

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JODI BEAN, *et al.*,

Plaintiffs,

v.

JUUL LABS, INC.,

Defendant.

C.A. No. N24C-10-232 KMM

KYLE DAVILA, *et al.*,

Plaintiffs,

v.

JUUL LABS, INC.,

Defendant.

C.A. No. N24C-10-242 KMM

CHRISTINE ACCETTURA, *et al.*,

Plaintiffs,

v.

JUUL LABS, INC.,

Defendant.

C.A. No. N24C-10-244 KMM

<p>TOMRA KUXHOUSE, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JUUL LABS, INC.,</p> <p>Defendant.</p>	<p>C.A. No. N24C-10-245 KMM</p>
<p>KIM AULT-FISHBURN, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JUUL LABS, INC.,</p> <p>Defendant.</p>	<p>C.A. No. N24C-10-246 KMM</p>
<p>DEREK ARNOLD, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JUUL LABS, INC.,</p> <p>Defendant.</p>	<p>C.A. No. N24C-10-247 KMM</p>
<p>CANDICE ALVAREZ, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JUUL LABS, INC.,</p> <p>Defendant.</p>	<p>C.A. No. N24C-10-248 KMM</p>

<p>JACOB BECK, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JUUL LABS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>C.A. No. N24C-10-249 KMM</p>
<p>THOMAS AKIN, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JUUL LABS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>C.A. No. N24C-10-250 KMM</p>
<p>ALBERT R. AYERS, JR., <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JUUL LABS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>C.A. No. N24C-10-251 KMM</p>
<p>LEE HALL, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JUUL LABS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>C.A. No. N24C-10-252 KMM</p>

I. INTRODUCTION

Twelve cases, involving claims of 1,005 plaintiffs from forty-nine states and Puerto Rico, were filed against JUUL Labs, Inc. (“JUUL Labs”) asserting various products liability, fraud, negligence and warranty claims arising out of use of JUUL Labs’ e-cigarettes.¹ Plaintiffs in one case, *Davis v. JUUL Labs, Inc.*,² also assert personal injury claims. The complaints allege that each plaintiff purchased and used JUUL products due to JUUL Labs’ deceptive marketing strategies, casting the e-cigarette as a healthy alternative to traditional cigarettes, and further, due to manufacturing defects, they suffered economic (and in the *Davis* case, physical) injuries.

JUUL Labs moved to dismiss the complaints on several grounds. First, it asserts that these actions must be dismissed on *forum non conveniens* grounds. It argues that because plaintiffs were previously parties to a California class action against JUUL Labs that asserted essentially the same claims asserted here, the Court should view these cases as a second-filed actions and apply the neutral *Gramercy*

¹ This decision cites to the Jodi Bean Complaint (D.I. 1) (“Bean Compl.”); Kyle Davila Complaint (D.I. 1) (“Davila Compl.”); Christine Accettura Complaint (D.I. 1) (“Accettura Compl.”); Tomra Kuxhouse Complaint (D.I. 1) (“Kuxhouse Compl.”); Kim Ault-Fishburn Complaint (D.I. 1) (“Ault-Fishburn Compl.”); Derek Arnold Complaint (D.I. 1) (“Arnold Compl.”); Candice Alvarez Complaint (D.I. 1) (“Alvarez Compl.”); Jakob Beck Complaint (D.I. 1) (“Beck Compl.”); Thomas Akin Complaint (D.I. 1) (“Akin Compl.”); Albert R. Ayers, Jr., Complaint (D.I. 1) (“Ayers Compl.”); Lee Hall Complaint (D.I. 1) (“Hall Compl.”); and Angela Davis Complaint (D.I. 1) (“Davis Compl.”). Common factual allegations from Plaintiffs’ complaints will be cited to the Bean Complaint.

² N24C-10-253.

factors. But plaintiffs opted out of the class action when permitted to do so by the California court, and therefore, they were not a party to that action. Accordingly, the Delaware cases are the first-filed actions and the plaintiff-friendly *Cryo-Maid* standard applies. Under *Cryo-Maid*, a plaintiff's choice of forum is given deference and will only be disturbed when the defendant shows overwhelming hardship. JUUL Labs fails to make such a showing and thus, its *forum non conveniens* argument fails.

JUUL Labs next seeks dismissal on the ground of misjoinder under Rule 20. Each complaint includes claims from 59 to 98 individual plaintiffs, from as many as 27 states. When parties are not properly joined, the remedy is severance, not dismissal. Under the unique circumstances of these cases, some joinder is appropriate under the liberal standard of Rule 20. However, the currently joined claims do not promote judicial economy and efficiency for the parties. The claims are severed and may be refiled in accordance with the parameters set forth below.

Finally, JUUL Labs seeks dismissal of various claims under Rule 12(b)(6). Here, its motion meets with some success. As discussed below, some claims are barred by the economic loss doctrine, abrogation, or statute of limitations. Other claims are not adequately pled. Plaintiffs, however, are granted leave to amend.

II. BACKGROUND

A. *Facts Common to all Plaintiffs*

1. *JUUL Products*

By 2014, smoking cigarettes and nicotine addiction were at an all-time low. The founders of JUUL Labs saw this as an opportunity to create a market for their new product that would make nicotine “cool again without the stigma of cigarettes.”³ To accomplish this goal, JUUL Labs designed, manufactured, sold, marketed, and distributed JUUL e-cigarette devices, JUUL pods, and accessories (collectively “JUUL products” or “JUUL”).

JUUL Labs designed its e-cigarette to minimize “throat hit” and maximize “buzz.”⁴ It conducted studies to refine its formula to achieve these goals.⁵ JUUL was designed to deliver four to five milligrams of aerosol per puff, which is an unusually massive puff. The JUUL e-liquid contains about 200-250 micrograms of nicotine, even though JUUL Labs’ scientists recognized that delivery of over 150 per puff “could be problematic.”⁶ JUUL Labs ultimately dismissed that concern,⁷ launching JUUL using a 5% strength solution.

³ Bean Compl. ¶¶ 2-3.

⁴ *Id.* ¶ 135.

⁵ *Id.* ¶¶ 136-45.

⁶ *Id.* ¶ 146.

⁷ *Id.* ¶¶ 147-50.

Nicotine is highly addictive and children are particularly vulnerable to nicotine addiction.⁸ JUUL Labs researched cigarette companies' product engineering and manipulated the technology to maximize nicotine delivery.⁹ The average domestic cigarette contains "10-15 mg of nicotine per cigarette" and "yields between 1.0 to 1.4 mg of nicotine, meaning that around 10% of the nicotine . . . is delivered to the user."¹⁰ JUUL has been shown "to deliver at least 82% of the nicotine contained in a JUUL pod to the user."¹¹ Thus, JUUL is more potent and delivers nicotine faster than combustible cigarettes.

The JUUL e-cigarette is designed to appear slick and high-tech, and included features like "party mode."¹² JUUL pods contain a liquid that includes nicotine, flavoring, and other additives. As part of its plan to attract younger users, the pods come in a variety of flavors such as mango, cool cucumber, fruit medley, cool mint, crème brûlée, and classic menthol.¹³ It marketed the device as "healthy, safe, cool, and available in 'kid-friendly flavors.'"¹⁴

⁸ *Id.* ¶¶ 112, 116, 227.

⁹ *Id.* ¶¶ 120, 142, 156, 200.

¹⁰ *Id.* ¶ 184.

¹¹ *Id.*

¹² *Id.* ¶ 6.

¹³ *Id.* ¶ 123.

¹⁴ *Id.* ¶ 120.

JUUL took off quickly. Since the launch in 2015, JUUL Labs has become the dominate e-cigarette manufacturer in the United States, growing revenue by 700 percent in 2017, and by 2019, owning three-quarters of the e-cigarette market.¹⁵

2. JUUL Labs’ Deceptively Markets JUUL as a Smoking Cessation Tool

Despite knowing the addictive nature of its product, JUUL Labs downplayed JUUL’s nicotine content, nicotine delivery profile, and the heightened risks of addiction.¹⁶ It marketed JUUL as a smoking cessation device and recruited third-party advertisers to spread misleading narratives about JUUL products.¹⁷

For example, JUUL Labs did not effectively disclose that JUUL contained nicotine and did not include nicotine warnings until August 2018, when it was forced to do so by regulators.¹⁸ Even after the labeling included nicotine warnings, JUUL Labs continued to misrepresent the amount of nicotine contained in each JUUL pod. The packaging represented to consumers that each JUUL pod was at a “5% strength,” and that this equated to the same amount of nicotine as one pack of cigarettes.¹⁹ But JUUL Labs knew each JUUL pod contained “roughly twice the nicotine content of

¹⁵ *Id.* ¶ 127.

¹⁶ *Id.* ¶ 181.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 182.

¹⁹ *Id.* ¶ 190.

a pack of cigarettes.”²⁰ It also knew JUUL delivered nicotine to the bloodstream more efficiently, resulting in increased risk of addiction.²¹

JUUL Labs engaged in false and misleading advertising from the outset. In 2015, it launched a food-based advertising campaign called “Save Room for JUUL,”²² which depicted JUUL pod flavors being paired with foods. JUUL Labs “described its Crème Brûlée nicotine pods as ‘the perfect evening treat’ that would allow users to ‘indulge in dessert without the spoon’”²³ and “Have a sweet tooth? Try Brulee.”²⁴ JUUL Labs also depicted JUUL pods as being paired with coffee and other caffeinated drinks, suggesting that JUUL should become a part of the consumers’ daily routine, much like a cup of coffee, and just as safe.²⁵

In 2019, JUUL Labs released a \$10 million television advertising campaign entitled “Make the Switch,”²⁶ featuring “former smokers aged 37 to 54 discussing ‘how JUUL helped them quit smoking.’”²⁷ These advertisements were false because JUUL Labs did not intend its e-cigarette to be a smoking cessation device. Just the opposite.

²⁰ *Id.* ¶¶ 183, 188. This was known by top officials at JUUL Labs in 2018, including its regulatory head and then-CEO Kevin Burns.

²¹ *Id.* ¶ 188.

²² *Id.* ¶ 197.

²³ *Id.*

²⁴ *Id.* As another example, it advertised to “Beat The August Heat With Cool Mint.”

²⁵ *Id.* ¶¶ 198-99.

²⁶ *Id.* ¶ 201.

²⁷ *Id.*

In addition to these advertisements and similar statements on its website, JUUL Labs furthered its deceptive practices by publicly declaring the device to be a smoking cessation tool. Its then-CEO James Monsees testified before Congress, where he explained that: “The history of cessation products have extremely low efficacy. That is the problem we are trying to solve here.”²⁸ He spoke of a study conducted by JUUL Labs that found “that after 90 days, 54 percent of those smokers had stopped smoking completely, for a minimum of 30 days already.”²⁹ JUUL Labs’ messaging conveyed that “unlike cigarettes, JUUL is harmless to your health.”³⁰

JUUL Labs also introduced “cost-saving calculators” that purported to show the savings consumers would experience by making the switch from cigarettes to JUUL. The calculators, however, assumed that customers would consume the same level of nicotine as smoking cigarettes. But JUUL Labs knew the use rate would be much higher due to JUUL’s high nicotine content and rapid delivery system.³¹

²⁸ *Id.* ¶ 202.

²⁹ *Id.* JUUL Labs continued making these public misrepresentations. *Id.* ¶ 203 (noting the founders’ (former smokers) goal was “improving the lives of the world’s one billion adult smokers by eliminating cigarettes.”); (JUUL “exists to help adult smokers switch off of combustible cigarettes.”); and (“we want to be the offramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to initiate on nicotine.”).

³⁰ *Id.* ¶ 205. JUUL Labs did not have FDA approval to market JUUL as a smoking cessation product. *Id.* ¶ 204. The FDA and other regulators criticized the “Make the Switch” campaign and issued warning letters to JUUL Labs about it marketing its products as a smoking cessation tool. *Id.* ¶¶ 213-19.

³¹ *Id.* ¶ 207.

3. *JUUL Labs Markets its Products to Youths*

JUUL Labs grew its market and consumer base by marketing its products to adolescents. Winning over the “cool kids” would mean they would be customers for life.³² JUUL Labs’ marketing plan started with the product’s design by using stylish models and bold colors. Using twenty-something models, JUUL Labs’ advertisements “highlighted themes of sexual attractiveness, thinness, independence, rebelliousness, and being ‘cool’”³³ and often evoked “behaviors more characteristic of underage teen[s] than mature adults.”³⁴

In furtherance of its marketing plan, JUUL Labs advertised on websites typically visited by adolescents (such as nickjr.com, cartoonnetwork.com, allfreakidscrafts.com, hellokids.com, and kidsgameheros.com),³⁵ websites supplying teen-focused games, education websites for middle school and high school students,³⁶ and social media platforms using hashtags, some of which were posted to trending topics unrelated to e-cigarettes to seek out new customers.³⁷

³² *Id.* ¶¶ 222-31.

³³ *Id.* ¶ 233.

³⁴ *Id.*

³⁵ *Id.* ¶ 237.

³⁶ *Id.*

³⁷ *Id.* ¶ 247.

To advance its marketing efforts, JUUL Labs also enlisted influencers who were young and popular with adolescents, including Tavi Gevinson³⁸ and Miley Cyrus, who gained her fame from the youth television show “Hannah Montana.”³⁹

By December 2017, JUUL Labs was making presentations in schools as a part of its “youth prevention program.”⁴⁰ It paid the schools for access to make these presentations, which served as disciplinary action for students who were caught with JUUL products in school.⁴¹ During at least one presentation “[n]o parents or teachers were in the room and JUUL’s messaging was that the product was ‘totally safe.’” The presenter provided snacks, collected student information, and even demonstrated how to use JUUL during these sessions.⁴²

JUUL Labs extensively marketed its products in gas stations and convenience stores, to which otherwise aged-restricted youths frequented.⁴³ It also encouraged these retailers to be more lenient in regulating sales to underage youth.⁴⁴

³⁸ Described by the Rolling Stone magazine the year prior as “possibly the most influential 18-year-old in America.” *Id.* ¶ 239.

³⁹ *Id.* ¶¶ 238-41.

⁴⁰ *Id.* ¶ 272.

⁴¹ *Id.*

⁴² *Id.* Similarly, JUUL Labs made presentations to a Police Activities League group and engaged teachers at a Charter School to gain access youths in grades 3 to 12 through weeks-long programs. *Id.* ¶ 275.

⁴³ *Id.* ¶¶ 250-53.

⁴⁴ *Id.* ¶ 252.

JUUL Labs' marketing efforts were successful. While it publicly stated that it was not marketing its products to youths,⁴⁵ JUUL Labs knew that a large majority of its customers were under 21.⁴⁶

B. *Plaintiffs' Individual Allegations*

In every complaint, except *Davis*, plaintiffs allege that they each purchased JUUL products in their respective home state and that before the purchase(s), they relied upon one or more of JUUL Labs' advertisements promoting the benefits of JUUL products: print ads; video commercials; social media ads; online ads; JUUL website; billboards; and/or point of sale advertising. Further, plaintiffs did not know (and were not informed) prior to purchasing a JUUL product that it was an "extremely potent nicotine-delivery mechanism[]" which was "powerfully addictive and posed significant risks of substantial physical injury." Had JUUL Labs disclosed these defects, plaintiffs would not have purchased a JUUL product or would have paid substantially less for it.⁴⁷ Each plaintiff also identifies the dates of use of the JUUL product.⁴⁸

⁴⁵ *Id.* ¶ 278.

⁴⁶ *Id.* ¶¶ 254-70.

⁴⁷ *Id.* ¶¶ 9-97; Davila Compl. ¶¶ 9-100; Accettura Compl. ¶¶ 9-104; Kuxhouse Compl. ¶¶ 9-101; Ault-Fishburn Compl. ¶¶ 9-91; Arnold Compl. ¶¶ 9-96; Alvarez Compl. ¶¶ 9-106; Beck Compl. ¶¶ 9-97; Akin Compl. ¶¶ 9-101; Ayers Compl. ¶¶ 9-73; Hall Compl. ¶¶ 9-67.

⁴⁸ Bean Compl. ¶¶ 9-97; Davila Compl. ¶¶ 9-100; Accettura Compl. ¶¶ 9-104; Kuxhouse Compl. ¶¶ 9-101; Ault-Fishburn Compl. ¶¶ 9-91; Arnold Compl. ¶¶ 9-96; Alvarez Compl. ¶¶ 9-106; Beck Compl. ¶¶ 9-97; Akin Compl. ¶¶ 9-101; Ayers Compl. ¶¶ 9-73; Hall Compl. ¶¶ 9-67.

The 60 *Davis* plaintiffs also allege that they have suffered one or more of the following injuries: nicotine addiction; anxiety; mental anguish; asthma; bronchitis; shortness of breath; acute eosinophilic pneumonia/pulmonary eosinophilia; pneumonia (any type); chronic obstructive pulmonary disease (“COPD”); popcorn lung/bronchiolitis obliterans; acute respiratory distress syndrome (“ARDS”); chronic lung problems; E-cigarette or vaping product use associated lung injury (“EVALI”); other specified interstitial pulmonary disease; emphysema; acute interstitial pneumonitis; and/or lipoid pneumonia.⁴⁹

III. THE PARTIES’ CONTENTIONS

JUUL Labs contends that these cases should be dismissed for *forum non conveniens*, arguing that only one plaintiff out of 1,005 resides in Delaware. It asserts that the vast majority of the evidence and witnesses are elsewhere and most claims do not apply Delaware law, thus, none of the factors weigh in favor of Delaware.⁵⁰ Plaintiffs respond that JUUL Labs must show “overwhelming hardship” before the court will disturb a plaintiff’s choice of forum, and it has failed to make such a showing here.⁵¹

⁴⁹ *Davis* Compl. ¶¶ 9-68.

⁵⁰ D.I. 10, Opening Brief in Support of Defendant JUUL Labs, Inc.’s Omnibus Motion to Dismiss (“OB”) at 2.

⁵¹ D.I. 14, Plaintiffs’ Brief in Opposition to JUUL Labs, Inc.’s Omnibus Motion to Dismiss (“AB”) at 1-2.

Second, JUUL Labs contends that, in violation of Rule 20(a), plaintiffs are improperly joined in these 12 actions.⁵² Plaintiffs argue that joinder is proper under the facts here and “necessary to allow the Plaintiffs to efficiently and effectively litigate their related claims.”⁵³

Finally, JUUL Labs seeks dismissal of various claims under Rule 12(b)(6). Namely, it argues that claims: (1) are barred by the economic loss doctrine, abrogation by statute, or statute of limitations; (2) fail to plead consumer protection, fraud, negligence, and gross negligence claims with the requisite particularity; (3) fail to plead common law fraud with the requisite reliance; (4) fail to adequately plead fraud, an implied warranty of merchantability claim, unjust enrichment, or strict liability; (5) fail to provide pre-suit notice as required by many states; and (6) preemption.⁵⁴ While plaintiffs concede some grounds for dismissal, for the remainder, they contend that the claims are adequately pled and are not otherwise barred and therefore, dismissal is not warranted.⁵⁵ Plaintiffs seek leave to amend any inadequately pled claim.

⁵² OB at 9.

⁵³ AB at 2.

⁵⁴ OB at 2-3.

⁵⁵ AB at 2-3.

IV. DISCUSSION

A. *Forum Non Conveniens*

1. *Delaware's Three Standards*

Forum non conveniens seeks to “discourage forum shopping and [] promote the orderly administration of justice by recognizing the value of confining litigation to one jurisdiction, whenever that is both possible and practical.”⁵⁶ “The doctrine empowers a court to decline jurisdiction whenever considerations of convenience, expense, and the interests of justice dictate that litigation in the forum selected by the plaintiff would be unduly inconvenient, expensive, or otherwise inappropriate.”⁵⁷ Delaware courts are highly deferential to a plaintiff’s choice of forum.⁵⁸ “Indeed, only in a ‘rare case’ will a complaint filed in Delaware be dismissed on the grounds of *forum non conveniens*.”⁵⁹ Whether dismissal is appropriate is left to the sound discretion of the court.⁶⁰

⁵⁶ *United Phosphorus, Ltd. v. Micro-Flo*, 808 A.2d 761, 764 (Del. 2002); see also *Lisa, S.A. v. Mayorga*, 993 A.2d 1042, 1047 (Del. 2010); *Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C.*, 173 A.3d 1033, 1041 (Del. 2017).

⁵⁷ *Sequa Corp. v. Aetna Cas. and Sur. Co.*, 1990 WL 123006, at *3 (Del. Super. 1990) (citing *Monsanto Co. v. Aetna Cas. and Sur. Co.*, 559 A.2d 1301, 1304 (Del. Super. 1988)).

⁵⁸ *Lisa, S.A.*, 993 A.2d at 1047; *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1198 (Del. 1997).

⁵⁹ *Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Refin., LP*, 777 A.2d 774, 778 (Del. 2001).

⁶⁰ *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *3 (Del. Super. Aug. 12, 2022) (citing *Williams Gas Supply Co. v. Apache Corp.*, 594 A.2d 34, 37 (Del. 1991)). Superior Court Civil Rule 12(b)(3) governs a motion to dismiss based on *forum non conveniens*.

The applicable *forum non conveniens* test varies based on the proceedings in this court and the parties' litigation history.⁶¹ The analysis in *General Foods Corp. v. Cryo-Maid, Inc.*⁶² (“*Cryo-Maid*”) applies when the Delaware case is the first-filed and no other case is pending elsewhere.⁶³ *McWayne Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*⁶⁴ (“*McWayne*”) applies when the Delaware action is the second-filed and another action is pending elsewhere.⁶⁵ Finally, *Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.L.C.*⁶⁶ (“*Gramercy*”) applies when the Delaware action is filed after a first-filed action in another jurisdiction, which is no longer pending.⁶⁷

Each of these tests requires the court to consider the same factors, in one form or another: (1) the relative ease of access to proof; (2) the availability of a compulsory process for witnesses; (3) the possibility to view the premises; (4) whether the controversy is dependent upon Delaware law; (5) the pendency or non-

⁶¹ *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *3 (citing *Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1250-51 (Del. 2018)); *GXP Cap., LLC v. Argonaut Mfg. Servs., Inc.*, 234 A.3d 1186, 1194 (Del. Super. 2020), *aff'd, appeal dismissed*, 253 A.3d 93 (Del. 2021) (citing *Candlewood Timber Grp., LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 998 (Del. 2004)) (“Three distinct standards for *forum non conveniens* exist in Delaware and a reviewing court must select the appropriate standard based on the case’s procedural facts.”).

⁶² 198 A.2d 681 (Del. 1964).

⁶³ *GXP Cap., LLC*, 253 A.3d at 100.

⁶⁴ 263 A.2d 281 (Del. 1970).

⁶⁵ *GXP Cap., LLC*, 253 A.3d at 100. The *McWayne* doctrine recognizes the “strong preference for the litigation of a dispute in the forum in which the first action relating to such dispute is filed.” *Gramercy Emerging Mkts. Fund*, 173 A.3d at 1044.

⁶⁶ 173 A.3d 1033 (Del. 2017).

⁶⁷ *GXP Cap., LLC*, 253 A.3d at 100.

pendency of a similar action in another jurisdiction; and (6) all other practical problems that would make the trial easy, expeditious, and inexpensive.⁶⁸ What changes, based on the procedural posture, is the strength of the presumption that is applied.⁶⁹

The *McWane* doctrine (“defendant friendly”) requires a stay or dismissal of the Delaware action when the other court is “capable of [providing] prompt and complete justice,” and the other action involves “the same parties and the same issues.”⁷⁰ *Cryo-Maid* is known as a “plaintiff friendly” standard because the defendant must establish that litigating in Delaware would create an “overwhelming hardship.”⁷¹ Finally, *Gramercy* (sometimes referred to as an intermediate standard), applies the factors on a neutral basis.⁷²

2. *Are the Delaware Cases First-filed?*

JUUL Labs argues that *Gramercy* applies because these cases are not the first-filed. Plaintiffs argue that these cases are the first-filed and therefore *Cryo-Maid* applies.

⁶⁸ *Id.* at 101; *Soares v. Cont’l Motors, Inc.*, 2023 WL 3221891, at *4-5 (Del. Super. May 3, 2023).

⁶⁹ *GXP Cap., LLC*, 253 A.3d at 101.

⁷⁰ *McWane*, 263 A.2d at 283.

⁷¹ *GXP Cap., LLC*, 234 A.3d at 1194, *aff’d, appeal dismissed*, 253 A.3d 93 (Del. 2021) (citing *Candlewood Timber Grp., LLC*, 859 A.2d at 998); *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *4.

⁷² *GXP Cap., LLC*, 253 A.3d at 101.

a. *The California Action*

In March 2020, a class action was filed against JUUL Labs in the United States District Court for the Northern District of California, which was subsequently consolidated with other class actions and individual suits as part of a multidistrict litigation (the “California Action”).⁷³ The complaint asserted various product liability claims.⁷⁴ No plaintiff in the Delaware actions was a named plaintiff in the California Action, but they were members of the putative class.

In 2022, the parties in the California Action reached a settlement. In January 2023, that court preliminarily certified the Settlement Class, defined as “All individuals who purchased, in the United States, a JUUL product from brick and mortar or online retailers before December 6, 2022.”⁷⁵ Excluded from the class were “all individuals who timely and properly exclude themselves from the Settlement Class.”⁷⁶ The putative class members were provided a deadline to exercise their opt-out right.⁷⁷ The Settlement was approved on a final basis on September 19, 2023.⁷⁸

⁷³ *In re JUUL Labs, Inc. Mktg., Sales Pracs., and Prods. Liab. Litig.*, Case No. 19-md-02913-WHO.

⁷⁴ The California action raised claims of strict liability, products liability, negligence/gross negligence, negligent failure to recall, negligent misrepresentation, fraud, fraudulent concealment, conspiracy to commit fraud, unjust enrichment, violation of unfair trade practices/consumer protection law, breach of express warranty, and breach of implied warranty of merchantability. *See In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prods. Liab. Litig.*, 497 F. Supp.3d 552, 576-77 (N.D. Cal. 2020).

⁷⁵ 19-md-02913-WHO, D.I. 3779, Preliminary Settlement Approval Order.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ 19-md-02913-WHO, D.I. 4138.

Each of the Delaware plaintiffs opted-out of the California Action and the twelve complaints were filed in Delaware.⁷⁹ The claims asserted in the Delaware actions⁸⁰ are very similar to the claims asserted in the California Action, except for the additional personal injury claims.

b. *Is the choice of filing in California imputed to the Delaware plaintiffs?*

JUUL Labs contends that because plaintiffs were parties to the California Action, the Delaware cases are not the first-filed. To support its position, JUUL Labs argues that plaintiffs have used the California Action to their advantage—alleging a substantially similar factual basis for the claims and relying on the California Action to toll the statute of limitations—yet, want to distance themselves from the California Action to forum shop. JUUL Labs argues that plaintiffs should not be permitted to have it both ways and therefore, it is appropriate to find the Delaware cases second-filed.⁸¹

Plaintiffs argue that they did not choose to file in California and could not opt-out of that action until permitted to do so by the California court. Once they had the

⁷⁹ The *Davis* plaintiffs declined to opt into a second settlement of personal injury claims. OB at 1.

⁸⁰ Plaintiffs assert claims under state consumer protection laws, common-law fraud, breach of the implied warranty of merchantability, unjust enrichment, negligence and/or gross negligence, and strict products liability. *See, e.g.*, Bean Compl. ¶¶ 311-413.

⁸¹ JUUL Labs does not seek to dismiss or stay these cases in favor of the California Action, which has concluded. Rather, it seeks dismissal because “[l]itigation in Plaintiffs’ home states...will better serve the interests of justice.” OB at 4. JUUL Labs concedes that this Court cannot compel plaintiffs to file in a particular jurisdiction if these cases are dismissed.

ability to make a choice on where to file, they chose Delaware and thus, these cases are first-filed.

“It is axiomatic that an unnamed class member is not ‘a party to the class-action litigation before the class is certified.’”⁸² In class actions predominately seeking damages “Rule 23 adds that putative class members do not become party plaintiffs until the time to opt out has elapsed.”⁸³ “By guaranteeing putative class members an unqualified right to exclude themselves, Rule 23 honors our deep-rooted historic tradition that everyone should have his own day in court.”⁸⁴ “Indeed, the Constitution demands that ‘every absent class member must ‘be provided with an opportunity to remove himself from’ a class action seeking predominantly damages.’”⁸⁵

Before class certification, putative class members are “mere passive beneficiaries of the action brought on their behalf.” But the commencement of the class action satisfies applicable statute of limitations provisions “as to all those who

⁸² *N. Sound Cap. LLC v. Merk & Co., Inc.*, 938 F.3d 482, 492 (3d Cir. 2019) (quoting *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011)).

⁸³ *N. Sound Cap.*, 938 F.3d at 492-93. *Appriva S’holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1286 (Del. 2007) (“the Superior Court’s Rules of Civil Procedure closely track the Federal Rules of Civil Procedure,” therefore, “cases interpreting the federal rules are persuasive authority”).

⁸⁴ *N. Sound Cap.*, 938 F.3d at 493 (cleaned up) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999)); *Perrigo Inst. Inv. Grp. v. Papa*, 150 F.4th 206, 214 (3d Cir. 2025) (same).

⁸⁵ *Perrigo Inst. Inv. Grp.*, 150 F.4th at 214 (quoting *N. Sound Cap.*, 938 F.3d at 493).

might subsequently participate in the suit as well as for the named plaintiffs.”⁸⁶ Allowing the statute of limitation to be tolled by a class action complaint balances the competing interests of class actions (to promote efficiency and economy of litigation) and statutes of limitations (to preclude stale claims).⁸⁷

The Court finds that the Delaware cases are the first-filed for these plaintiffs. They did not choose to file the class action complaint in California. Prior to class certification and opt-out, they were not parties to that action. They had the unqualified right to exclude themselves from the class action to “have [their] own day in court.”

