

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

SABRINA ZAMPA, individually, and as guardian of her minor children J.M., a minor, and J.M., a minor, on behalf of themselves and those similarly situated,

Plaintiff,

v.

JUUL LABS, INC., a Delaware corporation f/k/a PAX LABS, INC. f/k/a PLOOM PRODUCTS, INC., and PAX LABS, INC., a Delaware corporation f/k/a/ PAX LABS (DEUX), INC.,

Defendants.

**NOTICE OF REMOVAL OF CLASS ACTION**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, AND TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT**, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332, 1367, 1453, and 1711, and the diversity jurisdiction statute, 28 U.S.C. § 1332(a), Defendant JUUL Labs, Inc. (“JUUL Labs” or “Defendant”) hereby removes the above-captioned action—with reservation of all defenses and rights—from the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Case Number 2018-037507-CA-01, to the United States District Court for the Southern District of Florida, Miami Division. Removal is proper on the following grounds:

### **TIMELINESS OF REMOVAL**

1. Plaintiffs Sabrina Zampa and her minor children, J.M. and J.M. (collectively, “Plaintiffs”) filed a putative Class Action Complaint against JUUL Labs in the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Case Number 2018-037507-CA-01, on November 5, 2018. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the (a) Class Action Complaint, (b) Civil Cover Sheet, and (c) Summons are attached as Exhibits A–C to the Declaration of Austin V. Schwing (“Schwing Decl.”) filed concurrently herewith.

2. Plaintiffs served JUUL Labs, through JUUL Labs’ agent for service of process, with the Summons and Complaint on November 19, 2018. Schwing Decl. ¶ 5. This notice of removal is therefore timely pursuant to 28 U.S.C. § 1446(b) because it is filed within 30 days after service was completed. *See* 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6(a)(1).

### **SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

3. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this Court has subject matter jurisdiction over this action and all claims asserted against JUUL Labs in this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Removal is also proper pursuant to 28 U.S.C. §§ 1332 and 1441 because this Court has subject matter jurisdiction over this action by virtue of the diversity jurisdiction statute.

4. First, CAFA applies “to any class action before or after the entry of a class certification order by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). This case is a putative “class action” under CAFA because it was brought under a state statute or rule, namely Florida Rule of Civil Procedure 1.220, authorizing an action to be brought by one or

more representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* Schwing Decl. Ex. A (“Compl.”), ¶ 32.

5. In their Complaint, Plaintiffs assert seven counts against JUUL Labs: (1) False Advertising; (2) Fraud; (3) Deceptive and Unfair Trade Practices; (4) Unjust Enrichment; (5) Strict Product Liability – Failure to Warn; (6) Negligence; and (7) Negligence *per se*. *See* Compl. ¶¶ 42-112.

6. Among other things, Plaintiffs allege that putative class members are entitled to general, special, and statutory damages, penalties, restitution and disgorgement of profits, a monetary award for the cost of medical programs for the diagnosis and early detection of certain health issues, for the cessation of nicotine use, and for a public information campaign to warn underage users of the alleged health effects of using JUUL Labs products. Compl. Prayer for Relief.

7. Under CAFA, removal of a class action is proper if: (1) there are at least 100 members in the putative class; (2) there is minimal diversity between the parties, such that at least one class member is a citizen of a state different from that of any defendant; and (3) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d), 1441.

8. Moreover, under the diversity jurisdiction statute, removal of a civil action is proper if the action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332(a), 1441.

9. JUUL Labs denies any liability in this case. JUUL Labs expressly reserves all of its rights, including, but not limited to, its right to file motions to compel arbitration and motions challenging the pleadings. JUUL Labs also intends to oppose class certification and believes that

class treatment is inappropriate under these circumstances in part because there are many material differences between the named Plaintiffs and the putative class members Plaintiffs seek to represent. JUUL Labs expressly reserves all rights to oppose class certification and to contest the merits of all claims asserted in the Complaint. However, for purposes of meeting the jurisdictional requirements for removal *only*, JUUL Labs submits on a good-faith basis that the allegations in Plaintiffs' Complaint identify a putative class of more than 100 members, meet the minimum diversity requirement, and put in controversy, in the aggregate, an amount that exceeds \$5 million. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B), and (d)(6). JUUL Labs further submits, again for purposes of meeting the jurisdictional requirements for removal *only*, that the amount in controversy exceeds \$75,000 and that this action is between citizens of different states, such that removal is proper under 28 U.S.C. § 1332(a).

