

CHRIS BAKER, State Bar No. 181557
cbaker@bakerlp.com
DEBORAH SCHWARTZ, State Bar No. 208934
dschwartz@bakerlp.com
BAKER CURTIS & SCHWARTZ, P.C.
1 California Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 433-1064
Fax: (415) 366-2525

Attorneys for Plaintiff
MARCIE HAMILTON

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCIE HAMILTON,

Plaintiff,

vs.

JUUL LABS, INC.,

Defendant.

Case No.: 3:20-cv-3710

COMPLAINT

- 1. PAGA – LABOR CODE § 1102.5**
- 2. PAGA – LABOR CODE §§ 96(k) and 98.6**
- 3. PAGA – LABOR CODE § 232 and 1197.5**
- 4. PAGA – LABOR CODE § 232.5**
- 5. PAGA – LABOR CODE § 432.5**
- 6. UNFAIR COMPETITION**

REQUEST FOR PRELIMINARY AND PERMANENT PUBLIC INJUNCTION

INTRODUCTION

1. A generation ago, the tobacco industry willfully concealed its harmful and illegal conduct through employee non-disclosure agreements (“NDAs”) and other unlawful practices (such as misuse of the attorney-client privilege). The makers of Pall Mall and Lucky Strike sought and obtained an injunction prohibiting one employee, Jeffrey Wigand, from disclosing information about the industry’s manipulation of nicotine and the other public health dangers. At the risk of being jailed for contempt, Wigand breached his NDA. He spoke to the press, to

1 government regulators, to public interest attorneys, and he testified in court. Consequently, the
2 tobacco industry eventually paid more than \$300 billion in settlements and faced significant
3 additional regulation. Wigand was nearly bankrupted from the legal fees associated with the
4 tobacco industry's efforts to enforce his NDA and silence him.

5 2. Some things, apparently, never change.

6 3. As detailed below, Defendant JUUL Labs, Inc., now 35% owned by Altria
7 (producer of Marlboro cigarettes, among others), still seeks to illegally silence current and former
8 employees through NDAs, exit certifications, severance agreements, and other policies and
9 practices (collectively, "confidentiality requirements"). These confidentiality requirements are
10 deeply harmful to JUUL's current and former employees, to the public, and to the State of
11 California. They prevent employee speech, whistleblowing, and competition.

12 4. JUUL's confidentiality requirements are in gross violation of the California Labor
13 Code and, as detailed below, other California and federal laws. Thus, pursuant to the Private
14 Attorneys General Act (PAGA) and the Unfair Competition Law, Plaintiff Marcie Hamilton seeks
15 civil penalties, appropriate injunctive relief, and a declaration that JUUL's confidentiality
16 requirements are illegal, unenforceable, and must be changed.

17 PARTIES

18 5. Plaintiff Marcie Hamilton is a resident of San Francisco, California. She worked
19 at JUUL from approximately April 2, 2018 to March 2019 as its Director of Program
20 Management. As a high-level managerial employee, she reported directly to JUUL's Senior
21 Vice President of Product Management, who in turn reported to JUUL's Chief Executive
22 Officer.

23 6. The State of California is the legal entity upon whose behalf the PAGA claims are
24 brought. Hamilton acts as the State's proxy under PAGA.

25 7. All JUUL's current and former employees that are or were subject to JUUL's
26 confidentiality requirements are aggrieved employees within the meaning of PAGA. Hamilton
27 also seeks the appropriate share of any civil penalties on behalf of and for the benefit of these
28 aggrieved employees. She also seeks a preliminary and permanent injunction on behalf of the

1 public.

2 8. On information and belief, more than 3000 aggrieved employees have been subject
3 to the legal violations that are the subject of this case. They have collectively worked tens of
4 thousands, if not hundreds of thousands, of pay periods.

5 9. Defendant JUUL Labs, Inc. is incorporated in Delaware. In December 2018,
6 Altria, one of the largest tobacco companies in the world, invested \$12.8 billion in JUUL in
7 exchange for 35% of the company. Altria is a Virginia corporation and its principle executive
8 offices are located in Virginia. Upon acquiring its stake in JUUL, Altria appointed KC
9 Crosthwaite, an Altria senior executive based in Virginia, as its observer on JUUL's Board of
10 Directors.

