

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This settlement agreement and release of claims (“Settlement Agreement” or “Agreement”) is entered into by and between Center for Environmental Health (“CEH”), on the one hand, and JUUL Labs, Inc. formerly known as Pax Labs, Inc. (“JLI”) on the other hand.

CEH and JLI are each a “Party” and collectively the “Parties.” The date on which the last of the Parties shall execute and deliver to the other Party a countersigned copy of this Agreement shall be the “Effective Date.” The conduct-related terms agreed upon in sections 2.03, 2.04, and 2.05 below, shall remain in place until the earlier of (i) the date JLI receives any action on its premarket tobacco product applications (“PMTAs”) respecting JUUL products or any other applicable action by the U.S. Food and Drug Administration (“FDA”) to the extent such action conflicts with the provisions of sections 2.03, 2.04 and/or 2.05 or (ii) 3 years from the date of execution of this Agreement.

### RECITALS

WHEREAS, on September 2, 2015, CEH served a 60-Day Notice of Violation (the “Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq. (“Proposition 65”) on JLI alleging violations of Proposition 65 from use of Settling Defendant’s e-cigarette devices (the “Products”),

WHEREAS, on November 19, 2015, CEH filed a complaint in the matter *Center for Environmental Health v. Totally Wicked E Liquid (USA) Inc., et al.*, Alameda County Superior Court Case No. RG I 5-794036 (the “Action”), naming JLI as a defendant in the Action,

WHEREAS, on September 6, 2017, CEH and JLI entered into a Consent Judgment (“Consent Judgment”) as a full and final settlement of all claims which were or could have been raised in the Action arising out of the facts or conduct related to JLI’s alleged therein and in the Notice,

WHEREAS, in signing the Consent Judgment and agreeing to comply with its terms, the Parties did not admit any fact, conclusion of law, or violation of law,

WHEREAS, on April 12, 2019, CEH sent a letter to JLI regarding certain advertisements CEH claimed were in violation of the Consent Judgment,

WHEREAS, on May 13, 2019, CEH sent a second correspondence to JLI regarding other certain violations of the Consent Judgment,

WHEREAS, on June 1, 2019, JLI responded to CEH’s allegations in its letters of April and May 13, 2019 disputing CEH’s allegations,

WHEREAS, on July 30, 2019 and August 27, 2019, JLI and CEH participated in a mediation before the Honorable Judge David Garcia to resolve the dispute over the alleged violation of the Consent Judgment,

WHEREAS, the Parties have agreed to fully and finally settle all disputes and controversies between them on the terms set forth in this Agreement, without admitting any liability or damages,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, terms, provisions, and conditions set forth in this Settlement Agreement, the Parties hereby agree as follows:

### **SETTLEMENT PAYMENT**

**Section 1.01. Settlement Payment.** In consideration of the releases and covenants not to sue set forth in Section 2, and for other good and sufficient consideration set forth in this Agreement, JLI shall make a settlement payment to CEH as set forth in the confidential letter from Ethan Dettmer to Mark Todzo dated October 7, 2019. The Settlement Payment shall be utilized to further CEH's public interest goals and to fund advertisements designed to curb youth vaping and efforts to effectuate legislation designed to curb youth vaping including legislation to raise the national legal minimum purchase age to 21 (however, such advertising and other funded public statements will not name, or be directed against, specific brands or specific products), and to reimburse CEH and its attorneys for its attorneys' fees and costs.

### **RELEASES AND COVENANTS**

**Section 2.01. Release of JLI.** CEH, for itself, its past and current affiliates, subsidiaries, parent companies, sister companies, shareholders, owners, directors, officers, members, agents, employees, representatives, predecessors, successors, assigns, insurers, attorneys, related entities, purchasers, and any other person and entity acting on its behalf, hereby fully and unconditionally releases, discharges, acquits, and holds harmless JLI and its past, present, and future employees, agents, officers, partners, associates, paralegals, representatives, predecessors, affiliates, subsidiaries, successors, assigns, insurers, attorneys, and any other persons and entities acting on its behalf ("JLI Released Parties"), from any and all liability, damages, claims, lawsuits, proceedings, causes of action, fees, costs, debts, attorneys' fees, and any other contractual, equitable, statutory, administrative, and legal relief of whatsoever kind or nature, raised or not raised, known or unknown, direct or derivative, present or future, fixed or contingent, specifically including, but not limited to those relating to or arising out of the Consent Judgment. It is further understood and agreed that the Parties have irrevocably waived all rights under California Civil Code Section 1542 and under any similar laws. Section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**

**AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR  
RELEASED PARTY.**

**Section 2.02. Consent Judgment Optional Additional Injunctive Provisions.** JLI and CEH dispute whether JLI effectively activated section 3.2 of the Consent Judgment regarding the "Optional Additional Injunctive Provisions." However, the Parties agree that section 3.2 of the Consent Judgment is superseded by the terms of this Agreement, and therefore section 3.2 of the Consent Judgment is not effective.