**I. Removal Is Proper Under CAFA**

**A. The Proposed Class Consists of More than 100 Members**

10. Based on Plaintiffs' allegations, this action satisfies CAFA's requirement that the putative class action contains at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

11. Plaintiffs propose two classes. The first proposed class consists of "[a]ll residents of Florida who, at the time of their use of JUUL products, were under the age of 18, and who procured and used JUUL products (the 'Class')." Compl. ¶ 32.

12. The second proposed class consists of "[a]ll legal guardians of all residents of Florida who, at the time of their use of JUUL products, were under the age of 18, and who procured and used JUUL products (the 'Guardian Class')." Compl. ¶ 33.

13. The Complaint estimates that "the class is imposed [sic] of more than 500 persons." Compl. ¶ 36. Accordingly, while JUUL Labs denies that class treatment is

permissible or appropriate, based on the Complaint's allegations the proposed class plainly consists of more than 100 members.

**B. JUUL Labs and A Member of the Class Are Not Citizens of the Same State**

14. Under CAFA's minimum diversity of citizenship requirement, the plaintiff or any member of the putative class must be a citizen of a different state from any defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

15. Plaintiffs allege that, “[a]t all times material to th[eir] Complaint, Plaintiffs were and are residents of Miami, Miami-Dade County, Florida.” Compl. ¶ 3.

16. Plaintiffs further allege that “JUUL Labs, Inc., is a Delaware corporation with its principal address at 560 20th Street, San Francisco, CA 94107.” Compl. ¶ 13. As such, JUUL Labs is a citizen of Delaware and California. *See* 28 U.S.C. § 1332(c)(1). Accordingly, at least one Plaintiff is a citizen of a different state from that of JUUL Labs.

**C. The Amount in Controversy Exceeds \$5 Million**

17. CAFA requires that the amount in controversy in a class action exceed \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, a court must aggregate the claims of all individual class members. 28 U.S.C. § 1332(d)(6).

18. The Eleventh Circuit applies “a preponderance of the evidence” standard to determine whether removal under CAFA is proper. *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 913 (11th Cir. 2014); *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 752 (11th Cir. 2010). A defendant seeking to remove under CAFA need only show “that the amount in controversy more likely than not exceeds the . . . jurisdictional requirement [of \$5 million].” *Pretka*, 608 F.3d at

752 (internal quotation marks omitted). To satisfy this burden, a defendant may rely on “reasonable deductions, reasonable inferences, or other reasonable extrapolations.” *Id.* at 754.

19. Plaintiffs’ allegations—if accepted—would place in excess of \$5 million in controversy, exclusive of interest and costs. *See Shaver v. Ford Motor Co.*, 768 F. Supp. 2d 1235, 1236–37 (S.D. Fla. 2011) (holding that removal under CAFA is proper where “the requisite amount of controversy of \$5,000,000 is evident on the face of the complaint”). “When the complaint does not claim a specific amount of damages, removal from state court is jurisdictionally proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.” *Pretka*, 608 F.3d at 754 (internal quotation marks and alterations omitted). In other words, the focus of the Court’s inquiry must be on “how much will be put at issue during the litigation,” and “the amount is not discounted by the chance that the plaintiffs will lose on the merits.” *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1315 (11th Cir. 2014).

20. Although JUUL Labs denies that Plaintiffs’ claims have any merit or that Plaintiffs have suffered any harm or damages, JUUL Labs avers, for purposes of meeting the jurisdictional requirements for removal *only*, that if Plaintiffs were to prevail on every single claim and allegation in their Complaint on behalf of the putative class, the requested monetary recovery would exceed \$5 million. This can hardly be disputed since Plaintiffs seek damages for personal injury, restitution and disgorgement, medical monitoring, penalties, and attorneys’ fees, on behalf of two proposed classes. Compl. ¶ 36.<sup>1</sup>

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<sup>1</sup> JUUL Labs reserves the right to present evidence establishing the amount placed in controversy by each of Plaintiffs’ claims should Plaintiffs challenge whether the jurisdictional amount-in-controversy threshold is satisfied. *See Dart Cherokee Basin Operating Co.*, 135 S. Ct. 547, 554 (2014) (“Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation [that the amount in controversy exceeds the jurisdictional threshold].”).