That the statute of limitations was tolled by the class action complaint does not change the result. Allowing the limitations period to be tolled promotes judicial economy because otherwise, putative class members would be encouraged to file duplicative suits out of fear that the class might not be certified, or to preserve their claim if they decided later to opt-out.

Similarly, plaintiffs asserting the same or similar claims as were asserted in the class action does not weigh against finding the Delaware cases are the first-filed.

⁸⁶ *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 550 (1974) (holding that the statute of limitations was tolled by the class action complaint for members of the putative class who sought to intervene in an individual action after class certification was denied).

⁸⁷ *Dow Chem. Corp. v. Blanco*, 67 A.3d 392, 399 (Del. 2013) (recognizing cross-jurisdictional tolling); *Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 345-46 (1983) (class action complaint tolled the statute of limitations for putative class members who filed individual actions after class certification was denied).

Plaintiffs have a protected right to file an individual claim. They chose to do so. Thus, plaintiffs are not “having it both ways,” as JUUL Labs claims.

3. *Application of the Cryo-Maid Factors*

Under the *Cryo-Maid* analysis, a moving defendant must show “overwhelming hardship” with particularity to earn dismissal of a first-filed action.⁸⁸ “This standard ‘is not intended to be preclusive[,]’ but it ‘is intended as a stringent standard that holds defendants who seek to deprive a plaintiff of [its] chosen forum to an appropriately high burden.’”⁸⁹ “[T]he court should not treat [the *Cryo-Maid* factors] as a checklist or tally sheet.”⁹⁰ The court must “look to the circumstances as a whole to determine whether an overwhelming hardship is present.”⁹¹

(1) Relative ease of access of proof. A defendant must “make a particularized showing that witnesses, documents, or other evidence necessary to defend the allegations contained in the complaint cannot be brought to or otherwise produced in Delaware.”⁹² JUUL Labs argues that evidence is more accessible in each plaintiff’s home state and none is found in Delaware. It asserts that all witnesses, evidence of JUUL Labs’ marketing, and individual product usage are located

⁸⁸ *Aranda*, 183 A.3d at 1251.

⁸⁹ *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *7 (quoting *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1105 (Del. 2014)).

⁹⁰ *Harris v. Harris*, 2023 WL 355179, at *8 (Del. Ch. Jan. 23, 2023).

⁹¹ *Barrera v. Monsanto Co.*, 2016 WL 4938876, at *5 (Del. Super. Sept. 13, 2016).

⁹² *Mar-Land Indus.*, 777 A.2d at 781.

elsewhere, and JUUL Labs would be required to use 49 different jurisdictions' rules for interstate depositions and discovery.⁹³

Plaintiffs, of course, will have to produce evidence supporting their claims – medical records, discovery relating to reliance, and use of the product, for example. JUUL Labs, directly or through its agents, is in possession of evidence of its design, testing, and marketing of its JUUL products. “[I]n this day and age, Plaintiffs’ medical records and other documents pertaining to their diagnoses are or can be made available electronically. [T]he potential inconvenience of having to transport documents is slight because ... [m]odern methods of information transfer render concerns about transmission of documents virtually irrelevant.”⁹⁴

As for evidence in the possession of others, JUUL Labs failed to show that this evidence would be more accessible in each plaintiff’s home state. Indeed, it failed to identify the location of any specific piece of evidence, with the exception of a general assertion of the family and friends of a plaintiff, who presumably live in the same state as the plaintiff. But JUUL Labs failed to make any showing that these witnesses cannot be made available in Delaware.⁹⁵ This factor does not weigh in favor of dismissal.

⁹³ OB at 6; D.I. 47, Reply Brief in Support of Defendant JUUL Labs, Inc.’s Omnibus Motion to Dismiss (“RB”) at 6-7.

⁹⁴ *Barrera*, 2016 WL 4938876, at *6 (internal quotations and citations omitted).

⁹⁵ See *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *7 (noting that modern transportation methods lessens the concern over witness travel); *Mar-Land Indus.*, 777 A.2d at 780 (“The defendant must

(2) Availability of compulsory process for witnesses. In the context of this factor, the court considers whether “another forum would provide a substantial improvement as to the number of witnesses who would be subject to compulsory process.”⁹⁶ JUUL Labs argues any non-party witnesses who have knowledge of a plaintiff’s JUUL use, who likely resides in the plaintiff’s home state, and those from whom a plaintiff purchased the product, are not subject to the compulsory process in Delaware.⁹⁷ Additionally, it argues that no evidence of JUUL Labs’ marketing is located in Delaware.

JUUL Labs fails to identify any witness it deems necessary to call at trial or explain why (i) it cannot secure the witness’ attendance, such as where the person works for JUUL Labs, is within its control⁹⁸ or, is itself a Delaware entity, or (ii) testimony by deposition would not be sufficient. JUUL Labs does not explain why it would be substantially burdened by issuing subpoenas to these witnesses as 47 states have enacted the Uniform Interstate Depositions and Discovery Act.⁹⁹

put forth particularized evidence demonstrating that, for each *Cryo–Maid* factor relied upon, requiring the litigation to proceed in Delaware will result in overwhelming hardship.”)

⁹⁶ *Mt. Hawley Ins. Co. v. Jenny Craig, Inc.*, 668 A.2d 763, 769 (Del. Super. 1995).

⁹⁷ OB at 6-7; RB at 7-8.

⁹⁸ *See Warburg v. Pincus Venures, L.P.*, 774 A.2d 264, 270 (Del. 2001) (noting that defendant could obtain live testimony from witnesses under its control).

⁹⁹ *See Armenta v. G/O Media Inc.*, 2024 WL 4433946, at *10 (Del. Super. Oct. 7, 2024); *Harris*, 2023 WL 355179, at *12. *See also Interstate Depositions and Discovery Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=181202a2-172d-46a1-8dcc-cdb495621d35>. The remaining three states and Puerto Rico have introduced legislation to adopt the act.

JUUL Labs has also not shown that all of the witnesses would be available in each of plaintiff's home state. Thus, JUUL Labs may still have to issue multiple subpoenas for out-of-state witnesses even if these cases were dismissed.

“When a defendant does ‘not name the witness it deem[s] necessary to call . . . or explain why their testimony could not be presented in Delaware by deposition . . . [i]t follows that the defendant fail[s] to sustain its burden of proof in this regard.’”¹⁰⁰ This factor does not favor dismissal.

(3) Possibility of viewing the premises. This factor does not apply to the allegations in the complaints.

(4) Whether the controversy is dependent upon application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction. JUUL Labs argues that Delaware law does not apply (except for one plaintiff), but rather, the laws of each individual plaintiff's home state will

¹⁰⁰ *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *7 (quoting *States Marine Lines v. Domingo*, 269 A.2d 223, 226 (Del. 1970)). JUUL Labs also asserts that because there are so many plaintiffs, it cannot name these third-party witnesses by name, nor is it required to do so. JUUL Labs relies on *In re Nash v. McDonald's Corp.*, where the tortious conduct occurred in Spain, plaintiffs resided in the United Kingdom, and the only connection to Delaware was McDonald's incorporation. Unlike here, all potential witnesses and documents were located outside of the United States—restaurant staff resided in Spain and medical records were located in the United Kingdom. *In re Nash v. McDonald's Corp.*, 1997 WL 528036, at *2-3 (Del. Super. Feb. 27, 1997). The court found it could not compel the attendance of Spanish and British witnesses, and even if the witnesses voluntarily appeared, the cost would be exponential for both parties. *See also Schmidt v. Wash. Newspaper Publ'g Co, LLC*, 2019 WL 4785560, at *7 (Del. Super. Sept. 30, 2019) (explaining that under the *Gramercy* framework, a defendant need not identify unavailable witnesses, but it must do so under the *Cryo-Maid* overwhelming hardship analysis).

apply.¹⁰¹ Recognizing that Delaware often applies the laws of other states, JUUL Labs argues that Delaware courts do not often apply the laws of 49 jurisdictions “at once.”

First, a choice of law analysis has not yet been conducted.¹⁰² While plaintiffs live in many other states, that does not necessarily preclude the application of Delaware law.¹⁰³ Second, Delaware courts frequently “decide legal issues—even unsettled ones—under the law of other jurisdictions.”¹⁰⁴ “[T]he application of foreign law is not sufficient to warrant dismissal under the doctrine of *forum non conveniens*.”¹⁰⁵ This factor does not weigh in favor of dismissal.

¹⁰¹ OB at 8.

¹⁰² Delaware uses the most significant relationship test to determine the choice of law. *Deuley v. DynCorp Intern., Inc.*, 8 A.3d 1156, 1160 (Del. 2010). “Although the presumption favoring the place of injury is strong, it is not necessarily decisive.” *Barrera v. Monsanto Co.*, 2016 WL 4938876, at *11 (Del. Super. Sept. 13, 2016). The test requires the court to conduct a fact intensive analysis, which cannot always be done at the motion to dismiss stage. *Id.*; *Cresa Global Inc. v. Chirisa Cap. Mgt. (US) LLC*, 2025 WL 53168, at *4 (Del. Super. Jan. 9, 2025) (citing *Dow Chem. Co. v. Organik Kimya Holding A.S.*, 2018 WL 2382802, at *6 (Del. Ch. May 25, 20218)) (“Needless to say, the ‘most significant relationship’ test entails a fact-intensive inquiry that often is inappropriate to a motion to dismiss.”). Such is the case here. Therefore, the Court will not make a choice of law determination. For purposes of this motion, the Court will apply the laws of the state as argued by the parties.

¹⁰³ *Deuley*, 8 A.3d at 1161 (explaining a “false conflict” where Delaware law will apply if it does not conflict with the laws of the competing jurisdiction); *Soares*, 2023 WL 3221891, at *4-5 (finding this factor neutral where choice of law had not yet been determined); *Varsity Brands Holdings Co. LLC v. Arch Ins. Co.*, 2025 WL 552500, at *12 (Del. Super. Feb. 19, 2025) (same).

¹⁰⁴ *CVS Opioid Ins. Litig.*, 2022 WL 3330427, at *10.

¹⁰⁵ *Id.* (quoting *Berger v. Intelident Sols., Inc.*, 906 A.2d 134, 137 (Del. 2006)).

(5) Pendency of a similar action in another jurisdiction. The parties agree that there is no other pending action. “The absence of another pending litigation weighs significantly against granting a *forum non conveniens* motion.”¹⁰⁶

(6) Other practical considerations. JUUL Labs argues that Delaware lacks interest in the litigation of 1,004 out-of-state plaintiffs and allowing these cases to proceed would expend substantial judicial resources at the expense of in-state litigants.¹⁰⁷

The last “catch-all” factor takes into account a variety of factors that “would affect the conduct of the litigation and the expeditious and economic administration of justice,” including the trial court’s ability to manage its own docket and promote efficient use of its resources.¹⁰⁸ While the interest is “strongest where substantive issues of corporate governance are implicated,”¹⁰⁹ Delaware has “an interest in regulating the conduct of entities formed under its laws.”¹¹⁰ This last factor “will seldom, in isolation, be dispositive of whether dismissal on the grounds of *forum non conveniens* is warranted.”¹¹¹

¹⁰⁶ *Berger*, 906 A.2d at 137; *Armenta*, 2024 WL 4433946, at *11.

¹⁰⁷ OB at 7-8.

¹⁰⁸ *Harris*, 2023 WL 355179, at *13.

¹⁰⁹ *GXP Cap., LLC*, 253 A.3d at 106.

¹¹⁰ *Cresa Glob. Inc.*, 2025 WL 53168, at *4 (“While it is true that this interest is strongest when the dispute involves corporate governance matters, this does not mean that if the dispute *does not* involve corporate governance matters that Delaware has *no* interest in the dispute.”) (emphasis in original).

¹¹¹ *Martinez*, 86 A.3d at 1113.

While Delaware’s interest in these cases may be light, this factor does not weigh in favor of dismissal. Additionally, as discussed in the next section, the court has other tools available to it to handle these cases.

4. *Balancing the Factors.*

Taken together, the *Cryo-Maid* factors do not weigh in favor of dismissal. JUUL Labs claims that it will suffer an overwhelming hardship if forced to litigate these cases in Delaware. At most, it has shown that litigating in Delaware may be less convenient.¹¹² JUUL Labs has failed to meet its high burden of establishing overwhelming hardship.¹¹³ This is not the rare case where the court will disturb a plaintiff’s choice of forum. JUUL Labs’ motion to dismiss based on *forum non conveniens* is denied.

B. *Joinder*

1. *Joinder Standard*

Superior Court Civil Rule 20(a) allows for permissive joinder of plaintiffs’ claims if the claims “arise out of the same transaction, occurrence, or series of

¹¹² *Warburg*, 774 A.2d at 270 (noting that defendant did nothing more “than claim inconvenience and [had] not supported this claim with anything of substance.”).

¹¹³ JUUL Labs’ arguments that litigating in Delaware, as opposed litigating these cases in 49 jurisdictions as it is now urging, is directly contrary to its position when it sought to transfer multiple cases to California to be consolidated. *See* AB, D.I. 15, “Appendix A” at A-15 (JUUL Labs’ Motion to Transfer) (“Litigating these cases separately would impose substantial and duplicative discovery burdens.” “Because all of the actions concern the same products and allege the same conduct by [JUUL Labs], discovery in the ten actions will overlap substantially, including the same witnesses, the same documentary evidence, and the same third-party discovery.”).

transactions or occurrences and any question of law or fact common to all these persons will arise in the action.”¹¹⁴ Both requirements must be satisfied to properly join parties under Rule 20.¹¹⁵ As noted above, multiple cases were filed against JUUL Labs around the country. In its motion to transfer those cases to the Multidistrict Litigation (“MDL”) in California, JUUL Labs argued that the cases “involved common questions of fact and law....”¹¹⁶ Thus, JUUL Labs does not challenge the second requirement of Rule 20(a) here. Rather, it attacks the complaints on the “same transaction, occurrence, or series of transactions or occurrences” requirement.

The purpose of Rule 20 is to promote judicial economy, expedite final disposition of disputes, and thereby avoid multiple lawsuits.¹¹⁷ “Joinder of claims and parties is ‘strongly encouraged,’ and [the trial court] should ‘entertain[] the broadest possible scope of action consistent with fairness to the parties.’”¹¹⁸ Permissive joinder is not a substantive right, but a procedural mechanism that allows parties with similar substantive claims to be joined in one action.¹¹⁹ If parties are

¹¹⁴ Del. Super. Civ. R. 20(a).

¹¹⁵ *Sequa Corp.*, 1990 WL 123006, at *8.

¹¹⁶ See AB, Appendix A at A-1.

¹¹⁷ *Crawford v. Syngenta Crop Prot., LLC*, 2024 WL 2831554, at *4 (Del. Super. May 31, 2024); 7 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 1652 (3d ed.) (2025).

¹¹⁸ *Davis v. Neal*, 2023 WL 5289445, at *10 (D. Del. Aug. 17, 2023); *Sequa Corp.*, 1990 WL 123006, at *8.

¹¹⁹ *Allen v. Cherokee Cty., NC*, 2021 WL 2003561, at *2 (W.D.N.C. May 19, 2021).

misjoined, the remedy is severance, not dismissal.¹²⁰ Permissive joinder is left to the sound discretion of the court.¹²¹

The first element “refers to the similarity in the factual background of the relevant claims and requires a case-by-case examination of the facts.”¹²² “Transaction or occurrence” is flexible. Rule 20 does not require “precise congruence” of all factual and legal issues.¹²³ “The events comprising the transaction or series of transactions must[, however,] ‘bear[] a logical’ relationship to one another.”¹²⁴ A logical relationship “exists where ‘separate trials on each of the claims would involve a substantial duplication of effort and time by the parties and courts’ because the claims are ‘offshoots of the same basic controversy between the parties.’”¹²⁵

Under Rule 20(b), the court may “order separate trials or make other orders to prevent delay or prejudice.”¹²⁶ Additionally, under Rule 21, parties may be dropped at any stage of the action “on such terms as are just.”¹²⁷

¹²⁰ *Id.*; Del. Super. Civ. R. 21.

¹²¹ 7 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 1652 (3d ed.) (2025).

¹²² *Davis*, 2023 WL 5289445, at *10 (cleaned up) (quoting *Cooper v. Fitzgerald*, 266 F.D.R. 86, 88 (E.D. Pa. 2010)).

¹²³ *Crawford*, 2024 WL 2831554, at *4; *Sequa Corp.*, 1990 WL 123006, at *8 (quoting *Mesa Comput. Util., Inc. v. W. Un. Comp. Util., Inc.*, 67 F.D.R. 634, 637 (D. Del. 1975)).

¹²⁴ *Davis*, 2023 WL 5289445, at *10.

¹²⁵ *Id.*; *Crawford*, 2024 WL 2831554, at *4 (citing *Pallano v. AES Corp.*, 2016 WL 97496, at *2 (Del. Super. Jan. 4, 2016)).

¹²⁶ Del. Super. Civ. R. 20(b); see also *Tumlison v. Advanced Micro Devices, Inc.*, 2010 WL 8250792, at *3-4 (Del. Super. July 23, 2010) (finding permissive joinder under Rule 20, but requiring separate trials).

¹²⁷ Del. Super. Civ. R. 21.

2. *The Parties' Contentions*

JUUL Labs argues that each of the 12 complaints misjoin between 59 and 98 plaintiffs, from as many as 27 states.¹²⁸ It argues that these plaintiffs cannot be joined because they purchased JUUL products at different times, in different states, based on different advertising, from different sources, and each suffered different injuries.¹²⁹

Plaintiffs contend that the parties are properly joined because each plaintiff purchased a JUUL product for personal use from JUUL Labs (or an authorized retailer), relied on JUUL Labs' false marketing, and suffered similar injuries.¹³⁰ Plaintiffs argue that it does not matter what advertisement each plaintiff saw (and relied on) because none of the advertisements disclosed the design defects relating to the use of nicotine to foster addiction.¹³¹

3. *Cases Relied on by JUUL Labs*

JUUL Labs relies on a variety of toxic tort and product liability cases for the proposition that because plaintiffs' claims arose at different times in different locations, no joinder is permissible. But these cases do not stand for the proposition that no joinder is ever permissible.

¹²⁸ OB at 10.

¹²⁹ *Id.* at 11.

¹³⁰ AB at 16.

¹³¹ D.I. 52, Hearing Transcript ("Tr.") at 111, 131.

In *In re Zantac (Ranitidine) Prods. Liab. Litig.*,¹³² an MDL, the parties agreed to a pretrial order that prohibited multi-plaintiff complaints. After the court granted defendants' *Daubert* motion on causation, plaintiffs had to file individual cases in federal court to appeal the ruling. Plaintiffs now objected to the pretrial order and sought to file the 58,000 claims in multi-plaintiff cases, organized by law firm. So each of the approximately 330 law firms representing plaintiffs would file one complaint for all of their respective clients. The court ruled that Rule 20 cannot be satisfied by grouping plaintiffs by law firm.¹³³

The *Zantac* court went on to find that Rule 20 was not satisfied because "Plaintiffs, each with unique physiology, consumed a drug created by different manufacturers, using different supply chains, at different times, in different places, with varying levels of exposure. Furthermore, the carcinogen at issue in this MDL is found in trace amounts in water, air, and food."¹³⁴ The court noted that there "were too many opportunities over the years for other factors to cause the Plaintiffs' or the Claimants' cancer."¹³⁵ Accordingly, the court ruled that joinder would create an unmanageable and unworkable burden, instead of easing the burden.

¹³² 343 F.R.D. 347 (S.D. Fla. 2023); OB at 13.

¹³³ *In re Zantac (Ranitidine) Prods.*, 343 F.R.D. at 349-52.

¹³⁴ *Id.* at 351.

¹³⁵ *Id.* at 352.

*In re Orthopedic Bone Screw Prods. Liab. Litig.*¹³⁶ involved plaintiffs from many states who “went to different doctors or teams of doctors and medical facilities and providers . . . for different reasons, and underwent surgery at different times in what could likely be over one thousand different medical providers locations staffed by different personnel.”¹³⁷ Plaintiffs proposed filing multi-plaintiff cases, organized by judicial district in which the plaintiffs resided. This, the court ruled, did not satisfy Rule 20’s “transaction or occurrence” requirement. The court, however, did not rule out that some type of grouping may be appropriate given the liberal policies of Rule 20, and posing that maybe plaintiffs “who underwent surgery at the same medical provider, involving the same manufacturer’s device, or combination of devices, could, in obedience to Rule 20” be joined.¹³⁸

In *Green v. Wyeth*, plaintiffs sued Wyeth and its affiliates arising out of their use of a diet drug manufactured and marketed by Wyeth, a physician who prescribed the drug to one of the five plaintiffs, and a sales representative who promoted the drug to another plaintiff.¹³⁹ The court ruled that the plaintiffs’ claims against the

¹³⁶ 1995 WL 428683 (E.D. Pa. July 17, 1995).

¹³⁷ *Id.* at *2.

¹³⁸ *Id.* (plaintiffs’ counsel argued that “developing discovery in this case appears to justify linking manufacturers, distributors, and providers, and possibly doctors and others, in a confederation at best and a conspiracy at worst, in regard to the marketing of manufacturers’ products that could be a central issue in this case. If that is so, or believed to be so, and good grounds exist to support such allegations, the ‘series of transactions’ requirement of Rule 20 might be satisfied for filing purposes...”).

¹³⁹ *Green v. Wyeth*, 344 F. Supp.2d 674, 677 (D. Nev. 2004).

Wyeth defendants “may [be] regard[ed as] the ‘same transaction or occurrence’— i.e., the manufacture and marketing of Fen–Phen—[but] this characterization of the complaint would not apply equally to the physician and sales representative who are joined as Defendants.”¹⁴⁰ The claims against the misjoined defendants were severed.¹⁴¹

In *Simmons v. Wyeth Labs., Inc.*,¹⁴² the court was faced with several complaints, each with multiple plaintiffs, asserting claims arising out of the use of Norplant, a contraceptive drug marketed by the defendants. Based on the allegations in the complaints, the court stated that it did not have sufficient information “to even speculate as to how the plaintiffs before me may have been involved in the same transaction or occurrence or series of transactions or occurrences.” While the court severed the claims and ordered that they be repleaded, it did not mandate that each plaintiff file her own complaint. Rather, consistent with the statements in *Bone Screw*, the court allowed for multiple plaintiffs where “plaintiffs received identical information from the defendants through identical means or sources at the same

¹⁴⁰ *Id.* at 683.

¹⁴¹ *Id.* JUUL Labs relies on *Green* for the quote “Several courts have held that the ingestion of medication among various Plaintiffs alone cannot constitute the “same transaction or occurrence.” JUUL Labs cites *Cumba v. Merck & Co., Inc.*, 2009 WL 1351462, at *1 (D. N.J. May 12, 2009) for the same proposition. This Court does not disagree with these statements, but that factor is not the sole determinative of whether Rule 20 is satisfied.

¹⁴² 1996 WL 617492 (E.D. Pa. Oct. 24, 1996).

point in time, and were implanted with the drug by the same doctor at the same facility....”¹⁴³

In *In re Fosamax (Alendronate Sodium) Prods. Litig. (No. II)*,¹⁴⁴ 91 plaintiffs were joined in one action asserting claims for a “long bone fracture,” but the complaint did not specify for each plaintiff what bone was fractured, what type of fracture occurred, or the circumstances of how the fracture occurred.¹⁴⁵ Plaintiffs also failed to allege when they took the drug and for how long. Further, plaintiffs purchased the product from a wide variety of manufacturers.¹⁴⁶ Therefore, the court found that the plaintiffs were misjoined.

In *Breitner v. Merck & Co.*,¹⁴⁷ multiple plaintiffs were joined in one complaint alleging injuries from a vaccine manufactured by the defendant. Ruling that plaintiffs were misjoined, the court found that plaintiffs did not allege that they received the same lot of the vaccine, at the same time, or by the same healthcare providers.¹⁴⁸

In re Silica Prods. Liab. Litig.,¹⁴⁹ plaintiffs alleged injuries from exposure to silica, which can develop into silicosis after long-term exposure. Silicosis is one of

¹⁴³ *Id.* at *4 (citing *In re Orthopedic Bone Screw*, 1995 WL 428683, at *2).

¹⁴⁴ 2012 WL 1118780 (D.N.J. Apr. 3, 2012).

¹⁴⁵ *Id.* at *4.

¹⁴⁶ *Id.*

¹⁴⁷ 2019 WL 316026 (D.N.J. Jan. 24, 2019).

¹⁴⁸ *Id.* at *4.

¹⁴⁹ 398 F. Supp.2d 563 (S.D. Tex. 2005).

the “oldest recognized occupational diseases.”¹⁵⁰ Plaintiffs, who worked in a variety of different trades, claimed they were exposed to silica dust in a variety of work environments at multiple employers, over a vast period of time.¹⁵¹ The court did not reach the question of whether plaintiffs were properly joined under Rule 20,¹⁵² but in its survey of other courts’ decisions on joinder, noted that joinder of plaintiffs who have no connection to each other does not promote efficiencies or trial convenience.¹⁵³

Finally, plaintiffs in *Boyle v. St. Joe Paper Co.*,¹⁵⁴ named several defendants in their action to seek an order to quiet title. Only one defendant, however, claimed any right to the properties. The court stated that while Rule 20 permitted the joinder of all of these defendants, plaintiffs must actually have a claim against each. Because the remaining defendants expressly disavowed any interest in the properties, the court dismissed them from the action.

4. Other Relevant Cases

In *Crawford v. Syngenta Crop Protection, LLC*, this court was faced with 24 complaints with over 150 plaintiffs alleging they suffer from Parkinson’s disease from exposure to paraquat.¹⁵⁵ Defendants, the exclusive manufacturers and

¹⁵⁰ *Id.* at 570.

¹⁵¹ *Id.* at 574, 651.

¹⁵² *Id.* at 656.

¹⁵³ *Id.* at 652.

¹⁵⁴ 1986 WL 13113 (Del. Super. Oct. 29, 1986).

¹⁵⁵ *Crawford*, 2024 WL 2831554, at *1.

distributors of the product, argued that 16 of the cases improperly joined plaintiffs who were unconnected and suffered the injury under different circumstances. The court noted Delaware’s “liberal rules for joinder” and found that plaintiffs satisfied the requirements of Rule 20.¹⁵⁶

Davis v. Neal, filed in the District of Delaware, involved claims by 39 prisoners alleging a systematic pattern of abuse, asserting claims for violations of Section 1983 and state law tort claims.¹⁵⁷ Each plaintiff was abused at a different time, by different guards, in a different manner, and suffered different injuries.¹⁵⁸ Defendants moved to sever, arguing that plaintiffs’ claims did not satisfy Rule 20’s “transaction or occurrence” prong. As here, defendants did not challenge the second prong of Rule 20(a).

The court denied the motion finding that plaintiffs sufficiently alleged that defendants created a systemic pattern of abusive and unlawful conduct.¹⁵⁹ The court noted that although each plaintiff’s allegations of abuse occurred on different days, the claims were “logically related because Plaintiffs allege they are part of a larger, frequent, and consistent pattern of violence and abuse” at the prison.¹⁶⁰

¹⁵⁶ *Id.* at *4-5.

¹⁵⁷ *Davis*, 2023 WL 5289445, at *1-2.

¹⁵⁸ *Id.* at *1, 11.

¹⁵⁹ *Id.* at *11.

¹⁶⁰ *Id.*

The *Davis* court distinguished cases involving “logically disjointed” claims, such as *Parkell*, asserting claims of illegal strip searches, interference with mail, religious discrimination, and Eight Amendment violations,¹⁶¹ and *Fatir*, asserting claims for religious discrimination, conditions of confinement, medical needs, postal charges, and denial of good time credit.¹⁶²

5. *Other Considerations*

Multi-plaintiff complaints raise other administrative and practical concerns for the court. On a practical level, a docket with 90 plaintiffs makes it much more difficult for the Prothonotary’s office (the Superior Court’s clerk’s office), to manage the docket and keep track of filings as they relate to individual plaintiffs.

On a financial level, there is an issue of the filing fee. Each of these twelve cases was charged \$211.25, or a total of \$2,535. If each plaintiff filed an individual complaint, the filing fees would amount to \$212,306.25. Filing fees serve two important purposes. First, the fees help fund the staff’s services to process the cases and the court’s resources are already stretched thin. Second, paying filing fees ensures plaintiffs (and their counsel) have “skin in the game,”¹⁶³ promoting a thorough review of claims before filing complaints.

¹⁶¹ *Parkell v. Linsey*, 2017 WL 3485817, at *3-4 (D. Del. Aug. 14, 1987).

¹⁶² *Fatir v. Markell*, 2016 WL 5946870, at *5 (D. Del. Oct. 12, 2016).

¹⁶³ See *Zantac (Ranitidine) Prods.*, 343 F.R.D. at 353 (discussing the implications of not paying a filing fee for each plaintiff and noting that Rule 20 does not permit joinder solely to reduce filing fees); see also *Breitner v. Merck & Co.*, 2019 WL 316026, at *4 n.6 (discussing the impact of not paying a filing fee for each plaintiff).

6. *Joinder, with Some Parameters, is Appropriate*

While Rule 20(a) needs to be assessed on a case-by-case basis, the cases reviewed above appear to have some common themes in analyzing “transaction or occurrence.” First, it is clear that use of, or exposure to, the same product alone is insufficient to satisfy Rule 20(a). Second, courts tend to find that Rule 20(a) is not satisfied when (i) plaintiffs were exposed to, or prescribed, the product by multiple players in the process (*i.e.*, different employers, different doctors, different hospitals), (ii) the product was manufactured, marketed, and/or distributed by multiple players, (iii) plaintiffs’ exposure to the product vastly differ, and/or (iv) the injuries could be caused by other factors (as in *Zantac*), each plaintiff’s unique physiology is particularly relevant to the alleged injuries, or the injuries vastly differ (as in *Fosamax*). This Court agrees with the courts requiring one plaintiff per complaint, such as *Fosamax* and *Zantac* for example. The Court finds that these *JUUL Labs* cases, however, are different. The Court finds *Davis* persuasive in this analysis.