11 10. In September 2019, JUUL appointed Crosthwaite as its Chief Executive Officer.

12 11. On information and belief, soon after Crosthwaite's appointment, JUUL took
13 steps to sell its San Francisco office building at 123 Mission St. JUUL currently leases 20,000
14 square feet or more of office space in Washington, D.C.

15 12. JUUL has also concluded that the city of San Francisco is hostile to its business.
16 According to a May 5, 2020 news report by the Wall Street Journal, JUUL has announced that it
17 is moving its corporate headquarters from San Francisco to Washington, D.C. as part of a
18 restructuring. It is also moving its corporate headquarters in an effort to repair its relationships
19 with federal regulators. On information and belief, this move has already occurred in relevant
20 respects.

21 13. In the fall of 2019, and again in May 2020, JUUL announced layoffs of large
22 parts of its workforce.

23 14. On information and belief, Crosthwaite currently resides with his wife and family
24 in Virginia, and Crosthwaite's primary physical work locations for JUUL are in Washington,
25 D.C. and Virginia. This is especially so in light of the current pandemic.

26 15. On information and belief, JUUL's Chief Legal Officer resides in the Washington
27 D.C. Metropolitan Area and his primary physical work location is JUUL's Washington, D.C.
28 office.

1 16. On information and belief, five of Crosthwaite’s direct reports – including
2 JUUL’s Chief Operations Officer, Chief Quality Officer, and Chief Growth Officer – have
3 residences and primary physical work locations in places other than San Francisco, California.

4 17. On information and belief, executives currently employed by Altria continue to
5 assert considerable influence, direction and control over JUUL. These executives have
6 residences and primary physical work locations in places other than San Francisco, California.

7 18. JUUL’s center of direction, control, and coordination is not a single place in San
8 Francisco, California. JUUL is not a citizen of California.

9 **JURISDICTION AND VENUE**

10 19. This Court has diversity jurisdiction of this case. 29 U.S.C. § 1332. The amount in
11 controversy far exceeds \$75,000. At the time of the filing of this suit, Hamilton and JUUL are
12 citizens of different states. Hamilton is a citizen of California. Under 29 U.S.C. § 1332(c), JUUL
13 is not a citizen of California. JUUL is instead a citizen of Delaware (its place of incorporation).
14 The current location of JUUL’s principle place of business or “nerve center” is a physical location
15 in either Washington, D.C. or Virginia.

16 20. Venue is proper in the Northern District of California because Hamilton resides in
17 the Northern District and JUUL conducts business in the Northern District.

18 **BACKGROUND**

19 21. It is unfortunately well-established that employers rely on illegal NDAs and other
20 unlawful employment requirements to prevent whistleblowing, competition, and speech by their
21 employees. This is because “employees, having no reason to familiarize themselves with the
22 specifics of California’s employment law, will tend to assume that the contractual terms
23 proposed by their employer. . . are legal, if draconian. Furthermore, even if they strongly suspect
24 that a . . . clause is unenforceable, such employees will be reluctant to challenge the legality of
25 the contractual terms and risk the deployment of [the employer’s] considerable legal resources
26 against them. Thus, the *in terrorem* effect of the Agreement will tend to secure compliance with
27 its illegal terms in the vast majority of cases.” *Latona v. Aetna U.S. Healthcare Inc.* (C.D. Cal.
28 1999) 82 F.Supp.2d 1089, 1096.

1 22. Armed with these illegal NDAs and confidentiality requirements, and in reliance
2 on their terrorizing effect, powerful employers, often with the help of prominent law firms,
3 threaten employees with termination, financial ruin and more if they dare disclose corporate
4 wrongdoing or engage in other relevant protected conduct. To identify three notorious examples,
5 a Theranos whistleblower faced threats of litigation and six figures in legal fees for disclosing
6 information about Theranos’s fraud. Carreyrou, Theronas Whistleblower Shook the Company –
7 and His Family, Wall Street Journal (Nov. 18, 2016). Harvey Weinstein’s serial and horrendous
8 misconduct was hidden and facilitated through the use of employer-mandated NDAs. Helmore,
9 Harvey Weinstein lawsuit: attorney general says ‘we have never seen anything as despicable.’
10 The Guardian (Feb. 12, 2018) (linking to New York State complaint against Weinstein detailing
11 use of NDAs to prevent reporting of Weinstein’s illegal conduct). And, of course, Jeffrey
12 Wigand lost nearly everything because of the tobacco industry’s efforts to silence him with an
13 NDA, lest he disclose its unlawful and unethical conduct. Lyman, A Tobacco Whistle-Blower’s
14 Life Is Transformed, the New York Times (Oct. 15, 1999).

