savage for themselves and on behalf of a class of all persons in Massachusetts who became regular users of Juul e-cigarettes before the age of 18, and the parents and legal guardians of such persons. The proposed class does not include persons who were regular users of conventional cigarettes prior to using Juul’s e-cigarettes.

Matthew Murphy was born in 1999 and resides in Reading, Massachusetts. Mr. Murphy tried his first Juul e-cigarette at the age of 17, thinking that Juul was harmless. Mr. Murphy quickly became hooked. Not long after first trying a Juul e-cigarette, Mr. Murphy was using at least one – if not more – Juul “pods” (nicotine and flavor cartridges needed to operate a Juul e-cigarette) per day, with each pod delivering the amount of nicotine roughly equivalent to a pack of cigarettes. Over the next two years, Mr. Murphy remained heavily addicted to nicotine, finding that he became more irritable and aggressive, that he was unable to perform in the sports to which he was once devoted, that his addiction was impacting his academic performance, and that purchasing Juul pods was draining the money he had saved. Mr. Murphy recognized that he was addicted and tried many times to quit, but experienced severe nicotine withdrawal each time and would relapse to using Juul (“Juuling”) again. Although there is no recognized protocol for teenage cessation, Mr. Murphy was finally able to quit on his own in June of 2018.

Cade Beauparlant was born in 2001 and resides in Newburyport, Massachusetts. He was about 16 years old when he began Juuling. For roughly two years, Mr. Beauparlant used about one Juul pod per day. Mr. Beauparlant used many different flavors of pods, including mint, mango, and cucumber. Mr. Beauparlant used his Juul e-cigarette many times daily, taking puffs before he went to sleep and first thing in the morning, and Juuling throughout the day. As a high school student, Mr. Beauparlant would regularly leave class to use his Juul, finding that he could not go for more than a class without taking a puff. Mr. Beauparlant came to recognize that using Juul e-cigarettes was impacting his athletic abilities and his schoolwork, but was unable to stop. Since roughly January 2019, Mr. Beauparlant has tried to

quit Juuling in multiple ways, including by seeking the advice of a physician who specializes in youth addiction, using Nicorette gum, “weaning” himself off Juul, and taking part in counseling sessions. Mr. Beauparlant has succeeded in cutting back on Juuling, but has found it to be extremely difficult to quit and is still using Juul e-cigarettes.

Marianne Savage resides in Bolton, Massachusetts. Ms. Savage brings this suit on behalf of her son, M., who is 16 years old and who began using Juul e-cigarettes in 2018 at about the age of 15. In October 2018, Ms. Savage found a number of used, mint and menthol flavored Juul “pods” in M.’s possession. Around the same time, Ms. Savage observed that M. was experiencing severe behavioral changes attributable to his nicotine addiction. M. became increasingly angry, irritable, aggressive and anxious. Juuling affected M.’s athletic performance, and he also experienced physical symptoms, including coughing, nausea, and vomiting. Although Ms. Savage urged M. to quit, he continued Juuling until he was caught at school. Ms. Savage has sought treatment for her son’s nicotine addiction, but has been unable to find health care providers who can help him quit Juuling.<sup>1</sup>

The experiences of Mr. Murphy, Mr. Beauparlant, and M. are representative of the experiences of the thousands of member of the class who are struggling with their daily use of Juul e-cigarettes. Juul Labs, Inc., as the manufacturer and marketer of Juul e-cigarettes, has committed unfair and deceptive acts and practices in violation of Chapter 93A, and the regulations promulgated thereunder. As more fully set forth below, these violations include, but are not limited to, (1) breach of the implied warranty of merchantability by manufacturing, selling and/or distributing Juul’s e-cigarettes in a defective condition unreasonably dangerous to teenagers and (2) unfairly designing and marketing its e-cigarettes for use by teenagers.