While plaintiffs in *Davis* suffered different injuries, at different times, at the hands of different alleged actors, the court found that the claims were logically related because plaintiffs alleged a consistent pattern of violence and abuse at the prison. Here, plaintiffs allege, in detail, a consistent pattern of deception by JUUL Labs in the design, manufacturing, and marketing of its product. The logical relation

of these claims is that, to some extent, all of them involve the same systematic conduct by JUUL Labs. Plaintiffs alleged that JUUL Labs designed JUUL to minimize “throat hit” and maximize “buzz.” To that end, JUUL Labs designed the product to deliver a “massive puff” that delivered 200 to 250 micrograms of nicotine, even though its own researchers warned against anything above 150 micrograms. JUUL was also designed to deliver nicotine extremely efficiently (82% delivery rate compared to cigarettes’ 10% rate) and contained a much higher amount of nicotine than a pack of cigarettes (2.5 times). JUUL Labs is also alleged to have falsely marketed JUUL as a smoking cessation device and improperly marketed and sold the product to underage users. Rule 20(a) does not require that there be complete alignment of the claims and therefore, plaintiffs viewing different ads or suffering different injuries does not preclude joinder.

Prior to these Delaware actions, several cases alleging the same or similar claims as asserted here were filed around the country. JUUL Labs sought to have those cases consolidated for pretrial purposes because the actions “substantially overlap[ed] in many ways,” including the legal theories and causes of action.¹⁶⁴ JUUL Labs asserted that the cases “all center[ed] around the same or closely related operative theories of alleged wrongdoing[,]” which included its marketing of JUUL to attract minors, failing to disclose that JUUL was more potent and addictive than

¹⁶⁴ AB, Appendix A at A-10.

cigarettes, the product was unreasonably dangerous due to its attractiveness to minors and the nicotine content, and JUUL Labs promoted nicotine addiction.¹⁶⁵ JUUL Labs argued that 28 U.S.C. § 1407(a)'s "convenience of the parties and witnesses ... and promot[ion] of the just and efficient conduct of ... [the] action" prong was satisfied because consolidation of these claims would reduce discovery burdens and promote efficiency.¹⁶⁶

Plaintiffs' logically related claims (involving only one defendant who was responsible for the design, manufacturing, and marketing) along with JUUL Labs' previous position with respect to administering these cases together, leads the Court to conclude that some joinder is appropriate here.

While Rule 20(a) is liberally applied, it is not without boundaries. In addition to fairness and efficiencies for the parties, the court is to consider the efficiencies and burdens on the court. In the past two years, the Superior Court has experienced an explosion of mass toxic tort/products liability cases. In 2023, the court had 201 such cases. Today, 1,646 cases are pending. This figure does not account for the additional 993 plaintiffs spread across these 12 cases or the approximately 3,000 claimants in other multi-plaintiff complaints currently pending in this court. These cases take a lot of coordination and effort by the Prothonotary's office in managing

¹⁶⁵ *Id.* at A-11.

¹⁶⁶ *Id.* at A-15-20.

the docket. Complaints with the number of plaintiffs in these 12 cases makes the clerks' tasks particularly difficult.

Another problem is the filing fee. As explained above, the filing fee helps to provide funding for the court's services. Aggregating a large number of plaintiffs in one complaint deprives the court of this source of revenue. While a case filing fee is modest, the loss of fees on these types of complaints becomes significant for the court. Saving filing fees is not the purpose of Rule 20(a).¹⁶⁷

The court is also concerned that some counsel may use a reduced filing fee to avoid fully vetting all of the claimants' claims before filing. Not only does this raise potential Rule 11 issues, but the court is then faced with plaintiffs' counsel moving to withdraw for certain of the plaintiffs in a multi-plaintiff complaint, leading to more burden administering the docket and scheduling of the cases. If larger filing fees are required, the risk of this occurring is diminished.¹⁶⁸

Balancing the needs and interests of the parties and the Superior Court, the Rule 20(a) motion is **GRANTED** in part and **DENIED** in part. Each plaintiff's claim is severed and may be repleaded but each complaint shall have no more than 20 plaintiffs.

¹⁶⁷ See *Zantac (Ranitidine) Prods.*, 343 F.R.D. at 353.

¹⁶⁸ The Court does not suggest that plaintiffs' counsel here sought to avoid the filing fees or failed to vet their claimants. At argument, plaintiffs' counsel advised the Court that they will pay whatever amount the Court orders.

Plaintiffs in each complaint are to reside in the same state.¹⁶⁹ While a choice of law analysis has not been conducted in these cases, grouping the plaintiffs by state of residence will assist in presentation of arguments under a particular jurisdiction’s laws.

Even with this limit, trying 20 plaintiffs likely will not be workable. The Court can address trial issues later in these cases under Rule 20(b)¹⁷⁰ and Rule 21.¹⁷¹

C. *Failure to State a Claim*

1. *Standard of Review*

Upon a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6), the court accepts all well-pleaded allegations in the complaint as true.¹⁷² Even vague allegations are considered well-pleaded if they give the opposing party notice of the claim.¹⁷³ The court draws all reasonable inferences in favor of the non-moving party. However, the court will not “accept conclusory allegations unsupported by specific facts” or “draw unreasonable inferences in favor of the non-moving party.”¹⁷⁴ The claim will be dismissed only if the plaintiff “would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”¹⁷⁵

¹⁶⁹ JUUL Labs has conceded that common issues of law apply to these cases.

¹⁷⁰ Under Rule 20(b), the court may order separate trials.

¹⁷¹ Under Rule 21, a party may be severed at any stage of the proceeding “on such terms as are just.”

¹⁷² *Sees v. Mackenzie*, 2023 WL 5202675, at *2 (Del. Super. Aug. 14, 2023).

¹⁷³ *Id.*

¹⁷⁴ *Id.* (quoting *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011)).

¹⁷⁵ *Id.* (quoting *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020)).

2. *The Economic Loss Doctrine*¹⁷⁶

The economic loss doctrine precludes recovery in tort when the alleged injury arising from the defendant's conduct is economic in nature and there is no injury to a person or property (other than product itself). Generally, it bars claims of strict liability, negligence, gross negligence, fraud, and unjust enrichment.¹⁷⁷ The

¹⁷⁶ In their brief, plaintiffs argued that all plaintiffs alleged personal injuries. But at oral argument plaintiffs conceded that only the *Davis* plaintiffs adequately alleged personal injuries. Thus, the Court will analyze the sufficiency of the claims on the basis that no plaintiff, except the *Davis* plaintiffs, alleges personal injuries. See AB at 23-32; Tr. at 116.

¹⁷⁷ *Lloyd Wood Coal Co. v. Clark Equip. Co.*, 543 So. 2d 671, 673 (Ala. 1989) (negligence and strict liability); *Morrow v. New Moon Homes, Inc.*, 548 P.2d 279, 283-85 (Alaska 1976) (same); *Sullivan v. Pulte Home Corp.*, 306 P.3d 1, 3 (Ariz. 2013) (common law fraud, strict liability, and negligence); *Epperson v. Gen. Motors, LLC*, 706 F. Supp.3d 1031, 1043-44 (S.D. Cal. 2023) (same); *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256, 1264-66 (Colo. 2000) (tort claims absent an independent duty of care); *Tiara Condo. Ass'n, Inc. v. Marsh & McLennan Cos.*, 110 So. 3d 399, 404-05 (Fla. 2013) (strict liability and negligence); *Home Depot U.S.A., Inc. v. Wabash Nat'l Corp.*, 724 S.E.2d 53, 59 (Ga. Ct. App. 2012) (same); *State ex rel. Bronster v. U.S. Steel Corp.*, 919 P.2d 294, 302 (Haw. 1996), *abrogated on other grounds by State ex rel. Shikada v. Bristol-Myers Squibb Co.*, 526 P.3d 395 (Haw. 2023) (same); *Blahd v. Richard B. Smith, Inc.*, 108 P.3d 996, 1000 (Idaho 2004) (negligence); *Myers v. A.O. Smith Harvestore Prods., Inc.*, 757 P.2d 462, 435 (Idaho Ct. App. 1988) (strict liability); *In re Chicago Flood Litig.*, 680 N.E.2d 265, 274 (Ill. 1997) (strict liability and negligence); *Progressive Ins. Co. v. Gen. Motors Corp.*, 749 N.E.2d 484, 488 (Ind. 2001) (same); *Nelson v. Todd's Ltd.*, 426 N.W.2d 120, 122-23 (Iowa 1988) (same); *Jordan v. Case Corp.*, 993 P.2d 650, 652 (Kan. Ct. App. 1999) (same); *Young v. D.E.P.E., L.L.C.*, 2024 WL 4245064, at *5 (Ky. Ct. App. Sept. 20, 2024) (same); *Oceanside at Pine Point Condo. Owners Ass'n v. Peachtree Doors, Inc.*, 659 A.2d 267, 270 (Me. 1995) (same); *Am. Aerial Servs., Inc. v. Terex USA, LLC*, 39 F. Supp.3d 95, 111 (D. Me. 2014) (fraud); *Morris v. Osmose Wood Preserving*, 667 A.2d 624, 631 (Md. 1995) (strict liability and negligence); *FMR Corp. v. Bos. Edison Co.*, 613 N.E.2d 902, 903 (Mass. 1993) (same); *Neibarger v. Univ. Coops., Inc.*, 486 N.W.2d 612, 615 (Mich. 1992) (same); *Shaker v. Champion Petfoods*, 625 F. Supp.3d 621, 632 (E.D. Mich. 2022) (fraud); Minn. Stat. § 604.101(3) (strict liability and negligence); *Marvin Lumber & Cedar Co. v. PPG Indus., Inc.*, 223 F.3d 873, 885 (8th Cir. 2000) (Minn.: fraud); *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 736 So. 2d 384, 387 (Miss. Ct. App. 1999) (strict liability and negligence); *Dannix Painting, LLC v. Sherwin-Williams Co.*, 732 F.3d 902, 905-06 (8th Cir. 2013) (Mo.: same); *Holman v. Ali Indus., LLC*, 654 F. Supp.3d 871, 881-82 (W.D. Mo. 2023) (unjust enrichment); *Lesiak v. C. Vall. Ag Coop., Inc.*, 808 N.W.2d 67, 83 (Neb. 2012) (strict liability and negligence); *Hi-Tech Agg., LLC v. Pavestone, LLC*, 555 P.3d 1184, 1190 (Nev. 2024) (same); *Lockheed Martin Corp. v. RFI Supply, Inc.*, 440 F.3d 549, 552 (1st Cir. 2006) (N.H.: same); *Alloway v. Gen. Marine Indus., L.P.*, 695 A.2d 264, 267 (N.J. 1997) (same); *Cincinnati Ins. Co. v.*

economic loss doctrine is the boundary between contract law (enforcing the expectancy interests of the parties) and tort law (imposing a duty of reasonable care to encourage citizens to avoid causing physical harm to others).¹⁷⁸ There are, however, limited exceptions to the doctrine in certain jurisdictions, including where the parties lack privity,¹⁷⁹ the product is unreasonably dangerous,¹⁸⁰ the seller knew or should have known that its conduct would cause economic harm,¹⁸¹ or fraud has been adequately alleged.¹⁸²

Emerson Climate Techs., Inc., 187 N.Y.S.3d 391, 393 (N.Y. App. Div. 2023) (same); *Ellis v. La.-Pac. Corp.*, 699 F.3d 778, 783 (4th Cir. 2012) (N.C.: same); *Steiner v. Ford Motor Co.*, 606 N.W.2d 881, 884 (N.D. 2000) (same); *Ziegelmann v. DaimlerChrysler Corp.*, 2001 WL 35817235, at *8 (D.N.M. 2001) (N.D.: fraud); *Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins. Co.*, 537 N.E.2d 624, 630 (Ohio 1989) (strict liability and negligence); *Waggoner v. Town & Country Mobile Homes, Inc.*, 808 P.2d 649, 652 (Okla. 1990) (same); *Russell v. Deere & Co.*, 61 P.3d 955, 958 (Or. Ct. App. 2003) (same); *Holtec Int'l v. ARC Machs., Inc.*, 492 F. Supp.3d 430, 445 (W.D. Pa. 2020) (strict liability, negligence, and fraud); *Isla Nena Air Servs., Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 88, 92 (1st Cir. 2006) (P.R.: strict liability and negligence); *Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 49 (S.C. 2009) (same); *Jorgensen Farms, Inc. v. Country Pride Corp.*, 824 N.W.2d 410, 418 (S.D. 2012) (same); *Lincoln Gen. Ins. Co. v. Detroit Diesel Corp.*, 293 S.W.3d 487, 490 (Tenn. 2009) (same); *Equistar Chem., L.P. v. Dresser-Rand Co.*, 240 S.W.3d 864, 867 (Tex. 2007) (same); *Davencourt at Pilgrims Landing Homeowners Ass'n v. Davencourt at Pilgrims Landing, LC*, 221 P.3d 234, 242 (Utah 2009) (same); *Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.*, 374 S.E.2d 55, 57-58 (Va. 1988) (same); *Basham v. Gen. Shale*, 377 S.E.2d 830, 834 (W. Va. 1988) (same); *Wausau Tile, Inc. v. Cnty. Concrete Corp.*, 593 N.W.2d 445, 451 (Wis. 1999) (same); *Cont'l Ins. v. Page Eng'g Co.*, 783 P.2d 641, 647 (Wyo. 1989) (same).

¹⁷⁸ *Tiara Condo. Ass'n, Inc.*, 110 So. 3d at 401; *Progressive Ins. Co.*, 749 N.E.2d at 488; *Equistar Chemicals, L.P.*, 240 S.W.3d at 867; *Holtec Int'l*, 492 F. Supp.3d at 445; *Waggoner*, 808 P.2d at 652.

¹⁷⁹ Arizona, California, Florida, New Jersey, North Carolina, South Carolina, and Texas.

¹⁸⁰ Maryland.

¹⁸¹ Alaska.

¹⁸² Arizona, California, Maine, Michigan, Minnesota, and Pennsylvania.

JUUL Labs argues that the economic loss doctrine bars the non-*Davis* plaintiffs' claims in strict liability, negligence, and gross negligence in 43 states,¹⁸³ fraud claims in 7 states,¹⁸⁴ and unjust enrichment claims in Missouri.¹⁸⁵ Plaintiffs acknowledge the doctrine bars claims in 30 states,¹⁸⁶ but argue that certain recognized exceptions preclude application of the economic loss doctrine in 13 states.¹⁸⁷

a. *The Privity Exception*

Plaintiffs argue in Arizona, California, Florida, New Jersey, North Carolina, South Carolina, and Texas the economic loss doctrine does not apply if the plaintiff lacks privity with the defendant.¹⁸⁸ Plaintiffs contend that because JUUL Labs

¹⁸³ Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

¹⁸⁴ Alabama, California, Maine, Michigan, Minnesota, North Dakota, and Pennsylvania.

¹⁸⁵ OB at 14-50.

¹⁸⁶ AB at 33-51. Plaintiffs' strict liability, negligence, and gross negligence claims are dismissed based on the economic loss doctrine in Alabama, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. Additionally, plaintiffs' unjust enrichment claims in Missouri and plaintiffs' fraud claims in North Dakota are dismissed.

¹⁸⁷ Alaska, Arizona, California, Florida, New Jersey, Maryland, Maine, Michigan, Minnesota, North Carolina, Pennsylvania, South Carolina, and Texas.

¹⁸⁸ *Southwest Pet Products, Inc. v. Koch Industries, Inc.*, 89 F. Supp.2d 1115, 1128 (D. Ariz. 2000), *rev'd in part on other grounds*, 32 Fed. Appx. 213 (9th Cir. 2002) (Where there's no privity of contract, the economic loss rule does not apply); *Veterans Rideshare, Inc. v. Navistar Int'l Corp.*, 2021 WL 2206479, at *4 (S.D. Cal. June 1, 2021) ("The absence of privity between parties to a lawsuit has been found to preclude the application of the economic loss rule."); *McLeod v. Barber*,

asserts that plaintiffs from these states are not in privity for the purposes of dismissal of other claims (implied warranty of merchantability and consumer protection claims),¹⁸⁹ it cannot assert that plaintiffs *are* in privity to dismiss tort claims under the economic loss doctrine.¹⁹⁰

Rule 8 allows a plaintiff to plead in the alternative and “the Court need not ‘wrestle at the pleading stage how one claim might interact with another.’”¹⁹¹ When the validity of an element of the claim is in dispute, alternative pleading is permitted.¹⁹²

Plaintiffs allege they had “sufficient direct dealings” through authorized distributors or the JUUL Labs website to establish privity,¹⁹³ which JUUL Labs challenges. If plaintiffs are later found not to be in privity with JUUL Labs, the

764 So.2d 790, 792 (Fla. App. 2000) (same); *SRC Constr. Corp. of Monroe v. Atl. City Hous. Auth.*, 935 F. Supp.2d 796, 799 (D.N.J. 2013) (holding the economic loss doctrine “only applies to bar certain tort claims between parties to a contract. Stated another way, the absence of a contract between a plaintiff and defendant in a negligence suit precludes the application of the economic loss doctrine.”); *Hospira Inc. v. Alphagary Corp.*, 671 S.E.2d 7, 14 (N.C. Ct. App. 2009) (“[W]here no contractual privity exists between the parties, the rationale for barring recovery under the economic loss rule is not advanced by barring a claim for negligence.”); *Crawford Pharmacies v. Amerisourcebergen Drug Corp.*, 2008 WL 695895, at *3 (S.D. Tex. Mar. 11, 2008) (“Courts applying the economic loss rule have consistently held that the rule does not apply in the absence of contractual privity.”).

¹⁸⁹ OB at 62-64, 82-88.

¹⁹⁰ AB at 34-35, 37, 39, 46, 47, 49-50.

¹⁹¹ Del. Super. Civ. R. 8(e)(2); *Dillon Gage Inc. of Dallas v. Umicore Precious Metals USA Inc.*, 2025 WL 3779149, at *3 (Del. Super. Dec. 30, 2025) (quoting *Julian’s Foods, LLC v. Julian Bakery, Inc.*, 2025 WL 1826173, at *8 (Del. Super. June 17, 2025)).

¹⁹² *Dillon Gage Inc. of Dallas*, 2025 WL 3779149, at *3.

¹⁹³ Bean Compl. ¶¶ 543, 775, 792; Alvarez Compl. ¶ 350; Arnold Compl. ¶ 628; Akin Compl. ¶ 445; Davila Compl. ¶ 560; Hall Compl. ¶ 1401.

exception will apply, allowing them to proceed on their claims for strict liability, negligence, gross negligence, and fraud. If plaintiffs are later found to be in privity, the tort claims will be barred. At this stage, plaintiffs' alternative pleading is permissible and the Arizona, California, New Jersey, and South Carolina tort claims are not dismissed.

JUUL Labs further argues that under Florida, North Carolina, and Texas law, the economic loss doctrine applies where the defendant is the manufacturer or distributor of the product, even if the parties are not in privity.¹⁹⁴

Texas state courts hold that, notwithstanding a party's privity status, the economic loss doctrine bars all tort claims where no injury to a person or property is alleged and the alleged economic losses arose from the subject of the contract.¹⁹⁵ Federal courts in Texas have generally applied a more lenient approach to the economic loss doctrine, allowing parties who lack privity with one another to assert tort claims for purely economic loss unless the alleged damage was to the subject of

¹⁹⁴ RB at 20, 22.

¹⁹⁵ *Coastal Conduit & Ditching, Inc. v. Noram Energy Corp.*, 29 S.W.3d 282, 285-90 (Tex. App. 2000) (holding that absent a contractual relationship or claim of personal injury or property damage, Coastal could not maintain its negligence action); *Sw. Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494-95 (Tex. 1991) ("When the only loss or damage is to the subject matter of the contract, the plaintiff's action is ordinarily on the contract."); *White Star Pump Co., LLC v. Alpha Hunter Drilling, LLC*, 2021 WL 5707713, at *4 (Tex. App. Dec. 2, 2021) ("a party states a tort claim which is not barred by the economic loss rule 'when the duty allegedly breached is independent of the contractual undertaking **and** the harm suffered is not merely the economic loss of a contractual benefit.'") (emphasis in original).

the contract.¹⁹⁶ This Court is inclined to follow Texas state court decisions to resolve this question, as the state courts are clear that economic losses in tort are barred no matter privity status.¹⁹⁷

The Florida Supreme Court clarified and placed limitations on the scope of the economic loss doctrine in *Tiara Condo. Ass'n, Inc. v. Marsh & McLennan Companies, Inc.*¹⁹⁸ The court recognized prior over-expansion of the economic loss doctrine.¹⁹⁹ In *Tiara* the economic loss doctrine was brought back to its roots, applying only in products liability cases, and rescinding any exceptions to the application of the doctrine that had been enumerated in prior cases.²⁰⁰ Therefore,

¹⁹⁶ *Jackson v. Dole Fresh Fruit Co.*, 921 F. Supp. 454, 459 (S.D. Tex. 1996) (“if the defendant’s conduct gives rise to liability ‘only because it breaches the parties’ agreement, the plaintiff’s claim ordinarily sounds only in contract.’”); *Don Hanvey Oil Tr., Inc. v. Unit Texas Drilling, LLC*, 2011 WL 606264 (S.D. Tex. Feb. 16, 2011), *aff’d sub nom.*, *In re Reichmann Petroleum Corp.*, 453 Fed. Appx. 466 (5th Cir. 2011) (applying Tex. Law) (holding that reframing contractual claims as tort claims will not allow the claims to survive for strictly economic losses).

¹⁹⁷ *Coastal Conduit & Ditching, Inc.*, 29 S.W.3d at 285-90; *Sw. Bell Tel. Co.*, 809 S.W.2d at 494-95; *White Star Pump Co., LLC*, 2021 WL 5707713, at *4. This is further supported because Texas does not require privity between the parties for recovery for breach of the implied warranty of merchantability. *U.S. Tire-Tech, Inc. v. Boeran, B.V.*, 110 S.W.3d 194, 198 (Tex. App. 2003) (citing *Nobility Homes of Tex., Inc. v. Shivers*, 557 S.W.2d 77, 81 (Tex. 1977)) (“The Texas Supreme Court held in 1977 that privity of contract is not required in order to recover purely economic losses from the breach of an implied warranty of merchantability.”). Therefore, plaintiffs’ remedies lay in contract under the breach of implied warranty of merchantability and consumer protection act.

¹⁹⁸ 110 So. 3d 399 (Fla. 2013).

¹⁹⁹ *Id.* at 406. The Supreme Court stated in that in *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999), *Comptech Int’l, Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219 (Fla. 1999), and *Indem. Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532 (Fla. 2004), the court did not go far enough to limit the doctrine to its original intended purpose, leaving many exceptions to its application.

²⁰⁰ *Tiara Condo. Ass’n, Inc.*, 110 So. 3d at 407 (“Our experience with the economic loss rule over time, which led to the creation of the exceptions to the rule, now demonstrates that expansion of the rule beyond its origins was unwise and unworkable in practice.”).

Florida’s economic loss doctrine bars all products liability actions, with no exceptions. Accordingly, Florida plaintiffs’ claims are limited to their breach of implied warranty and consumer protection claims.²⁰¹

The North Carolina plaintiffs argue that the doctrine does not bar tort claims where the parties are not in privity. JUUL Labs responds that North Carolina provides an exception for manufacturers, and tort claims are barred even without privity.

JUUL Labs relies on *Ellis v. Louisiana-Pacific Corp.*,²⁰² which recognized authority from the North Carolina Supreme Court that a plaintiff may maintain a tort action if he lacks privity.²⁰³ In discussing the rationale for the economic loss doctrine, the *Ellis* court quoted the North Carolina Court of Appeal’s explanation that where the parties’ relationship is governed by a contract (in which they are free to set their rights and liabilities), allowing a party to proceed in tort “would permit the party to ignore and avoid the rights and remedies granted or imposed by the parties’ contract.”²⁰⁴ *Ellis* did not recognize a further exception to the lack of privity

²⁰¹ While privity is required in Florida to establish an implied warranty claim, Florida recognizes a third-party beneficiary exception, which permits claims by reasonably foreseeable users of a product against manufacturers despite absence of direct contact. Fla. Stat. § 672.318.

²⁰² 699 F.3d 778 (4th Cir. 2012).

²⁰³ *Id.* at 784 (citing *Oates v. JAG, Inc.*, 333 S.E.2d 222, 223-24 (N.C. 1985)) (“an owner of a dwelling house who is not the original purchaser has a cause of action against the builder and general contractor for negligence in the construction of the house, when such negligence results in economic loss or damage to the owner.”).

²⁰⁴ *Id.* (quoting *Moore v. Coachmen Indus., Inc.*, 129 N.C.App. 389, 499 S.E.2d 772, 780 (1998)).

requirement for manufacturers, as JUUL Labs argues. Accordingly, the North Carolina claims are not dismissed.

b. *Unreasonably Dangerous Product Exception*

Maryland recognizes an exception to the economic loss doctrine when the alleged defect makes the product unreasonably dangerous,²⁰⁵ meaning there exists a clear danger of death or personal injury as a result of the defect.²⁰⁶ “[C]onditions that present a risk to general health, welfare, or comfort but fall short of presenting a clear danger of death or personal injury will not suffice.”²⁰⁷

To determine whether the exception applies, Maryland conducts a two-part test that examines “both the nature of the damage threatened and the probability of damage occurring to determine whether the two, viewed together, exhibit a clear, serious, and unreasonable risk of death or personal injury.”²⁰⁸ A plaintiff may fall within the exception if only one prong is satisfied, so long as, under the facts alleged, both elements are, at a minimum, present.”²⁰⁹

²⁰⁵ *Lloyd v. General Motors Corp.*, 916 A.2d 257, 270 (Md. 2007).

²⁰⁶ *Id.* at 266; *Morris*, 667 A.2d at 631 (“It is the serious nature of the risk that persuades us to recognize the cause of action in the absence of actual injury.”).

²⁰⁷ *Morris*, 667 A.2d at 632.

²⁰⁸ *Id.* at 631-32. The court stated:

if the possible injury is extraordinarily severe, i.e., multiple deaths, we do not require the probability of the injury occurring to be as high as we would require if the injury threatened were less severe, i.e. a broken leg or damage to property. Likewise, if the probability of the injury occurring is extraordinarily high, we do not require the injury to be as severe as we would if the probability of injury were lower.

²⁰⁹ *Lloyd*, 916 A.2d at 262, 270.

Cautious that the exception is not “too indeterminate,” Maryland applies the exception narrowly, “to, predominately, those situations in which either liability would inevitably be created by actual physical injury or the manufacturer’s exposure to liability is so great that it cannot be ignored.”²¹⁰

JUUL Labs argues that the facts here are more like *Morris v. Osmose Wood Preserving* and plaintiffs argue the facts are more aligned with *Loyd v. General Motors Corp* and *U.S. Gypsum Co. v. Mayor & City Council of Baltimore*. In *Morris*, plaintiffs sought to recover the cost of replacing allegedly defective fire retardant plywood used to construct the roofs of their townhomes. Plaintiffs alleged that in high temperatures, the fire treatment begins to breakdown, which causes the wood to deteriorate and lose strength capacity.²¹¹ Plaintiffs claimed that they were at risk of injuries in two circumstances: (1) because the roofs were unsafe, they threatened the safety of anyone who may need to be on the roof (such as repair personnel), and (2) when the material degrades, the roofs are incapable of supporting any weight (even from a snowfall), thereby risking collapse and the safety of the occupants.²¹² No personal injuries or roof collapses had occurred.²¹³ The court found that plaintiffs’ claims did not “meet the required legal threshold of pleading the existence

²¹⁰ *Morris*, 667 A.2d at 633.

²¹¹ *Id.* at 628.

²¹² *Id.* at 633.

²¹³ *Id.* at 632.

of a clear and extreme danger of death or *serious* personal injury...” as there was only a mere possibility of injury.²¹⁴

In *Lloyd*, the class action complaint sought to recover the cost to repair defective vehicle seatbacks, which allegedly collapse in rear-impact collisions, posing a risk of serious bodily injury or death. Although no person in the class had experienced personal injury,²¹⁵ plaintiffs alleged that others had suffered paraplegia, quadriplegia, and even death as a result of the defective seats, which was supported at least in part, by complaints filed with the National Highway Traffic Safety Administration.²¹⁶ The court found that the exception to the economic loss doctrine applied because of the serious injury at risk, which alone satisfied the test. The court went on to find that the second prong was satisfied, as plaintiffs alleged that thousands of individuals were seriously hurt or killed, thus, the injury was probable.²¹⁷

In *Gypsum*, plaintiffs sought recovery for asbestos remediation in several buildings, but did not assert personal injury claims. The tort claims were not barred by the economic loss doctrine because the possible injury (inhalation of asbestos causing serious diseases) was coupled with a high probability that personal injuries

²¹⁴ *Id.* at 633 (emphasis in original).

²¹⁵ *Lloyd*, 916 A.2d at 262.

²¹⁶ The records showed that no less than 38 reported injuries and 3 fatalities were reported. *Id.* at 270.

