

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No: 500-C

500-06-001077-201

**SUPERIOR COURT**  
(Class Action)

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**SANDRO SALVATORE**, a person residing at 10707, Avenue de Bruxelles, Montreal, DE BRUXELLES, , Montreal, Province of Québec, H1H 4R5

*Applicant*

v.

**JUUL LABS CANADA, LTD.**, a legal person, duly constituted under the laws of Canada, having its proxy, **Services Blakes Québec Inc.**, domiciled at 3000-1, Place Ville-Marie, Montreal, Province of Quebec, H3B4N8;

and

**JUUL LABS INC.**, a legal person, duly constituted under the laws of the United States of America, having a place of business at 560 20th Street, San Francisco, California USA, 94107-4344;

and

**ALTRIA GROUP, INC.**, a legal person duly constituted under the laws of the United States of America, having a place of business at 6601 W Broad Street, Richmond, Virginia USA 23230;

*Defendants*

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Art. 574 C.c.p.)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES AS  
FOLLOWS:

**PART 1: FACTS**

1. This action concerns the electronic cigarette, or more commonly called e-cigarette, product, JUUL®. E-cigarettes are battery-powered smoking devices which contain cartridges filled with a liquid that contains nicotine, propylene glycol, glycerine, benzoic acid and flavourings. Vaping is the act inhaling of the vapour created by the e-cigarette. JUUL is a type of e-cigarette which is described on the official Canadian website as “created to be a satisfying alternative to cigarettes”;
  
2. The Applicant, Sandro Salvatore (the “Applicant”), wishes to institute a class action on behalf of the following group, of which he is a member (the “Class” or “Class Members”):

all persons in Québec who purchased or used JUUL e-cigarette products for sale in Canada, or alternatively in Quebec, from July 1, 2018, to present

or such other class definition as may be approved by the Court;

**Defined Terms**

3. The following definitions apply for the purpose of this application to authorize the bringing of a class action:
  - (a) “**C.c.p.**” means *Code of Civil Procedure*, C.Q.L.R. c. C-25.01;
  - (b) “**C.c.Q.**” means *Civil Code of Québec*, C.Q.L.R. c. CCQ-1991;

- (c) “**Charter**” means *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12;
- (d) “**Class**” or “**Class Member(s)**” all persons in Québec who purchased or used JUUL e-cigarette products for sale in Canada, or alternatively in Quebec, from July 1, 2018 to present;
- (e) “**C.a.**” means *Competition Act*, R.S. 1985, c. C-34;
- (f) “**C.p.a.**” means *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (g) “**H.i.a.**” means the *Hospital Insurance Act*, R.S.Q. c. A-28;
- (h) “**T.c.a.**” means *Tobacco Control Act*, C.Q.L.R. c. L-6.2;
- (i) “**T.v.p.a.**” means *Tobacco and Vaping Products Act*, S.C. 1997, c. 13;

### **The Applicant**

4. The Applicant resides at 10707, Avenue de Bruxelles, Montreal, Province of Québec, H1H 4R5;

### **The Defendants**

5. The Defendant, JUUL Labs Canada Ltd. (hereinafter, “JUUL Canada”), has legal representatives with a registered address Suite 3000-1, Place Ville-Marie, Montreal, Province of Quebec, H3B 4N8, as appears in the CIDREQ, attached herewith as Exhibit P-1;
6. The Defendant, JUUL Labs, Inc. (hereinafter, “JUUL USA”), has a place of business at 560 20th Street, San Francisco, California USA, 94107-4344;
7. The Defendant, Altria Group, Inc. (hereinafter, “Altria”), is a company having a place of business at 6601 W Broad Street, Richmond, Virginia, USA 23230

8. At all material times, each of the Defendants hereinabove was the agent, servant, employee, partner, alter ego, aider and abettor, co-conspirator and/or joint venturer of each of the remaining Defendants named herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and/or joint venture, and each Defendants has ratified and approved the acts of each of the remaining Defendants;
  
9. At times not presently known to the Applicant, Altria conspired with JUUL Canada, JUUL USA and others, including Philip Morris USA with respect to the design and marketing of the JUUL e-cigarette device, using tobacco industry research and years of Altria's industry experience to develop, produce and market a highly potent method of nicotine delivery, being the JUUL e-cigarette device;
  
10. In particular, the Defendants, including Altria, exploited regulatory loopholes and relied heavily on social media and other viral advertising tools to hook people, and in particular young persons, on its addictive e-cigarettes. To accomplish this, the Defendants, and each of them, adopted the same themes used by the tobacco industry in its long-standing, extensive advertising campaign to glamorize cigarette smoking while downplaying its addictiveness and deleterious health effects. Examples of advertising made by the Defendants in online, print, and social media available throughout North America, including in Quebec are attached herewith as Exhibit P-2 (Advertising Samples);

11. At all material times, the Defendants, and each of them, designed, manufactured, and distributed e-cigarettes for sale in Quebec, Canada and/or worldwide;
12. E-cigarettes, or Vaping, are an alternative to traditional cigarettes, or smoking. However, they are both addictive and contain, inter alia, cancer-causing harmful chemicals;

### **History and Background of JUUL**

13. In 2015, the Defendants set out to recapture the magic of the most successful product ever made - the cigarette. Due to regulations and court orders preventing the major cigarette manufacturers from marketing to young people, youth smoking had decreased to its lowest levels in decades. While the public health community celebrated this decline as a victory, the Defendants saw an opportunity. Seizing on regulatory inaction and loopholes for e-cigarettes, the Defendants set out to develop and market a highly addictive product that could be marketed and sold to young people. Youth is and has always been the most sought-after market for cigarette companies, because they are the most vulnerable to nicotine addiction and are most likely to become customers for life;
14. The Defendants' product – known as JUUL - was designed perfectly for teenagers. It doesn't look or smell like a cigarette. It is a sleek, high-tech youth-friendly battery-powered device that looks like a USB drive. The JUUL device heats a nicotine-filled liquid JUULpod, sold separately in appealing flavors like mango and mint, delivering powerfully potent doses of nicotine, along with aerosol and other toxic chemicals into the lungs, body and brain. Unlike noxious

cigarette smoke, when a JUUL user exhales, the smoke is undetectable by its odor;

15. JUUL is small, easily concealable and can be used practically anywhere without parents or teachers knowing; just Google “JUUL in school” and find more than 188,000 videos on how to JUUL anywhere without detection. This is part of the appeal, fostered and bolstered by the Defendants’ viral marketing campaigns using young models to make the products look cool and stylish;
16. Defendants designed JUUL to quickly and severely addict young people to nicotine, one of the most addictive chemicals available. By studying cigarette industry archives, the Defendants learned how to manipulate the nicotine in their product to maximize addictiveness, particularly among new users and young people, and thereby increase sales. JUUL designed its products to have maximum inhalability, without any “throat hit” or irritation that would serve as a natural deterrent to new users. The sole purpose of this design element was to initiate new smokers, since those who already smoke cigarettes are tolerant to the throat hit sensation and associate it with smoking and nicotine satisfaction. At the same time, JUUL designed its device to deliver substantially higher concentrations of nicotine per puff than traditional cigarettes and most other e-cigarettes. This combination of ease of inhalation and high nicotine delivery makes JUUL both powerfully addictive and dangerous, as described in numerous media articles, including an article titled “What are vaping-associated illnesses and why are doctors concerned?” which are collectively attached as Exhibit P-3;

17. The pathology of vaping-associated lung injury was the subject of an initial report in the New England Journal of Medicine, which is attached as Exhibit P-4;
18. The toxicity of JUUL has been subject of a recent study titled “Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavour Chemical Concentrations”, which is attached as Exhibit P-5;
19. Nicotine is particularly dangerous to young people whose brains are still developing through the mid-20s. Nicotine is not only addictive developing adolescent brains, but it also induce seizures and it permanently alters the structure of the brain and causes permanent mood changes and other cognitive disorders. The risk of nicotine addiction among young people using e-cigarettes in Canada has been discussed in a paper by Hammond et al., titled “Prevalence of vaping and smoking among adolescents in Canada, England, and the United States: repeat national cross sectional surveys”, which is attached as Exhibit P-6;
20. Several studies, including one recently released by the American Stroke Association, have shown that e-cigarettes increase the risk of stroke, heart attack and coronary artery disease. Other studies have shown that e-cigarettes containing nicotine significantly increase blood pressure, heart rate and arterial stiffness, and also cause vascular damage, which can lead to strokes and other cardiovascular injuries. These studies build on the well-established research that nicotine increases blood pressure, as discussed in, *inter alia*, “Association of E-Cigarette Use with Respiratory Disease Among Adults: A Longitudinal Analysis”, which is attached as Exhibit P-7;