15 23. JUUL currently faces numerous government investigations arising from its
16 business practices, including as it relates to the use of its products by minors. JUUL also faces
17 numerous administrative and court actions (by governments and otherwise) arising from its
18 business practices, including as it relates to its relationship with Altria and the health dangers of
19 its products.

20 24. JUUL relies on NDAs and other confidentiality requirements to prevent its
21 current and former employees from providing information relevant to these investigations and
22 actions. JUUL relies on NDAs and other confidentiality requirements to prevent disclosure of
23 its unlawful and unethical business practices. JUUL’s use of illegal NDAs and other
24 confidentiality requirements violate California law.

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FACTSJUUL's Confidentiality and Non-Disparagement Agreement

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3 25. On March 22, 2018, Hamilton accepted an offer to work for JUUL as its Director
4 of Program Management. As an express condition of her employment, JUUL required Hamilton
5 to sign its standard "Proprietary Information and Invention Assignment Agreement" ("NDA").
6 On information and belief, JUUL has a policy of requiring all of its employees to sign this
7 standard or a substantially similar NDA. JUUL's offer letter to Hamilton, states that: "this offer,
8 and employment pursuant to this offer, is conditioned upon" . . . "[y]our signed agreement to,
9 and ongoing compliance with, the terms of the enclosed [NDA]." On information and belief, all
10 JUUL employees receive an offer letter with similar terms.

11 26. The NDA states "Employee shall at all times during the term of the Employee's
12 employment with the Company and thereafter, hold in strictest confidence, and not use . . . or
13 disclose to any person, firm, or corporation, without written authorization from the Company's
14 Board of Directors (the "Board"), any Confidential Information of the Company." The NDA
15 defines "Confidential Information" to mean, essentially, everything related to JUUL, including:
16 customers (including those with whom the Employee merely became "acquainted" during the
17 term of Employee's employment), "products," "markets," a laundry list of other categories of
18 items, "other business information of the Company;" and "information disclosed by the
19 Company to Employee and information developed or learned by Employee during the course of
20 employment with Company." But that is not all.

21 27. The NDA also contains a non-disparagement provision. It defines Confidential
22 Information to include: "all information of which the unauthorized disclosure could be
23 detrimental to the interests of the Company, whether or not such information is identified as
24 Confidential Information."

25 28. The NDA contains no "carve-outs" for whistleblowing under Labor Code §
26 1102.5, the SEC Rules, or any other law, the disclosure of potentially illegal conduct under
27 Government Code § 12964.5, the disclosure of wages under Labor Code §§ 232 and 1197.5, the
28 disclosure of working conditions under Labor Code § 232.5, or the exercise of free speech rights

1 under Labor Code §§ 96(k) and 98.6. The NDA does not contain a notice of immunity
2 concerning the disclosure of trade secrets for the purpose of whistleblowing, as required by the
3 Defend Trade Secrets Act. Instead, the NDA states: “Employee agrees that Employee bears the
4 burden of proving that given information or materials are not confidential.”

5 29. The NDA requires employees to “execute any proper oath or verify any proper
6 document required to carry out the terms of this Agreement.” It states that: “In the event of the
7 termination of the Employee’s employment, Employee hereby covenants and agrees to sign and
8 deliver the ‘Termination Certificate’ attached hereto as Exhibit C.”

9 30. The NDA also requires that employees agree that “for a period of twelve (12)
10 months immediately following the termination of Employee’s relationship with the Company for
11 any reason . . . the employee shall not either directly or indirectly solicit, induce, recruit, or
12 encourage any of the Company’s employees to leave their employment, or attempt to solicit,
13 induce, recruit, encourage or take away employees of the Company, either for Employee or any
14 other person or entity.”