Allegations of Personal Injury

21. Plaintiffs allege that JUUL Labs unlawfully designed, manufactured, marketed, advertised, and distributed JUUL Labs products. *See, e.g.*, Compl. ¶ 19. Plaintiffs further allege that JUUL Labs’ alleged conduct caused the putative class members a wide variety of personal injuries, in the form of physical, mental, and emotional harms including: “increased risk of heart disease and stroke; changes in brain functionality that lead to changes in behavior, respiratory illness, increased susceptibility to anxiety, depression and other addictions; long-term nicotine addiction; decreased functionality of the immune and endocrine systems; heightened risk of cancer; and negative effects on fertility.” Compl. ¶ 19.

22. For example, Plaintiffs allege that “[a]s a result of Defendants’ conduct, minor Plaintiffs and Class Members have been significantly exposed to toxic substances, including nicotine and nicotine delivery additives, and have as a result of this exposure have suffered increased risk of illness, disease or disease process.” Compl. ¶ 51.

23. Plaintiffs seek “actual, compensatory, and consequential damages,” as well as “statutory damages and penalties.” Compl. Prayer for Relief.

24. Given Plaintiffs’ allegations that the proposed classes are entitled to recover damages for serious medical conditions, Plaintiffs’ personal injury claims put more than \$5 million in dispute. This is especially true given that Plaintiffs also seek restitution, disgorgement, and penalties. *See* Compl. Prayer for Relief.

Programmatic Relief

25. Plaintiffs have also put more than \$5 million in dispute by seeking relief in the form of a “monetary award of the cost of [three] program[s]” for: (1) “diagnostic testing for the early detection of illness, disease, or disease process for class members who used JUUL

products”; (2) “a nicotine use cessation program for class members who used JUUL products”; and (3) “a public information campaign to warn underage users of the health effects and addictive nature of the JUUL products.” Compl. Prayer for Relief.

26. The creation of a diagnostic testing program and a nicotine use cessation program of the kind demanded by Plaintiffs, for the proposed classes, and an additional statewide public information campaign to warn underage users of the health effects of using JUUL Labs products, likely would cost more than \$5 million.

#### Attorneys’ Fees

27. Plaintiffs’ demand for “attorneys’ fees,” Compl. Prayer for Relief, places an additional amount in controversy. *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000) (“When a statute authorizes the recovery of attorney’s fees, a reasonable amount of those fees is included in the amount in controversy.”).

28. Plaintiffs’ First and Third causes of action are based on Florida’s Deceptive and Unfair Trade Practices Act (the “FDUTPA”), Florida Statute Section 501.201, *et seq.* Compl. ¶¶ 45, 68. Plaintiffs seek attorneys’ fees if they prevail on their claims. Fla. Stat. § 501.2105(1).

29. JUUL Labs denies that any such attorneys’ fees are owed to Plaintiffs or the putative class, and reserves the right to contest the amount of any such fees in this case. However, for purposes of this jurisdictional analysis *only*, JUUL Labs relies on Plaintiffs’ allegations that the attorneys’ fees are owed. Plaintiffs’ request for attorneys’ fees places a significant additional amount in controversy for purposes of CAFA.

30. Plaintiffs’ allegations therefore place more than the requisite \$5 million in controversy. The jurisdictional amount-in-controversy requirement is met, and removal to this Court is proper under CAFA.



## **II. Removal Is Also Proper Under The Diversity Jurisdiction Statute**

### **A. The Amount in Controversy Exceeds \$75,000**

31. For similar reasons, Plaintiffs' allegations place more than the requisite \$75,000 in controversy for jurisdiction under the diversity jurisdiction statute, 28 U.S.C. § 1332(a).