### **I. Breach of Implied Warranty of Merchantability**

Juul’s e-cigarettes breach the implied warranty of merchantability because they are unreasonably dangerous. They are designed to be highly addictive and designed to be particularly attractive to minors. Despite Juul’s claims of creating a product for adult smokers looking to switch from conventional cigarettes, Juul’s e-cigarettes were designed to yield a physiological response and degree of “satisfaction” exceeding those of even traditional cigarettes. The nicotine salt formulation of Juul’s proprietary vapor liquid, JUULsalts™, was intentionally designed, engineered, patented, and adopted by Juul to deliver high concentrations of nicotine while mitigating adverse taste and maintaining palatability. This combination of nicotine concentration and palatability makes Juul’s e-cigarettes particularly attractive and accessible to minors who have never smoked a single cigarette. This defective and dangerous nature of Juul’s e-cigarettes, along with deceptive and misleading marketing and advertising strategies, indicates that Juul intentionally or recklessly designed the product to be used by persons under the age of 18 and to create nicotine dependence among non-smoking minors.

Juul further breached the implied warranty of merchantability because its 5% nicotine-concentration e-cigarettes contain dangerously addictive levels of nicotine and other

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<sup>1</sup> Hoffman, J., [“Addicted to Vaped Nicotine, Teenagers Have No Clear Path to Quitting,”](#) New York Times, Dec. 19, 2018.

substances that potentially alter adolescents' brain chemistry and may have long-term impacts on their health. In spite of the established health consequences of nicotine consumption and addiction, Juul research and design engineers have explicitly acknowledged that health was not a consideration in the products' design. To the contrary, Juul's e-cigarettes were not only designed to deliver very high doses of nicotine with each puff, but each "pod" used to operate a Juul device contains as much nicotine as one or two packs of cigarettes.

940 CMR 3.16 provides that an act or practice is a violation of M.G.L. c. 93A, §2 if "[i]t is oppressive or otherwise unconscionable in any respect." For decades, nicotine has been shown to be harmful for minors, altering brain chemistry and causing addiction. Yet, Juul manufactured its products with extremely high levels of nicotine and optimized its products through engineering for use by teenagers, ignoring evidence of the harmful impact that nicotine has on mental and physical health. In fact, Juul was the first company to successfully sell 5% concentration nicotine products by engineering palatability to such a degree that youth users report using the product to achieve a "buzz."<sup>2</sup>

In addition to the highly addictive nature of Juul's e-cigarettes, there is strong emerging evidence that the nicotine addiction that results from use of Juul products may encourage minors to begin smoking conventional cigarettes, and concern that minors who become addicted to Juul's e-cigarettes may be more likely to use other substances of abuse.<sup>3</sup> Minors such as Mr. Murphy, Mr. Beauparlant, and M. and class members, who first became exposed and addicted to nicotine through Juul's e-cigarettes, therefore face increased health risks including the well-established health consequences of cigarette use.

## **II. Unfair Design and Marketing to Teenagers**

Juul's e-cigarettes were also designed in such a way that both entices non-smoking minors to begin using them and facilitates ease of use by minors once nicotine addiction is established. The compact, sleek, and electronic nature of Juul's e-cigarettes appeals to minors and makes the product appear to young audiences like a harmless, fun accessory.<sup>4</sup> Furthermore, Juul's flavored vapor liquids (including "Mango," "Fruit," "Crème," and "Cucumber") cater to the preferences of non-smoking minors, whose palates are innately averse to the harsh, bitter taste of unflavored nicotine products and whose brains are particularly susceptible to the appeal of sweet tastes. Surveys and studies have found that flavor is a primary reason for youth initiation of e-cigarette use, with the overwhelming majority of youth reporting that their first use was with a flavored product.<sup>5</sup> Mint, while not as sweet as "mango" or "fruit," produces a cooling effect that allows for deeper inhalation and

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<sup>2</sup> See, e.g., Emma I. Brett et al., [A Content Analysis of Juul Discussions on Social Media: Using Reddit to Understand Patterns and Perceptions of Juul Use](#). 194 DRUG ALCOHOL DEPEND. 358 (2019).

<sup>3</sup> See, e.g., Eric R. Kandel & Denise B. Kandel, [A Molecular Basis for Nicotine as a Gateway Drug](#). 371 NEW ENG. J. MED. 932 (2014).

<sup>4</sup> Kavuluru, R., Han S., Hahn, D.J., [On the Popularity of the USB Flash Drive-Shaped Electronic Cigarette Juul](#), 28 TOBACCO CONTROL 110 (2019).