15 31. The NDA has no temporal or geographic limitation. It lasts forever. It also
16 purports to give JUUL the right to enforce the agreement “by injunction, specific performance or
17 other equitable relief, without bond” because “Employee may have access to and become
18 acquainted with the Confidential Information of the Company.” The NDA also makes clear that
19 injunctive relief is not JUUL’s sole remedy in the event of an employee breach. An employee
20 may also be held liable to JUUL for monetary damages.

21 32. The NDA unlawfully prohibits whistleblowing, competition, and speech. It is,
22 among other things, an unlawful restrictive covenant that has as one well-established purpose the
23 suppression of wages.

24 The Termination Certificate

25 33. On March 15, 2019, JUUL informed Hamilton that it had decided to terminate her
26 employment. It required her to sign the “Termination Certificate” that all employees must agree
27 to sign as a condition of employment. The Certificate requires employees to certify they have
28 “complied with all the terms of the [NDA].” The Certificate further states:

1 In compliance with the [NDA], I will preserve as confidential all
2 trade secrets, confidential knowledge, data, or other proprietary
3 information, relating to products, processes, know-how, designs,
4 formula, developmental or experimental work, computer programs,
5 data bases, other original works of authorship, customer lists,
6 business plans, financial information or other subject matter
7 pertaining to any business of the Company or any of its employees,
8 clients, consultants, or licensees.

9 34. In accordance with her contractual obligations, Hamilton signed the Termination
10 Certificate. On information and belief, and consistent with their contractual obligations, other
11 former JUUL employees have done the same.

12 35. The Termination Certificate unlawfully prohibits whistleblowing, competition, and
13 speech.

14 The Severance Agreement

15 36. In addition to informing Hamilton, on March 15, 2019, of its intent to terminate
16 her employment, JUUL also informed Hamilton it would continue to employ and pay her wages
17 through April 2, 2019, as well as pay her a bonus, if she signed a JUUL severance agreement.
18 This was an important date because employment through April 2, 2019 would allow Hamilton's
19 first tranche of equity to vest.

20 37. The severance agreement included a general release of claims, including claims
21 arising under the Fair Employment & Housing Act.

22 38. The severance agreement further required Hamilton to refrain from any
23 "disparagement" of JUUL and "its current and former parents, subsidiaries, related entities and
24 affiliates, and their respective employee benefit plans or funds, officers, directors, shareholders
25 [including Altria, its largest shareholder], partners, employees, agents, trustees, administrators,
26 predecessors, successors, and assigns."

27 39. The severance agreement further required Hamilton to keep the existence and
28 terms of the severance agreement itself "confidential," even though the agreement contained
extensive information about working conditions and wages.

40. On information and belief, JUUL requires all employees to sign agreements with
similar terms as a condition of continuing employment, or as a condition of receiving

1 compensation, wages, or bonuses.

2 41. Hamilton declined to sign the severance agreement. As a result, JUUL refused to
3 employ her through April 2, 2019 and refused to pay her bonus, resulting in the loss of wages and
4 other compensation. Her equity did not vest.

5 42. Hamilton continues to be subject to the NDA and Termination Certificate. These
6 documents are restrictive covenants that restrain Hamilton's employment opportunities and
7 suppress her worth in the labor market.

8 43. Hamilton is in possession of information about her employment with JUUL. The
9 NDA and Termination Certificate prohibit Hamilton from communicating this information to
10 government regulators, government officials, the press, and others. JUUL's confidentiality
11 requirements prohibit all aggrieved employees from engaging in whistleblowing and other
12 conduct protected by California law.

13 Other Confidentiality Requirements

14 44. As alleged in Hamilton's PAGA notice, JUUL also maintains policies and
15 practices that unlawfully prohibit employees from engaging in whistleblowing, seeking new or
16 better work, disclosing information about their wages and working conditions, or otherwise
17 engaging in protected speech under California law.

18 JUUL's Knowledge

19 45. JUUL knows its confidentiality requirements are illegal. Among other things,
20 JUUL is presumed to know the law, and, on information and belief, JUUL received the advice of
21 competent counsel in drafting and promulgating its confidentiality requirements. In addition,
22 when JUUL proposes certain release agreements to employees, it sometimes includes in these
23 release agreements certain carve-outs required by law. Moreover, and as detailed below, on or
24 around August 14, 2019, JUUL received a PAGA notice detailing the manner in which certain of
25 JUUL's confidentiality requirements violate the law.