21. The United States Surgeon General has concluded that e-cigarettes, including JUUL, are not safe for anyone under age 26;
22. Even though e-cigarettes are unsafe for anyone under 26, the Defendants heavily promoted its products to young people. Following the wildly successful playbook laid out in historic cigarette industry documents, Defendants leveraged social media and utilized other marketing and promotion tactics, long outlawed for cigarette companies, to capture the highly-lucrative youth market. JUUL preyed on youth using medium and themes that exploit teenagers' vulnerabilities to create and sustain nicotine addiction, all for financial gain, and without giving kids any warnings about the serious risks of addiction, stroke, and other permanent injuries;
23. At the time the Applicant commenced using JUUL, none of The Defendants' advertising, marketing, promotion, packaging or website disclosed any of the health effects and risks that JUUL knew or should have known would occur from use of its products. These risks include severe nicotine addiction, significant increases in blood pressure, vascular damage, increased risk of stroke, heart attacks and other cardiovascular injuries, permanent brain changes, mood disorders, heightened risk of cancer, and other harms. JUUL never disclosed that its products were unsafe for anyone under age 26;
24. Instead, the imaging, advertising, promotion, packaging and overall marketing represented the product as safe, fun, and not harmful. As one of the JUUL founders has said: "We don't think a lot about addiction here because we're not



trying to design a cessation product at all...anything about health is not on our mind". JUUL's design, manufacturing, marketing and distribution of this product has proven this statement to be true;

25. Since 2015 when JUUL hit the market in the USA, JUUL has become pervasive in schools across the country and adolescent use is rampant. JUUL not only dominates the multi-billion dollar e-cigarette market, it has expanded the size of that market significantly—mostly via young non-smokers. In December 2018, the tobacco company Defendant Altria (formerly known as Philip Morris) acquired a 35% stake in JUUL for \$12.8 billion, giving Defendant Altria access to the new generation of customers JUUL has groomed. Attached hereto is a private company summary for JUUL showing Altria's investment in JUUL (Exhibit P-8), and a copy of a recent Federal Trade Commission Statement outlining a challenge to Altria's investment in JUUL (Exhibit P-9);
26. At times that are not presently known to the Applicant, the Defendants also conspired with others, including Altria and Philip Morris, with respect to the design and marketing of their product;
27. The Defendants also used cigarette industry advertisements—which were created to lure nonsmoking youth—as a blueprint for JUUL's advertising campaigns as can be seen from Exhibit P-2;
28. The Defendants achieved their vision. Since its launch in 2015, JUUL has become the dominant e-cigarette manufacturer in the United States. Its revenues

grew by 700% in 2017. It has been reported that the Defendants own three-quarters of the e-cigarette market in the USA. In Canada, following the launch of JUUL in August 2018, JUUL rapidly increased its market share to 62% - becoming the #1 brand of e-cigarette in stores selling JUUL by December 2018 as shown in a 2019 CAGNY Investor Presentation from Altria, attached hereto as Exhibit P-10

### **Background of Altria**

29. Altria is the parent company of Philip Morris USA (producer of “Marlboro” brand cigarettes) and, inter alia, other tobacco companies. The “rebranding” from Philip Morris USA to Altria took place in 2003. Altria is one of the largest tobacco companies in the world;

### **Altria’s Involvement with the JUUL Defendants**

30. Since a time not presently known to the Applicant, Altria’s involvement and guidance in the development of JUUL products has been described by JUUL’s founder. In an article in Wired magazine dated April 21, 2015, JUUL’s founder James Monsees was quoted as saying “people who understood the science and were listed on previous patents from tobacco companies aren’t at those companies anymore. If you go to Altria’s R&D facility, it’s empty.” The Wired article stated that “some of those people are now on Pax’s [JUUL’s predecessor] team of advisers, helping develop JUUL.”;

31. In December 2018, four months after the launch of JUUL products in Canada, Altria acquired a 35% interest in the JUUL Defendants for \$12.8 billion as shown in Exhibit P-8;
32. On April 1, 2020, the United States Federal Trade Commission (“FTC”) issued a press release titled “FTC Sues to Unwind Altria’s \$12.8 Billion Investment in Competitor JUUL” attached hereto as Exhibit P-11. The press release states as follows:

*“Today, the Federal Trade Commission filed an administrative complaint (a public version of which will be available and linked to this news release as soon as possible) alleging that Altria Group, Inc. and JUUL Labs, Inc. entered a series of agreements, including Altria’s acquisition of a 35% stake in JUUL, that eliminated competition in violation of federal antitrust laws.*

*“For several years, Altria and JUUL were competitors in the market for closed-system e-cigarettes. By the end of 2018, Altria orchestrated its exit from the e-cigarette market and became JUUL’s largest investor,” said Ian Conner, Director of the Bureau of Competition. “Altria and JUUL turned from competitors to collaborators by eliminating competition and sharing in JUUL’s profits.”*

*The FTC alleged that as competitors, Altria and JUUL monitored each other’s e-cigarette prices closely and raced to innovate. Altria also leveraged its ownership of leading brands across tobacco categories to secure favorable shelf space at retailers throughout the United States, the complaint alleges. Although early competition resulted in Altria’s MarkTen e-cigarette becoming the second most popular brand by market share, by*

*late 2018, JUUL vaulted past the industry leaders Altria and Reynolds to become the leading e-cigarette company in the country.*

*The Commission alleges that Altria dealt with this competitive threat by agreeing not to compete in return for a substantial ownership interest in JUUL. Weeks after Altria declared its intention to wind down its e-cigarette business, Altria and JUUL announced an agreement that made Altria JUUL's largest shareholder, allowed Altria to appoint an observer to JUUL's Board of Directors, and would have permitted Altria to appoint three members of JUUL's Board after converting its shares to voting securities. JUUL received over \$12 billion, an agreement that Altria would not compete with JUUL for six years, and a range of support services.*

*The FTC alleges that Altria's acquisition of JUUL shares and the associated agreements together constitute an unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 5 of the FTC Act, and substantially lessened competition in violation of Section 7 of the Clayton Act."*

33. On April 2, 2020, FTC Commissioner Rohit Chopra issued a statement (Exhibit P-9) concerning the FTC complaint, which included the following language:

*The JUUL-Altria Deal*

*JUUL's alleged aggressive youth targeting and deceptive marketing were just one part of the company's moves to boost sales and meet investor expectations. The FTC's investigation suggests that this was dual-tracked alongside a move to eliminate competition with Altria (NYSE: MO), formerly known as Phillip Morris Companies, Inc. Altria is the leading seller of traditional cigarettes, like Marlboro, but it also deployed its own competing e-cigarette, the MarkTen, and invested substantial resources to*

*market it. The Commission's complaint details how JUUL and Altria allegedly took steps to eliminate competitive threats, entrench JUUL's dominant position in e-cigarettes, and share JUUL's profits.*

*In July 2018, JUUL was reportedly valued at \$15 billion. But by December 2018, Altria and JUUL struck a deal where Altria paid JUUL \$12.8 billion in cash for a 35% stake in the company, giving it a new valuation of \$38 billion, a phenomenal increase from just a few months before.*

*I believe a key reason for this rich valuation was a key provision in the agreement where Altria would be able to share in monopoly profits through a non-compete agreement. As part of the deal, JUUL sought and secured a provision that Altria would no longer compete with JUUL in the ecigarette market. Curiously, in October 2018, Altria publicly claimed that it was discontinuing its ecigarette product due to concerns about youth vaping. This appears to be a pretext, as it was simultaneously looking to strike a massive deal with JUUL. With Altria's MarkTen out of the market, basic economic logic suggests that JUUL could capture those sales and further dominate the market.*