**Section 2.03. Advertisements.** JLI, without admitting any violation, liability, or damages, agrees to the following for advertisements and marketing materials appearing or viewable in California:

- (i) advertise or promote the JUUL product only in media that is 85% or more over the age of 21, according to nationally established advertising demographics services (for avoidance of doubt, JLI may continue to advertise and promote its product on its website, [www.juul.com](http://www.juul.com));
- (ii) not publish any marketing or advertising material, including paid influencers (which JLI does not currently use), on social media, with the exception of JLI's age-restricted YouTube channel:
- (iii) not use models under the age of 28 in its advertisements;
- (iv) not advertise within 1000 feet of schools or playgrounds, excepting advertisements in retail establishments for which it shall use commercially reasonable efforts to not have those advertisements on the exterior of such establishment;
- (v) not sponsor or advertise at sports events or concerts unless the event or concert is restricted to people over the age of 21;
- (vi) replace the terms "adults only" or "not for use by minors" with the phrase "the sale of tobacco products to minors is prohibited by law," in all paid advertising that first runs sixty days after the effective date of this Agreement unless this change is contrary to applicable law or regulation or demand of a regulatory authority (this change is based on CEH's belief that the replaced phrases are not effective in discouraging appeal to minors); and
- (vii) not pay for or permit JLI employees or contractors to appear at school or youth-oriented educational programs or events in their professional capacity.

**Section 2.04. Sales Practices.** JLI, without admitting any violation, liability, or damages, agrees to:

- (i) continue its secret shopper program in California, of no less than 190 store visits per month including application of the 3-Strikes-And-You're-Out Program, comprised of the escalation procedures listed below. In the event the 3-Strikes-And-You're-Out program is altered in connection with RACS or other compliance-related efforts, JLI may change its California program consistent with those alterations.

First Inspection Failure: JUUL Labs will issue a letter notifying the retailer of its first

violation. The letter will reiterate JLI's youth prevention policies and penalty escalation structure.

**Second Inspection Failure:** If there is a second violation within one year of the first violation, JLI will issue a letter notifying the retailer of the second violation. The retailer will lose the opportunity to participate in two JUUL promotional cycles following the date of the second failed inspection. For a JLI sponsored age-verification inspection failure, JLI will communicate the age-verification non-compliance to FDA.

**Third Inspection Failure:** If there is a third violation within one year of the first violation, JLI will issue a letter notifying the retailer of the third violation. The retailer will lose the opportunity to order and sell JUUL product for one year from the date of the third failed inspection unless they choose to become RACS-compliant. JLI will notify wholesalers, distributors and sub-distributors of the enforcement action. For a JLI sponsored age-verification inspection failure, JLI will communicate the age-verification non-compliance to FDA.

(ii) use commercially reasonable efforts to enforce its current bulk sales policy in California both on line and through resellers, limiting sales through resellers on a per-transaction basis to no more than two devices, and five JUUL pod packs, including in any future retail technological advances, and limiting online sales on a monthly basis to no more than two devices, and fifteen JUUL pod packs. JLI will provide CEH with a report setting forth the results from the secret shopper visits at CEH's request, not more frequently than twice annually.

**Section 2.05. Formaldehyde.** JLI, without admitting, any violation, liability, or damages, agrees that it will not reformulate its Virginia Tobacco, Classic Tobacco, Menthol, or Mint e-liquids without FDA approval. Changing or adding suppliers for components of e-liquid shall not be considered a reformulation. JLI further agrees that it will not market any reformulated JUUL e-liquid products in California, if those reformulated products would contain an increased formaldehyde level in the vapor produced by that e-liquid over the levels presently contained therein as determined by CEH's 2019 testing, the results of which are stated in the May 10, June 5 and August 28, 2019 Enthalpy Analytical test reports previously provided to JLI ("CEH's Testing"). The Parties recognize that the results of formaldehyde testing are variable. Therefore, a Product will not violate this Section unless the formaldehyde level of the mean of 5 or more samples of a particular flavor exceeds the following threshold for each flavor:

- Classic Tobacco: 0.0556 ug/puff
- Crème: 0.081 ug/puff
- Cucumber: 0.1003 ug/puff
- Fruit: 0.096 ug/puff
- Mango: 0.0556 ug/puff
- Menthol: 0.0556 ug/puff
- Mint: 0.0612 ug/puff
- Virginia Tobacco: 0.0772 ug/puff

CEH represents that the CEH's Testing presents a complete record of all samples tested and that no data or samples have been excluded from the report. Any future testing of a Product for the purposes of this Section shall use the same methods and equipment and equal or lower limits of quantitation and detection as used in CEH's Testing. If CEH asserts that a Product exceeds the stated threshold for that Product, JLI shall have the right to conduct its own test of at least 10 samples of that Product within two months of receiving written notice from CEH of an alleged exceedance. Such notice shall include a standard test report from Enthalpy Analytical, including sample chain of custody, showing the exceedance. Unless the mean formaldehyde concentration of the samples in JLI's test exceeds the threshold for that Product, JLI shall not be in violation of this Section. For purposes of this section, to the extent a new flavor is introduced, it shall be subject to the level for Cucumber set forth above.