26 Administrative Exhaustion & Pre-Litigation Settlement Efforts

27 46. Plaintiff filed a PAGA notice with the Labor Workforce & Development Agency
28 ("LWDA") on August 14, 2019. It is attached as Exhibit A. She has heard no response from the

1 LWDA stating that it intends to investigate the claims alleged in this lawsuit. On September 30,
2 2019, the parties entered into a tolling agreement in order to determine if a pre-litigation
3 resolution of this matter was possible. The parties engaged in a mediation in January 2020. The
4 claims alleged in this lawsuit were not resolved, and the parties have been unable to reach a
5 resolution since that time.

6 47. Plaintiff has administratively exhausted her LWDA remedies. To the extent she
7 has not, and for the avoidance of doubt, she will amend her complaint to include all the
8 allegations set forth in this complaint upon the exhaustion of a new PAGA notice period.

9 48. On information and belief, JUUL still has not changed the illegal confidentiality
10 requirements referenced above. If anything, JUUL continues to aggressively require, implement,
11 and enforce its illegal confidentiality requirements with respect to its current and former
12 employees. It continues to require employees to sign agreements that unlawfully prohibit them
13 from engaging in whistleblowing, competition, and speech.

14 49. The Private Attorneys General Act was enacted to deter Labor Code violations and
15 unfair competition. PAGA grants courts the same discretion as the LWDA to assess civil
16 penalties. Labor Code § 2699(e)(1). This discretion necessarily includes the discretion to
17 condition any contemplated reduction in civil penalties on an employer's agreement to injunctive
18 relief.

19 50. Hamilton seeks both civil penalties and negative and affirmative injunctive relief.

20 **CAUSES OF ACTION**

21 51. Hamilton brings the following claims:

22 **FIRST CAUSE OF ACTION**

23 **(PAGA VIOLATION OF LABOR CODE § 1102.5(a))**

24 52. Plaintiff incorporates by reference the allegations set forth above to the extent she
25 has exhausted her PAGA administrative remedies with respect to those allegations.

26 53. Labor Code § 1102.5(a) makes it unlawful for an employer to make, "adopt, or
27 enforce any rule, regulation, or policy preventing an employee from disclosing information to a
28 government or law enforcement agency, to a person with authority over the employee [or to

1 another employee with the authority to investigate, discuss, or correct the violation], or from
2 providing information to, or testifying before, any public body conducting an investigation,
3 hearing or inquiry,” if the employee has reasonable cause to believe that the information discloses
4 a violation of law, “regardless of whether disclosing the information is part of the employee’s job
5 duties.”

6 54. As detailed above, JUUL’s confidentiality requirements violate Labor Code
7 §1102.5(a). JUUL has adopted and enforced policies preventing employees from disclosing
8 information concerning reasonably-suspected violations of the law to government agencies and
9 public bodies.

10 55. Labor Code § 1102.5(f) states that, “in addition to other penalties, an employer
11 that is a corporation or limited liability company is liable for civil penalties not exceeding ten
12 thousand dollars (\$10,000) for each violation of this section.”

13 56. Additional penalties under PAGA for a violation of Labor Code § 1102.5(a) are
14 “one hundred dollars (\$100) for each aggrieved employee per period for the initial violation and
15 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
16 violation.”

17 57. Plaintiff seeks from Defendant JUUL Labs, Inc., on behalf of herself, the State of
18 California, and all aggrieved employees, PAGA penalties as set forth above for each employee
19 per pay period within the statutory time frame.

20 **SECOND CAUSE OF ACTION**

21 **(PAGA VIOLATION OF LABOR CODE §§ 96(k) and 98.6)**

22 58. Plaintiff incorporates by reference the allegations set forth above to the extent she
23 has exhausted her PAGA administrative remedies with respect to those allegations.

24 59. Labor Code § 96(k) gives employees the right to engage in “lawful conduct
25 occurring during non-working hours away from the employer’s premises.” This lawful conduct
26 includes the exercise of free speech rights, as protected by the California and United States
27 Constitutions. Labor Code §98.6(b) makes it unlawful to threaten an employee with discharge for
28 engaging in conduct protected by Labor Code § 96(k).