*Company insiders hauled in big benefits from this deal. XXXXXX XXXX and XXXXXX XXXXXXXX, who were investors in JUUL with significant stakes in the company and were directly involved in negotiations, saw the value of their investments skyrocket by billions of dollars. The deal also reportedly led to a \$2 billion special dividend that created an immediate payout for other company insiders.*

*[...]*

*A number of facts alleged in the Commission's complaint give reason to believe a conspiracy to monopolize existed. For example, the complaint alleges:*

- *That JUUL insisted, and Altria understood, that Altria's exit from the e-cigarette market was a non-negotiable condition for any deal;*
- *That the written agreements between JUUL and Altria required Altria to not only halt competitive activities in the e-cigarette market, but also to commit Altria's considerable resources to entrenching JUUL's dominant position;*
- *That Altria took affirmative steps to provide JUUL with significant competitive advantages over its rivals. In particular, Altria temporarily leased valuable shelf space to JUUL.*

*[...]*

*Conspiracy to monopolize claims are uncommon, but the Commission should not hesitate to include the charge when the facts warrant given the extreme perniciousness of this type of conduct. Here, in my view, the evidence strongly suggests a specific intent to exclude and monopolize with the necessary overt acts.*

*As part of the transaction between Altria and JUUL, Altria was given the right to appoint a board observer to JUUL's board of directors. There is significant risk that Altria's Chief Growth Officer, and later its Chief Financial Officer, may have had access to competitively sensitive information on a wide range of topics related to JUUL's business strategy, just like any other board member. I have reason to believe this arrangement undermines a key purpose of Section 8 of the Clayton Act's prohibition on interlocking directorates and was therefore unlawful under Section 5 of the FTC Act, pursuant to the Commission's 2015 Policy Statement.<sup>7</sup>*

*Altria and JUUL's alleged monopolization scheme might have eliminated their e-cigarette rivalry, but there is reason to believe that they compete on a number of other dimensions. This raises serious questions about the propriety of this board observer arrangement. For example, due to various regulations and to guard against theft, tobacco products are often sold behind cashier counters in places like convenience stores. Convenience store purchasers must maximize returns for a limited amount of shelf space, so sellers of traditional cigarettes and sellers of e-cigarettes often offer promotional allowances, rebates, and other marketing incentives in competition with each other for that shelf space. Tobacco companies, of course, must also compete for tobacco-related raw materials to produce their products, and for talent with tobacco-related expertise.*

*In light of these realities, allowing a situation where Altria has potential access to JUUL's operational and development plans puts too much risk on consumers and flies in the face of one of the underlying premises of the FTC Act: "... [T]o stop in their incipency acts and practices which, when full blown, would violate [the Sherman Act and the Clayton Act]. . . "*

### **Design of JUUL Promotes Rapid Addiction**

34. The amount and speed of nicotine delivery plays a critical role in the potential for abuse of tobacco products. The cigarette industry has long known that nicotine is the addicting agent in cigarettes and that nicotine satisfaction is the dominant desire of nicotine addicts, as described in an article titled "Tech investors have found something even more addictive than social media" dated October 24, 2018, attached as Exhibit P-12;

35. The Defendants, either acting alone or in collusion with tobacco companies, including Altria, knowingly used tobacco industry research and conclusions to

produce a highly potent method of nicotine delivery, thereby promoting increased use and sales of JUUL e-cigarettes. In U.S. patent No. 9,215,895 (“the ‘895 Patent”), assigned to the Defendants’ predecessor “Pax Labs, Inc.” and listing the Defendants’ executive Adam Bowen as an inventor, the Defendants describe a process for combining benzoic acids with nicotine to produce “nicotine salts”, a formulation that mimics the nicotine salt additive developed by the tobacco industry decades earlier;

36. The Defendants’ manipulation of nicotine pH directly affects the palatability of nicotine inhalation by reducing the “throat hit” users experience when vaping. Benzoic acid reduces the pH of solutions of nicotine, an alkali with a pH of 8.0 in its unadulterated, freebase form. This reduction in pH converts naturally-occurring unprotonated nicotine, which causes irritation in the throat and respiratory tract, to protonated nicotine, which is not be absorbed in the throat or upper respiratory tract and, therefore, does not irritate the throat, as described by Hammond et al. in Exhibit P-6;
37. The Defendants’ creation of a product with low levels of harshness and minimal throat “hit” is consistent with the goal of producing a product for young non-smokers. The nonirritating vapor product is easier for non-smokers to consume without negative side effects like coughing or irritation. The design also shows that the Defendants’ intention was to recruit nonsmokers, not existing smokers, because smokers are already tolerant of the throat hit and have even been habituated into associating the “throat hit” with getting their nicotine fix.



Minimizing the throat “hit” of JUUL e-cigarettes is therefore unnecessary to providing an alternative for adult smokers, but is crucial to luring a new generation of users;

38. JUUL’s lack of throat hit increases the risk of using the product, because it masks the amount of nicotine being delivered, by eliminating the throat sensory feedback normally associated with a large dose of nicotine. The “throat hit” is part of the body’s alert system, letting a person know he is inhaling something harmful. Eventually, the irritation to the throat will cause even the most compulsive addict to wait before the next inhalation. Reducing or removing this feedback impairs the user’s ability to ascertain that he is consuming a toxin. As a result, the cravings for nicotine can be satisfied nonstop, fostering addiction or aggravating an existing addiction, and repeatedly exposing the user to the health risks associated with the product, such as significantly increased blood pressure;
39. The Defendants sell products that contain relatively low amounts of throat-irritating freebase nicotine, yet contain and deliver far higher concentrations of nicotine than cigarettes or other e-cigarettes containing freebase nicotine;
40. Blood plasma studies for users of products involving the “895 Patent” show that vaping nicotine benzoate increases nicotine delivery compared to cigarettes or vaporized solutions of freebase nicotine. In fact, nicotine uptake was up to four times higher for nicotine salt formulations than traditional cigarettes (approximately 4 ng/mL/min compared to approximately 1 ng/mL/min). The Defendants’ data also indicates that nicotine salt solutions produce a higher heart

rate in a shorter amount of time (a 50 beats/minute increase within 2 minutes for nicotine salt, versus a 40 beats/minute increase in 2.5 minutes for a Pall Mall cigarette). Nicotine salts also cause a faster and more significant rise in heart rate than placebo or vaporized freebase nicotine;

41. JUUL's 895 Patent shows that a 4% solution of benzoic acid nicotine salt causes a peak nicotine-blood concentration ("Cmax") of approximately 15 ng/mL, compared to a Cmax of 11 ng/mL for a Pall Mall cigarette;
42. As high as the reported nicotine dose reported for JUULpods is, the actual dose is likely 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 ( $44.8 \pm 0.6$ ) solution. That study 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 on the packaging of JUUL products sold in Canada. JUULpods containing an absolute nicotine concentration 1.2% higher than the stated 5% on the label (a relative increase of over 20%) coupled with more benzoic acid than listed in the 895 Patent produce higher nicotine absorption than expected for the advertised formulation;
43. None of the information regarding the elevated nicotine-blood concentration caused by using JUUL has been reported by the Defendants on their packaging or warnings. Instead, the packaging only provides disclosure of the percentage of strength expressed as mg/ml of nicotine in liquid, not vaporized, form. The

Defendants' disclosure concealed information regarding the extremely high potency and addictive potential of their product;