²¹⁷ *Id.*

would result because everyone in the buildings was at risk of asbestos exposure and related injuries.²¹⁸

The Maryland plaintiffs' claims are more closely aligned to the claims in *Morris*. Plaintiffs allege that JUUL Labs' products create a risk of pulmonary injuries, cardiovascular issues, and seizures,²¹⁹ but do not allege death or other more serious personal injuries. Additionally, plaintiffs do not allege the likelihood of these injuries. Further, plaintiffs have not pointed to a case finding e-cigarettes to be unreasonably dangerous, like asbestos. Accordingly, the Maryland plaintiffs' strict liability, negligence, and gross negligence claims are barred by the economic loss doctrine and therefore are dismissed.

c. *Seller's Knowledge that the Product will Cause Economic Harm*

Under Alaska's exception to the doctrine, where the seller knew or should have known that economic loss would occur due to its actions, tort claims are not barred.²²⁰ To establish this exception, a plaintiff must show "the defendants knew or reasonably should have foreseen . . . that ascertainable economic damages would

²¹⁸ *U.S. Gypsum Co. v. Mayor & City Council of Baltimore*, 647 A.2d 405, 410-11 (Md. 1994). The court relied on a Minnesota Supreme Court case, *St. Ltd. Ptsp. v. Carey-Canada*, 486 N.W.2d 393 (Minn. 1992), which held that asbestos containing material posed a "substantial and unreasonable risk of personal injury to building users." *U.S. Gypsum Co.*, 647 A.2d at 411.

²¹⁹ Ault-Fishburn Compl. ¶¶ 4, 8, 285, 288, 291, 298, 302, 303.

²²⁰ *Anchorage v. Integrated Concepts & Research Corp.*, 2015 WL 926219, at *5 (D. Alaska Mar. 4, 2015).

ensue from the conduct.”²²¹ “An identifiable class of plaintiffs must be particularly foreseeable in terms of the type of persons or entities comprising the class, the certainty or predictability of their presence, the approximate numbers of those in the class, as well as the type of economic expectations disrupted.”²²²

While plaintiffs allege that they relied on JUUL Labs’ misrepresentations and the risk of personal physical injury was foreseeable, they do not allege that the risk of economic harm was, or should have been, foreseeable.²²³ Therefore, the Alaska plaintiffs’ strict liability, negligence, and gross negligence claims are barred by the economic loss doctrine and dismissed.

d. *Fraud Exception*

Arizona, California, Maine, Michigan, Minnesota, and Pennsylvania recognize an exception to the economic loss doctrine for various types of fraud,²²⁴

²²¹ *Id.* (quoting *Mattingly v. Sheldon Jackson College*, 743 P.2d 356, 360 (Alaska 1987)).

²²² *Id.* (quoting *Mattingly*, 743 P.2d at 361).

²²³ See Bean Compl. ¶¶ 435, 499-501.

²²⁴ *Martin v. Weed Inc.*, 2018 WL 2431837, at *6-7 (D. Ariz. May 30, 2018) (economic loss rule does not bar fraud claims); *Shah v. General Motors LLC*, 2023 WL 8852491, at *7 (N.D. Cal. Dec. 21, 2023) (economic loss rule does not apply to fraudulent omission claims); *In re Evenflo Co., Inc. Marketing, Sales Pracs. & Prods. Liab. Litig.*, 707 F. Supp.3d 103, 126 (D. Mass. 2023) (Me.: economic loss rule does not apply to fraudulent inducement claims); *Huron Tool & Eng’g Co. v. Precision Consulting Servs., Inc.*, 532 N.W.2d 541, 543-44 (Mich. Ct. App. 1995) (same); Minn. Stat. Ann. § 604.10(e) (“This section shall not be interpreted to bar tort causes of action based upon fraud or fraudulent or intentional misrepresentation or limit remedies for those actions.”); *Zwiercan v. General Motors Corp.*, 2002 WL 31053838, at *6 (Pa. Ct. Com. Pl. Sept. 11, 2002) (economic loss rule does not bar common law fraud claims).

recognizing that a plaintiff does not bargain for the risk of a defendant's fraudulent conduct.²²⁵

JUUL Labs does not dispute that Arizona, California, Maine, Michigan, and Minnesota recognize a fraud exception. The claims are not dismissed based on this exception.

For Arizona and California, JUUL Labs argues that plaintiffs fail to plead fraud with particularity.²²⁶ As discussed below, plaintiffs' fraud allegations are pled with sufficient particularity.

California plaintiffs also argue that the doctrine does not apply where a defendant's tortious conduct directly targeted these plaintiffs.²²⁷ JUUL Labs argues that plaintiffs did not allege that they were targeted.²²⁸

There must be "more than mere foreseeability" to establish this exception.²²⁹ California plaintiffs allege that JUUL Labs specifically targeted youths through its product design, marketing campaigns, and presentations at schools and youth groups. The pleadings are sufficient to allege targeting of minors. Therefore, JUUL Labs' motion is denied on this alternative ground.

²²⁵ *Martin*, 2018 WL 2431837, at *7; *Shah*, 2023 WL 8852491, at *7; *In re Evenflo Co., Inc.*, 707 F. Supp.3d at 126; *Huron Tool & Eng'g Co.*, 532 N.W.2d at 543-44; *Zwiercan*, 2002 WL 31053838, at *6.

²²⁶ RB at 18.

²²⁷ AB at 35-36.

²²⁸ RB at 18-19.

²²⁹ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 661; Bean Compl. ¶¶ 222-31, 233, 237, 247, 238-41, 272.

For Pennsylvania plaintiffs, JUUL Labs concedes that their statutory fraud claims (consumer protection claims) are unaffected by the economic loss doctrine, but it argues that common law fraud is barred by the doctrine.²³⁰ Pennsylvania law however, is to the contrary. The Pennsylvania Supreme Court has not directly addressed the issue, but lower Pennsylvania courts have interpreted the supreme court’s prior ruling on the economic loss doctrine to bar negligence claims.²³¹ and therefore plaintiffs’ common law fraud claims are also not barred by the doctrine.²³²

3. *Consumer Protection Claims*

Plaintiffs’ consumer protection claims are grounded in fraud, alleging that the prohibited conduct JUUL Labs engaged in was “fraudulent, deceptive, and

²³⁰ See OB at 43-44.

²³¹ *Knight v. Springfield Hyundai*, 81 A.3d 940, 951-52 (Pa. Super. 2013) (“Our research reveals, however, that our Supreme Court has defined the economic loss doctrine as providing “no cause of action exists for **negligence** that results solely in economic damages unaccompanied by physical injury or property damage.”) (emphasis in original). See also, *In re Gen. Motors LLC Ignition Switch Litig.*, 257 F. Supp.3d 372, 435-36 (S.D.N.Y. 2017) (applying Pa. law) (finding the question of whether the doctrine bars common law fraud claims a “closer question” but ruling that the claim was not barred, reasoning that the doctrine is premised on the theory that parties to a contract can protect themselves, but “in both theory and practice, it is impracticable, if not impossible, for parties to negotiate terms regarding what happens if one of them is intentionally deceiving the other.”).

²³² JUUL Labs cites *Earl v. NVR, Inc.*, 990 F.3d 310 (3d Cir. 2021) (applying Pa. law) for the proposition that there are no exceptions for the economic loss doctrine, even for fraud. RB at 22, citing *Earl*, 990 A.3d at 313. That portion of the opinion, however, was explaining the court’s previous ruling in *Werwinski*, which was overturned in *Earl*. *Earl* did not address common law fraud claims.

unfair.”²³³ Because the claims are grounded in fraud, the pleadings must conform to Rule 9(b)’s particularity requirements.²³⁴

a. Rule 9(b)’s Particularity Requirement

JUUL Labs argues, and plaintiffs do not dispute, that the consumer protection claims must be pled with particularity sufficient to satisfy Rule 9(b), which requires alleging “circumstances sufficient to fairly apprise the defendant of the basis for the claim.”²³⁵ “The relevant circumstances are the time, place, contents of the false representation; the facts misrepresented; the identity of the person(s) making the representations; and what that person(s) gained from making the misrepresentations.”²³⁶ And Delaware has “consistently found that the date, place, and time allegations are not required so long as the pleadings put defendants on notice of the misconduct with which they are charged and protect defendants against false charges of immoral or fraudulent behavior.”²³⁷ A plaintiff need not allege

²³³ See, e.g., *Bean Compl.*, ¶¶ 322, 327, 421, 425, 520, 524, 619, 623, 729, 743, 747.

²³⁴ Del. Super. Civ. R. 9(b).

²³⁵ *Knight Broadband LLC v. Knight*, 2022 WL 1788855, at *8 (Del. Super. June 2, 2022) (quoting *H–M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 145 (Del. Ch. 2003)); *Castetter v. Delaware Dept. of Labor*, 2002 WL 819244, at *3 (Del. Super. April 30, 2002) (citing *Strasburger v. Mars, Inc.*, 83 A.2d 101, 279 (Del. Super. 1951)).

²³⁶ *LVI Gp. Invs., LLC v. NCM Gp. Hldgs., LLC*, 2017 WL 1174438, at *4 (Del. Ch. Mar. 29, 2019) (quoting *Prairie Cap. III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 49 (Del. Ch. 2015)).

²³⁷ *Bamford v. Penfold, L.P.*, 2020 WL 967942, at *14 (Del. Ch. Feb. 28, 2020) (quoting *Yavar Rzayev, LLC v. Roffman*, 2015 WL 5167930, at *4 (Del. Super. Aug. 31, 2015)); *LVI Gp. Invs., LLC*, 2017 WL 1174438, at *4 (date, time, and place are not required “provided that the pleadings put the defendant on sufficient notice of the actual misconduct with which they are charged.”); see also *Mosaic US Holdings LLC v. Atlas Tech. Sols., Inc.*, 2025 WL 483064, at *7 (Del. Super. Jan. 22, 2025).

evidentiary details.²³⁸ Allegations are sufficient when the defendant can admit or deny the facts in a responsive pleading and has sufficient information to prepare a defense and discovery.²³⁹ When evaluating the sufficiency of a fraud claim, the court will employ a “context-driven analysis.”²⁴⁰

JUUL Labs argues that plaintiffs fail to specify the advertisements or representations each personally viewed, when and where they were viewed, how they were deceptive, and who made the representations.²⁴¹ JUUL Labs further argues that plaintiffs fail to show affirmative acts, taken by JUUL Labs, to conceal any information.²⁴² Plaintiffs argue that JUUL Labs does not, and cannot, claim that it lacks notice of the alleged misconduct or that it is unaware of the nature of plaintiffs’ allegations.²⁴³

The complaints go into detail of how JUUL Labs developed its product to attract teens and ignored risks revealed through its internal studies. Plaintiffs allege that JUUL Labs failed to disclose that its product was extremely potent and highly addictive. And it failed to disclose that JUUL was not a smoking cessation device or that it delivered more nicotine than a pack of combustible cigarettes. Plaintiffs further allege that none of this information was provided in JUUL Labs’ marketing

²³⁸ *Bamford*, 2020 WL 967942, at *12.

²³⁹ *Id.* at *13.

²⁴⁰ *Elburn v. Albanese*, 2020 WL 1929169, at *8 n.97 (Del. Ch. Apr. 21, 2020) (collecting cases).

²⁴¹ OB at 52.

²⁴² *Id.* at 53.

²⁴³ AB at 52.

or labeling. JUUL Labs downplayed JUUL's nicotine content, nicotine delivery profile, and the heightened risks of addiction.²⁴⁴ Each plaintiff specifies the type of advertisements she/he saw, the dates of purchase and use of the product, and their state of residence.²⁴⁵

JUUL Labs knows its marketing campaigns and when, where and how it advertised its products.

Plaintiffs have sufficiently placed JUUL Labs on notice of the claims asserted and the conduct at issue. The complaints satisfy Rule 9(b)'s particularity requirements and the motion to dismiss on this ground is denied.

b. *Exemption for Conduct Regulated Elsewhere*

The marketing and sale of the JUUL products are regulated at the federal level, and the marketing and sale of nicotine products is regulated in many states.²⁴⁶ Because of these other regulations, JUUL Labs argues that in Indiana, Maine, Massachusetts, Michigan, Rhode Island, South Dakota, Tennessee, Utah, Virginia, and Wyoming, it is exempt from the consumer protection laws.²⁴⁷ Specifically, federal law regulates the tobacco industry through the Food and Drug Administration

²⁴⁴ Bean Compl. ¶¶ 112, 116, 120, 149, 181, 184-89, 201, 209, 227.

²⁴⁵ Bean Compl. ¶¶ 9-97; Davila Compl. ¶¶ 9-100; Accettura Compl. ¶¶ 9-104; Kuxhouse Compl. ¶¶ 9-101; Ault-Fishburn Compl. ¶¶ 9-91; Arnold Compl. ¶¶ 9-96; Alvarez Compl. ¶¶ 9-106; Beck Compl. ¶¶ 9-97; Akin Compl. ¶¶ 9-101; Ayers Compl. ¶¶ 9-73; Hall Compl. ¶¶ 9-67; Davis Compl. ¶¶ 9-68.

²⁴⁶ OB at 54-55.

²⁴⁷ *Id.* at 54.

(the “FDA”),²⁴⁸ which has promulgated rules for the packaging, labeling, advertising, and promotion of tobacco products, including electronic nicotine delivery systems.²⁴⁹ Indiana, Michigan, Rhode Island, South Dakota, Tennessee, Utah, Virginia, and Wyoming also regulate the sale and distribution of nicotine within their state’s borders.²⁵⁰ JUUL Labs argues that these regulations take the consumer protection claims out of the scope of each state’s act.²⁵¹

The state consumer protection statutes exempt conduct that is “required, permitted, or authorized” by the laws of the state or United States, from liability under the acts.²⁵² The burden is on the proponent of the exemption to prove the conduct is exempt.²⁵³ When a court evaluates a regulatory exemption the “focus

²⁴⁸ See 21 U.S.C. § 387a; 21 C.F.R. § 1100.1 (2023).

²⁴⁹ See 21 U.S.C. § 387c(a)(1); 21 U.S.C. § 387f; 21 C.F.R. § 1100.1 (2023).

²⁵⁰ See Ind. Code § 7.1-7-5-1.1; Mich. Comp. Laws §§ 722.641 *et seq.*; 11 R.I. Gen. Laws §§ 11-9-13 *et seq.*; S.D. Codified Laws §§ 34-46 *et seq.*; Tenn. Code §§ 39-17-1501 *et seq.*; Utah Code § 26B-7-505; Utah Code § 76-10-105.1; Va. Code § 58.1-1021.07; Wyo. Stat. §§ 14-3-301 *et seq.*; Wyo. Stat. §§ 35-7-2001 *et seq.*

²⁵¹ OB at 54-55.

²⁵² Ind. Code § 24-5-0.5-6 (“required or expressly permitted”); Me. Rev. Stat. tit. 5, § 208 (1) (“authorized, permitted or required”); Mass. Gen. Laws ch. 93A, § 3 (“transactions or actions otherwise permitted”); Mich. Comp. Laws § 445.904(1)(a) (“transaction or conduct specifically authorized”); R.I. Gen. Laws § 6-13.1-4(a) (“actions or transactions permitted”); S.D. Codified Laws § 37-24-10 (“acts or practices required or permitted”); Tenn. Code § 47-18-111(a)(1) (“[a]cts or transactions required or specifically authorized”); Utah Code § 13-11-22(a) (“required or specifically permitted”); Va. Code § 59.1-199(1) (“[a]ny aspect of a consumer transaction which aspect is authorized”); Wyo. Stat. § 40-12-110(a)(i) (“[a]cts or practices required or permitted”).

²⁵³ *In re Juul Labs, Inc., Mktg Sales Pracs. and Prods. Liab. Litig.*, 2022 WL 1955678, at *8 (N.D. Cal. Jan. 28, 2022) (citing *Liss v. Lewiston-Richards, Inc.*, 478 Mich. 203, 208 (2007)).

should be directed at whether ‘the transaction at issue, not the alleged misconduct, is specifically authorized.’”²⁵⁴

Indiana regulates the sale of e-liquid and specifies that a product shall not contain “more than seventy-five (75) milligrams per milliliter of nicotine.”²⁵⁵ It also dictates that “[a] manufacturer, distributor, or retailer may not market e-liquid as a modified risk tobacco product . . . that has not been designed as a modified risk tobacco product by the federal Food and Drug Administration.”²⁵⁶ A “modified risk tobacco product” is “any tobacco product that is sold or distributed to reduce harm or the risk of tobacco related disease associated with commercially marketed tobacco products.”²⁵⁷

Utah enacted requirements for labeling, nicotine content, product packaging, and product quality.²⁵⁸ Utah requires that: electronic cigarette devices comply with federal law (including the minimum nicotine warning); the nicotine content shall not

²⁵⁴ *Id.* at *8 (N.D. Cal. Jan. 28, 2022) (quoting *Smith v. Globe Life Ins. Co.*, 460 Mich. 446, 464 (1999)); *Skinner v. Steele*, 730 S.W.2d 335, 337 (Tenn. Ct. App. 1987) (the exemption rule “is intended to avoid conflict between laws, not to exclude from the Act’s coverage every activity that is authorized or regulated by another statute or agency.”); *Naranjo v. Cherrington Firm, LLC*, 285 F. Supp.3d 1242, 1246 (D. Utah 2018) (the exemption “would apply only if Cherrington’s actions were required or specifically permitted by federal or state law.”).

²⁵⁵ Ind. Code § 7.1-7-5-1.1(e).

²⁵⁶ Ind. Code § 7.1-7-5-1.1(j).

²⁵⁷ Ind. Code § 7.1-7-2-17.5.

²⁵⁸ Utah Admin. Code r. R384-415-3 (labeling); Utah Admin. Code r. R384-415-4 (prohibited sales); Utah Admin. Code r. R384-415-5 (nicotine content); Utah Admin. Code r. R384-415-6 (packaging); Utah Admin. Code r. R384-415-7 (product quality).

exceed 59mg/mL; and labels not create the impression that the product contains additives for health, energy, or vitality.²⁵⁹

Virginia requires that a retail seller of nicotine products verify the customer's age before selling or furnishing a nicotine product.²⁶⁰

Michigan, Rhode Island, South Dakota, Tennessee, and Wyoming prohibit the sale of tobacco and vapor products to children.²⁶¹

Plaintiffs argue that their claims are not exempt because JUUL Labs has not proven that the *specific activities* underlying their consumer protection claims were “required, permitted, or authorized” by state or federal laws.²⁶²

This issue was addressed under the Michigan Consumer Protection Act in *In re Juul Labs, Inc., Mktg. Sales Practices & Products Liab. Litig.*²⁶³ There, plaintiffs alleged that JUUL Labs specifically targeted communities in Indian tribes with its highly addictive and damaging products through the use of deceptive and misleading sales and marketing programs.²⁶⁴ Based on the “breadth of the scope of the

²⁵⁹ Utah Admin. Code r. R384-415-3 (labeling); Utah Admin. Code r. R384-415-4 (prohibited sales); Utah Admin. Code r. R384-415-5 (nicotine content); Utah Admin. Code r. R384-415-6 (packaging); Utah Admin. Code r. R384-415-7 (product quality).

²⁶⁰ Va. Code § 58.1-1021.07.

²⁶¹ Mich. Comp. Laws §§ 722.641 *et seq.*; 11 R.I. Gen. Laws §§ 11-9-13 *et seq.*; S.D. Codified Laws §§ 34-46 *et seq.*; Tenn. Code §§ 39-17-1501 *et seq.*; Wyo. Stat. § 14-3-301.

²⁶² AB at 55-58.

²⁶³ *In re Juul Labs, Inc.*, 2022 WL 1955678, at *8-10; *see also Flanagan v. Altria Grp., Inc.*, 2005 WL 2769010, at *7 (E.D. Mich. Oct. 25, 2005) (dismissing MCPA claim because comprehensive federal programs regulate cigarette labeling and advertising).

²⁶⁴ *In re Juul Labs, Inc.*, 2022 WL 1955678, at *2.

exemption as explained by the Michigan Supreme Court and interpreted by courts in Michigan,” the court found that plaintiffs’ deceptive and misleading marketing claims fell within the exemption.²⁶⁵

In contrast, in *Aspinall v. Phillip Morris, Inc.*, the Massachusetts Supreme Court held that defendants failed to meet their exceedingly high burden to show that they were given explicit permission to use descriptors such as “light” in marketing their cigarettes and therefore, the exemption did not apply.²⁶⁶ Defendants argued that through consent decrees with other cigarette companies and the Federal Trade Commission’s failure to take action against cigarette companies that put descriptors on their packages, it “condoned,” “authorized,” and “permitted” the use of the descriptors “lights” and “lowered tar.”²⁶⁷ The court stated that inferences cannot be the basis for proving an exemption applies.²⁶⁸

²⁶⁵ *Id.* at *10.

²⁶⁶ *Aspinall v. Philip Morris, Inc.*, 902 N.E.2d 421, 424-25 (Mass. 2009) (“a defendant must show more than the mere existence of a related or even overlapping regulatory scheme that covers the transaction. Rather, a defendant must show that such scheme affirmatively *permits* the practice which is alleged to be unfair or deceptive.”) (emphasis in original).

²⁶⁷ *Id.* at 424.

²⁶⁸ *Id.* at 425-26.

Utah, Maine, Massachusetts, Tennessee, Virginia, South Dakota,²⁶⁹ and Wyoming narrowly define the scope of their consumer protection exemptions.²⁷⁰ The exemption in these states does not apply when an activity is merely regulated by another body of law; it only applies when the alleged wrongful conduct is specifically required or permitted by state or federal law.²⁷¹ Whereas Indiana, Michigan, and Rhode Island consumer protection exemptions provide for a broad

²⁶⁹ While courts in South Dakota have not addressed the scope of its consumer protection exemption, the act’s language closely aligns with the states that draw a narrow scope of the exemption. South Dakota exempts “acts or practices required or permitted” by another body of law. S.D. Codified Laws § 37-24-10. This interpretation is consistent with the consumer protection act as a whole because it provides cumulative, rather than exclusive remedies alongside regulatory schemes. S.D. Codified Laws § 37-24-7 (stating that deceptive practices are “in addition to and do not limit” other causes of action); S.D. Codified Laws § 37-24-32 (clarifying that private remedies “shall in no way affect causes of action arising under other laws”).

²⁷⁰ *Patane v. Nestle Waters N. Am., Inc.*, 478 F. Supp.3d 318, 332-36, 338-40 (D. Conn. 2020) (discussing consumer protection exemptions in Maine and Massachusetts); *WyoLaw, LLC v. Office of Attorney Gen., Consumer Prot. Unit*, 486 P.3d 964, 975-77 (Wyo. 2021); *Skinner*, 730 S.W.2d at 337-38; *Naranjo*, 285 F. Supp.3d at 1244-46; *Garvin v. LBAS, Inc.*, 2025 WL 2956445, at *5-6 (Va. Ct. App. Oct. 21, 2025); S.D. Codified Laws § 37-24-10 (applies to acts or practices that are required or permitted).

²⁷¹ *See Patane*, 478 F. Supp.3d at 332-36, 338-40 (selling Poland Spring water as “spring water” was not exempted even though the water industry is regulated through licensure or that bottled water “must conform with the legal standard of identity for spring water”); *WyoLaw, LLC*, 486 P.3d at 975-77 (“Section 110(a)(i) exemption does no more than defer to contradictory laws that permit or require a specific act or practice that might otherwise be unlawful under the Act.”); *Skinner*, 730 S.W.2d at 337-38 (the federal antitrust laws will not exempt all conduct in connection with the sale of insurance and annuities just because it “specifically authorizes” the sale of insurance and annuities); *Naranjo*, 285 F. Supp.3d at 1244-46 (“the UCSPA does not apply when state or federal law ‘require[s] or specifically permit[s]’ the alleged wrongful conduct. Here, *Naranjo* claims that Cherrington *violated* both federal and state law. Section 13–11–22(1)(a) would apply only if Cherrington’s actions were required or specifically permitted by federal or state law.”) (emphasis in original); *Garvin*, 2025 WL 2956445, at *5-6 (“Section 59.1-199(1) ‘does not exempt entire industries from the Act, rather it exempts claims arising from certain transactions that are already covered by a Virginia or federal law.’”).

scope of the exemption.²⁷² In these states, the courts look at the general activity complained of, rather than the specific alleged wrongful activity.²⁷³

The general activity plaintiffs complain of is the marketing of the JUUL products; more specifically, plaintiffs complain that JUUL Labs made misrepresentations and fraudulent statements in the marketing of the JUUL products. Federal law permits the advertising and promotion of cigarettes, with substantial limitations. Federal law and the state laws referenced above, however, do not: explicitly permit or authorize the marketing of a cigarette device as a smoking cessation device when not authorized to do so, explicitly authorize the sale or advertisement of cigarette products to adolescents, and authorize false statements as to the amount of nicotine contained within a product.

Utah, Maine, Massachusetts, Tennessee, Virginia, South Dakota, and Wyoming law do not explicitly authorize or require the alleged conduct and therefore, the vast regulations in the cigarette industry do not exempt JUUL Labs

²⁷² *Koehlinger v. State Lottery Comm'n of Ind.*, 933 N.E.2d 534, 542 (Ind. Ct. App. 2010); *Patane*, 478 F. Supp.3d at 352-53 (discussing Rhode Island's act); *In re Juul Labs, Inc.*, 2022 WL 1955678, at *8-10 (applying Mich. law); *Flanagan*, 2005 WL 2769010, at *7.

²⁷³ *Koehlinger*, 933 N.E.2d at 542 (“The DCSA is to be ‘liberally construed and applied to promote its purposes and policies’”); *Patane*, 478 F. Supp.3d at 352-53 (“the exemption applie[s] to all activities subject to monitoring by governmental agencies, not simply activities permitted under state or federal law.”); *In re Juul Labs, Inc.*, 2022 WL 1955678, at *8-10 (applying Mich. law) (“a court’s focus should be directed at whether ‘the transaction at issue, not the alleged misconduct, is specifically authorized.’”); *Flanagan*, 2005 WL 2769010, at *7 (“Defendant’s ‘general transaction’ was the *labeling and advertising* of its cigarettes. The FCLAA ‘establish[es] a comprehensive Federal program to deal with cigarette *labeling and advertising*’”) (emphasis in original).

from the scope of the consumer protection statutes.²⁷⁴ However, Indiana, Michigan, and Rhode Island broadly apply their consumer protection exemption to cover general activities subject to monitoring or regulation, in general, by state or federal law. Therefore, these claims are dismissed as being exempt under the states' consumer protection statutes.²⁷⁵

c. *Pre-suit Notice*

Some state's consumer protection statute requires pre-suit notice to the defendant in certain circumstances.²⁷⁶ Typically, the notice must be in writing and detail the alleged violations.²⁷⁷ JUUL Labs argues that plaintiffs fail to allege that they provided the required pre-suit notice in Alabama, California, Georgia, Maine, Massachusetts, and Texas.²⁷⁸

Under Alabama and Georgia law, pre-suit notice is not required if the defendant does not maintain a place of business or keep assets in the state.²⁷⁹

²⁷⁴ *Patane*, 478 F. Supp.3d at 332-36, 338-40; *WyoLaw, LLC*, 486 P.3d at 975-77; *Skinner*, 730 S.W.2d at 337-38; *Naranjo*, 285 F. Supp.3d at 1244-46; *Garvin*, 2025 WL 2956445, at *5-6; S.D. Codified Laws § 37-24-10 (applies to acts or practices that are required or permitted).

²⁷⁵ *Koehlinger*, 933 N.E.2d at 542; *Patane*, 478 F. Supp.3d at 352-53; *In re Juul Labs, Inc.*, 2022 WL 1955678, at *8-10; *Flanagan*, 2005 WL 2769010, at *7.

²⁷⁶ See Ala. Code § 8-19-10(e); Cal. Civ. Code § 1782(a); Ga. Code § 10-1-399(b); Me. Rev. Stat. tit. 5, § 213(1-A); Mass. Gen. Laws ch. 93A, § 9(3); Tex. Bus. & Com. Code § 17.505(a).

²⁷⁷ See Ala. Code § 8-19-10(e); Cal. Civ. Code § 1782(a); Ga. Code § 10-1-399(b); Me. Rev. Stat. tit. 5, § 213(1-A); Mass. Gen. Laws ch. 93A, § 9(3); Tex. Bus. & Com. Code § 17.505(a).

²⁷⁸ OB at 57-58.

²⁷⁹ Ala. Code § 8-19-10(e) and Ga. Code Ann. § 10-1-399(b): “[t]he demand requirements of this subsection shall not apply if the prospective respondent does not maintain a place of business or does not keep assets within the state[.]”

Plaintiffs argue that they were not required to send pre-suit notice in these states.²⁸⁰

JUUL Labs does not contest that these exceptions apply. Therefore, the Alabama and Georgia plaintiffs are not required to make a pre-suit demand.²⁸¹

California plaintiffs did allege that each plaintiff sent pre-suit demands as required by Cal. Civ. Code § 1782(a).²⁸² JUUL Labs does not contest the sufficiency of this allegation.

Maine and Massachusetts plaintiffs admit that pre-suit notice was not alleged in their respective complaints.²⁸³ In both states, courts allow a plaintiff to cure the deficiency and amend the complaint instead of dismissal.²⁸⁴

Texas plaintiffs argue that JUUL Labs waived its objection to lack of notice²⁸⁵ because it failed to timely request an abatement of the case due to lack of pre-suit notice.²⁸⁶ “A defendant who fails to make a timely request for abatement must be

²⁸⁰ AB at 58-59.

²⁸¹ RB at 24.

²⁸² AB at 59. “Each Plaintiff sent a pre-suit notice letter that complied with the requirements of Cal. CCP § 1782 more than 30 days before filing this lawsuit.” Bean Compl. ¶ 748; Davis Compl. ¶ 424.

²⁸³ AB at 59-61.

²⁸⁴ *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 350 F. Supp.2d 160, 186 (D. Me. 2004) (failure to comply with pre-suit notice does not lead to dismissal, instead the objecting party may request cessation of the litigation for 30 days to correct the error, or the court may deny attorney’s fees and costs at the conclusion of litigation); *Rodi v. S. New England Sch. Of Law*, 389 F.3d 5, 19 (1st Cir. 2004) (A party may cure failure to provide pre-suit notice by amending its complaint when, otherwise, a plaintiff has stated “a colorable claim for relief under Chapter 93A.”).