1 60. As detailed above, JUUL’s confidentiality requirements violate Labor Code §
2 96(k) and 98.6. Among other things, JUUL threatens employees with discharge if they engage in
3 lawful conduct during non-working hours away from JUUL’s premises, including speech of
4 which JUUL does not approve.

5 61. Penalties under PAGA for a violation of Labor Code §§ 96(k) and 98.6 are “one
6 hundred dollars (\$100) for each aggrieved employee per period for the initial violation and two
7 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
8 violation.”

9 62. Plaintiff seeks from Defendant JUUL Labs, Inc., on behalf of herself, the State of
10 California, and all aggrieved employees, PAGA penalties as set forth above for each employee
11 per pay period within the statutory time frame for each statutory section.

12 **THIRD CAUSE OF ACTION**

13 **(PAGA VIOLATION OF LABOR CODE §§ 232 AND 1197.5(k))**

14 63. Plaintiff incorporates by reference the allegations set forth above to the extent she
15 has exhausted her PAGA administrative remedies with respect to those allegations.

16 64. Labor Code § 232 states, among other things, that no employer may “require, as a
17 condition of employment, that an employee refrain from disclosing the amount of his or her
18 wages.” Labor Code § 1197.5(k) states, among other things, that “an employer shall not prohibit
19 an employee from disclosing the employee’s own wages, discussing the wages of others,
20 inquiring about another employee’s wages, or aiding or encouraging any other employee to
21 exercise his or her rights under [Labor Code § 1197.5].”

22 65. As detailed above, JUUL, through its confidentiality requirements, prohibits
23 employees from disclosing the amount of their wages, discussing the wages of others, and aiding
24 or encouraging other employees to exercise their rights under Labor Code §§ 232 and 1197.5.

25 66. Penalties under PAGA for a violation of Labor Code §§ 232 and 1197.5 are “one
26 hundred dollars (\$100) for each aggrieved employee per period for the initial violation and two
27 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
28 violation.”

1 67. Plaintiff seeks from Defendant JUUL Labs, Inc., on behalf of herself, the State of
2 California, and all aggrieved employees, PAGA penalties as set forth above for each employee,
3 per pay period, within the statutory time frame for each statutory section.

4 **FOURTH CAUSE OF ACTION**

5 **(PAGA VIOLATION OF LABOR CODE § 232.5)**

6 68. Plaintiff incorporates by reference the allegations set forth above to the extent she
7 has exhausted her PAGA administrative remedies with respect to those allegations.

8 69. Labor Code § 232.5 states, among other things, that no employer may “require, as
9 a condition of employment, that an employee refrain from disclosing information about the
10 employer’s working conditions.”

11 70. As detailed above, JUUL, through its confidentiality requirements, requires that
12 employees – through signed writings and otherwise – refrain from disclosing information about
13 JUUL’s working conditions.

14 71. Penalties under PAGA for a violation of Labor Code §§ 232.5 are “one hundred
15 dollars (\$100) for each aggrieved employee per period for the initial violation and two hundred
16 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

17 72. Plaintiff seeks from JUUL Labs, Inc., on behalf of herself, the State of California,
18 and all aggrieved employees, PAGA penalties as set forth above for each employee, per pay
19 period, within the statutory time frame.

20 **FIFTH CAUSE OF ACTION**

21 **(PAGA VIOLATION OF LABOR CODE § 432.5)**

22 73. Plaintiff incorporates by reference the allegations set forth above to the extent she
23 has exhausted her PAGA administrative remedies with respect to those allegations.

24 74. Labor Code § 432.5 states that no employer “shall require any employee or
25 applicant to agree, in writing, to any term or condition which is known by such employer . . . to
26 be prohibited by law.”

27 a. Business & Professions Code §§ 17200 *et seq.* makes certain business
28 practices unlawful.

1 b. Business & Professions Code § 16600 and the Cartwright Act make
2 contracts in restraint of trade unlawful.

3 c. Government Code § 12964.5 makes it unlawful for an employer, in
4 exchange for a raise or bonus, or as a condition of employment, to require an employee to
5 sign a non-disparagement agreement or other document that purports to deny the
6 employee the right to disclose information about unlawful or potentially unlawful
7 conduct.