44. JUUL is delivering doses of nicotine that are materially higher than delivered by combustible cigarettes. An e-cigarette with a concentration of 20 mg/ml delivers approximately 1 milligram of nicotine in 5 minutes (the time needed to smoke a traditional cigarette, for which the maximum allowable delivery is 1 mg of nicotine)." With at least 59 mg/mL of nicotine delivered in a salt form that increases the rate and efficiency of uptake (and even with a lower mg/mL amount), a JUULpod will easily exceed the nicotine dose of a traditional cigarette. Not surprisingly, the European Union has banned all e-cigarette products with a nicotine concentration of more than 20 mg/ml nicotine, and Israel is seeking to do the same. A product that contains a concentration of nicotine that is almost three times the level permitted in the European Union constitutes a danger to public health;
45. Comparison of available data regarding per puff nicotine intake corroborates the other JUUL studies (mentioned above), indicating that JUUL delivers about 30% more nicotine per puff. Specifically, a recent study of JUULpods found that "[t]he nicotine levels delivered by the JUUL are similar to or even higher than those delivered by cigarettes;
46. Because nicotine yield is strongly correlated with tobacco consumption, a JUULpod with more nicotine will strongly correlate with higher rates of consumption of JUULpods, generating more revenue for the Defendants. For

example, a historic cigarette industry study looking at smoker employees found that the number of cigarettes the employees smoked per day was directly correlated to the nicotine levels. In other words, the more nicotine in the cigarettes, the more cigarettes a person smoked;

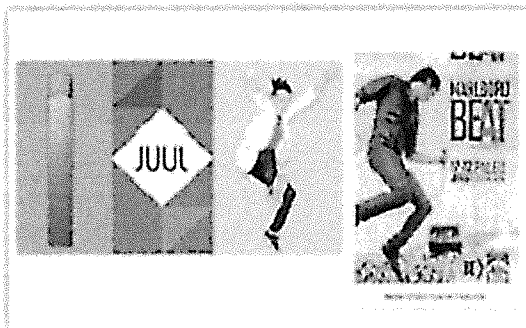
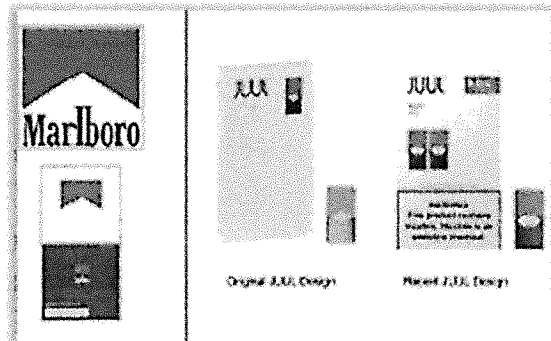
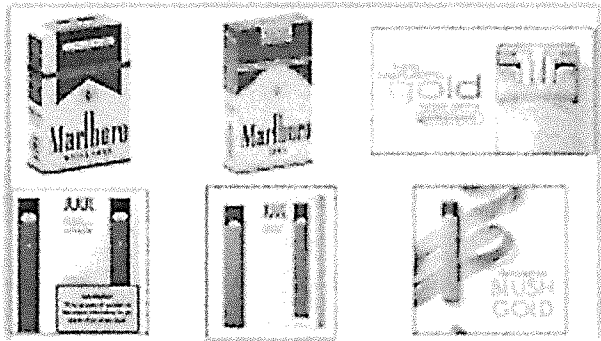
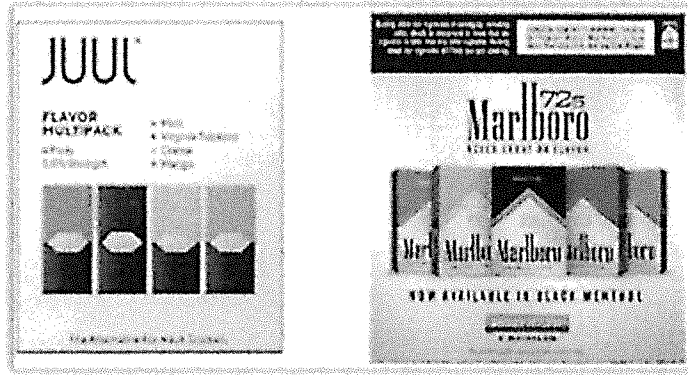
47. Despite the above data, the Defendants have failed to disclose to consumers that the JUULpods' nicotine salt formulation delivers an exceptionally potent dose of nicotine;
48. By delivering such potent doses of nicotine, JUUL products magnify the health risks posed by nicotine, significantly increase blood pressure, and place users at heightened risk for stroke, heart attacks, other cardiovascular events, addiction and respiratory problems;
49. Further, because JUUL's nicotine salts actually increase the rate and magnitude of blood plasma nicotine compared to traditional cigarettes, the risk of nicotine addiction and abuse is higher for JUUL e-cigarettes than traditional cigarettes. Thus, JUULpods are foreseeably exceptionally addictive when used by persons without prior exposure to nicotine—a fact not disclosed by Defendant;

### **Marketing and Advertising of JUUL**

50. The Defendants have used the same strategies perfected by the cigarette industry including Altria to sell JUUL products to young people. In particular, the Defendants both exploited regulatory loopholes and relied heavily on social

media and other viral advertising tools to hook people, and in particular young persons, on its addictive e-cigarettes, as shown in the examples in Exhibit P-2;

51. To accomplish this, the Defendants adopted the same themes used by Altria, Philip Morris and other cigarette companies in the industry's long-standing, extensive advertising campaign to glamorize cigarette smoking while downplaying its addictiveness and deleterious health effects;
52. Altria and/or others presently not known to the Applicant provided the strategies, analyses, and services to the Defendants enabling and in furtherance of the Defendants' deceptive and unfair marketing tactics;
53. Following the successful model of its predecessors, since 2015, Defendants, in conjunction and in concert with Altria, Pax Labs and/or others involved in providing marketing services to the Defendants, have been operating a long-term viral marketing campaign aimed at teenagers and young adults. This campaign extends and expands upon deceptive advertising themes used by tobacco companies to exploit the psychological needs of consumers—especially youth—to convert them into smokers. Examples of advertisements are shown below:





54. The Defendants' reliance on tobacco industry documents is apparent in a collection of 82 JUUL advertisements compared to historical cigarette advertisements on Stanford's Research into Impact of Tobacco Advertising ("SRITA") website. The side-by-side comparison of numerous JUUL advertisements shows that its imagery directly parallels that adopted by cigarette manufacturers, including imagery relating to attractiveness, stylishness, sex appeal, fun, "belonging," relaxation, and sensory pleasure, including taste. The efforts made by JUUL on social media are described in "Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market dated May 31, 2018", attached hereto as Exhibit P-13;

55. Because of social media, the Defendants have been able to operate an even more pervasive, insidious, and successful viral marketing campaign than its

predecessors in this industry. As set forth below, the Defendants developed and oversaw a long-term viral marketing campaign with the intent to convince young people to purchase its products. The Defendants' advertisements presented images depicting an idealized future self that adolescents could achieve by taking up JUUL products;

56. Furthermore, the Defendants marketed their product with free samples, launch parties, and leaflets promoting JUUL included in packages of traditional cigarettes sold by, among others, Altria, examples of which are attached at Exhibit P-14;

57. The Defendants' advertisements consistently withheld material information about the dangers of the product. Through this long-term advertising campaign, the Defendants were able to persuade consumers, and in particular teenagers and young adults that its product was cool, while hiding from them the dangers associated with using the product. And because of the viral nature of JUUL's marketing, JUUL promotions continue to reach youth, despite JUUL's deactivation of its social media accounts;

58. "Viral marketing" is defined as "marketing techniques that seek to exploit preexisting social networks to produce exponential increases in brand awareness, through processes similar to the spread of an epidemic." Viral marketing is a form of word-of-mouth recommendation that harnesses the network effect of the internet to rapidly reach a large number of people. Because the goal in a viral marketing campaign is to turn customers into salespeople who



repeat a company's representations on its behalf, a successful viral marketing campaign may look like millions of disconnected, grassroots communications, when in fact they are the result of carefully orchestrated corporate advertising campaign;