32. As set forth in detail above, Plaintiffs seek compensatory damages for serious medical conditions; statutory damages and penalties; restitution and disgorgement; three separate forms of programmatic relief; and attorneys' fees. Compl. Prayer for Relief. These forms of relief place at least \$75,000 in controversy for at least one plaintiff.

33. Where the amount-in-controversy requirement of the diversity jurisdiction statute is satisfied for at least one plaintiff, this Court may exercise supplemental jurisdiction over the claims of other plaintiffs, even if such claims do not independently satisfy the amount-in-controversy requirement. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005); *see also* 28 U.S.C. § 1367.

### **B. The Parties Are Citizens of Different States**

34. For federal jurisdiction to be authorized under the diversity jurisdiction statute, there must be diversity of citizenship between the parties. 28 U.S.C. § 1332(a). Such diversity is present where the parties are "citizens of different States." *Id.* § 1332(a)(1).

35. Plaintiffs describe their Complaint as "a class action complaint by Florida residents." Compl. ¶ 1. As noted above, they allege that, "[a]t all times material to this Complaint, Plaintiffs were and are residents of Miami, Miami-Dade County, Florida." Compl. ¶ 3.

36. Plaintiffs propose to certify two classes: "All residents of Florida who, at the time of their use of JUUL products, were under the age of 18, and who procured and used JUUL

products (the ‘Class’); and “[a]ll legal guardians of all residents of Florida who, at the time of their use of JUUL products, were under the age of 18, and who procured and used JUUL products (the ‘Guardian Class’).” Compl. ¶¶ 32-33.

37. JUUL Labs is a citizen of California and Delaware. Compl. ¶ 13.

38. The diversity of citizenship requirement of 28 U.S.C. § 1332(a)(1) is therefore satisfied because JUUL Labs and the plaintiffs are citizens of different states.

**THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

39. Based on the foregoing facts and allegations, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and (d) because:

- a. This is a civil action which is a class action within the meaning of § 1332(d)(1)(B);
- b. The action involves a putative class of at least 100 persons as required by § 1332(d)(5)(B);
- c. At least one member of the putative class is a citizen of a state different from that of any defendant as required by § 1332(d)(2)(A);
- d. The amount in controversy exceeds \$5 million, exclusive of interest and costs, as required by § 1332(d)(2);
- e. The amount in controversy as to at least one plaintiff exceeds \$75,000, as required by § 1332(a); and
- f. The parties are citizens of different states, as required by § 1332(a)(1).

Accordingly, this action is properly removable under 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

40. The United States District Court for the Southern District of Florida, Miami Division, is the federal judicial district and division in which the Circuit Court for the Eleventh

Judicial Circuit, in and for Miami-Dade County, sits. This action was originally filed in the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, rendering venue in this federal judicial district and division proper. *See* 28 U.S.C. §§ 89(c), 1441(a).<sup>2</sup>

41. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon JUUL Labs are attached as Exhibits A–D to the Declaration of Austin V. Schwing filed concurrently herewith. These filings constitute the complete record of all records and proceedings in the state court that have been served upon JUUL Labs.

42. On November 26, 2018, Plaintiffs and Defendant PAX Labs, Inc. (“PAX Labs”) submitted a stipulation in the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, to dismiss PAX Labs from the action. *See* Schwing Decl. ¶ 5, Ex. D. Although PAX Labs’ consent to removal is not necessary, counsel for PAX Labs has indicated via email that it does not oppose removal. *Id.* ¶ 7.

43. Upon filing the Notice of Removal, JUUL Labs will furnish written notice to Plaintiffs’ counsel, and will file and serve a copy of this Notice with the Clerk of the Circuit Court for the Eleventh Judicial Circuit, pursuant to 28 U.S.C. § 1446(d).

44. WHEREFORE, JUUL Labs hereby removes to the Court the above action pending against it in the Circuit Court for the Eleventh Judicial Circuit.

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<sup>2</sup> Defendant reserves the right to seek to transfer this action from the Southern District of Florida to another United States District Court.

DATE: November 30, 2018

Respectfully submitted

By: /s/ George S. LeMieux

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