8 d. Rule 21F-17 of the Securities and Exchange Commission states that “no
9 person may take any action to impede an individual from communicating directly with the
10 [SEC] about a possible securities law violation, including enforcing, or threatening to
11 enforce, a confidentiality agreement.”

12 e. The Defend Trade Secrets Act requires employers to provide notice to
13 employees in any contract or agreement that governs the use of trade secrets or other
14 confidential information that employees shall not be held civilly or criminally liable for
15 disclosing trade secrets for the purpose of reporting or investigating a suspected violation
16 of law. 18 U.S.C. § 1833.

17 f. The law and public policy prohibit employers from requiring employees to
18 sign NDAs or abide by confidentiality requirements that prohibit them from disclosing
19 potentially illegal conduct in furtherance of a federal securities action, a federal False
20 Claims Act violation, or otherwise, to an attorney investigating such unlawful conduct.

21 g. As detailed above, Labor Code §§ 96(k), 98.6, 232, 232.5, 1102.5, and
22 1197.5(k) place strict restrictions on an employer’s ability to silence its current and former
23 employees.

24 75. As detailed above, JUUL, through its confidentiality requirements, require
25 employees to agree in writing to terms and conditions which JUUL knows are prohibited by the
26 above laws.

27 76. Penalties under PAGA for a violation of Labor Code § 432.5 are “one hundred
28 dollars (\$100) for each aggrieved employee per period for the initial violation and two hundred

1 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

2 77. Plaintiff seeks from Defendant JUUL Labs, Inc., on behalf of herself, the State of
3 California, and all aggrieved employees, PAGA penalties as set forth above for each employee,
4 per pay period, within the statutory time frame.

5 **SIXTH CAUSE OF ACTION**

6 **(UNFAIR COMPETITION)**

7 78. Plaintiff incorporates by reference the allegations set forth above.

8 79. Business & Professions Code § 17200 defines unfair competition to include “any
9 unlawful, unfair, or fraudulent business act or practice.” Business & Professions Code § 17203
10 gives courts the power “to make such orders or judgments, including the appointment of a
11 receiver, as may be necessary to prevent the use or employment . . . of any practice which
12 constitutes unfair competition.”

13 80. JUUL engages in unfair competition through its use of NDAs and other
14 confidentiality requirements.

15 81. As detailed above, Hamilton has suffered injury in fact and has lost money and
16 property as a result of this unfair competition.

17 82. Hamilton, like all aggrieved employees, remain subject to JUUL’s illegal NDA
18 and has been harmed by its confidentiality requirements. This is an ongoing and irreparable
19 public harm.

20 83. Hamilton thus seeks a preliminary and permanent public injunction against JUUL.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for the following:

23 1. A preliminary and permanent public injunction redressing JUUL’s ongoing
24 violations of the law, including:

25 a. An order prohibiting JUUL from seeking to enforce its illegal
26 confidentiality requirements.

27 b. An order requiring JUUL to notify its current and former employees of the
28 Court’s injunction, that the at-issue confidentiality requirements are illegal and

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unenforceable, and that employees have the right to engage in whistleblowing, competition and speech consistent with the laws identified in this Complaint.

c. An order requiring JUUL to modify its confidentiality requirements to bring them into compliance with the laws identified in this Complaint.

d. An order requiring JUUL to verify its compliance with the Court’s injunction through independent monitoring or other appropriate means.

2. Full and complete civil penalties for each separate violation of PAGA, as to each statutory section, in accordance with the Private Attorneys General Act.

3. Interest on penalties.

4. Attorneys’ fees and costs under PAGA, CCP § 1021.5, or any other applicable law or doctrine.

5. All other relief the Court deems proper and just.

Dated: June 4, 2020

BAKER CURTIS & SCHWARTZ, P.C.

By: /s/ Chris Baker
Chris Baker
Attorneys for Plaintiff
MARCIE HAMILTON

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: June 4, 2020

BAKER CURTIS & SCHWARTZ, P.C.

By: /s/ Chris Baker
Chris Baker
Attorneys for Plaintiff
MARCIE HAMILTON