59. Companies may use different media to transmit their viral messaging, but generally, all viral marketing campaigns tend to share similar features, including (1) a simple message—typically implied by an image—that elicits an emotional response; (2) the strategic use of marketing platforms, especially social media, to reach and engage the target audience; (3) use of content that invites participation and engagement; and (4) use of third parties to magnify the impact of a message;
60. Typically, a viral marketing campaign will begin with a “push” by the company seeking to advertise the product, and since the advent of social media, that push is typically done through the creation of new content on a social media platform, such as Instagram, YouTube, Twitter, Facebook or other similar platform (“Social Media Platforms”);
61. A company that wants to push an ad on Social Media Platforms has a few options. First, the company can solicit followers to its social media pages, so that when the company posts to its feed, the content would be delivered to those followers and to those who visited the company page. Second, the company can purchase paid advertisements that were delivered to specified target audiences. Then, to amplify a message, companies can utilize other tools, such as paid

influencers and strategic use of promotions and hashtags, to blanket the targeted demographic with advertisements across social media;

### **United States Regulatory Warnings**

62. On or about September 12, 2018, the U.S. Food & Drug Administration (“FDA”) wrote to JUUL USA and stated, inter alia, “FDA requests that you take prompt action to address the rate of youth use of JUUL products , which letter is attached hereto as Exhibit P-15;

63. On or about February 6, 2019, the FDA wrote to the Defendant JUUL USA regarding the “mounting epidemic of youth addiction to tobacco products” and wrote that:

*“After Altria Group Inc.’s acquisition of a 35 percent ownership interest in JUUL, many of JUUL’s public statements seem inconsistent with its previous representations to the FDA. When we meet, JUUL should be prepared to explain how this acquisition by Altria affects the commitments you made to the FDA about addressing the crisis of youth use of JUUL products.*

64. On or about August 30, 2019, the FDA issued, inter alia, a statement about the harmful effects of using e-cigarettes, and in particular, potentially severe respiratory and pulmonary diseases which result from using e-cigarettes. The article also speaks of a recent death of an individual as a result of Vaping, which is attached hereto as Exhibit P-16;

65. Also on or about August 30, 2019, the U.S. Center for Disease Control (“CDC”) provided, inter alia, recommendations to clinicians in suspected cases of patients

with pulmonary disease as a result of using e-cigarettes. The article also reported an “outbreak” of possible cases around the country where e-cigarettes were the cause of reports of respiratory and pulmonary issues, which is attached hereto as Exhibit P-17;

### **Canadian Regulatory Warnings**

66. On or about September 6, 2019, Health Canada issued a public notice about the dangers of using e-cigarettes. This public notice advised that there have been reports of pulmonary illness, and even death, as a result of Vaping, which is attached hereto as Exhibit P-18;

67. The information on the Health Canada website regarding this public notice included the following:

*“This caution comes in the wake of the recent cases of acute pulmonary illnesses and several deaths reportedly linked to the use of vaping products in the United States. The United States Food and Drug Administration (US FDA) and the Centers for Disease Control and Prevention (US CDC) released a statement August 30 on their ongoing investigation into the cause of the illnesses. The same day, the US CDC issued an official health advisory. On September 6, the US CDC released publications to provide an update on the status of the investigation. The source of the illnesses remains unclear at this time; however, the US CDC reports that chemical exposure is the likely cause. Many patients have reported vaping tetrahydrocannabinol (THC) and/or nicotine-containing products. However, at this time no specific product, substance or device has been linked to all cases of vaping illness in the U.S.”*

68. Quebec judicial authorities have also taken note of JUUL commercial practices in *Association québécoise des vapoteriers c. Procureure générale du Québec*, 2019 QCCS 1644 (CanLII), where Justice Daniel Dumais opined:

[32] Le produit n'est pas uniforme. Ainsi, on retrouve des types de cigarettes électroniques avec batteries rechargeables et réservoirs dans lesquels on vide la solution achetée. D'autres modèles, tels la Juul, nécessitent l'achat de petites cartouches jetables, ressemblant à une clé USB, que l'on connecte au dispositif. Cette dernière, de plus en plus populaire aux États-Unis, contient généralement une grande quantité de nicotine et intéresse notamment les gros fumeurs. Elle suscite de plus en plus d'inquiétudes surtout qu'elle attire les jeunes.

[115] M. Dewhirst déplore la présence envahissante des géants du tabac, spécialistes du marketing, qui vont sans doute chercher à développer le monde de la cigarette électronique si l'industrie est peu réglementée. Leur but premier consiste à accroître les ventes, et non d'informer, sans égard aux impacts sur la santé tant individuelle que collective. Quoiqu'on ne dispose pas de données précises, les cigarettiers vont probablement s'emparer du marché. Il trouve la législation fédérale trop permissive et appliquée libéralement. Il donne en exemple la publicité de toutes sortes que l'on diffuse aux États-Unis et les ventes explosives de la Juul, cigarette électronique associée à de très fortes doses de nicotine. Toute cette publicité attire la clientèle de jeunes, vulnérables aux techniques éprouvées des spécialistes du tabac. On ne devrait permettre que la publicité informative faite par des associations et organismes indépendants et sans but lucratif.

#### **JUUL Labs Canada Ltd.**

69. The official JUUL Canada website describes their e-cigarette products as follows:

"JUUL was designed with smokers in mind.

JUUL has no buttons or switches. The JUUL vapourizer has regulated temperature control and uses JUUL pods filled with a proprietary e-liquid formulation that combines glycerol, propylene glycol, natural oils, extracts and flavor, nicotine and benzoic acid. These qualities are unique to JUUL.

[...]

JUUL uses an intelligent heating mechanism that creates an aerosol and is engineered to minimize combustion.

JUUL is a closed system vapour product and is not designed to be refillable.

JUUL is rechargeable via a USB port.”

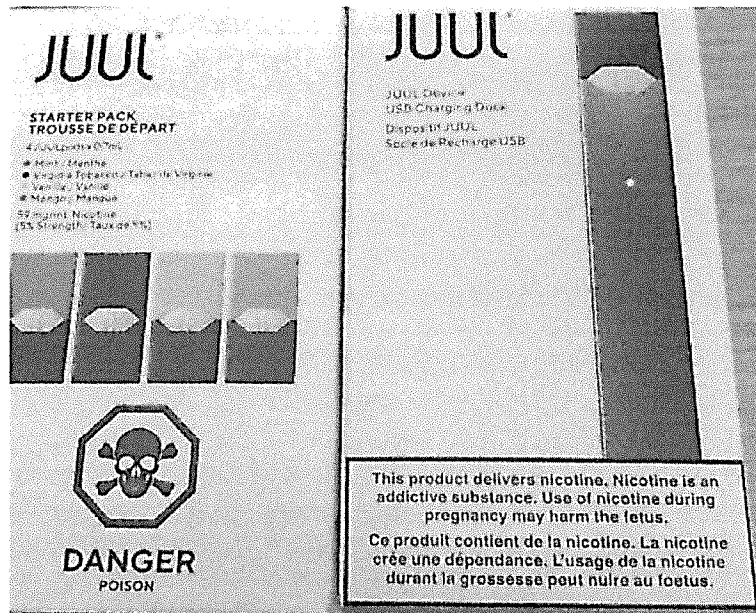
70. JUUL pods, which are e-liquid cartridges which deliver the vapour experience with inhalation, are said to contain the following chemicals:

- Propylene glycol and glycerine (30/60 mix);
  - (up to 90%)  
Propylene glycol and glycerine are clear liquids that are used to create a visible vapor, and are commonly used by the medical, beauty and food industries. A majority, if not all e-liquids, contain propylene glycol (PG).
- Nicotine
  - Nicotine is a stimulant that comes from the tobacco plant. We use highly purified/USP grade/pharmaceutical grade nicotine.
- Benzoic Acid
  - Benzoic acid is a naturally occurring ingredient, found in tobacco and other substances. When combined with nicotine as part of our nicotine salts formulation, it helps provide cigarette-like satisfaction.
- Flavor
  - JUUL flavors consist of both naturally occurring and artificial flavor ingredients which provide the specific taste profile for each flavor.