²⁸⁵ AB at 61.

²⁸⁶ *See Hines v. Hash*, 843 S.W.2d 464, 468-69 (Tex. 1992) (if a plaintiff fails to meet the pre-suit notice requirements, a defendant may request abatement of the case, for 60 days, with the filing of an answer or shortly after).

considered to have waived his objection to the lack of notice.”²⁸⁷ JUUL Labs does not contest that it failed to timely object to the lack of notice.

JUUL Labs’ motion to dismiss the Alabama, Georgia, California, and Texas claims is denied. The claims under Maine and Massachusetts are abated for 60 days to allow plaintiffs to cure the deficiency.

d. *Damages under Georgia and Minnesota Statutes*

JUUL Labs argues, and plaintiffs do not contest, that Georgia’s consumer protection act does not authorize recovery of damages.²⁸⁸ Thus, these claims are dismissed.²⁸⁹

Minnesota plaintiffs also concede that damages are not recoverable under the Minnesota Consumer Protection Act, however, they argue that they do not assert such claims.²⁹⁰ While the headings in the *Davis* and *Arnold* complaints identify Minn. Stat. § 325D.43-.48 (which does not authorize damages), the substance of the allegations cite to Minn. Stat. § 325F.69(1) and § 8.31(3a),²⁹¹ which permit recovery

²⁸⁷ *Hines*, 843 S.W.2d at 469.

²⁸⁸ OB at 58-59.

²⁸⁹ Georgia plaintiffs argue that they do not assert claims under the Uniform Deceptive Trade Practices Act, however, this claim is asserted in the *Davis* and *Davila* complaints. *See, e.g.*, *Davis* Compl. ¶¶ 743-56; *Davila* Compl. ¶¶ 627-40.

²⁹⁰ AB at 62; Minn. Stat. § 325D.43-.48.

²⁹¹ *See, e.g.*, *Davis* Compl. ¶¶ 1544-56; *Arnold* Compl. ¶¶ 407-19.

of damages. Therefore, JUUL Labs’ motion to dismiss the Minnesota consumer protection claims is denied.²⁹²

e. *JUUL Labs’ Contact with Delaware and New Hampshire*

Both Delaware and New Hampshire consumer protection statutes require the alleged improper conduct occur within the state’s borders.²⁹³ JUUL Labs argues that Delaware and New Hampshire plaintiffs fail to allege that JUUL Labs acted within those states’ borders.²⁹⁴ Plaintiffs respond that this pleading requirement is satisfied by the allegations that these plaintiffs bought the JUUL products and saw the misleading labels within their home states.²⁹⁵ JUUL Labs did not respond to this argument. Drawing all reasonable inferences in plaintiffs’ favor, the complaints sufficiently allege conduct within these states and these claims are not dismissed on this ground.

²⁹² See *Kramer v. W. Pac. Indus., Inc.*, 546 A.2d 348, 353 (Del. 1988) (“In determining the nature of the wrong alleged, a court must look to ‘the body of the complaint, not to the plaintiff’s designation or stated intention.’”).

²⁹³ 6 *Del. C.* § 2512 (“The purpose of this subchapter shall be to protect consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce in part or wholly within this State.”); N.H. Rev. Stat. Ann. § 358-A:2 (“It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state.”).

²⁹⁴ OB at 59-60.

²⁹⁵ Davis Compl. ¶ 19 (“Plaintiff . . . is a citizen of Delaware who purchased JUUL Products in Delaware.”); Hall Compl. ¶¶ 29-36 (“Plaintiff . . . is a citizen of New Hampshire who purchased JUUL Products in New Hampshire.”).

f. *Ascertainable Loss*

JUUL Labs argues plaintiffs from Idaho, Missouri, and New Jersey have not specifically pled an “ascertainable loss” under their state’s statute, as they purportedly assert only a diminution in value.²⁹⁶ Plaintiffs contend that the allegations that they “would not have purchased the JUUL Products or would have paid substantially less for them” is sufficient to establish an ascertainable loss and specificity (particularity) is not required.²⁹⁷

Idaho, Missouri, and New Jersey require a plaintiff plead an ascertainable loss to sufficiently plead a claim under the respective consumer protection statute.²⁹⁸ These states apply the “benefit of the bargain” rule to determine whether a plaintiff suffered an ascertainable loss.²⁹⁹ This measure of damages applies when the plaintiff sues for “damages on account of the quality of the property he bought.”³⁰⁰

²⁹⁶ OB at 60.

²⁹⁷ AB at 64.

²⁹⁸ *Anderson v. Interpath Lab., Inc.*, 2026 WL 177894, at *4-5 (D. Idaho Jan. 22, 2026); *Hennessey v. Gap, Inc.*, 86 F.4th 823, 827-28 (8th Cir. 2023) (applying Mo. law); *Talalai v. Cooper Tire & Rubber Co.*, 823 A.2d 888, 897 (N.J. Super. 2001).

²⁹⁹ *Hennessey*, 86 F.4th at 827-28 (applying Mo. law) (“The ‘benefit of the bargain rule’ awards a prevailing party the difference between the value of the product as represented and the actual value of the product as received.”) (citation omitted); *Green v. Green Mountain Coffee Roasters, Inc.*, 279 F.R.D. 275, 281 (D.N.J. 2011) (quoting *Bosland v. Warnock Dodge, Inc.*, 964 A.2d 741, 750 (N.J. 2009)) (ascertainable loss is one equivalent to “any lost ‘benefit of [the] bargain’”).

³⁰⁰ *Hennessey*, 86 F.4th at 828 (applying Mo. law); *Litster Frost Injury Lawyers, PLLC v. Idaho Injury Law Grp., PLLC*, 518 P.3d 1, 13 (Idaho 2022), *as amended* (Sept. 2, 2022) (quoting Idaho Admin. Code r. 04.02.01.020.05) (“An ‘ascertainable loss of money’ under Idaho Code § 48-608(1) is ‘[a]ny deprivation’ of money that “is capable of being discovered, observed, or established.””).

Plaintiffs have sufficiently pled ascertainable loss. As described above, the complaints provide factual detail to support the allegation that the JUUL products were not as advertised. Accordingly, they have sufficiently pled that they did not receive the benefit of their bargain.³⁰¹

g. Lack of Privity

JUUL Labs argues that the Arizona, Idaho, and Kentucky consumer protection statutes require privity to state a claim.³⁰²

For Arizona, plaintiffs argue that *Watts v. Medicis Pharmaceutical Corp.*³⁰³ makes clear that the Arizona Consumer Fraud Act does not require privity. JUUL Labs does not dispute this proposition. Thus, its motion is denied.

The Idaho Supreme Court ruled in *Taylor v. McNichols* that a plaintiff “must have been in a contractual relationship with the party alleged to have acted unfairly or deceptively.”³⁰⁴ Subsequently, Idaho state courts and, almost without exception,

³⁰¹ JUUL Labs argues that plaintiffs are required to plead ascertainable loss with specificity. OB at 60-61. As noted, a plaintiff must plead facts to support the contention that she suffered an ascertainable loss, but JUUL Labs has not shown that a plaintiff must plead damages with specificity. For the Missouri claims, JUUL Labs relies on *White v. Walmart*, 2024 WL 4542259, at *6 (E.D. Mo. Oct. 22, 2024), for the proposition that a plaintiff must plead the actual value and the value of what was received to sufficiently plead ascertainable loss. The *White* court found plaintiff’s allegation to be conclusory, failing to provide factual detail to determine the difference in value. The lack of a purchase price was a factor in the court’s conclusion. This Court finds that failure to plead a purchase price or the “actual” value, alone will not defeat the claim. The Missouri Court of Appeals found that an allegation that the product was worth less than the product as advertised was sufficient. *Murphy v. Stonewall Kitchen, LLC*, 503 S.W.3d 308, 313-14 (Mo. App. 2016). The Court finds *Murphy* persuasive.

³⁰² OB at 62.

³⁰³ *Watts v. Medicis Pharm. Corp.*, 365 P.3d 944 (Ariz. 2016).

³⁰⁴ *Taylor v. McNichols*, 243 P.3d 642, 662 (Idaho 2010).

Idaho federal courts, have consistently ruled that privity is required.³⁰⁵ Some federal courts applying Idaho law have found that direct or “immediate privity” is not necessary, reasoning that *Taylor* did not address whether indirect privity would be sufficient.³⁰⁶ The split of authority will need to be addressed by the Idaho Supreme Court. For now, this Court will follow the weight of Idaho state and federal courts. Because privity is required, the Idaho claims are dismissed.

Kentucky plaintiffs acknowledge that privity is required, but argue that dismissal is not warranted because the manufacturer extends an express warranty.³⁰⁷ Kentucky plaintiffs, however, do not allege that JUUL Labs made any express warranties.³⁰⁸ Accordingly, Kentucky plaintiffs’ consumer protection act claims are dismissed.

h. *Alabama Election of Claims*

The Alabama Consumer Protection Act provides for an election of remedies. It states that “[a]n election to pursue the civil remedies prescribed in this

³⁰⁵ *Rouse v. H.B.*, 2024 WL 4528872, at *4-5 (D. Minn. Oct. 18, 2024) (applying Idaho law) (collecting cases); *In re Duramax Diesel Litig.*, 2018 WL 3647047, at *8-9 (E.D. Mich. Aug. 1, 2018) (applying Idaho law) (collecting cases) (“the Court believes that the Idaho Supreme Court has unambiguously interpreted the ICPA as requiring direct contractual privity.”).

³⁰⁶ *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, 295 F. Supp.3d 927, 1021-22 (N.D. Cal. 2018) (applying Idaho law).

³⁰⁷ *Naiser v. Unilever U.S., Inc.*, 975 F. Supp.2d 727, 743 (W.D. Ky. 2013) (citing *Ford Motor Co. v. Mayes*, 575 S.W.2d 480 (Ky. App. 1978)) (holding when express warranties are made for the customers benefit, privity will not stand in the way of a consumer protection claim).

³⁰⁸ Plaintiffs point to Ault-Fishburn Compl. ¶433. That paragraph, however, asserts third-party beneficiary status of implied warranties.

chapter shall exclude and be a surrender of all other rights and remedies available at common law, ... for fraud, arising out of any act, occurrence or transaction actionable under this chapter.”³⁰⁹ JUUL Labs argues that plaintiffs are precluded from asserting this statutory claim because they assert a common law fraud claim.³¹⁰ Citing other cases in the Eleventh Circuit, plaintiffs counter that they are permitted to plead the claims in the alternative.³¹¹

There is a split among the District Courts in the Eleventh Circuit over whether these claims may be plead in the alternative.³¹² *Holmes* ruled they cannot because while under Federal Rule of Civil Procedure 8(d) a party may plead in the alternative, “the plain text of the ADTPA specifically and unambiguously makes, as an essential element of the claim, the statutory remedy exclusive of other remedies available under Alabama Law.”³¹³ The court reasoned that to allow a plaintiff to plead both claims “would enlarge the substantive right and remedy of the ADTPA[.]”³¹⁴ Relying on Rule 8(d), the *Morris* court found that “although the plain language of the savings clause requires a plaintiff to elect one or the other remedy, it does not

³⁰⁹ Ala. Code § 8-19-15 (emphasis added).

³¹⁰ OB at 64-65 (citing *Holmes v. Behr Process Corp.*, 2015 WL 7252662, at *3 (N.D. Ala. Nov. 17, 2015)).

³¹¹ AB at 69-71 (citing *Morris v. Walmart.*, 2020 WL 470287, at *6 (N.D. Ala. Jan. 29, 2020)).

³¹² See *Holmes*, 2015 WL 7252662, at *2; *Morris*, 2020 WL 470287, at *6.

³¹³ *Holmes*, 2015 WL 7252662, at *3.

³¹⁴ *Id.*

specify *when* in the proceedings the plaintiff must do so.”³¹⁵ Thus, the claims were not dismissed on this ground.

The Court finds *Morris* persuasive.³¹⁶ Delaware Superior Court Rule 8(e)(2) permits a plaintiff to plead claims in the alternative, even inconsistent claims.³¹⁷ The Alabama plaintiffs cannot recover under both the statute and common law fraud claim. However, at this stage, they are permitted to plead both.

i. *Pleading Actual Damages*

JUUL Labs argues that plaintiffs fail to plead actual damages as required by the Arkansas Deceptive Trade Practices Act. Under the act, a plaintiff must plead “an actual financial loss.”³¹⁸ An actual financial loss is “an ascertainable amount of money that is equal to the difference between the amount paid by a person for goods or services and the actual market value of the goods or services provided to a person.”³¹⁹

³¹⁵ *Morris*, 2020 WL 470287, at *6 (collecting cases) (emphasis in original) (citing *In re Gen. Motors LLC Ignition Switch Litig.*, 257 F. Supp.3d at 405) (“In light of this omission from the savings clause and the lack of ambiguity inherent in Rule 8(d), this court will permit *Morris* to proceed alternatively with her ADTPA claims and her common law claims.”).

³¹⁶ *See also McCabe v. Ford Motor Co.*, 774 F. Supp.3d 349 (D. Mass. 2025) (applying Alabama law) (allowing a plaintiff to plead both causes of action “does not determine the outcome of the case, threaten neglect of the state’s remedial limitation, or have any impact on the ultimate rights afforded under the statute.”).

³¹⁷ Del. Super. Civ. R. 8(e)(2).

³¹⁸ Ark. Code § 4-88-113(f)(2).

³¹⁹ Ark. Code § 4-88-102(1).

Relying on *Wallis v. Ford Motor Co.*,³²⁰ JUUL Labs argues plaintiffs only allege diminution in value, which is insufficient to state a claim.³²¹ In *Wallis*, plaintiff asserted a claim based on the Ford vehicles having a known rollover risk. Plaintiffs did not suffer a rollover or other malfunction. Rather, they sought to recover the loss in value that resulted from the stigma of the vehicles' known risk.³²² Because plaintiffs could not allege that they did not receive what they bargained for, they did not assert an actual injury and the claims were dismissed.³²³

Unlike *Wallis*, plaintiffs allege actual damages – that is, the product was not what was promised and they did not receive what they bargained for.³²⁴ Plaintiffs allege JUUL products were not smoking cessation devices, contained more nicotine than represented, and they were not a reasonable alternative to traditional cigarettes.³²⁵ The claims are not dismissed on this ground.

³²⁰ *Wallis v. Ford Motor Co.*, 208 S.W.3d 153 (Ark. 2005).

³²¹ OB at 65-67.

³²² *Wallis*, 208 S.W.3d at 154-55.

³²³ *Id.* at 162; *Parnell v. FanDuel Inc.*, 591 S.W.3d 315, 319 (Ark. 2019) (“In *Wallis*, the plaintiff could not prove that he did not receive the vehicle he bargained for because the vehicle had not malfunctioned.”); *M.S. Wholesale Plumbing, Inc. v. Univ. Sports Publ’ns Co., Inc.*, 2008 WL 90022, (E.D. Ark. Jan. 7, 2008) (plaintiff pled actual damage where it pled it paid for a product that was not what defendant represented it to be).

³²⁴ *Wallis*, 208 S.W.3d at 154, 156.

³²⁵ See Bean Compl. ¶¶ 616, 620.

j. Georgia’s Due Diligence Requirement

Georgia’s statute requires a plaintiff to exercise due diligence when the alleged violation is a misrepresentation.³²⁶ JUUL Labs argues, and plaintiffs do not dispute, that the complaint does not allege due diligence.³²⁷ To the extent the Georgia claims are based on misrepresentations, they are dismissed. To the extent the claims are based on omissions, due diligence is not required³²⁸ and the claims are not dismissed.

k. Uncured/Incurable Acts

The Indiana Deceptive Consumers Sales Act provides for two types of actionable deceptive acts: uncured and incurable.³²⁹ An uncured deceptive act is one where the consumer was damaged and gave notice to the supplier, but the supplier failed to cure.³³⁰ An incurable deceptive act is where the “supplier as part of a scheme, artifice, or device . . . intent[s] to defraud or mislead.”³³¹ Because an incurable deceptive act requires fraud, it must be pled with particularity.³³²

JUUL Labs argues that the Indiana plaintiffs fail to allege uncured or incurable deceptive acts.³³³ Indiana plaintiffs respond that they did provide notice, but they

³²⁶ OB at 67.

³²⁷ AB at 74.

³²⁸ JUUL Labs does not contest this point.

³²⁹ *James v. S. Univ., LLC*, 2018 WL 11448005, at *1 (N.D. Ind. Mar. 13, 2018).

³³⁰ Ind. Code § 24-5-0.5-2(7).

³³¹ Ind. Code § 24-5-0.5-2(8).

³³² *James*, 2018 WL 11448005, at *1.

³³³ OB at 68.

admit they did not plead notice.³³⁴ Thus, the uncured deceptive act claims are dismissed. Indiana plaintiffs have, however, alleged an incurable deceptive act because they have adequately alleged fraud with sufficient particularity under Rule 9(b) as discussed in section IV(C)(3)(a).³³⁵

JUUL Labs makes the same argument on an uncured deceptive act under Wyoming law,³³⁶ which also requires notice.³³⁷ Wyoming plaintiffs fail to plead notice and therefore, their uncured deceptive act claims are dismissed.

I. *Failure to Engage in Informal Dispute Resolution*

JUUL Labs argues, and Mississippi plaintiffs concede, that plaintiffs fail to allege the statutorily required attempt to resolve any consumer protection claim through an informal dispute settlement program.³³⁸ Therefore, the Mississippi consumer protection claims are dismissed.

³³⁴ AB at 74.

³³⁵ Del. Super. Civ. R. 9(b).

³³⁶ OB at 71.

³³⁷ Wyo. Stat. § 40-12-102(a)(ix); *Broderick v. Dairyland Ins. Co.*, 270 P.3d 684, 692 (Wyo. 2012) (holding appellant had no valid cause of action for an uncured deceptive trade practice under the act due to appellant's failure to provide notice).

³³⁸ OB at 69-70; AB at 75; *Taylor v. S. Farm Bureau Cas. Co.*, 954 So. 2d 1045, 1049 (Miss. Ct. App. 2007) (holding plaintiff fails to state a Mississippi Consumer Protection Act claim where it fails to allege compliance with statutory informal dispute settlement program requirement).

m. *No Private Right of Action under Puerto Rico law*

JUUL Labs argues, and Puerto Rico plaintiffs concede, there is no private right of action under the Puerto Rico consumer protection statute. Therefore, the Puerto Rico consumer protection claims are dismissed.³³⁹

n. *Punitive Damages, Treble Damages, and Attorneys' Fees*

JUUL Labs argues that certain states do not permit recovery of punitive damages,³⁴⁰ Arizona, Delaware, and Wyoming do not permit an award of attorneys' fees,³⁴¹ and Utah does not permit treble damages.³⁴² Plaintiffs concede that where punitive damages are alleged in these states, they are barred.³⁴³ Plaintiffs do not contest JUUL Labs' argument that attorneys' fees and treble damages are not recoverable under the applicable acts. Therefore, the motion is granted except for

³³⁹ OB at 70-71; AB at 75; *Muns. of Bayamon v. Exxon Mobil Corp.*, 2025 WL 600430, at *39 (D.P.R. Feb. 20, 2025) (“Puerto Rico does not recognize ‘common law consumer fraud’ and has no specific consumer protection statute that provides a private right of action for consumer fraud.”).

³⁴⁰ Alabama, Arkansas, Colorado, Florida, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. OB at 72-73.

³⁴¹ *Id.* at 73 n.18.

³⁴² Under the Utah Consumer Sales Practices Act. *Id.* at 23 n.6.

³⁴³ Arkansas, Florida, Indiana, Maine, Maryland, Mississippi, New Mexico, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. AB at 77. Plaintiffs did not assert punitive damages in the following states: Alabama, Colorado, Hawaii, Kansas, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, and Washington. Thus, JUUL Labs' argument is moot. *See* Bean Compl. ¶¶ 311-328; Davila Compl. ¶ 329; Ayers Compl. ¶ 302; Accettura Compl. ¶ 430; Hall Compl. ¶ 395; Ault-Fishburn Compl. ¶ 610; Hall Compl. ¶ 495; Hall Compl. ¶ 594; Hall Compl. ¶ 790; Alvarez Compl. ¶ 333; Alvarez Compl. ¶ 431; Arnold Compl. ¶ 611; Hall Compl. ¶ 987; Beck Compl. ¶ 324; Alvarez Compl. ¶ 531; Akin Compl. ¶ 721.

punitive damages under the Nevada Deceptive Trade Practices Act, which are permitted as JUUL Labs concedes.³⁴⁴

4. Common Law Fraud

a. Duty to Disclose

JUUL Labs argues that plaintiffs fail to plead their fraud claims with the requisite particularity³⁴⁵ because plaintiffs fail to allege that JUUL Labs owed a duty to disclose.³⁴⁶ Plaintiffs respond that because JUUL Labs made statements—such as the JUUL products being smoking cessation devices, contained the equivalent nicotine to one pack of cigarettes, and are a reasonable alternative to traditional cigarettes—it had a duty to disclose the omitted information, in order to make the statements made, not misleading.³⁴⁷ Alternatively, plaintiffs argue that a duty to disclose is adequately alleged because these omitted facts were known by JUUL Labs, the JUUL products pose an unreasonable risk of bodily injury, and JUUL Labs actively concealed material facts.³⁴⁸

³⁴⁴ *Maddox v. Adler*, 2024 WL 4349481, at *14 (D. Nev. Sept. 29, 2024), *appeal dismissed*, 2025 WL 1037520 (9th Cir. Jan. 31, 2025) (punitive damages are permitted when the defendant is “guilty of oppression, fraud or malice.”); AB at 77.

³⁴⁵ OB at 74-79.

³⁴⁶ *Id.* at 76-78.

³⁴⁷ AB at 79-86.

³⁴⁸ *Id.* at 82-86. As discussed in section IV(C)(3)(a), plaintiffs assert sufficient facts to place JUUL Labs on notice of the alleged fraudulent conduct.

Ordinarily, there is no duty to disclose material facts or opinions.³⁴⁹ However, liability will arise if one actively conceals a material fact or if the party chooses to speak but omits facts which then makes the disclosure misleading.³⁵⁰ Active concealment requires that a plaintiff plead “facts supporting an inference that the ‘defendant took some action affirmative in nature designed or intended to prevent, and which does prevent, the discovery of facts giving rise to the fraud claim, some artifice to prevent knowledge of the facts or some representation intended to exclude suspicion and prevent inquiry.’”³⁵¹ Although not much more, the affirmative act must be more than mere silence.³⁵²

Plaintiffs allege that JUUL Labs made many partial representations that were misleading—namely, that JUUL Labs marketed the JUUL products as smoking cessation devices even though it knew through testing and research that these

³⁴⁹ *Sofregen Medical Inc. v. Allergan Sales, LLC*, 2021 WL 1400071, at *3 (Del. Super. Apr. 1, 2021); *Prairie Cap. III, L.P.*, 132 A.3d at 53 (“Absent a special relationship, a party is under no duty to disclose ‘facts of which he knows the other is ignorant’ even if ‘he further knows the other, if he knew of them, would regard [them] as material in determining his course of action in the transaction in question.’”) (citation omitted).

³⁵⁰ *Sofregen Medical Inc.*, 2021 WL 1400071, at *3; *Prairie Cap. III, L.P.*, 132 A.3d at 52; *Corporate Prop. Assocs. 14 Inc. v. CHR Holding Corp.*, 2008 WL 963048, at *6 (Del. Ch. Apr. 10, 2008) (“once a party chooses to speak, he can be held liable if he makes “[a] representation stating the truth so far as it goes but which the maker knows or believes to be materially misleading because of his failure to state additional or qualifying matter.”) (citation omitted).

³⁵¹ *Corporate Prop. Assocs. 14 Inc.*, 2008 WL 963048, at *7.

³⁵² *Johnson & Johnson v. Fortis Advisors LLC*, ___ A.3d ___, 2026 WL 89452, at *29 (Del. Jan. 12, 2026) (“The affirmative act must be more than mere silence, but not much more; the act can be as small as ‘a single word, even a nod or a wink or a shake of the head or a smile or gesture intended to induce another to believe in the existence of a nonexisting fact’”) (citations omitted).

statements were false³⁵³ and that one JUUL pod was equivalent to one pack of cigarettes, even though it chemically engineered the JUUL pods to be stronger and more potent than a traditional pack of cigarettes.³⁵⁴

Plaintiffs further allege that JUUL Labs knew its representations were not accurate.³⁵⁵

Plaintiffs, however, fail to allege any active concealment. Their argument that JUUL Labs made constant representations about its products is not sufficient. Their claim of active concealment amounts to nothing more than silence.

The final basis on which plaintiffs rely for a duty to disclose is that the JUUL products posed an unreasonable risk of substantial bodily harm. Some states recognize that when an undisclosed defect poses an unreasonable risk of substantial bodily injury and the manufacturer has superior and exclusive knowledge of the defect, a duty to disclose can be triggered.³⁵⁶ A manufacturer has a duty to disclose

³⁵³ Bean Compl. ¶¶ 125-131, 200-221.

³⁵⁴ *Id.* ¶¶ 181-199, 132-180. Plaintiffs allege that these misleading representations were made across JUUL Labs' labeling and marketing and they specify where they saw these misrepresentations. *See id.* ¶¶ 9-97, 110, 120, 131, 150, 152, 182, 188, 192, 197, 201, 209, 211, 213, 222 (detailing the representations that a pack of JUUL pods equal one pack of cigarettes, the food-based advertising campaign, "Make the Switch" campaign, "Vaporized" campaign, and JUUL Labs extensive marketing on social media).

³⁵⁵ *Id.* ¶¶ 116, 148, 151, 154, 170, 172, 179, 184-86, 188, 199-200, 204, 206-07, 253 (detailing JUUL Labs' knowledge of minors being more susceptible to addiction, test results not conforming to their representations, and that the JUUL products were unusually addictive).

³⁵⁶ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 628 ("a manufacturer has a duty to disclose a defect that poses an unreasonable safety risk even if that manufacturer did not have a transactional relationship with the end user.") (citation omitted); *Zwiercan*, 2003 WL 1848571, at *1-2; *Sowa v. Mercedes-Benz Grp. AG*, 764 F. Supp.3d 1233, 1283, 1286-1287 (N.D. Ga. 2024) (collecting cases from Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois,

that defect even if the manufacturer is not in a transactional relationship with the user.³⁵⁷ JUUL Labs does not contest this argument.

Plaintiffs adequately plead a duty to disclose based on omission and unreasonable safety risk. Plaintiffs fail to plead active concealment and therefore, fraud claims based on this theory are dismissed.

b. Reasonable or Justifiable Reliance

JUUL Labs argues that plaintiffs fail to plead reasonable or justifiable reliance with the requisite particularity³⁵⁸ and plaintiffs from 26 states³⁵⁹ fail to plead reasonable or justifiable reliance at all.³⁶⁰

To adequately plead justifiable reliance, a plaintiff must allege facts “making it reasonably conceivable that the plaintiff acted based on of the material representation or omission.”³⁶¹ Assessing reliance requires a context-specific analysis.³⁶² Magic words are not required to adequately plead justifiable reliance.³⁶³

Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington).

³⁵⁷ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 628; *Zwiercan*, 2003 WL 1848571, at *1-2; *Sowa*, 764 F. Supp.3d at 1283, 1286-1287.

³⁵⁸ OB at 78-79.

³⁵⁹ Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Washington, and Wisconsin.

³⁶⁰ OB at 80.

³⁶¹ *Trifecta Multimedia Holdings Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024).

³⁶² *Rohl v. Rohl*, 2025 WL 3268598, at *5 (Del. Super. Nov. 24, 2025).

³⁶³ *Snyder v. Butcher & Co.*, 1992 WL 240344 (Del. Super. Sept. 15, 1992) (specifically using the words “justifiable” or “reliance” is not necessary).

While it is true that plaintiffs from 26 states fail to plead that they “reasonably and justifiably relied on the misrepresentations and/or omissions” (unlike the remainder of plaintiffs), they allege facts to show that they acted pursuant to the misrepresentations and/or omissions. These plaintiffs allege that they “reviewed and relied upon” the various representations, would not have purchased the JUUL products or would have paid substantially less for them had they known the truth.³⁶⁴

Every plaintiff further alleges that:

[r]easonable consumers, including the Plaintiffs, would have found it material to their purchasing decisions that JUUL’s products (i) were not smoking cessation devices, (ii) were not reasonable alternatives to combustible cigarettes, (iii) were extremely potent nicotine- delivery mechanisms, (iv) were powerfully addictive, (v) posed unreasonable risks of substantial bodily injury resulting from the use of the products, and (vi) that the nicotine consumed through one JUUL pod exceeded the nicotine consumed through a pack of combustible cigarettes.³⁶⁵

These allegations are sufficient. Additionally, the Court must review the allegations in the context of the entire complaint. That certain plaintiffs did not use the words “justifiable reliance” does not defeat the adequacy of the factual allegations supporting justifiable reliance. Accordingly, plaintiffs adequately plead justifiable reliance.

³⁶⁴ See, e.g., Bean Compl. ¶¶ 25-97.

³⁶⁵ See, e.g., *Id.* ¶¶ 323, 335, 422, 433, 521, 532.

5. *Breach of the Implied Warranty of Merchantability*

a. *Direct Privity*

JUUL Labs argues that under Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Ohio, and Tennessee law, direct privity of contract is required to state a claim for breach of the implied warranty of merchantability, and plaintiffs' allegations are conclusory.³⁶⁶ It further argues that even if these states recognize a third-party beneficiary exception, plaintiffs' allegations are insufficient to sufficiently plead such an exception.³⁶⁷

Plaintiffs argue that in Arizona, Kentucky, Ohio, and Tennessee, direct privity is not required in circumstances as alleged here.³⁶⁸ For the remaining 6 states, they argue that the third-party beneficiary exception applies.³⁶⁹

Arizona requires privity except "in the case of food, beverages, and drugs [where] an implied warranty by the manufacturer [arises] that the goods are pure and free from deleterious foreign substances."³⁷⁰ Plaintiffs do not contend that the JUUL products contained a foreign substance. Therefore, the Arizona plaintiffs' implied

³⁶⁶ OB at 82, 84.