<sup>5</sup> See, e.g., Melissa B. Harrell et al., [Flavored E-cigarette Use: Characterizing Youth, Young Adult, and Adult Users](#). 5 PREVENTIVE MED. REPS. 33 (2016).

facilitates youth initiation.<sup>6</sup> As Juul is likely aware, youth are much more likely to try and continue using e-cigarettes with flavored vapor liquids than unflavored or tobacco-flavored e-cigarette products.<sup>7</sup>

Juul's e-cigarettes were also physically designed to encourage minors' continued use and thus to successfully maintain nicotine dependence. The compact design may be mistaken for a USB drive and enables minors to use the product discreetly, allowing for use in schools and dormitories, at home, and in other spaces where smoking and/or vaping may be prohibited. With this ability for discreet use comes the propensity for continuous – and thus generally increased – use of Juul's e-cigarettes, as the product can be used inconspicuously in a wide variety of settings.

Moreover, since its products launched in 2015, Juul has used social media marketing campaigns to target teenagers and young adults, despite claiming that its products are designed to be used by cigarette smokers seeking to switch from conventional cigarettes. These social media advertisements, often characterized by flashy colors and geometric patterns, frequently depict young, attractive, and smiling models holding and/or using Juul's e-cigarettes and served an obvious purpose of attracting youth, including minors, to purchase the products.<sup>8</sup> Statements of concern by the U.S. Food and Drug Administration ("FDA") regarding rising rates of youth addiction to Juul's e-cigarettes finally led your company to change its marketing strategies in 2018, shutting down social media accounts (including Facebook and Instagram) and largely abandoning eye-catching graphics for more neutral photographs of older Juul models (including, in some cases, indicating users' ages). However, it was only after being repeatedly threatened with further regulation by the FDA that Juul changed its marketing campaigns to actually focus on adult smokers switching from traditional cigarettes (i.e., the "SWITCH campaign") and began to use older models and less enticing graphics in its advertisements. Regardless of these recent changes, Juul's actions have left an epidemic of youth vaping in their wake.<sup>9</sup>

As a proximate result of Juul's wrongful conduct, we seek injunctive relief, specifically, that Juul Labs provide the funding to establish a statewide clinical program in the Commonwealth of Massachusetts for the prevention and treatment of nicotine addiction in young persons who use Juul's e-cigarettes. To date, addiction specialists are ill-equipped to help young people who want to quit the use of Juul products and end their addiction to nicotine. This e-cigarette prevention and treatment program would offer medical services tailored to young persons addicted to Juul's e-cigarettes including, but not limited to: individual and group nicotine cessation counseling, telephone quit-line support, intensive nicotine cessation support services, and the provision of nicotine cessation medications. The

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<sup>6</sup> See, e.g., Suchitra Krishnan-Sarin et al., [Studying the Interactive Effects of Menthol and Nicotine Among Youth: An Examination Using E-cigarette](#), 180 DRUG ALCOHOL DEPEND. 193 (2017).

<sup>7</sup> Morean, M.E., et al., [Preferring More E-Cigarette Flavors Is Associated With E-Cigarette Use Frequency Among Adolescents But Not Adults](#), PLoS ONE 13(1):e0189015 (2018).

<sup>8</sup> Huang J, Duan Z, Kwok J, et al *Vaping Versus JUULing: How the Extraordinary Growth and Marketing of JUUL Transformed the US Retail E-cigarette Market*, 28 TOBACCO CONTROL 146 (2019); Chu, K.H., Colditz, J.B., Primack, B.A., et al., *JUUL: Spreading Online and Offline*, 63 J Adolesc. Health, 582 (2018).

<sup>9</sup> [Surgeon General's Advisory on e-Cigarette Use Among Youth](#), U.S. Centers for Disease Control and Prevention: Atlanta, GA (2018.).

statewide program would additionally engage in clinical and public health research to better understand e-cigarette addiction among youth and to facilitate evidence-based prevention and treatment programs.

We ask that you respond within thirty (30) days from the date of this letter with a good faith settlement proposal.

Sincerely,

Andrew Rainer  
Litigation Director