71. The JUUL starter kit, as advertised on their Canadian website, consists of the following:

- JUUL device;
- USB charging dock;
- Four JUUL pods in 5% nicotine strength (Virginia Tobacco, Mint, Vanilla, and Mango),

For a cost of \$64.99 CDN. The Canadian JUUL starter kit as sold in October 2019 is shown below:



72. The October 2019 JUUL packaging stated, inter alia:

*1 JUUL pod contains ~ 0.7 ml with 5% nicotine by weight. Approximately equivalent to 1 pack of cigarettes.*

73. JUUL has emerged as a leading e-cigarette brand and, in or around July 2019, opened its first brick-and-mortar store in North America in Toronto;

74. The Defendants marketed, and sold e-cigarettes throughout North America, including within the province of Quebec;

75. The Defendants distributed their e-cigarettes to various retail outlets, which ultimately sold them to unsuspecting consumers, including the Applicant;
76. Individuals who have used e-cigarettes, including those manufactured and distributed by JUUL, have reported experiencing symptoms associated with respiratory or pulmonary symptoms, including the following:
- Shortness of breath;
  - Chest pain;
  - Coughing;
  - Asthma;
  - Influenza;
  - Pneumonia (the above conditions collectively referred to as “Pulmonary Disease”);
  - Vocal change;
  - Vocal loss;
  - Anxiety; and
  - Such further symptoms that may be proven at trial.
77. The symptoms associated with Pulmonary Disease have been reported by individuals who have used JUUL e-cigarettes;
78. The Defendants have represented in their advertisements, representations and communications to consumers that Vaping is a safer alternative to smoking. Misleading and/or deceptive statements, express and implied, made by the Defendants include the following:

- That their products are a tool to help adult smokers stop smoking;
- That smokers should “Make the Switch”;
- That the Defendants’ products are “totally safe”;
- That the FDA “was about to come out and say it was 99 percent safer than cigarettes”;
- “JUUL labs was founded with the goal of impacting the lives of the world’s one billion smokers by eliminating cigarettes”;
- “No tar. No smoke. No ash.” and other similar representations which imply that Vaping is safer than smoking;
- 59 mg/ml nicotine (5% strength/Taux de 5%);
- That one JUULpod is “approximately equivalent to one pack of cigarettes”;
- Representations targeted to selling JUUL e-cigarettes minors, including marketing of fruit-flavoured e-cigarette pods, social media campaigns, and other advertisements designed to induce purchase of JUUL e-cigarettes by minors; and
- Such other representations or statements as may be proven at trial.

79. To date, the FDA has not approved any e-cigarette product, including products manufactured by the Defendants, as a smoking cessation aid under the safety and efficacy standard governing FDA-regulated medical products;

80. The Applicant brings this action against the Defendants, and each of them, based on their manufacturing of e-cigarettes, their wrongful advertising aimed at young persons and minors, their misleading representation of e-cigarettes as a smoking cessation product, their disregard to the harmful effects of using their products, and their failure to adequately warn consumers of the risks associated with their products;



**PART 2: LEGAL BASIS****Civil Liability and Failure of the Duty to Inform**

81. As the manufacturers, marketers, developers, distributors, labelers and/or importers of e-cigarettes, the Defendants failed in their legal obligations per articles 1457, 1468 and 1469 C.c.Q. as well 228 C.p.a. to adequately inform the Applicant and class members of the serious health risks and dangers associated with their product. The Defendants caused the e-cigarettes to be introduced into the stream of commerce in Canada, and they knew that any damages or adverse effects related to the e-cigarettes would cause foreseeable injury to the Applicant and class members;
82. The Applicant and class members were entitled to expect, and rightly expected, that the Defendants guarantee the quality and safety of the products that they advertise and sell;
83. The Defendants, and each of them, failed in their legal obligation to the Applicant and class members to exercise reasonable diligence and prudence when designing, testing, manufacturing, marketing, labelling, promoting, and selling e-cigarettes;
84. The Defendants, and each of them, failed in their legal obligation to the Applicant and class members to ensure that e-cigarettes were safe and effective for their intended use.

85. The Defendants' failed to properly disclose all material facts regarding the risks of Vaping with the JUUL brand, including adverse health effects and the high potency and addictive potential of JUUL products;
86. Particulars of the Defendants' faults include:
- a. Downplaying, misrepresenting or under-reporting serious side effects and harmful complications of JUUL e-cigarettes;
  - b. Placing JUUL e-cigarettes on the market when they knew or ought to have known that this product has potential risks that outweighs its potential benefits;
  - c. Manufacturing and/or marketing a product that they know, or ought to have known, had an unreasonably high risk of causing harmful health effects, including addiction and Pulmonary Disease;
  - d. Failing to warn, or appropriately warn, of the risk of illnesses, including risk of addiction and Pulmonary Disease, associated with JUUL e-cigarettes;
  - e. Failing to supervise, or appropriately supervise as indirect sellers, the representations made to consumers, regarding the risk of addiction and illnesses, including Pulmonary Disease, associated with JUUL e-cigarettes;
  - f. Failing to implement a timely recall of JUUL e-cigarettes once the risk of illnesses, including Pulmonary Disease, were known to them;
  - g. Manufacturing and/or marketing a product that was not fit for the purpose for which it was intended;
  - h. Failing to manufacture and/or market a product in a good and workmanlike manner and in accordance with generally accepted standards;
  - i. Marketing and advertising of their product in a manner that would likely appeal to young persons and minors; and
  - j. Such further and other particulars of the Defendants failures in their legal obligations to the Applicant and class members as will be alleged at trial.

**Civil Liability for Health Consequences of Toxic Product (Toxic Tort)**

87. The Defendants knew, or alternatively through the exercise of reasonable diligence ought to have known, that JUUL e-cigarettes contained toxins including propylene glycol, glycerine, and benzoic acid;
88. The Defendants knew, or alternatively through the exercise of reasonable prudence ought to have known, that the introduction of the said toxins in a human body could result in injury, including Pulmonary Disease;
89. Per articles 1457, 1468 and 1469 C.c.Q., the Defendants are liable for physiological harm, emotional harm, and costs associated with medical monitoring for the Applicant and class members as a result of the Defendants' failures in their legal obligations toward the Applicant and class members;

**False or Misleading Representations and Consumer Protection Act**

90. The Defendants are "manufacturers" within the meaning of the C.p.a. and the Applicant and class members who purchased JUUL e-cigarettes are "consumers" within the meaning of the C.p.a.;
91. The Defendants' solicitations, offers, advertisements, promotions, sales and supply of e-cigarettes included false or misleading representations to the Applicant and class members including, *inter alia*, with respect to the harmful effects of e-cigarettes, the addictive qualities of e-cigarettes, the use of e-

cigarettes as a healthier alternative to smoking and the quantity of nicotine ingested when using e-cigarettes;

92. In particular, the Defendants misrepresented the strength of the nicotine contained therein by providing disclosure of the concentration of nicotine in the e-liquid as opposed to the nicotine in vaporized form which is inhaled by the user;
93. The Defendants knew or were reckless as to their knowledge of the falsehood of these representations;
94. The Defendants' false representations caused the Applicant and class members to purchase and use e-cigarettes;
95. The Applicant' and class members' purchase and use of e-cigarettes resulted in losses and damages;
96. The Defendants' false or misleading representations were in violation of s. 219 and s. 220(a) of the C.p.a.