³⁶⁷ *Id.* at 85. Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Ohio, and Tennessee.

³⁶⁸ AB at 89.

³⁶⁹ *Id.* at 90-94. Alabama, California, Connecticut, Florida, Georgia, and Illinois.

³⁷⁰ *Crystal Coca-Cola Bottling Co. v. Cathey*, 317 P.2d 1094, 1097 (Ariz. 1957) (a fly in a bottle of soda).

warranty claims are dismissed to the extent they did not purchase directly from JUUL Labs.

Under Kentucky law privity is required to maintain an implied warranty claim.³⁷¹ Plaintiffs argue that under the Kentucky Court of Appeals decision in *Dealers Transp. Co. v. Battery Distrib. Co.*,³⁷² privity is not required in products liability cases.³⁷³ However, the Kentucky Supreme Court in *Compex International Co., Ltd. v. Taylor* clarified that while the court in *Dealers* “openly entertained the idea of disposing of privity as a prerequisite for products liability actions,” the court “ultimately declined to endorse that view[.]”³⁷⁴ Here, the Kentucky plaintiffs fail to allege privity of contract and therefore, to the extent they did not purchase directly from JUUL Labs, the implied warranty of merchantability claims fail.

Ohio provides an exception to the privity requirement for implied warranty claims sounding in tort.³⁷⁵ “[T]he doctrine of implied warranty in tort was designed to protect consumers not covered by contractual sales warranties because of lack of

³⁷¹ See *Compex Intern. Co., Ltd. v. Taylor*, 209 S.W.3d 462, 463-64 (Ky. 2006).

³⁷² *Dealers Transp. Co. v. Battery Distrib. Co.*, 402 S.W.2d 441 (Ky. Ct. App. 1965).

³⁷³ AB at 89.

³⁷⁴ *Compex Intern. Co., Ltd.*, 209 S.W.3d at 464. See also *Williams v. Fulmer*, 695 S.W.2d 411, 413 (Ky. 1985).

³⁷⁵ *McKinney v. Bayer Corp.*, 744 F. Supp.2d 733, 756 (N.D. Ohio 2010); *Droesser v. Ford Motor Co.*, 2023 WL 2746792, at *15 (E.D. Mich. Mar. 31, 2023) (applying Ohio law); *Ohio Dept. of Adm. Serv. V. Robert P. Madison Int’l, Inc.*, 741 N.E.2d 551, 558 (Ohio App. 2000) (“this court finds that a consumer, commercial or not, can maintain a claim for breach of implied warranty/strict liability against a manufacturer, not in privity, for purely economic loss”); *Lonzrick v. Republic Steel Corp.*, 218 N.E.2d 185, 192 (Ohio 1966) (privity of contract not required for personal injury plaintiff assert tort claim in breach of warranty).

privity.”³⁷⁶ Plaintiffs argue, and JUUL Labs does not dispute, that this exception applies. The motion to dismiss the Ohio claims is denied.

Tennessee requires privity except when the product is unreasonably dangerous and causes personal injuries.³⁷⁷ A plaintiff may show that a product is “unreasonably dangerous” by demonstrating the product exceeded ordinary consumer expectations of danger or showing that a reasonably prudent manufacturer would not have marketed the product given its dangerous condition.³⁷⁸ Here, plaintiffs allege that the JUUL products posed more danger than anticipated due to the higher nicotine content and heightened delivery profile of the product,³⁷⁹ however, no Tennessee plaintiff alleges personal injuries as required to meet the privity exception. Therefore, their implied warranty claims are dismissed.³⁸⁰

Plaintiffs argue that in the remaining states they are third-party beneficiaries of the implied warranty.³⁸¹ Generally, to be considered a third-party beneficiary “a complainant must show that the contracting parties intended to bestow a direct

³⁷⁶ *Lessin v. Ford Motor Co.*, 600 F. Supp.3d 1137, 1147 (S.D. Cal. 2022) (applying Ohio law).

³⁷⁷ *Americoach Tours, Inc. v. Detroit Diesel Corp.*, 2005 WL 2335369, at *6 (W.D. Tenn. Sept. 23, 2005) (quoting *Leach v. Wiles*, 429 S.W.2d 823, 832 (Tenn. App.1968)).

³⁷⁸ Tenn. Code § 29-28-102.

³⁷⁹ Akin Compl. ¶¶ 124-25, 146-47, 150, 207, 344.

³⁸⁰ See *Americoach Tours, Inc.*, 2005 WL 2335369, at *7.

³⁸¹ AB at 90-94. Alabama, California, Connecticut, Florida, Georgia, and Illinois.

benefit on a third party, that the complainant was the intended beneficiary, and that the contract was breached.”³⁸²

In the complaints, plaintiffs allege “Plaintiffs were third-party beneficiaries of JLI’s agreements with its distributors, dealers, and sellers for the distribution, dealing, and sale of JUUL products to consumers. Specifically, plaintiffs are the intended beneficiaries of JLI’s implied warranties. JLI’s products are manufactured with the express purpose an intent of being sold to consumers.”³⁸³

JUUL Labs argues that these allegations are insufficient to plead third-party beneficiary status, as the allegations are “mere conclusions of law, not allegations of fact.”³⁸⁴

Plaintiffs must plead that JUUL Labs intended to bestow the benefit on plaintiffs and that plaintiffs were intended beneficiaries.³⁸⁵ Plaintiffs allege that JUUL products were manufactured and sold to the authorized distributors with the express purpose of being sold to the public. These allegations are sufficient to allege

³⁸² See *Harman v. Taurus Intern. Manufacturing, Inc.*, 586 F. Supp.3d 1155, 1167 (M.D. Ala. 2022) (citing *Lisk v. Lumber One Wood Preserving, LLC*, 792 F.3d 1331, 1338 (11th Cir. 2015) (applying Ala. Law) (finding third-party beneficiary status adequately pled where plaintiff alleged “the manufacturer intended to benefit remote purchasers.”); *Barakezyan v. BMW of N. Am., LLC*, 2016 WL 2840803, at *9 (C.D. Cal. Apr. 7, 2016) (finding third-party beneficiary adequately pled where “a plaintiff pleads that he or she purchased a vehicle from an authorized dealership who is an agent of the manufacturer, the dealer was not intended to be the ultimate consumer. Rather, the plaintiff was the intended consumer.”).

³⁸³ See Bean Compl. ¶ 347.

³⁸⁴ RB at 37.

³⁸⁵ *Napoli-Bosse v. Gen. Motors LLC*, 2023 WL 7485796, at *2 (2d Cir. Nov. 13, 2023) (applying Conn. law); *Barakezyan*, 2016 WL 2840803, at *9.

plaintiffs are the intended beneficiaries of the warranties.³⁸⁶ The claims are not dismissed on this ground.

b. *Fitness for Ordinary Purpose*

The implied warranty of merchantability warrants that a product is fit for ordinary purposes, which focuses on reasonable consumer expectations.³⁸⁷ It ensures that the product performs at a minimum level of quality³⁸⁸ and is breached when “the defect in the product ...[is] so fundamental as to render the product unfit for its ordinary purpose.”³⁸⁹ In contrast, the warranty of fitness for a particular purpose “arises ‘when the seller at the time of contracting has reason to know (1) any particular purpose for which the goods are required; and (2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods.’”³⁹⁰ The fundamental difference between the warranties depends on the use of the product. A “particular purpose” encompasses a specific use by the buyer which is

³⁸⁶ See Bean Compl. ¶ 347.

³⁸⁷ *In re Carrier IQ, Inc.*, 78 F. Supp.3d 1051, 1107 (N.D. Cal. 2015) (applying Cal., Md., Miss., N.H., Tex., and Wash. law).

³⁸⁸ *In re Carrier IQ, Inc.*, 78 F. Supp.3d at 1107 (citing *Birdsong v. Apple, Inc.*, 590 F.3d 955, 958 (9th Cir. 2009); *Am. Suzuki Motor Corp. v. Superior Court*, 37 Cal. App.4th 1291, 1296 (1995)) (applying Cal., Md., Miss., N.H., Tex., and Wash. law).

³⁸⁹ *In re Carrier IQ, Inc.*, 78 F. Supp.3d at 1107 (citing *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp.2d 1123, 1142 (N.D. Cal. 2010)) (applying Cal., Md., Miss., N.H., Tex., and Wash. law) (“there must be a fundamental defect that renders the product unfit for its ordinary purpose”).

³⁹⁰ *Williams v. Amazon, Inc.*, 573 F. Supp.3d 971, 976 (E.D. Pa. 2021) (citing *Gall ex rel. Gall v. Allegheny Cnty. Health Dep't*, 555 A.2d 786, 790 (Pa. 1989)).

peculiar to that buyer.³⁹¹ An ordinary purpose is the use for which the product is customarily made.³⁹²

JUUL Labs argues that plaintiffs fail to allege that the JUUL products were unfit for their ordinary purpose because the products functioned as they were customarily used—an electronic nicotine delivery systems.³⁹³ JUUL Labs contends that plaintiffs are attempting to assert a fitness for a particular purpose claim.³⁹⁴ Plaintiffs counter that based on JUUL Labs’ extensive marketing of JUUL products as smoking cessation devices and as a “safer alternative” to combustible cigarettes, the JUUL’s ordinary purpose was as a smoking cessation device or a better, healthier, way to smoke.³⁹⁵

The court in *Colgate v. JUUL Labs, Inc.*, addressed this argument. The court stated:

[Plaintiffs] have also stated a breach of implied warranty claim based on the pharmacokinetics of JUUL’s nicotine salt formulation. [] They have alleged that JUUL’s formulation is “far more addictive than cigarettes, worsens or aggravates nicotine addiction, and can serve as a gateway to cigarette use.” [] JUUL’s argument that it is not unfit for use simply because it contains nicotine mischaracterizes plaintiffs’ claims.

I also agree with plaintiffs’ other argument that the allegations about the pharmacokinetics of JUUL’s formulation sufficiently allege that JUUL’s products do not “possess even the most basic degree of fitness

³⁹¹ *Williams*, 573 F. Supp.3d at 976.

³⁹² *Id.*

³⁹³ OB at 88.

³⁹⁴ *Id.*

³⁹⁵ AB at 95-96.

for ordinary use.” [] Again, the issue is not that JUUL’s products contain nicotine; it is that JUUL’s products are alleged to cause more than twice as much nicotine to be absorbed by the body than a pack of combustible cigarettes with the same amount of nicotine. [] A product that causes the body to absorb twice as much nicotine as a combustible cigarette cannot fairly be considered a cigarette replacement as a matter of law.³⁹⁶

JUUL Labs’ only attempt to distance itself from this ruling is to argue that it is not binding on this Court and “it merely repeats [plaintiffs’] same flawed analysis as to ordinary purpose,”³⁹⁷ without any further explanation.

Plaintiffs allege that the JUUL products were designed, manufactured, advertised, and sold as a reasonable replacement for traditional cigarettes and as smoking cessation devices.³⁹⁸ They also allege the products were not comparable to traditional cigarettes, but instead delivered nearly twice as much nicotine than a pack of cigarettes.³⁹⁹ The Court agrees with *Colgate*’s ruling and the motion is denied on this ground.

³⁹⁶ *Colgate v. JUUL Labs, Inc.*, 402 F. Supp.3d 728, 757 (N.D. Cal. 2019) (“*Colgate II*”).

³⁹⁷ RB at 39.

³⁹⁸ Bean Compl. ¶¶ 126, 181, 200-02, 204, 206, 209, 213.

³⁹⁹ *Id.* ¶¶ 183, 190.

c. Pre-suit Notice

JUUL Labs argues that in 25 states, plaintiffs fail to give the requisite notice⁴⁰⁰ and for an additional 16 states, plaintiffs allegations of notice are insufficient.⁴⁰¹ Plaintiffs respond that notice was provided but that for these 25 states, they did not plead notice.⁴⁰²

Plaintiffs in the remaining 16 states allege:

JLI was provided notice of these issues by numerous complaints filed against it, including the complaints In re: JUUL Labs, Inc. Product Litigation, and by numerous individual letters and communications sent by consumers before or within a reasonable amount of time after they discovered or should have discovered that JUUL products were defective and unmerchantable.⁴⁰³

⁴⁰⁰ Cal. Com. Code § 2607(3)(a) (“buyer must, within a reasonable time after he or she discovers or should have discovered any breach, notify the seller of breach or be barred from any remedy.”); Haw. Rev. Stat. § 490:2-607(3)(a) (same); Idaho Code § 28-2-607(3)(a) (same); Iowa Code § 554.2607(3)(a) (same); Kan. Stat. § 84-2-607(3)(a) (same); Ky. Rev. Stat. § 355.2-607(3)(a) (same); Me. Rev. Stat. tit. 11, § 2-607(3)(a) (same); Md. Code Com. Law § 2-607(3)(a) (same); Minn. Stat. § 336.2-607(3)(a) (same); Miss. Code § 75-2-607(3)(a) (same); Mont. Code § 30-2-607(3)(a) (same); Neb. Rev. St. U.C.C. § 2-607(3)(a) (same); Nev. Rev. Stat. § 104.2607(3)(a) (same); N.H. Rev. Stat. § 382-A:2-607(3)(a) (same); N.M. Stat. § 55-2-607(3)(a) (same); Okla. Stat. tit. 12A, § 2-607(3)(a) (same); Or. Rev. Stat. § 72.6070(3)(a) (same); R.I. Gen. Laws § 6A-2-607(3)(a) (same); S.C. Code § 36-2-607(3)(a) (same); S.D. Codified Laws § 57A-2-607(3)(a) (same); Va. Code § 8.2-607(3)(a) (same); W. Va. Code § 46-2-607(3)(a) (same); Wyo. Stat. § 34.1-2-607(c)(i) (same); La. Civ. Code art. 2522 (“The buyer must give the seller notice of the existence of a redhibitory defect in the thing sold.”); *Torres Mas v. Carver Boat Corp.*, 257 F. Supp.2d 484, 491 (D.P.R. 2003) (buyer must give notice of defect before initiating suit).

⁴⁰¹ OB at 92-93. These states are Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin.

⁴⁰² AB at 96-97. These states are California, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia, and Wyoming.

⁴⁰³ See, e.g., Bean Compl. ¶ 645 (Alabama).

Plaintiffs allege that these allegations are sufficient. These states, however, require individual notices that specify the defects that particular product is experiencing.⁴⁰⁴ Accordingly, plaintiffs' implied warranty claims in all 41 states are dismissed for failure to plead or adequately plead notice.

6. Unjust Enrichment

a. Independent Cause of Action

JUUL Labs argues that Alaska, California, New Jersey, and Texas do not recognize the claim of unjust enrichment as an independent cause of action.⁴⁰⁵ Plaintiffs disagree but argue that if the court finds otherwise, the unjust enrichment claims should be treated as quasi-contract or restitution claims.⁴⁰⁶

⁴⁰⁴ *Smith v. Apple, Inc.*, 2009 WL 3958096, at *2 (N.D. Ala. Nov. 4, 2009); *Murphy v. Wright Med. Tech. Inc.*, 2022 WL 947052, at *3 (E.D. Ark. Mar. 29, 2022); *Zeigler v. Sony Corp. of Am.*, 849 A.2d 19, 24 (Conn. Super. Ct. 2004); *Theis v. Viewsonic Corp.*, 2013 WL 1632677, at *1 (D. Del. Apr. 16, 2013); *Fineman v. Ferragamo USA Inc.*, 672 F. Supp.3d 1302, 1307 (S.D. Fla. 2023); *Connick v. Suzuki Motor Co.*, 675 N.E.2d 584, 590 (Ill. 1996); *Cincinnati Ins. Cos. v. Hamilton Beach/Proctor-Silex, Inc.*, 2006 WL 299064, at *4 (N.D. Ind. Feb. 7, 2006); *Chapman v. Gen. Motors LLC*, 531 F. Supp.3d 1257, 1281 (E.D. Mich. 2021); *Lawrence v. Louisville Ladder, Inc.*, 2024 WL 1328246, at *4 (E.D. Mo. Mar. 28, 2024); *Singleton v. Fifth Generation, Inc.*, 2016 WL 406295, at *12 (N.D.N.Y. Jan. 12, 2016); *Radford v. Daimler Chrysler Corp.*, 168 F. Supp.2d 751, 754 (N.D. Ohio 2001); *Seidl v. Artsana USA, Inc.*, 643 F. Supp.3d 521, 534 (E.D. Pa. 2022); *Bunn v. Navistar, Inc.*, 797 F. App'x 247, 252-55 (6th Cir. 2020) (applying Tenn. Code §47-2-607(3)); *Mora v. AngioDynamics, Inc.*, 2022 WL 16640021, at *4 (S.D. Tex. Sept. 20, 2022), *report and recommendation adopted*, 2022 WL 16636940 (S.D. Tex. Nov. 1, 2022); *Callegari v. Blendtec, Inc.*, 2018 WL 5808805, at *6 (D. Utah Nov. 6, 2018); *Blitz v. Monsanto Co.*, 317 F. Supp.3d 1042, 1054 (W.D. Wis. 2018).

⁴⁰⁵ OB at 98.

⁴⁰⁶ AB at 97-100.

Alaska does not recognize unjust enrichment as an independent a cause of action, but rather, it is a “prerequisite to recovery under the doctrine of restitution.”⁴⁰⁷ Alaska “treat[s] actions brought upon theories of unjust enrichment, quasi-contract, contracts implied in law and *quantum meruit* as essentially the same.”⁴⁰⁸ Because Alaska courts construe claims of unjust enrichment as quasi-contract claims, the claims of unjust enrichment are not dismissed.⁴⁰⁹

California courts are split on whether unjust enrichment is an independent cause of action. JUUL Labs relies on *Robinson*,⁴¹⁰ which found that unjust enrichment is “a general principle underlying various legal doctrines and remedies” but not an independent cause of action.⁴¹¹

Plaintiffs rely on *In re JUUL Labs, Inc., Marketing, Sales Practices, and Products Liab. Litig.*,⁴¹² which permitted an unjust enrichment claim as stand-alone cause of action.⁴¹³ The court relied on two cases where plaintiffs were permitted to

⁴⁰⁷ *Haines v. Comfort Keepers, Inc.*, 393 P.3d 422, 428 (Alaska 2017).

⁴⁰⁸ *Alaska Sales & Serv., Inc. v. Millet*, 735 P.2d 743, 746 n.6 (Alaska 1987) (citing *Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 154 (1966)) (noting that these terms are used interchangeably in many court opinions).

⁴⁰⁹ *See Kramer*, 546 A.2d at 353 (“In determining the nature of the wrong alleged, a court must look to ‘the body of the complaint, not to the plaintiff’s designation or stated intention.’”).

⁴¹⁰ *Robinson v. HSBC Bank USA*, 732 F. Supp.2d 976 (N.D. Cal. 2010).

⁴¹¹ *Id.* at 987 (quoting *McBride v. Boughton*, 123 Cal. App.4th 379, 387 (2004)).

⁴¹² 497 F. Supp.3d 552 (N.D. Cal. 2020).

⁴¹³ *Id.* at 641-42.

assert unjust enrichment claims based on false advertising because their claims could be considered quasi-contract claims.⁴¹⁴

California courts construe a cause of action labeled as “unjust enrichment” as a quasi-contract claim seeking restitution.⁴¹⁵ Restitution is only available to a plaintiff if the benefits were conferred by mistake, fraud, coercion, or request.⁴¹⁶

Plaintiffs allege that JUUL Labs was unjustly enriched due to their use of false and misleading advertising regarding the JUUL products adequacy as smoking cessation devices, reasonableness as an alternative to traditional cigarettes, and addictive qualities.⁴¹⁷ In other words, plaintiffs contend that JUUL Labs received a benefit due to their alleged fraudulent conduct. Restitution is available under California law for fraud.⁴¹⁸ The Court will not dismiss California plaintiffs’ unjust enrichment claims and instead will require those claims to proceed as quasi-contract claims seeking restitution.⁴¹⁹

⁴¹⁴ Unjust enrichment may proceed as a stand-alone cause of action under California law if “it states a claim for relief as an independent cause of action or as a quasi-contract claim for restitution. To allege unjust enrichment as an independent cause of action, a plaintiff must show that the defendant received and unjustly retained a benefit at the plaintiff’s expense.” *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016) (applying Cal. law); *see also Snarr v. Cento Fine Foods Inc.*, 2019 WL 7050149, at *8 (N.D. Cal. Dec. 23, 2019).

⁴¹⁵ *Rutherford Holdings, LLC v. Plaza Del Rey*, 166 Cal. Rptr. 3d 864, 872 (Cal. Ct. App. 2014).

⁴¹⁶ *Snarr*, 2019 WL 7050149, at *7.

⁴¹⁷ Bean Compl. ¶ 798.

⁴¹⁸ *Snarr*, 2019 WL 7050149, at *7.

⁴¹⁹ *Rutherford Holdings, LLC*, 166 Cal. Rptr. 3d at 872.

New Jersey does not recognize unjust enrichment as an independent cause of action in tort, but construes the claim as a quasi-contract cause of action.⁴²⁰ To plead a claim for unjust enrichment, a plaintiff must allege “that the opposing party ‘received a benefit and that retention of that benefit without payment would be unjust.’”⁴²¹ A plaintiff is also required to plead “that it expected remuneration from . . . defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights.”⁴²² New Jersey plaintiffs do not allege that they expected remuneration and therefore, the unjust enrichment claims are dismissed.

Texas also does not recognize unjust enrichment as a cause of action, but it is a theory of recovery⁴²³ under a quasi-contract claim.⁴²⁴ Unjust enrichment

⁴²⁰ *Goldsmith v. Camden Cty. Surrogate’s Office*, 975 A.2d 459, 462 (N.J. Super. App. 2009) (“Unjust enrichment is not an independent theory of liability, but is the basis for a claim of quasi-contractual liability.”) (citation omitted); *Jurista v. Amerinox Processing, Inc.*, 492 B.R. 707, 754 (D.N.J. 2013).

⁴²¹ *Adar Aleph LLC v. TDJP Properties LLC*, 2024 WL 649263, at *3 (N.J. Super. Feb. 16, 2024) (citation omitted).

⁴²² *Adar Aleph LLC*, 2024 WL 649263, at *3 (quoting *Thieme v. Aucoin-Thieme*, 151 A.3d 545, 557 (N.J. 2016)).

⁴²³ *Mowbray v. Avery*, 76 S.W.3d 663, 679 (Tex. App. 2002); *Barnett v. Coppell N. Tex. Ct., Ltd.*, 123 S.W.3d 804, 816-17 (Tex. App. 2003); *City of Corpus Christi v. Heldenfels Brothers, Inc.*, 802 S.W.2d 35, 40 (Tex. App. 1990), *aff’d*, 832 S.W.2d 39 (Tex. 1992).

⁴²⁴ *Landers v. Landers*, 2021 WL 1570011, at *8 (Tex. App. Apr. 22, 2021); *Mowbray*, 76 S.W.3d at 679 (“that is, where a benefit was wrongfully secured or passively received which would be unconscionable for the receiving party to retain.”).

“characterizes the result of a failure to make restitution under circumstances that give rise to an implied or quasi-contractual obligation to return those benefits.”⁴²⁵

While styled as an independent cause of action in the complaints, the court looks to the substance of the allegations and will construe this claim as a quasi-contract claim.⁴²⁶

b. *Adequate Remedy at Law*

JUUL Labs argues that the claims of plaintiffs from 25 states⁴²⁷ must be dismissed because they cannot plead lack of a remedy at law.⁴²⁸ Plaintiffs plead this claim in the alternative and contend that it should not be dismissed at this stage.⁴²⁹

While there may be some variation in different states, the essential elements of unjust enrichment are: “(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification, and (5) the absence of a remedy provided by law.”⁴³⁰ While referred to as an “equitable claim,” in Delaware, it is a legal claim (and therefore, this court has jurisdiction over

⁴²⁵ *Pemex Exploración Y Producción v. BASF Corp.*, 2013 WL 5514944, at *85 (S.D. Tex. Oct. 1, 2013).

⁴²⁶ *Kramer*, 546 A.2d at 353; *Johnson v. Hamilton*, 185 A.2d 70, 72 (Del. Super. 1962) (“mere matters of form in labelling pleadings are of no importance; the contents of pleadings are looked to in seeking that justice is done”).

⁴²⁷ Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, Nevada, New York, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, and Wisconsin.

⁴²⁸ OB at 99.

⁴²⁹ AB at 100-01.

⁴³⁰ *Garfield v. Allen*, 277 A.3d 296, 341 (Del. Ch. 2022) (quoting *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010)).

the claim) and the fifth element only comes into play when the Court of Chancery is determining whether it has jurisdiction and no other equitable claim is asserted.⁴³¹ In this regard, Delaware law is in accord with the Restatement of Unjust Enrichment and other jurisdictions, relevant here, such as California, Illinois, Rhode Island, Georgia, and Pennsylvania.⁴³² It is also a legal claim in Connecticut⁴³³ and Utah.⁴³⁴

In some states, unjust enrichment is not an alternative remedy where the parties' relationship is governed by a contract and therefore, it cannot be pled in the alternative to a breach of contract claim.⁴³⁵

⁴³¹ *Id.* at 349 (“Colloquially speaking, the absence of a remedy at law can be viewed as an element of the claim. Outside of a dispute over jurisdiction, however, it is not necessary for a plaintiff to plead or later prove the absence of an adequate remedy at law.”).

⁴³² *Id.* at 349 n.25.

⁴³³ *Gagne v. Vaccaro*, 835 A.2d 491, 495-97 (Conn. App. 2003) (recognizing Pennsylvania and Massachusetts treat unjust enrichment as a legal claim).

⁴³⁴ *Johnson v. Blendtec, Inc.*, 500 F. Supp.3d 1271, 1291 (D. Utah 2020) (“proof of ‘the absence of an adequate remedy at law is *not* an element of the *prima facie* case for unjust enrichment under the law[] of ... Utah.”) (citation omitted, emphasis in original).

⁴³⁵ *Jones v. Bank of Am., N.A.*, 2019 WL 2744470, at *8 (N.D. Ala. July 1, 2019) (“the existence of an express contract extinguishe[s] an unjust enrichment claim altogether because unjust enrichment is an equitable remedy which issues only where there is no adequate remedy at law.”); *Isofoton, S.A. v. Giremberk*, 2006 WL 1516026, at *3 (D. Ariz. May 30, 2020) (quoting *Sutter Home Winery, Inc. v. Vintage Selections, Ltd.*, 971 F.2d 401, 408 (9th Cir. 1992)) (“under Arizona law a party ‘cannot recover on its claim [] of unjust enrichment’ where the parties’ dispute is ‘governed by a valid express contract.’”); *Bd. of Governors of Colo. St. Univ. v. Alderman*, 563 P.3d 1205, 1212-13 (Colo. 2025) (“breach of contract and unjust enrichment claims involving the same subject matter are mutually exclusive. Thus, a party may not assert a claim for unjust enrichment if a valid contract covers the same subject matter”); *Willaims v. Bear Stearns & Co.*, 725 So. 2d 397, 400 (Fla. Dist. Ct. App. 1998) (“There is no dispute that under Florida law, the general rule is that if the complaint on its face shows that adequate legal remedies exist, equitable remedies are not available. []However, this doctrine does not apply to claims for unjust enrichment. []It is only upon a showing that an express contract exists that the unjust enrichment or promissory estoppel count fails.”) (citations omitted); *Shafer, Kline & Warren, Inc. v. Allen Grp.-Kan. City, LLC*, 2014 WL 1974525, at *2 (D. Kan. 2014) (unjust enrichment claim barred by the parties’ express contract); *Killen v. Johnson & Johnson*, 2022 WL 330995, at *7 (S.D. Miss. Feb. 3, 2022) (ruling that statutory claim did not automatically subsume unjust enrichment claim, but

Hawaii, Illinois, Iowa, Massachusetts, Minnesota, Mississippi, Nevada, New Mexico, New York, Washington, and Wisconsin allow a claim for unjust enrichment to be pled in the alternative to legal claims.⁴³⁶

Plaintiffs do not allege a breach of contract claim and JUUL Labs does not contest the right to plead unjust enrichment in the alternative. Puerto Rico appears

dismissing the claim for failure to allege there was no legal contract between the parties); *Armijo v. FedEx Ground Package Sys., Inc.*, 285 F. Supp.3d 1209, 1217 (D.N.M. 2018) (“noting that in New Mexico, ‘unjust enrichment is widely accepted as an alternative theory of recovery, should the factfinder determine that no contract between the parties exists’”) (citation omitted); *Korte Construction Co. v. State on Relation of Bd. of Regents of Nevada Sys. of Higher Edu.*, 492 P.3d 540, 544 (Nev. 2021) (plaintiff cannot recover under unjust enrichment where a contract governed the parties’ relationship); *Tyree v. Cornman*, 453 P.3d 497, 508 (Okla. Civ. App. 2019) (unjust enrichment precluded because plaintiff asserted a breach of contract).