#### **Breaches of the *Competition Act***

97. The Applicant further pleads and relies on the C.a., as amended, including ss. 36 and 52;

#### **Breaches of the *Tobacco and Vaping Products Act***

98. The Defendants' solicitations, offers, advertisements, promotions, sales and supply of e-cigarettes were contrary to the provisions of ss. 15.1, 19, 20, 23.3, 30.1, 30.2, 30.3, 30.41, 30.42, 30.43, 30.46, 30.5, 30.6, 30.7 and 30.701 of the T.v.p.a.;

### **Breaches of the *Tobacco Control Act***

99. The Defendants' solicitations, offers, advertisements, promotions, sales and supply of e-cigarettes were contrary to s. 22 of the T.c.a. prohibiting sponsorships such as the use of social media influencers as well as s. 24 prohibiting advertising directly to minors (using slogans such as "#maketheswitch" and #vaporized);

### **Health Care Cost Recovery**

100. The Applicant and class members have a claim for the recovery of health care costs incurred on their behalf by The Minister of Health and Social Services of Quebec. The Applicant pleads s.10 of the H.i.a.;

### **Conspiracy**

101. The Defendants conspired with other tobacco companies, including Altria Group, Inc., its predecessors, and/or others to orchestrate efforts to addict a new generation of persons to nicotine. The predominant purpose of the conduct of the Defendants and their co-conspirators was to cause injury to the Applicant and similarly situated persons, namely addiction;

102. Further, or in the alternative, the conduct of the Defendants and their co-conspirators was unlawful, by virtue of being contrary to the C.c.Q, C.p.a., C.a., T.v.p.a, T.c.a., and H.i.a. and the Defendants and their co-conspirators should have known in the circumstances that injury to the Applicant and similarly situated persons would be likely to result;
103. Consequently, per article 1480 C.c.Q., the Defendants and their co-conspirators should be held solidarily responsible and liable for any damages suffered by the Applicant and class members caused by the Defendants' failures in their legal obligations;

**PART 3: CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**

**1) The Facts Alleged Appear to Justify the Conclusions Sought**

***A) Applicant's Claim Against Defendants for (i) Civil Liability, (ii) Failure of Duty to Inform and (iii) False Representations, (iii) various statutory breaches***

104. Due to representations made in the public domain, including on social media available to be viewed in Canada, that e-cigarettes were safe, appealing and a healthier alternative to smoking, the Applicant purchased and commenced using JUUL e-cigarettes in 2017, while he was a 17-year-old minor;
105. Immediately after commencing JUUL e-cigarettes, the Applicant has sustained damages including, but not limited to, the following:
- Shortness of breath;

- Chest pain;
- coughing;
- Addiction to nicotine;
- Loss of quality of life;
- Vomiting; and
- Such other injuries as shall be proven at trial,

all of which injuries have caused and continue to cause the Applicant pain, suffering, and loss of enjoyment of life;

106. The Applicant has attempted to stop using JUUL e-cigarettes since April, 2020, without success;

107. The Applicant states that he would not have purchased and/or used JUUL e-cigarettes had he been provided with accurate information and/or warnings with respect to the possible health complication from Vaping. The Applicant was misled by the statements made by the Defendants with respect to the safety and efficacy of their products and by advertising made by the Defendants designed to market their products to minors;

108. The Applicant claims damages against the Defendants for:

- (a) Corporal and material damages pursuant to articles 1457, 1468 and 1469 C.c.Q.;
- (b) Reimbursement of cost of purchasing the Defendants' products;
- (c) Moral damages (addiction to nicotine, anxiety and mental distress);
- (d) Special damages for medical expenses and out-of-pocket expenses;

- (e) Loss of past and prospective income;
- (f) Cost of future care;
- (g) Punitive damages pursuant to article 1621 of the C.c.Q., articles 1 and 49 of the Charter and articles 219, 220(a), 228 and 272 of the C.p.a.;

109. The Applicant's damages are a direct result of the Defendants' failures in their legal obligations;

***B) Applicant's Claim for Punitive Damages***

110. Punitive damages pursuant to s. 272 C.p.a. have a preventive objective, that is, to discourage the repetition of such undesirable conduct;

111. Not only did the Defendants violate the C.p.a. by failing in their duty to inform, by making false or misleading representations, and by ascribing a health advantage to e-cigarettes over regular cigarettes, they intentionally and knowingly continue to sell JUUL e-cigarettes;

112. This behaviour also triggers a s. 1 Charter violation, because the Applicant's personal security has been compromised as a result of the Defendants' misconduct, giving rise to a claim in punitive damages under s. 49;

113. The Defendants' violations were intentional, knowing, malicious, vexatious, and dangerous;



114. The Defendants demonstrated through their behaviour that they are more concerned about their bottom line than about the health and safety of the Applicant and class members;
115. The conduct of the Defendants, and each of them, warrants a claim for punitive damages. They have conducted themselves in a high-handed, wanton, and reckless manner, and without regard to public safety. The Defendants knew or ought to have know the likely consequences of their actions on the Applicant and class members;
116. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the Defendants', to advance public safety and to achieve the goal of both specific and general deterrence;
117. The Applicant's claim for punitive damages is therefore justified;

**2) The Claims of the Members of the Group Raise Identical, Similar or Related Issues of Law or Fact**

118. The claims of the Class Members raise identical, similar or related questions of fact or law namely:
- (a) Did the defendants fail in their legal obligations to the class members to manufacture a product free of manufacturing defects which renders the product unsafe and dangerous for consumption?

- (b) Did the Defendants adequately inform class members about the risks of their products?
- (c) Did the Defendants conceal their knowledge of the risk of adverse health effects associated with their products, and if so, for how long?
- (d) Did the Defendants make false or misleading representations and, if so, what are the representations that were made and how were they made to class members?
- (e) Did the Defendants make representations as to the benefits of their products compared to regular cigarettes?
- (f) Is the responsibility of any of the Defendants engaged in view of the C.c.Q., the Charter, the C.p.a. or the C.a.?
- (g) If the responsibility of any of the Defendants is engaged, are class members entitled to:
  - (i) A reduction of their obligations and, if so, in what amount?
  - (ii) damages for trouble and inconvenience and, if so, in what amount?
  - (iii) Damages for loss of work and, if so, in what amount?
  - (iv) moral damages and, if so, in what amount?
  - (v) Punitive damages and, if so, in what amount?
- (h) Did the Defendants act in bad faith?
- (i) Can any or all of the claims be assessed on an aggregate basis?

### **3) The Composition of the Class**

119. The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, for the following reasons:

- (a) Class members are numerous and are scattered across Québec estimated to be in the thousands;
- (b) The Applicant is unaware of how many persons throughout Québec had purchased and/or used the Defendants' products;
- (c) The names and addresses of the class members are not known to the Applicant;
- (d) Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the defendants. Even if the class members themselves could afford such individual litigation, the Court system could not as it would be overloaded;
- (e) Further, individual litigation of the factual and legal issues raised by the conduct of the defendants would increase delay and expense to all parties and to the Court system;
- (f) A multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all class members;
- (g) These facts demonstrate that it would be impractical, if not impossible, to contact each and every class member to obtain mandates and to join them in one action; and
- (h) In these circumstances, a class action is the only appropriate procedure for all of the class members to effectively pursue their respective rights and have access to justice;

**4) The Class Member Appointed as Representative Plaintiff is in a Position to Properly Represent the Class Members**

120. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:

- a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;

- b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *C.c.p.*;
- c) His interests are not antagonistic to those of other class members;

121. Additionally, the Applicant respectfully adds that:

- a) He contacted and mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' failures in their legal obligations and so that the Defendants can be held accountable;
- b) He also wants to make sure that the public is made aware of the true risks associate with the Defendants' products;
- c) He is aware of several other class members in the same situation as him;
- d) He has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- e) He cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;
- f) He understands the nature of the action;

#### **PART 4: DAMAGES**

122. During the class period the Defendants generated important revenues while intentionally failing to inform class members of the health risks of their products;

123. Consequently, the Defendants have breached several obligations imposed on them by legislation in Quebec and Canada, including:
- a) The C.c.Q., including, but not limited to, sections 1399-1401, 1407, 1457, 1468, 1469 and 1473;
  - b) The Quebec *Charter*, s. 1, thus rendering s. 49 applicable;
  - c) The *Competition Act*, including s. 74 concerning deceptive marketing practices;
  - d) The Quebec *Consumer Protection Act*, including, but not limited to, ss. 219, 220(a) and 228, thus rendering s. 272 applicable;
124. Moreover, the Defendants failed in their obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
125. As a result of the Defendants' breaches, the Applicant and class members have suffered and will continue to suffer loss and damages. Such loss and damage was the result of the Defendants' failure to act with reasonable diligence and prudence;
126. The Applicant seeks injunctive relief and declaratory relief and punitive damages on his own behalf and on behalf of class members who purchased JUUL e-cigarettes;