⁴³⁶ *Jass v. CherryRoad Tech., Inc.*, 472 F. Supp.3d 787, 799 (D. Haw. 2020); *Velez v. RM Acquisition, LLC*, 672 F. Supp.3d 620, 646 (N.D. Ill. 2023) (“It is well settled that a plaintiff may not recover under an unjust enrichment theory when a contract governs the relationship between the parties.”); *Rasch v. Tyson Fresh Meats, Inc.*, 2016 WL 11641708, at *5 (N.D. Iowa Oct. 11, 2016) (noting that generally a claim for unjust enrichment will be dismissed where the party has a breach of contract remedy, but will allow it to be pled in the alternative); *Linde v. Envision Healthcare Corp.*, 2021 WL 3089214, at *3 (D. Kan. July 22, 2021) (permitting claims to be asserted in the alternative and therefore refusing to dismiss unjust enrichment claim where statutory claims were also asserted); *Capstone Headwaters LLC v. EdutainmentLive LLC*, 2021 WL 5882409, at *6 (D. Mass. Dec. 13, 2021) (allowing unjust enrichment claim to be pled in the alternative to contract claim because at the pleading stage it was too uncertain whether plaintiff had an adequate remedy at law); *Francis v. General Motors LLC*, 504 F. Supp.3d 659, 694 (E.D. Mich. 2020) (“unjust enrichment claims routinely are allowed to proceed when pleaded in the alternative to other viable claims for relief.”) (citation omitted); *Marty H Segelbaum Inc. v. MW Capital LLC*, 672 F. Supp.2d 875, 878 (D. Minn. 2009) (“Where plaintiff alleges unjust enrichment ‘as an alternative theory,’ the Court may consider both the contract and unjust enrichment claims at this phase in the litigation.”); *Bond Pharmacy v. Advanced Health Sys., Inc.*, 2022 WL 304698, at *3 (S.D. Miss. Feb. 1, 2022) (“Because BCBS and AHS may plead unjust enrichment in the alternative, the Court does not dismiss this claim.”); *Farmer v. Walmart, Inc.*, 729 F. Supp.3d 1202, 1237 (D.N.M. 2024) (“plead[ing] an unjust enrichment claim in the alternative to remedies at law is permissible.”); *U.S. Bank Nat’l Assoc. v. BFPRU I, LLC*, 230 F. Supp.3d 253, 266 (S.D.N.Y. 2017) (“However, even though Plaintiffs may not ultimately recover under both the breach of contract and unjust enrichment claims, courts in this Circuit routinely allow plaintiffs to plead such claims in the alternative.”) (citation omitted) (emphasis in original); *Diamond Center, Inc. v. Leslie’s Jewelry Mfg. Corp.*, 562 F. Supp.2d 1009, 1016-17 (W.D. Wis. 2008) (refusing to dismiss unjust enrichment claim pled in the alternative to a legal claim).

to be the only jurisdiction that does not permit the claim to be pled in the alternative.⁴³⁷ Accordingly, the motion is granted only on plaintiffs' claims under Puerto Rico law.

c. Confer a Direct Benefit

JUUL Labs argues plaintiffs' claims in 25 states⁴³⁸ are fatally flawed because they fail to allege they conferred a direct benefit on JUUL Labs.⁴³⁹ Specifically, JUUL Labs argues that in order to establish unjust enrichment, a plaintiff must be in a direct relationship with defendant to establish the direct benefit element.⁴⁴⁰ Plaintiffs contend that an indirect purchaser is sufficient in these states⁴⁴¹ to satisfy this element.⁴⁴²

⁴³⁷ *Kress Stores of Puerto Rico, Inc. v. Wal-Mart Puerto Rico, Inc.*, 2021 WL 2912436, at *9 (D.P.R. July 9, 2021), *rev'd on other grounds*, 121 F.4th 228 (1st Cir. 2024).

⁴³⁸ Delaware, Alabama, Arizona, Connecticut, Florida, Georgia, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

⁴³⁹ OB at 104-06.

⁴⁴⁰ *Id.* at 104-07.

⁴⁴¹ Alabama, Arizona, Connecticut, Florida, Georgia, Illinois, Kentucky, Massachusetts, Mississippi, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

⁴⁴² AB at 110-18. *Abernathy v. Church of God*, 2011 WL 13135285, at *2 (N.D. Ala. Nov. 28, 2011) (direct benefit not required to sustain an unjust enrichment claim); *In re Auto. Parts Antitrust Litig.*, 50 F. Supp.3d 869, 897 (E.D. Mich. 2014) (The "critical inquiry [i]s not whether the benefit is conferred directly on the defendant, but whether the plaintiff can establish the relationship between his detriment and the defendant's benefit 'flow from the challenged conduct.'"); *HSBC Bank SA, Nat. Ass'n v. D'Agostino*, 2015 WL 3797990, at *12 (Conn. Super. Ct. May 21, 2015) (indirect benefit is sufficient); *Williams v. Wells Fargo Bank N.A.*, 2011 WL 4368980, at *9 (S.D. Fla. Sept. 19, 2011) (same; no direct contact does not preclude finding of direct benefit); *In re Generic Pharms. Pricing Antitrust Litig.*, 368 F. Supp.3d 814, 850-51 (E.D. Pa. 2019) (same; applying laws of Ala., Ariz., Fla., Ga., N.Y., N.D., R.I., S.C., and Utah); *Muehlbauer v. General Motors Corp.*, 431 F. Supp.2d 847, 852 (N.D. Ill. 2006) (same); *Seye v. Community Yellow Cab*,

In Alabama “[i]t is not necessary ... to prove that money belonging to the plaintiff was actually and physically given to, and received by the defendant, as it is sufficient to show that ... the defendant has received the benefit *indirectly*.”⁴⁴³

JUUL Labs relies on *Hancock-Hazlett General Const. Co., Inc. v. Trane Co.*, for the proposition that Alabama law requires a direct benefit.⁴⁴⁴ However, *Hancock-Hazlett* did not address the question of whether a direct benefit was required.⁴⁴⁵

Arizona also does not require a direct benefit and instead focuses on “whether the plaintiff can establish the relationship between his detriment and the defendant’s benefit ‘flow from the challenged conduct.’”⁴⁴⁶ JUUL Labs cites *Physicians Surgery Ctr. of Chandler v. Cigna Healthcare Inc.* to support its argument under Arizona law.⁴⁴⁷ The court, however, did not hold that a “direct benefit” or relationship

2013 WL 1332430, at *12 (E.D. Ky. 2013) (same); *Massachusetts v. Mylan Lab ’ys*, 357 F. Supp.2d 314, 323 (D. Mass. 2005) (same); *GEICO Corp. v. Autoliv, Inc.*, 345 F. Supp.3d 799, 851-52 (E.D. Mich. 2018) (same; applying Miss. law); *In re K-Dur Antitrust Litig.*, 338 F. Supp.2d 517, 544 (D.N.J. 2004) (same; applying Mont. law); *Sheet Metal Workers Local 441 Health & Welfare Plan v. GlaxoSmithKline*, 737 F. Supp.2d 380, 440-41 (E.D. Pa. 2010) (acceptance and retention of indirect benefit is sufficient; applying laws of N.Y., Mass., Minn., and W. Va.).

⁴⁴³ *Jewett v. Boihem*, 23 So. 3d 658, 662 (Ala. 2009) (quoting 42 C.J.S. Implied Contracts § 19, at 27 (2007) (“Often a person owes restitution for a benefit he received through entirely innocent behavior, and even *through a transaction in which he took no part.*”) (citation omitted) (emphasis in original)).

⁴⁴⁴ *Hancock-Hazlett Gen. Constr. Co. v. Trane Co.*, 499 So. 2d 1385, 1387 (Ala. 1986).

⁴⁴⁵ *Abernathy*, 2011 WL 13135285, at *2 (“The court has studied the *Hancock-Hazlett* opinion, and nowhere within that decision does the Supreme Court of Alabama use either the word ‘direct’ or the word ‘benefit,’ much less the phrase ‘direct benefit.’”); *see also*, *Hancock-Hazlett Gen. Constr. Co.*, 499 So. 2d at 1387 (defendant returned overpayment to plaintiff, so defendant was not in possession of plaintiff’s money).

⁴⁴⁶ *In re Auto. Parts*, 50 F. Supp.3d at 897 (citing *Yee v. Nat’l Gypsum Co.*, 2010 WL 2572976, at *4 (D. Ariz. June 22, 2010)) (applying Ariz. law).

⁴⁴⁷ *Physicians Surgery Ctr. of Chandler v. Cigna Healthcare Inc.*, 609 F. Supp.3d 930 (D. Ariz. 2022).

between the parties is necessary. It held that the plaintiff failed to establish this element because the plaintiff (a medical provider) conferred the benefit—medical services—to plan members, not the defendant insurance company.⁴⁴⁸

JUUL Labs cites *Granito v. Int’l Bus. Machines*⁴⁴⁹ in support of its argument under Connecticut law. *Granito* dismissed an unjust enrichment claim because plaintiff bought the product from a retailer, not the defendant-manufacturer, and therefore, plaintiff failed to show a direct benefit.⁴⁵⁰

HSBC Bank SA, Nat. Ass’n v. D’Agostino,⁴⁵¹ relied on by plaintiffs, recognized a split among Connecticut trial courts.⁴⁵² *HSBC* concluded that a direct benefit is not required,⁴⁵³ relying in part on the Connecticut Supreme Court’s prior description of unjust enrichment arising from an indirect benefit.⁴⁵⁴ Other courts have also declined to follow *Granito*.⁴⁵⁵

⁴⁴⁸ *Id.* at 940.

⁴⁴⁹ 2003 WL 1963161 (Conn. Super. Ct. Apr. 16, 2003).

⁴⁵⁰ *Id.* at *2.

⁴⁵¹ 2015 WL 3797990 (Conn. Super. Ct. May 21, 2015).

⁴⁵² *Id.* at *11; *see also Breen v. Judge*, 4 A.3d 326, 335 (Conn. App. 2010) (recognizing neither the Appellate Court “nor our Supreme Court, has specifically addressed the question of whether an alleged benefit must be directly conferred on a defendant in order for a court to find that the defendant has been unjustly enriched.”).

⁴⁵³ *HSBC Bank SA, Nat. Ass’n*, 2015 WL 3797990, at *11-14.

⁴⁵⁴ *Id.* at *11 (quoting *New Hartford v. Connecticut Resources Recovery Auth.*, 970 A.2d 592, 618 (Conn. 2009)) (noting that unjust enrichment may arise “indirect[ly], involving, for example, a transfer of a benefit from a third party to a defendant when the plaintiff has a superior equitable entitlement to that benefit.”).

⁴⁵⁵ *Clinger v. Edgewell Personal Care Brands LLC*, 2023 WL 2477499, at *16 (D. Conn. March 13, 2023) (finding no direct benefit required, relying in part on Connecticut Supreme Court’s 2019 similar indication in *Geriatrics, Inc. v. McGee*, 332 Conn. 1, 25 (2019)); *In re Takata Airbag Prod.*

This Court finds *HSBC* persuasive and finds Connecticut does not require a direct relationship. An indirect relationship will satisfy the conferral of a benefit requirement when the plaintiff has “superior equitable entitlement to that benefit.”⁴⁵⁶

Similarly, Florida recognizes that while a direct benefit is required for unjust enrichment, direct contact between plaintiff and defendant is not.⁴⁵⁷ But the defendant must actually receive the benefit from the transaction.⁴⁵⁸

In re Generic Pharmaceuticals Pricing Antitrust Litig. considered the direct benefit element under multiple states’ law.⁴⁵⁹ The court ruled that the term “direct benefit” refers to a benefit that is “not incidental, and not to a requirement that there

Liab. Litig., 462 F. Supp.3d 1304, 1327 (S.D. Fla. 2020) (applying Connecticut law concluding that no direct benefit required).

⁴⁵⁶ *Town of New Hartford v. Connecticut Res. Recovery Auth.*, 970 A.2d 592, 618 (Conn. 2009) (“Although unjust enrichment typically arises from a plaintiff’s direct transfer of benefits to a defendant, it also may be indirect, involving, for example, a transfer of a benefit from a third party to a defendant when the plaintiff has a superior equitable entitlement to that benefit.”); *Stefan v. P.J. Kids, LLC*, 2005 WL 834208, at *3 (Conn. Super. Ct. Mar. 1, 2005) (citing *United Coastal Industries v. Clearheart Constr. Co.*, 802 A.2d 901, 905-06 (Conn. App. Ct. 2002)) (“the plaintiff must, *inter alia*, prove the defendant received a benefit in an unjust enrichment claim.”) (emphasis in original) (“Nor is the court persuaded by other superior court decisions which have concluded the parties must have a direct relationship (as opposed to buying from a retailer as here)”).

⁴⁵⁷ *Williams*, 2011 WL 4368980, at *9 (“It would not serve the principles of justice and equity to preclude an unjust enrichment claim merely because the ‘benefit’ passed through an intermediary before being conferred on a defendant.”).

⁴⁵⁸ *Compare id.* (defendant’s receipt of a portion of plaintiff’s insurance premium payment made to a third party was sufficient to satisfy direct benefit element) and *Kopel v. Kopel*, 229 So. 3d 812, 818 (Fla. 2017) (benefit to corporation was not sufficient to confer a direct benefit to the corporation’s owner).

⁴⁵⁹ Alabama, Arizona, the District of Columbia, Florida, Georgia, Idaho, Iowa, Kansas, Maine, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Utah.

be privity between the parties.”⁴⁶⁰ The authority JUUL Labs relies on in these states are factually distinguishable and do not reach a contrary result.⁴⁶¹

Finally, *In re K-Dur Antitrust Litig.*⁴⁶² ruled that indirect purchasers were permitted to proceed with unjust enrichment claim under the law of multiple states.⁴⁶³

As the authority above establishes, direct benefit does not require direct contact.⁴⁶⁴ Plaintiffs allege they overpaid authorized retailers or JUUL Labs directly,

⁴⁶⁰ *In re Generic Pharm. Pricing*, 368 F. Supp.3d at 850-51 (if the connection between plaintiff and defendant is “not so attenuated” as to make the claims for unjust enrichment implausible, then pleading will be sufficient to assert unjust enrichment).

⁴⁶¹ *Scott v. Mamari Corp.*, 530 S.E.2d 208, 212 (Ga. Ct. App. 2000) (finding no direct benefit where plaintiff performed repair work for a resort and the defendants were the resort’s lenders); *Stevenson v. Windermere Real Estate/Capital Grp., Inc.*, 275 P.3d 839, 842-44 (Idaho 2012) (“We are unwilling to expand the doctrine of unjust enrichment to the extent advocated by the [plaintiffs]. If we were to do so, in every situation where an unjustly enriched party transfers some portion of that benefit to a creditor, the party conferring the benefit to the unjustly enriched party could claw back the benefit from the creditor. Such a rule would inject a measure of unreliability into every commercial transaction that is inconsistent with the operation of our market economy.); *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000) (applying N.Y. law) (no direct benefit established to wife-defendant where plaintiff loaned money to husband-defendant who used the proceeds to pay expenses of his law practice); *Sousa v. Roy*, 243 A.3d 775, 782 (R.I. 2021) (in dispute over proceeds of house after death of grandparents-owners, plaintiffs’ claim that their uncle was benefitted by plaintiffs’ mother’s financial contributions to the construction of an addition onto her parents’ home several years before this dispute was “simply too attenuated” to constitute a direct benefit on uncle, who now resided in the home).

⁴⁶² 338 F. Supp.2d 517 (D.N.J. 2004).

⁴⁶³ Applying the laws of the 50 states, the District of Columbia, and Puerto Rico. *In re K-Dur*, 338 F. Supp.2d at 545 n.35 (“the essence of the doctrine of unjust enrichment is that there is no direct relationship between the parties.”) (citation omitted).

⁴⁶⁴ *Abernathy*, 2011 WL 13135285, at *2 (direct benefit not required to sustain an unjust enrichment claim); *In re Auto. Parts*, 50 F. Supp.3d at 897 (The “critical inquiry [i]s not whether the benefit is conferred directly on the defendant, but whether the plaintiff can establish the relationship between his detriment and the defendant’s benefit ‘flow from the challenged conduct.’”); *HSBC Bank SA, Nat. Ass’n*, 2015 WL 3797990, at *12 (indirect benefit is sufficient); *Williams*, 2011 WL 4368980, at *9 (same: no direct contact does not preclude finding of direct benefit); *In re Generic Pharms. Pricing*, 368 F. Supp.3d at 850-51 (same: applying laws of Ala.,

which they allege was improperly retained by JUUL Labs.⁴⁶⁵ This is sufficient to allege conferral of a benefit.

d. Defendant Must Unjustly Receive a Benefit

JUUL Labs argues that to prove unjust enrichment plaintiffs must show that JUUL Labs got “something for nothing.”⁴⁶⁶ It contends that plaintiffs paid money and received the product in exchange, and therefore, it was not unjustly enriched.⁴⁶⁷

Plaintiffs respond that JUUL Labs relies only on Wisconsin authority in support of its argument, and therefore, it waived this argument for the remaining 49 jurisdictions.⁴⁶⁸ Further, plaintiffs contend that overpayment *is* a basis to establish unjust enrichment.⁴⁶⁹

While the elements of an unjust enrichment claim vary among states, generally, a plaintiff must allege “that they conferred a benefit or enrichment upon defendant and that it would be inequitable or unjust for defendant to accept and retain the benefit.”⁴⁷⁰

Ariz., Fla., Ga., N.Y., N.D., R.I., S.C., and Utah); *Muehlbauer*, 431 F. Supp.2d at 852 (same); *Seye*, 2013 WL 1332430, at *12 (same); *Massachusetts*, 357 F. Supp.2d at 323 (same); *GEICO Corp.*, 345 F. Supp.3d at 851-52 (same; applies Miss. law); *In re K-Dur*, 338 F. Supp.2d at 544 (same; applies Mont. law); *Sheet Metal Workers Local 441 Health & Welfare Plan*, 737 F. Supp.2d at 440-41.

⁴⁶⁵ See, e.g., Bean Compl. ¶¶ 352-54.

⁴⁶⁶ OB at 108-09.

⁴⁶⁷ *Id.*

⁴⁶⁸ AB at 118.

⁴⁶⁹ *Id.* at 118-20.

⁴⁷⁰ *In re Flonase Antitrust Litig.*, 692 F. Supp.2d 524, 541 (E.D. Pa. 2010) (applying laws of Ariz., Fla., Ill., Iowa, Mass., N.C., and Wis.); *In re Cardizem CD Antitrust Litig.*, 105 F. Supp.2d 618, 669-70 (E.D. Mich. 2000) (applying laws of Ala., Cal., D.C., Ill., Mich., Minn., N.Y., N.C., Tenn.,

JUUL Labs relies on *Weaver v. Champion Petfoods USA Inc.*,⁴⁷¹ which states “the equity concern embodied in the doctrine of unjust enrichment is ‘getting something for nothing, not providing a product for a price.’”⁴⁷² *Weaver* relied on another District Court case, *Tsamota Certification Ltd. v. ANSI ASQ Nat’l Accreditation Board LLC*,⁴⁷³ which quoted the “something for nothing” language from another District Court case, *Assoc. Banc–Corp v. John H. Harland Co.*⁴⁷⁴ *Assoc. Banc–Corp* relies on the Wisconsin Supreme Court case, *Ramsey v. Ellis*.⁴⁷⁵

The plaintiff in *Ramsey* worked as a consultant for a real estate brokerage firm and sought recovery of additional compensation from the firm. The supreme court reviewed the lower court’s ruling, which equated quantum meruit with unjust enrichment. In distinguishing these causes of action, the supreme court stated:

While recovery for unjust enrichment is based upon the inequity of allowing the defendant to retain a benefit without paying for it, recovery in quantum meruit is based upon an implied contract to pay reasonable compensation for services rendered.... [D]amages in an unjust enrichment claim are measured by the benefit conferred upon the

and Wis.); *In re Generic Pharm. Pricing*, 368 F. Supp.3d at 849 (applying laws of Alaska, Ark., Colo., Conn., De., Fla., Ga., Idaho, Ill., Ky., La., Md., Mass., Mo., Mont., N.J., Okla., Pa., P.R., R.I., S.C., Tex., Va., Wash., and Wyo.); *In re K-Dur*, 338 F. Supp.2d at 543-44 (applying laws of fifty states, D.C., and P.R.).

⁴⁷¹ 2019 WL 2774139 (E.D. Wis. July 1, 2019). The other cases cited by JUUL Labs, *TandM Farms v. CNH Indus. Am. LLC*, 488 F. Supp.3d 756, 769 (E.D. Wis. 2020) and *Brame v. Gen. Motors LLC*, F. Supp.3d 832, 843 (E.D. Wis. 2021), both rely on *Weaver* for the proposition that unjust enrichment requires receipt of “something for nothing.”

⁴⁷² *Weaver*, 2019 WL 2774139, at *6.

⁴⁷³ 2018 WL 1936840, at *9 (E.D. Wis. Apr. 24, 2018).

⁴⁷⁴ 2007 WL 128337, at *2 (E.D. Wis. Jan. 11, 2007).

⁴⁷⁵ 484 N.W.2d 331, 333 (Wis. 1992).

defendant, while damages in a quantum meruit claim are measured by the reasonable value of the plaintiff's services.⁴⁷⁶

While JUUL Labs is correct that the District Courts in Wisconsin have construed unjust enrichment to require the plaintiff to have received something for nothing, the Wisconsin law relied upon does not support this requirement. The Wisconsin Supreme Court in *Ramsey* was distinguishing two causes of action and noting the different measure of damages – the value of services provided for quantum meruit and the benefit to the defendant in unjust enrichment. It was not addressing the question of whether overpayment satisfies the “receiving a benefit” element of unjust enrichment.

JUUL Labs attempts to distinguish the cases cited by plaintiffs that support the conclusion that overpayment may satisfy the “receipt of a benefit” element⁴⁷⁷ by

⁴⁷⁶ *Ramsey v. Ellis*, 484 N.W.2d 331, 333 (Wis. 1992).

⁴⁷⁷ RB at 43-45. See *In re Cardizem CD*, 105 F. Supp.2d at 671 (overpayment for heart medication was sufficient to state a claim for unjust enrichment where plaintiffs “alleged that they conferred a benefit, in the form of overpayments and increased profits, on Defendants, that Defendants accepted that benefit and that it would be unjust under the alleged circumstances for Defendants to retain that benefit.”) (applying laws of Ala., Cal., D.C., Ill., Mich., Minn., N.Y., N.C., Tenn., and Wis.); *In re FCA US LLC Monostable Elec. Gearshift Litig.*, 280 F. Supp.3d 975, 1008-09 (E.D. Mich. 2017) (court recognized that a benefit was conferred on defendant in the form of inflated purchase price for cars); *In re Generic Pharm. Pricing*, 368 F. Supp.3d at 851 (the court held that plaintiffs “plausibly alleged that their alleged losses from purchasing Group 1 drugs at inflated prices are connected to benefits incurred by Defendants who allegedly conspired to raise the prices of those drugs.”) (applying laws of Alaska, Ark., Colo., Conn., De., Fla., Ga., Idaho, Ill., Ky., La., Md., Mass., Mo., Mont., N.J., Okla., Pa., P.R., R.I., S.C., Tex., Va., Wash., and Wyo.); *Francis v. Gen. Motors, LLC*, 504 F. Supp.3d 659, 693 (E.D. Mich. 2020) (quoting *In re FCA US LLC*, 280 F. Supp.3d at 1008-09) (“In this case, as the Court has held in prior similar consumer auto defect suits, “[t]he plaintiffs adequately have pleaded that the defendant received a benefit (the inflated prices paid by them for their cars), that it knew it received it, and that it would be unfair for the defendant to retain it (because of its wrongful concealment of the defective [transmission] design,

arguing that these cases involved antitrust litigation and the defendants did not make the argument that JUUL Labs is making here. Even if the factual scenario is different in these cases, JUUL Labs offers no policy reason why the same principle should not apply to the facts here.

The Court finds that the District Court cases do not accurately reflect Wisconsin law and the authority cited by plaintiffs is persuasive.⁴⁷⁸ It is JUUL Labs' burden so show that plaintiffs' claims are not reasonably conceivable. It has failed to meet that burden. The Court finds that plaintiffs' allegation of overpayment is sufficient to state a claim for unjust enrichment.

7. *Negligence and Gross Negligence*

a. *Rule 9(b) Particularity Requirement*

JUUL Labs argues that plaintiffs fail to allege negligence and gross negligence with the particularity required by Rule 9(b).⁴⁷⁹ Plaintiffs contend that they have put forward sufficient factual allegations to fulfill the particularity requirement.⁴⁸⁰

which all of the plaintiffs alleged would have led them to reconsider the purchase of their car, or to have paid less for it).”); *In re K-Dur*, 338 F. Supp.2d at 544 (“Here, Schering’s payments to Upsher and ESI flow from, and are related to, the anti-competitive conduct alleged by Plaintiffs. Plaintiffs’ purchase of K–Dur constituted a benefit conferred on Defendant Schering, in the form of monetary payments.”) (applying laws of fifty states, D.C., and P.R.).

⁴⁷⁸ Because JUUL Labs’ argument fails under the authority it relied on in its Opening Brief, the Court need not address the new arguments it raised in its Reply Brief.

⁴⁷⁹ OB at 110.

⁴⁸⁰ AB at 120.

Under Rule 9(b), negligence claims must “be stated with particularity,” which requires some indication of the time and place of the alleged injuries.⁴⁸¹ To satisfy this requirement plaintiffs must allege “(1) what duty, if any was breached; (2) who breached it; (3) what act or failure to act breached the duty; and (4) the party upon whom the act was performed.”⁴⁸²

Gross negligence “requires a showing of negligence that is a ‘higher level’ of negligence representing extreme departure from the ordinary standard of care.”⁴⁸³ To plead gross negligence with the requisite particularity a “plaintiff must articulate ‘facts that suggest a *wide* disparity between the process [] used ... and that which would have been rational.’”⁴⁸⁴

Plaintiffs allege that “[JUUL Labs] had a duty of reasonable care in designing, manufacturing, assembling, inspecting, testing, packaging, labeling, marketing, advertising, promoting, supplying, distributing and/or selling JUUL to avoid causing harm to those that consumed JUUL Products.”⁴⁸⁵ JUUL Labs “knew or should have

⁴⁸¹ Del. Super. Civ. R. 9(b); *Archie v. 4520 Corp., Inc.*, 2003 WL 832549, at *1 (Del. Super. Mar. 3, 2003).

⁴⁸² *Ward v. Del. State Police*, 2022 WL 351205, at *7 (Del. Super. Feb. 4, 2022).

⁴⁸³ *Tews v. Cape Henlopen Sch. Dist.*, 2013 WL 1087580, at *2 (Del. Super. Feb. 14, 2013) (quoting *Hughes v. Christina Sch. Dist.*, 2008 WL 73710, at *4 (Del. Super. Jan. 7, 2008)).

⁴⁸⁴ *J.L. v. Barnes*, 33 A.3d 902, 916 n.77 (Del. Super. 2011) (quoting *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 750 n.429 (Del. Ch. 2005)) (emphasis in original) (finding that where a complaint devotes multiple pages to specific allegations detailing defendants’ failures, their knowledge of dangerous conditions, and facts giving rise to that knowledge gross negligence was sufficiently pled).

⁴⁸⁵ *Bean Compl.* ¶¶ 114, 173, 199, 292, 294, 303, 306, 493.

known through the exercise of reasonable care”⁴⁸⁶ the risks of addiction, underage attraction and use of the products, and the risk of physical harm with reasonably foreseeable use.⁴⁸⁷ Plaintiffs further allege that JUUL Labs breached these duties by failing to perform adequate testing to ensure safety; failing to warn about the inadequacy of the testing; failing to use reasonable care in the design, production, manufacture, assembly, advertising, promoting, and marketing; using a design that maximizes nicotine delivery; failing to inspect the products for unsafe doses of nicotine; and failing to warn of the actual nicotine content.⁴⁸⁸ Plaintiffs allege that JUUL Labs intentionally targeted youths,⁴⁸⁹ knew the dangers associated with its product’s pharmacokinetic profile,⁴⁹⁰ and knew its advertisements were deceptive and misleading to consumers.⁴⁹¹ Plaintiffs also allege that despite knowing the safety issues, JUUL Labs sold the product, unreasonably risking the health and safety of its consumers.⁴⁹² The complaints contain detailed facts of studies and marketing campaigns to allege how JUUL Labs breached its duties. These allegations, taken as

⁴⁸⁶ “Malice, intent, knowledge and other condition of mind of a person may be averred generally.” Super. Ct. Civ. R. 9(b).

⁴⁸⁷ Bean Compl. ¶¶ 116, 128, 130, 148, 151, 154, 184-88, 199-200, 494-501.

⁴⁸⁸ *Id.* ¶¶ 116, 128, 130, 148, 151, 154, 184-88, 199-200, 504.

⁴⁸⁹ *See, e.g., id.* ¶¶ 116, 138, 155, 163, 166-68, 179, 182-83, 205, 222-90.

⁴⁹⁰ *See, e.g., id.* ¶¶ 148-54, 173, 181-96.

⁴⁹¹ *See, e.g., id.* ¶¶ 197-221.

⁴⁹² *See, e.g., id.* ¶¶ 116, 138, 148-55, 166-68, 173, 179, 181-83, 197-290.

a whole, meet the particularity requirement⁴⁹³ and the motion to dismiss on this ground is denied.

b. *Gross Negligence as an Independent Cause of Action*

JUUL Labs argues Alabama, California, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, New Mexico, Pennsylvania, Rhode Island, South Dakota, Wisconsin, and Wyoming do not recognize gross negligence as a separate cause of action.⁴⁹⁴ Plaintiffs counter that while this is true, the assertion of gross negligence serves as a predicate for recovering exemplary or punitive damages.⁴⁹⁵

The claims for gross negligence in these states are dismissed. However, the allegations in the complaints under Alabama, Indiana, Kansas, New Mexico, and North Dakota law may remain in the complaints as a basis for asserting punitive damages, which are permitted in these states.⁴⁹⁶

⁴⁹³ *Pfeifer v. Johnson Motor Lines, Inc.*, 89 A.2d 154, 157 (Del. Super. 1952); *In re Benzene Litig.*, 2007 WL 625054, at *6 (Del. Super. Feb. 26, 2007) (“When pleading negligence, the plaintiff must ‘allege only sufficient facts out of which a duty is implied and a general averment of failure to discharge that duty.’”).

⁴⁹⁴ OB at 112.

⁴⁹⁵ AB at 123 n.30.

⁴⁹⁶ *Porter Coal Co. v. Davis*, 165 So. 93, 96 (Ala. 1935) (“For a tort committed willfully or wantonly or with malice, fraud, gross negligence, or oppression, punitive damages may be recovered”); *Prudential Ins. Co. of Am. v. Executive Estates, Inc.*, 369 N.E.2d 1117, 1132 (Ind. Ct. App. 1977) (holding gross negligence may be sufficient to fulfill “heedless disregard of the consequences” standard for punitive damages); *Johnson v. Geer Real Estate Co.*, 720 P.2d 660, 663 (Kan. 1986) (“Punitive damages are permitted whenever the elements of fraud, malice, gross negligence or oppression mingle in the controversy.”); *Gonzales v. Sansoy*, 703 P.2d 904, 906 (N.M. Ct. App. 1984) (“gross negligence remains a sound basis for awarding punitive damages”); *Schaffer v. Edward D. Jones & Co.*, 552 N.W.2d 801, 806 n.3 (S.D. 1996) (must show something more than mere negligence).

8. *Strict Liability*

a. *No Cause of Action*

JUUL Labs argues, and plaintiffs concede, Delaware, Michigan, North Carolina, and Virginia do not recognize strict liability in products liability cases.⁴⁹⁷ Therefore, the strict liability claims asserted in these states are dismissed.

b. *Defective Design*

JUUL Labs contends that plaintiffs' strict liability claim based on a design defect must be dismissed because plaintiffs allege both a failure to warn and a design defect, which are distinct theories of liability.⁴⁹⁸ Plaintiffs acknowledge the "failure to warn language within the complaints but contend that the inclusion of this language is a typographical error."⁴⁹⁹ To the extent that the complaints assert a design defect for failure to warn claim, they are dismissed.

JUUL Labs further argues that plaintiffs' claims of design defect are based on the very purpose of the product—to inhale and deliver nicotine—therefore, they cannot be defective.⁵⁰⁰ JUUL Labs relies on cases that find cigarettes, which are *meant* to inhale nicotine, as not defective because they are *designed* to deliver nicotine, and urges the Court to adopt this reasoning. JUUL Labs further argues that

⁴⁹⁷ OB at 114-16; AB at 130 n.32.

⁴⁹⁸ OB at 116.

⁴⁹⁹ AB at 124 n.31.

⁵⁰⁰ OB at 117-18.

JUUL products cannot be defectively designed just because they cause a risk of harm.⁵⁰¹

Plaintiffs respond that the design defect claims are not based on nicotine being in the product but rather, the other harmful ingredients that were designed with a “pharmacokinetic profile engineered to create risks of abuse and addiction.”⁵⁰² Their claims are based on the unsafe nature of the e-liquid because the flavoring and other chemical additives carry a significant risk of toxicity and injuries.⁵⁰³ Plaintiffs further argue that their claims assert that the JUUL products could be safer by reducing the level of nicotine or formulating a less potent and addictive form of nicotine, which they argue is sufficient to state a claim.⁵⁰⁴

Plaintiffs argue that unlike traditional cigarettes, electronic nicotine delivery systems, like JUUL, are not widely known to be costly to one’s health⁵⁰⁵ and JUUL Labs marketed these devices as “safer alternative[s] to cigarettes.”⁵⁰⁶ Traditional cigarette case law, plaintiffs continue, is not instructive because cigarettes have been subject to government oversight and regulation for decades, and the general population is well aware of the inherent risks with traditional cigarettes. Instead, plaintiffs point the Court’s attention to two decisions from the *Colgate v. JUUL Labs*,

⁵⁰¹ *Id.* at 119-20.

⁵⁰² *AB* at 123.

⁵⁰³ *Id.* at 124.

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.* at 125.

⁵⁰⁶ *Id.* at 126.

Inc. litigation,⁵⁰⁷ where the Northern District of California decided this strict liability question.⁵⁰⁸

While the standard for a design defect varies among the states, it appears (and JUUL Labs does not dispute) that some iteration of the consumer expectation test and/or the risk-benefit test is generally applied.⁵⁰⁹ Under the consumer expectation test, a product is defective if it fails to perform as safely as an ordinary consumer would expect when used in a reasonably foreseeable manner.⁵¹⁰ Under the risk-benefit test, a product is defective if its design proximately causes injury and defendant fails to show that the benefits of the design outweigh its inherent risks.⁵¹¹

The Restatement (Second) of Torts § 402A (strict liability), comment g. states: “The defective condition may arise not only from harmful ingredients, not characteristic of the product itself either as to presence or quantity, but also from foreign objects contained in the product, from decay or deterioration before sale, or from the way in which the product is prepared or packed.” Comment i. on unreasonably dangerous states, in part: “The article sold must be dangerous to an

⁵⁰⁷ *Colgate v. JUUL Labs, Inc.*, 345 F. Supp.3d 1178 (N.D. Cal. 2018) (“*Colgate I*”); *Colgate II*, 402 F. Supp.3d 728.

⁵⁰⁸ AB at 125-28.

⁵⁰⁹ See *Colgate I*, 345 F. Supp.3d at 1192-93 (applying Cal. law); *Tincher v. Omega Flex Inc.*, 104 A.3d 328, 417 (Pa. 2014) (“we hold that, in Pennsylvania, the cause of action in strict products liability requires proof, in the alternative, either of the ordinary consumer’s expectations or of the risk-utility of a product.”); *Walker v. Ford Motor Co.*, 406 P.3d 845, 848-51 (Colo. 2017) (noting the two tests, which apply in different circumstances).

⁵¹⁰ *Colgate I*, 345 F. Supp.3d at 1192-93.

⁵¹¹ *Id.*

extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.”⁵¹²

In *Colgate*, JUUL Labs made the same argument it makes here—plaintiffs cannot allege a valid design defect claim because the product functioned as intended to deliver nicotine.⁵¹³ Applying the consumer expectation test, the court found

plaintiffs have stated a claim for design defect based on the allegation that JUUL’s pods contain 6.2% nicotine salt, rather than the 5% nicotine advertised. [] Plaintiffs have sufficiently alleged that JUUL’s pods do not perform as safely as an ordinary consumer would expect because each inhalation would deliver 20% more nicotine than they would reasonably expect from JUUL’s representations.⁵¹⁴

The court rejected JUUL Labs’ argument that the product cannot be defective simply because it contains nicotine⁵¹⁵ because the alleged defect was not the presence of nicotine itself, but the higher-than-expected nicotine concentration.⁵¹⁶

In *Colgate II*,⁵¹⁷ the court addressed a later-filed consolidated class action complaint, which also alleged a defective design based on the product delivering nicotine in a manner that made it more addictive than consumers would reasonably

⁵¹² Comment i. provides examples, including: “Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad whiskey, containing a dangerous amount of fuel oil, is unreasonably dangerous.”

⁵¹³ *Colgate I*, 345 F. Supp.3d at 1193.

⁵¹⁴ *Id.* at 1192-93.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ In the first case, the *Colgate* court addressed claims asserted by 13 individuals in seven states.

expect.⁵¹⁸ JUUL Labs again argued the alleged defects were inherent to the product.⁵¹⁹ The court rejected JUUL Labs’ arguments for a second time, noting that the issue is a puff that delivered more nicotine than a combustible cigarette, directed at excessive potency.⁵²⁰ The *Colgate* court distinguished the cigarette cases relied on by JUUL Labs on the basis that they were in a different procedural posture (after trial or on summary judgment) and therefore, they were not persuasive.⁵²¹ Accordingly, the court denied JUUL Labs’ motion to dismiss those claims.

This Court finds that, consistent with the *Colgate* decisions, plaintiffs adequately allege a design defect. The complaints allege that the JUUL products were defectively designed because they delivered high levels of nicotine (exceeding that of combustible cigarettes), were engineered with a pharmacokinetic profile that increased the risk of abuse and addiction,⁵²² and included harmful ingredients and unsafe flavoring additives.⁵²³ Thus, plaintiffs’ claims are not simply based on the presence of nicotine. Cases cited by JUUL Labs do not change this result. For

⁵¹⁸ *Colgate II*, 402 F. Supp.3d at 753. Specifically, plaintiffs contended that JUUL engineered its products to reduce the traditional “throat hit,” thereby masking the strength of the nicotine while increasing its addictive potential. They argued that JUUL Labs could have adopted a safer alternative design—such as using a less addictive freebase nicotine formulation—and that the risks of heightened addiction outweighed any benefits, particularly given JUUL Labs’ stated purpose of serving as a cigarette alternative for adult smokers.

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² Bean Compl. ¶¶ 363-68.

⁵²³ *Id.*

example, in *King v. Phillip Morris, Inc.*,⁵²⁴ the court dismissed the claim to the extent it was relying on the dangers of tobacco. But, it refused to dismiss a defective cigarette design claim based on product manipulation, finding that:

the plaintiff here is not relying on an allegation of the general danger of tobacco; she has alleged that the defendants' cigarettes were defective and unreasonably dangerous. The plaintiff bases her claim on the allegation that the defendants designed their product to be more addictive than plain tobacco by blending tobacco with nicotine and other chemicals.⁵²⁵

The *King* court also distinguished *Buckingham v. R.J. Reynolds Tobacco Co.*,⁵²⁶ also relied on by JUUL Labs. Unlike here, *Buckingham's* claim was based solely on the dangers of tobacco.⁵²⁷

The motion to dismiss the design defect claims is denied.

c. *Preemption of Warning Claims*

Reyling on *In re Fontem US, Inc.*,⁵²⁸ JUUL Labs asserts that plaintiffs' strict liability claims based on the product's labeling or packaging are expressly preempted by the Family Smoking Prevention and Tobacco Control Act (the "Tobacco Control Act").⁵²⁹ Plaintiffs urge this Court to follow the ruling in *In re JUUL Labs, Inc.*,

⁵²⁴ 2000 WL 34016358 (N.H. Super. Nov. 2, 2000).

⁵²⁵ *King*, 2000 WL 34016358, at *8.

⁵²⁶ 713 A.2d 381 (N.H. 1998).

⁵²⁷ *Buckingham*, 713 A.2d at 383-84. See also *RJ Reynolds Tobacco Co. v. Nelson*, 353 So. 3d 87, 93 (Fla. Dist. Ct. App. 2022) (on appeal from denial of defendant's motion for directed verdict, plaintiff's claim, based on the product containing tobacco and nicotine, failed as a matter of law because he presented no competent evidence that anything was "wrong" with the product).

⁵²⁸ 2016 WL 6520142 (C.D. Cal. Nov. 1, 2016).

⁵²⁹ OB at 120-24.

Mktg., Sales Pracs., & Prods. Liab. Litig.,⁵³⁰ where the court found the design defect claims were not expressly preempted.

Preemption is governed by the Supremacy Clause which states “[i]f federal law ‘imposes restrictions or confers rights on private actors[] and []a state law confers rights or imposes restrictions that conflict with federal law,[] the federal law takes precedence and the state law is preempted.’”⁵³¹ “Express preemption is found when Congress ‘enact[s] a clear statement to that effect.’”⁵³²

The Third Circuit has articulated two guiding principles for a court’s preemption inquiry:

First, the intent of Congress is the ‘ultimate touchstone’ of preemption analysis.” []. This requires examination of Congress’s express statements as well as the “structure and purpose of the statute as a whole, as revealed . . . through the reviewing court’s reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law.” []Second, there is a presumption against preemption such that “Congress did not intend to preempt state law absent evidence of a ‘clear and manifest’ intent.”⁵³³

⁵³⁰ AB at 128; 497 F. Supp.2d 552 (N.D. Cal. 2020).

⁵³¹ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 585 (quoting *Kansas v. Garcia*, 589 U.S. 191, 202 (2020)).

⁵³² *Id.* (quoting *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., and Prods. Liab. Litig.*, 959 F.3d 1201, 1211 (9th Cir. 2020)); *Gonzales v. State*, 207 A.3d 147, 154 (Del. 2019) (“Express preemption occurs when Congress preempts state law ‘in express terms.’”).

⁵³³ *Lara v. Cool Clouds Distb. Inc.*, 2021 WL 613842, at *7 (D.N.J. Feb. 2, 2021) (quoting *Farina v. Nokia Inc.*, 625 F.3d 97, 115 (3d Cir. 2010), *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996), and *Freedman v. Redstone*, 753 F.3d 416, 430 (3d Cir. 2014)).

The FDA regulates tobacco products under the Tobacco Control Act.⁵³⁴ In 2016, the scope of the act was broadened to deem electronic nicotine delivery systems (“ENDS”), such as JUUL, to be “tobacco products.”⁵³⁵ The act expressly preempts a state from enacting or enforcing “any requirement which is different from, or in addition to, any requirement under the provisions of this subchapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.”⁵³⁶

The act and the regulations, however, carve out areas where state action (and related claims) are expressly permitted, through an exception. The preemption in subparagraph A does not apply:

to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products....⁵³⁷

In this framework, the court *In re JUUL Labs* reiterated its prior ruling that plaintiffs’ product labeling claims based on the “presence or absence of false and misleading disclosures about nicotine addiction and failure to warn theories” were

⁵³⁴ 21 U.S.C. §§ 387 *et. seq.*

⁵³⁵ 81 Fed. Reg. 28973 (2016).

⁵³⁶ 21 U.S.C. §§ 387p(a)(2)(A) (emphasis added).

⁵³⁷ 21 U.S.C. § 387p(a)(2)(B).

preempted.⁵³⁸ The court then rejected JUUL Labs’ argument that plaintiffs’ warning claims relating to nicotine addiction and the product being a reasonable alternative to combustion cigarettes would impose requirements “different or additional” than that required by the FDA and therefore, these claims are preempted as well. The court explained that the only relevant FDA labeling requirement currently in place for ENDS is the “minimum” nicotine addiction warning.⁵³⁹ The court reasoned that to accept JUUL Labs’ position would be contrary to the exception clause which preserves the states’ “requirements relating to the sale, distribution, possession, . . . , exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age. . . .”⁵⁴⁰ Accordingly, other than the minimum warnings, the court could not determine what might be “different from or in addition to” standards that the FDA might adopt in the future.⁵⁴¹

In re Fontem found that the FDA promulgated labeling requirements for ENDS relating to nicotine and its addictiveness, the same as *JUUL Labs*. The

⁵³⁸ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 585 (citing *Colgate I*, 345 F. Supp.3d at 1189); *Colgate II*, 402 F. Supp.3d at 752 (failure to warn claims based on lack of labelling were preempted).

⁵³⁹ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 588 (stating that 21 C.F.R. § 1143.3(a)(1) requires a label to include: “WARNING: This product contains nicotine. Nicotine is an addictive chemical.”).

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.* at 589 (“plaintiffs are correct that omissions of ‘deadly safety defects’ that they contend should have been made under state law duties are not expressly preempted, other than any related to the minimum nicotine addiction warning from the labels of the JUUL products. If and when the FDA issues additional labelling requirements, this argument can be reassessed.”); *Colgate I*, 345 F. Supp.3d at 1189 (“To the extent that plaintiffs’ causes of action are based on the allegation that JUUL mislabels the dosage of nicotine on its pods at 5% when the dosage of nicotine is higher than 5%, these causes of action are not preempted by the TCA and FDA Rule.”).

Fontem court, however, found the exception clause was not broad enough to save plaintiffs’ claims from preemption. The court read the act to preempt “any requirement relating to ‘labeling,’” but excepted only “requirements relating to ‘exposure to’ or ‘use of’ tobacco products.”⁵⁴² The court then found that plaintiffs’ claims in that case (violations of various consumer protection laws)⁵⁴³ were about disclosure of information and not “exposure to tobacco products.”⁵⁴⁴ The court described plaintiffs’ claims as:

acts by Defendants of warning of certain risks relating to nicotine, and listing of ingredients (but not “hidden ingredients”) ***on Defendants’ products’ packaging*** and impliedly representing that those are the only health-related risks related to the Defendants’ e-cigarettes. [Consequently, these claims are premised on what is, and what is not, included on the product’s label. [Therefore,] these claims are preempted by the prohibition on additional or different labeling requirements.⁵⁴⁵

JUUL Labs recognized the ruling in *Fontem*, but declined to follow it because “the scope of any specific preemptive effect is better considered when and if the FDA actually issues standards.”⁵⁴⁶

⁵⁴² *In re Fontem US, Inc.*, 2016 WL 6520142, at *6.

⁵⁴³ The complaint asserted claims for: (I) Violations of the Consumer Legal Remedies Act, (II) Violations of Unfair Competition Law, (III) Violation of False Advertising Law for Deceptive, False, and Misleading Advertising, (IV) Violations of UCL based on violations of Proposition 65, (V) Violation of New York General Business Law, (VI) Fraudulent Concealment under Illinois Law, and (VII) Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.

⁵⁴⁴ *In re Fontem US, Inc.*, 2016 WL 6520142, at *6.

⁵⁴⁵ *Id.* (emphasis in original).

⁵⁴⁶ *In re JUUL Labs, Inc.*, 497 F. Supp.3d at 589 n.18.

Plaintiffs allege that the JUUL products are defective because JUUL Labs failed to provide adequate warnings on its labeling and packaging relating to other health hazards, exposing users to serious health risks, including lung, cardiovascular, neurological, and mental health injuries, and nicotine content prior to 2017.⁵⁴⁷

The Court finds that beyond labeling for nicotine and its addictiveness, plaintiffs' claims are not preempted. The reasoning in *JUUL Labs* persuasive. In this Court's view, permitting states to regulate labeling outside of nicotine content and addictiveness gives effect to the exception clause. JUUL Labs does not address the exception clause in its arguments. The *Fontem* decision appears to read the exception clause narrowly, which seems inconsistent with not finding preemption absent a "clear and manifest intent" to expressly preempt states from regulating labels.

9. *Product Liability Acts Abrogate Personal Injury Claims*

JUUL Labs argues that the product liability statute in Indiana, Kansas, Mississippi, New Jersey, Ohio, and Washington bars the *Davis* plaintiffs' claims for breach of implied warranty of merchantability sounding in tort, strict liability,

⁵⁴⁷ Bean Compl. ¶¶ 381-83.

negligence, and gross negligence.⁵⁴⁸ This is so because plaintiffs allege physical injury, which falls within the province of the acts.⁵⁴⁹

The *Davis* plaintiffs do not dispute that their personal injury claims are abrogated, but argue that they have sufficiently alleged facts to meet the pleading requirement under the respective state’s product liability acts. Plaintiffs request that these claims not be dismissed, but instead be considered claims pled under the respective acts.⁵⁵⁰ Plaintiffs further argue that these states’ statutes do not abrogate common law claims for economic loss (as opposed to personal injury).

The Court declines plaintiffs’ request to rewrite their complaints. With the number of plaintiffs in these cases and various states’ laws at issue, plaintiffs are

⁵⁴⁸ OB at 124-29.

⁵⁴⁹ Ind. Code § 34-20-1-1 (governs actions which are “(1) brought by a user or consumer; (2) against a manufacturer or seller; and (3) for physical harm caused by a product; regardless of the substantive legal theory or theories upon which the action is brought.”); Kan. Stat. § 60-3302(c) (covers all claims “brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product.”); Miss. Code § 11-1-63 (“any action for damages caused by a product, including, but not limited to, any action based on a theory of strict liability in tort, negligence or breach of implied warranty, except for commercial damage to the product itself”); N.J. Stat. § 2A:58C-1(b)(3) (“any claim or action brought by a claimant for harm caused by a product, irrespective of the theory underlying the claim, except actions for harm caused by breach of an express warranty.”); Ohio Rev. Code § 2307.71(A)(13) (covers claims that “seek[] to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question”); Wash. Rev. Code § 7.72.010(4) (“any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product.”).

⁵⁵⁰ AB at 130-31

required to properly state their cause of action. Moreover, plaintiffs cannot amend their complaints through their brief.⁵⁵¹ Accordingly, the claims are dismissed.

There are, however, some limitations to the abrogation of common law claims. Many of the acts expressly do not cover economic losses⁵⁵² and Indiana and Washington courts have held that their products liability act does not cover economic losses.⁵⁵³ Plaintiffs' breach of implied warranty and common law claims for economic damages fall outside the product liability act's reach in each state.⁵⁵⁴ Therefore, these claims are not dismissed.

⁵⁵¹ *Standard Gen. L.P. v. Charney*, 2017 WL 6498063, at *25 (Del. Ch. Dec. 19, 2017), *judgment entered*, (Del. Ch. 2018), and *aff'd*, 195 A.3d 16 (Del. 2018); *Appleby Apartments, LP v. Appleby Apartments Associates, LP*, 2023 WL 2728773, at *4 n.49 (Del. Ch. Mar. 31, 2023).

⁵⁵² Kan. Stat. § 60-3302(d) (harm does not include economic losses); Miss. Code § 11-1-63 (“except for commercial damage to the product itself”); Ohio Rev. Code § 2307.71(A)(13) (does not cover harm to the product itself); N.J. Stat. § 2A:58C-1(b)(2) (does not cover harm to the product itself).

⁵⁵³ *Gunkel v. Renovations, Inc.*, 822 N.E.2d 150, 153 (Ind. 2005) (“under the Products Liability Act and under general negligence law is that damage from a defective product or service may be recoverable under a tort theory if the defect causes personal injury or damage to other property, but contract law governs damage to the product or service itself and purely economic loss arising from the failure of the product or service to perform as expected”); *Touchet Valley Grain Growers, Inc. v. Opp & Seibold Gen. Const., Inc.*, 831 P.2d 724, 733 (Wash. 1992) (“The WPLA confines recovery to physical harm of persons and property and leaves economic loss, standing alone, to the Uniform Commercial Code.”).

⁵⁵⁴ Kan. Stat. § 60-3302(d) (harm does not include economic losses); Miss. Code § 11-1-63 (“except for commercial damage to the product itself”); Ohio Rev. Code § 2307.71(A)(13) (does not cover harm to the product itself); N.J. Stat. § 2A:58C-1(b)(2) (does not cover harm to the product itself); *Gunkel*, 822 N.E.2d at 153 (“under the Products Liability Act and under general negligence law is that damage from a defective product or service may be recoverable under a tort theory if the defect causes personal injury or damage to other property, but contract law governs damage to the product or service itself and purely economic loss arising from the failure of the product or service to perform as expected”); *Touchet Valley Grain Growers, Inc.*, 831 P.2d at 733 (“The WPLA confines recovery to physical harm of persons and property and leaves economic loss, standing alone, to the Uniform Commercial Code.”).

Finally, JUUL Labs contends that the Louisiana Products Liability Act subsumes plaintiffs’ common-law fraud and breach of implied warranty of merchantability claims.⁵⁵⁵ Plaintiffs concede this point, but assert that they have alleged their claims under the statute.⁵⁵⁶ Accordingly, to the extent they are pled, the Louisiana plaintiffs’ common-law fraud and breach of implied warranty claims are be dismissed.⁵⁵⁷

10. *Statute of Limitations in Puerto Rico and Louisiana*

Puerto Rico establishes “a one-year statute of limitations for tort-based actions, as well unjust enrichment, fraud, and other non-contractual claims.”⁵⁵⁸

Louisiana has a one-year statute of limitations for breach of implied warranty of merchantability and redhibition claims.⁵⁵⁹

⁵⁵⁵ OB at 129-30; *Touro Infirmary v. Sizeler Architects*, 947 So. 2d 740, 744 (La. Ct. App. 2006) (“Courts have consistently held [Louisiana’s PLA] subsumes all possible causes of action, with the exception of a claim in redhibition.”); La. Stat. § 9:2800.58 (The Louisiana Products Liability Act “subsumes all possible causes of action, with the exception of a claim in rehibition.”).

⁵⁵⁶ Ayers Compl. ¶¶ 407-16.

⁵⁵⁷ La. Stat. § 9:2800.58 (The Louisiana Products Liability Act “subsumes all possible causes of action, with the exception of a claim in rehibition.”).

⁵⁵⁸ *TBB Int’l Bank Corp. v. Oliveros-Febres Cordero*, 1014 WL 3924670, at *6 (D.P.R. August 23, 2024) (citing Article 1868, PR Laws Ann. Tit. 31, § 5298 (repealed)) (“The current version of the Puerto Rico Civil Code, Act No. 55 of June 1, 2020, codified as 31 L.P.R.A. § 5311 *et seq.*, entered into force on November 28, 2020, but has no official English translation.”).

⁵⁵⁹ La. Civ. Code art. 2498; La. Civ. Code art. 2534(B); *see also Leo v. Jeld-Wen, Inc.*, 835 F. App’x 727, 729 (5th Cir. 2020) (“[A] one-year statute of limitations applies to redhibition claims against the manufacturer of the defective thing.”).

JUUL Labs argues that because the California action opt-out date was July 14, 2023, and plaintiffs from Puerto Rico and Louisiana filed their claims on October 18, 2024, their claims are barred by the applicable statute of limitations.⁵⁶⁰

In response, plaintiffs do not contest the limitations period, but contend that JUUL Labs fails to argue when plaintiffs' claims actually accrued⁵⁶¹ and "simply assumes they accrued before or during the class action tolling period . . ."⁵⁶²

If claims are untimely based on the statute of limitations, the plaintiff "bear[s] the burden of pleading specific facts demonstrating that the statute was, in fact, tolled."⁵⁶³ As noted above, plaintiffs in a putative class action have the benefit of tolling the statute of limitations before the putative class members are permitted to opt-out.⁵⁶⁴ These cases were filed more than 1 year after the end of the California opt-out period. The complaints, however, allege no facts to toll the statute of limitations.

Plaintiffs bear the burden to plead facts leading to a reasonable inference that a tolling doctrine applies.⁵⁶⁵ In the complaints, plaintiffs allege that any applicable statute of limitation was tolled under the discovery rule and the doctrine of

⁵⁶⁰ OB at 130-32.

⁵⁶¹ AB at 135-36.

⁵⁶² *Id.* at 135.

⁵⁶³ *In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *6 (Del. Ch. July 17, 1998), *aff'd*, 725 A.2d 441 (Del. 1999).

⁵⁶⁴ See section IV(A)(2)(b), *supra*.

⁵⁶⁵ *Krishna v. Asura Dev. Grp., Inc.*, 2017 WL 1103013, at *4 (Del. Super. Mar. 24, 2017).

fraudulent concealment,⁵⁶⁶ yet they provide no facts supporting these allegations for these particular plaintiffs.⁵⁶⁷

The complaints also assert that the statute of limitations was tolled during the pendency of the class action.⁵⁶⁸ While true, plaintiffs do not allege any facts to toll the statute of limitations when it started after the opt-out period. Accordingly, Puerto Rico plaintiffs' tort-based claim, unjust enrichment, fraud, and other non-contractual claims are dismissed as untimely.⁵⁶⁹ The Louisiana plaintiffs' breach of implied warranty of merchantability and redhibition claims are also time-barred.

11. *Hawaii Plaintiffs' Claims for Redhibition*

JUUL Labs argues, and plaintiffs concede,⁵⁷⁰ that Hawaii plaintiffs' redhibition claims are not recognized under Hawaii law.⁵⁷¹ Accordingly, Hawaii plaintiffs' claims of redhibition are dismissed.

⁵⁶⁶ See Bean Compl. ¶ 859.

⁵⁶⁷ See *id.* ¶¶ 860-62.

⁵⁶⁸ See *id.* ¶ 869.

⁵⁶⁹ *TBB Int'l Bank Corp.*, 1014 WL 3924670, at *6 (citing Article 1868, PR Laws Ann. Tit. 31, § 5298 (repealed)) ("The current version of the Puerto Rico Civil Code, Act No. 55 of June 1, 2020, codified as 31 L.P.R.A. § 5311 *et seq.*, entered into force on November 28, 2020, but has no official English translation.").

⁵⁷⁰ Plaintiffs failed to respond to this argument.

⁵⁷¹ See Ayers Compl. ¶¶ 333-349; *Hawaii v. Bristol-Myers Squibb Co.*, 2014 WL 3427387, at *14 (D. Haw. July 15, 2014) ("redhibition" is "a cause of action unique to Louisiana").

D. Leave to Amend

Plaintiffs seek leave to amend their complaints to cure any pleading deficiencies.⁵⁷² Civil Rule 15 provides that leave to amend a complaint “shall be freely given when justice so requires.”⁵⁷³ “On the absence of prejudice to another party, the [Court] is required to exercise its discretion in favor of granting leave to amend.”⁵⁷⁴ A motion to amend may be denied if the proposed amendment would be futile.⁵⁷⁵

JUUL Labs does not argue futility or prejudice. Accordingly, plaintiffs may amend the claims dismissed for insufficient pleading (and not a matter of law). The request for leave to amend is **GRANTED**.

V. CONCLUSION

JUUL Labs’ motion to dismiss on *forum non conveniens* is **DENIED** and under Rule 12(b)(6) is **DENIED**, in part and **GRANTED**, in part. JUUL Labs’ motion to dismiss based on misjoinder is **DENIED**. JUUL Labs’ motion under Rule 20 is **GRANTED**, in part and the claims are **SEVERED**.

⁵⁷² AB at 136.

⁵⁷³ Del. Super. Civ. R. 15.

⁵⁷⁴ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993) (citing *Ikeda v. Mollock*, 603 A.2d 785, 787-88 (Del. 1991)).

⁵⁷⁵ *NACCO Indus., Inc. v. Applicia Inc.*, 2008 WL 2082145, at *1 (Del. Ch. May 7, 2008).

Plaintiffs' request for leave to amend is **GRANTED**.

IT IS SO ORDERED.

/s/Kathleen M. Miller

Kathleen M. Miller, Judge