127. The punitive damages provided for in section 272 *C.p.a.* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
128. Not only did the Defendants violate the *C.p.a.* by failing in their duty to inform, by making false or misleading representations, and by ascribing certain advantages to their product, they intentionally continue to sell their products in Quebec, and this despite the known health risk;
129. This behaviour also triggers a s. 1 Charter violation, because the Applicant and class members' personal security has been compromised as a result of the Defendants' gross and intentional negligence, giving rise to a claim in punitive damages under s. 49;
130. The Defendants' violations were intentional, malicious, vexatious and dangerous;
131. The conduct of the Defendants, and each of them, warrants a claim for punitive damages. They have conducted themselves in a high-handed, wanton, and reckless manner, and without regard to public safety;
132. This case raises issues of general deterrence. A punitive damage award in this case is necessary to express society's condemnation of conduct such as the Defendants', to advance public safety and to achieve the goal of both specific and general deterrence;
133. In light of the foregoing, the following damages may be claimed solidarily against the Defendants:

- a. Corporal and material damages pursuant to articles 1457, 1468 and 1469 C.c.Q.;
- b. Cost of purchasing the Defendants' products fueled by nicotine addiction;
- c. Moral damages;
- d. Special damages for medical expenses and out-of-pocket expenses;
- e. Loss of past and prospective income;
- f. Cost of future care;
- g. Punitive damages pursuant to article 1621 of the C.c.Q., article 1 and 49 of the C.h.r.f., and articles 219, 220(a), 228 and 272 of the C.p.a.;
- h. Recovery of health care costs incurred by the Ministry of Health Services;
- i. Costs;
- j. The legal interest and the special indemnity pursuant to article 1619 of the C.c.Q.;
- k. Such further and other relief this Honourable Court may deem just;

#### **PART 5: NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

134. The action that the Applicant wishes to institute for the benefit of the class members is an action in damages;

135. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

**GRANT** the Applicant's action against the defendants on behalf of all class members;

**DECLARE** that the defendants are solidarily liable for the damages suffered by the Applicant and each of the class members;

**CONDEMN** the Defendants solidarily to pay each class member a sum to be determined in compensation of the damages suffered and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

## **PART 5: JURISDICTION**

136. The Applicant suggests that this class action be exercised before the Superior Court in the District of Montréal because the class members and defendants reside everywhere in the Province of Québec;

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an Application to Institute Proceedings in damages;



**APPOINT** the Applicant the status of representative plaintiff of the persons included in the class herein described as:

all persons in Québec who purchased or used JUUL e-cigarette products for sale in Canada, or alternatively in Quebec, from July 1, 2018, to present

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- (a) Did the defendants fail in their legal obligations to the class members to manufacture a product free of manufacturing defects which renders the product unsafe and dangerous for consumption?
- (b) Did the Defendants adequately inform class members about the risks of their products?
- (c) Did the Defendants conceal their knowledge of the risk of adverse health effects associated with their products, and if so, for how long?
- (d) Did the Defendants make false or misleading representations and, if so, what are the representations that were made and how were they made to class members?
- (e) Did the Defendants make representations as to the benefits of their products compared to regular cigarettes?
- (f) Is the responsibility of any of the Defendants engaged in view of the C.c.Q., the Charter, the C.p.a. or the C.a.?
- (g) If the responsibility of any of the Defendants is engaged, are class members entitled to:
  - (i) A reduction of their obligations and, if so, in what amount?
  - (ii) damages for trouble and inconvenience and, if so, in what amount?
  - (iii) Damages for loss of work and, if so, in what amount?

- (iv) moral damages and, if so, in what amount?
- (v) Punitive damages and, if so, in what amount?
- (h) Did the Defendants act in bad faith?
- (i) Can any or all of the claims be assessed on an aggregate basis?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the Applicant's action against the defendants on behalf of all class members;

**DECLARE** that the defendants are solidarily liable for the damages suffered by the Applicant and each of the class members;

**CONDEMN** the Defendants solidarily to pay each class member a sum to be determined in compensation of the damages suffered and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each class member punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine; **DECLARE** that all class members that have not requested their exclusion from the class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the class members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the class members in accordance with Article 579 of the *C.c.p.*, within sixty (60) days from the judgement to be rendered herein pursuant to a further Order of the Court, and **ORDER** Defendants to pay for said publication costs;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs, including the costs of all publications of notices.

Montréal, June 12, 2019



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Montréal (Québec) H2Y 1B8

Phone: 1-438-738-3950

Fax: 1-438-788-9278

**Attorneys for the Applicant**

**SUMMONS**  
**(Art. 145 and following C.C.P.)**

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Applicant in the office of the Superior Court in the judicial district of Montréal.

**Defendants' answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 Rue Notre-Dame Est, Montréal, Québec, H2Y 186, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the case required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your

main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a Applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Applicant's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is files, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

- Exhibit P-1:** CIDREQ record for JUUL Labs Canada Ltd. as viewed on June 6, 2020
- Exhibit P-2:** JUUL Advertising Examples
- Exhibit P-3:** CBC What are vaping-associated illnesses and why are doctors concerned
- Exhibit P-4:** Pathology of Vaping-Associated Lung Injury NEJM dated October 2, 2019
- Exhibit P-5:** Toxicity of JUUL Fluids and Aerosols Correlates Strongly with Nicotine and Some Flavor Chemical Concentrations
- Exhibit P-6:** Prevalence of vaping and smoking in adolescents in Canada, England, and the United States
- Exhibit P-7:** Association of E-Cigarette Use with Respiratory Disease Among Adults: A Longitudinal Analysis
- Exhibit P-8:** JUUL Private Company Summary

- Exhibit P-9:** Federal Trade Commission Statement of Commissioner Rohit Chopra In the Matter of Altria Group, Inc. and JUUL Labs, Inc. dated April 2, 2020
- Exhibit P-10:** 2019 CAGNY Investor Presentation from Altria
- Exhibit P-11:** Federal Trade Commission Press Release: FTC Sues to Unwind Altria's \$12.8 Billion Investment in Competitor JUUL
- Exhibit P-12:** Tech investors have found something even more addictive than social media, dated October 24, 2018
- Exhibit P-13:** Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market, dated May 31, 2018
- Exhibit P-14:** JUUL launch parties, leaflets etc.
- Exhibit P-15:** FDA letter to JUUL dated September 12, 2018
- Exhibit P-16:** FDA Statement dated August 30, 2019
- Exhibit P-17:** CDC Summary Severe Pulmonary Disease Associated with Using E-Cigarette Products dated August 30, 2019
- Exhibit P-18:** Health Canada Information Update – warning of potential risk of pulmonary illness associated with vaping products dated September 6, 2019

The exhibits in support of the application are available upon request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

**NOTICE OF PRESENTATION  
(Articles 146 and 574 CCP)**

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**TO:**

**JUUL LABS CANADA, LTD.,  
c/o: *Services Blakes Québec inc.*  
3000-1, Place Ville-Marie,  
Montreal, Quebec, H3B4N8**

and

**JUUL LABS INC.  
560 20th Street,  
San Francisco, California  
USA, 94107-4344**

and

**ALTRIA GROUP, INC.  
6601 W BROAD STREET,  
RICHMOND, VIRGINIA  
USA 23230**

Defendants

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Québec, H2Y 1B6, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELF ACCORDINGLY.**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class Action)  
SUPERIOR COURT

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NO:

SANDRO SALVATORE

*Applicant*

v.

JUUL LABS CANADA, LTD.

and

JUUL LABS INC.

and

ALTRIA GROUP, INC.

*Defendants*

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**LIST OF EXHIBITS**


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Montréal, June 12, 2019

  
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**Attorneys for the Applicant**

500-06-001077-201

NO:

**SUPERIOR COURT  
DISTRICT OF MONTREAL  
(Class Action)**

**SANDRO SALVATORE**

Applicant

v.

**JUUL LABS CANADA, LTD.**

and

**JUUL LABS INC.**

and

**ALTRIA GROUP, INC.**

Defendants

APPLICATION FOR AUTHORIZATION TO INSTITUTE  
A CLASS ACTION AND TO OBTAIN THE STATUS OF  
REPRESENTATIVE,  
LIST OF EXHIBITS

**ORIGINAL**

Nature : Class Action

Mon dossier : 0060-001

BS2828



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