**Section 2.06. Miscellaneous.** CEH and JLI represent and warrant that no claims, whether raised or not raised, known or unknown, direct or derivative, present or future, fixed or contingent, relating to or arising out of the Consent Judgment have been assigned, pledged, hypothecated, or otherwise transferred to any third parties.

## **REPRESENTATIONS AND WARRANTIES**

**Section 3.01. Authority.** CEH and JLI represent and warrant that they are fully authorized and able to enter into this Agreement and perform the provisions hereof. Further, the signatories hereto declare, warrant, and represent that they have agreed to the terms of this Agreement and that they have the authority to enter into this Agreement on behalf of their respective principals. Accordingly, this Agreement is binding on the Parties in accordance with its terms.

**Section 3.02. Investigation and Independent Counsel.** All Parties to this Agreement have entered it freely and voluntarily, with no duress or coercion (as those terms are defined by law), after having had full opportunity to consult with legal counsel and to receive counsel's explanation of each of the terms to this Agreement. The Parties appreciate and understand the terms of this Agreement and are fully satisfied with the settlement set forth herein.

## **MISCELLANEOUS**

**Section 4.01. Recitals.** The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement.

**Section 4.02. No Admission of Liability or Damages.** CEH and JLI expressly agree and acknowledge that the negotiation, execution or performance of the terms of this Agreement and the settlement referenced herein shall not be deemed to constitute an admission of liability, wrongdoing, or damages by any Party. This Agreement shall not and may not be construed as, offered as, or used as evidence of any kind in any other action or proceeding as proof of any fact or point of law, except that it may be used in an arbitration to enforce this Agreement.

**Section 4.03. Difference in Facts.** The signatories hereto understand, acknowledge, and agree that if any fact now believed to be true is found hereafter to be other than, or different from, that which is now believed, each expressly assumes the risk of such difference in fact and agrees that this Agreement shall and will remain effective notwithstanding such difference in fact.

**Section 4.04. Modification and Waiver.** This Agreement may not be modified, amended, or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment, or supplement. No provision of this Agreement may be waived unless such waiver is expressly stated in a writing executed by the Party to be bound by the waiver.

**Section 4.05. Binding.** This Agreement will inure to the benefit of, and be binding upon, the legal representatives, successors, and assigns of any of the Parties. Either Party may, without the consent of the other Party, assign this Agreement in whole or in part to any of its affiliates or in connection with its merger, reorganization, consolidation, or the sale of all or substantially all of its assets, so long as such assignee agrees to be bound by the Agreement. Any other assignment or attempted assignment shall be null and void and of no force or effect.

**Section 4.06. Choice of Law and Enforcement.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without reference to its internal conflicts of law principles to the extent any may require the application of a different jurisdiction's law. Only conduct within California may constitute a violation of this Agreement. Any proceeding required to enforce this Agreement or any dispute relating to this Agreement or any breach thereof shall be by motion or application for an order to show cause before the Superior Court of Alameda County. For purposes of this Agreement, the Parties agree that the Superior Court of Alameda County has jurisdiction to enforce the terms set forth herein. Prior to initiating any proceeding to enforce this Agreement, a Party must give at least 30 days' notice to the other Party, during which time the Parties will attempt to resolve their dispute in good faith. The prevailing party on any action to enforce the terms of this Settlement Agreement shall be entitled to its reasonable attorneys' fees and costs associated with such action. The Parties expressly recognize that JLI's obligations under this Agreement are unique. In the event that JLI is found to be in breach of this Agreement for failure to comply with the provisions of Section 2.03-2.05, the Parties agree that it may be impracticable to measure the resulting damages. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance.

**Section 4.07. Notice.** Any notice or written submission required under this Agreement shall be considered duly provided by mailing notice, via prepaid overnight delivery, to the following addresses:

If to CEH:

Lexington Law Group  
Attn: Counsel. Mark N. Todzo  
503 Divisadero Street

San Francisco. CA 94117

If to JLI:

JUUL Labs. Inc.  
Attn: Chief Legal Officer - Gerald Masoudi  
560 20th Street  
San Francisco. CA 94107

**Section 4.08. Savings Clause.** If any provision or paragraph of this Agreement is held to be illegal, invalid, or unenforceable, under the present or future laws, such provision shall be fully severable. In lieu thereof, there shall be additive provisions that are legal, valid, and enforceable as similar as possible to the illegal, invalid, or unenforceable provision.

**Section 4.09. Construction.** This Agreement will not be interpreted or construed against any Party to this Agreement because that Party or any attorney or representative for that Party drafted or participated in the drafting of this Agreement.

**Section 4.10. Entire Agreement.** This Agreement together with the letter referenced in Section 1.01 constitutes the full and entire agreement among the Parties with regard to the subject matter hereof and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof.

**Section 4.11. Attorneys' Fees.** Except as otherwise stated herein, CEH and JLI agree that they shall each bear their own costs and attorneys' fees.

**Section 4.12. Tax Liability.** The Parties agree that any and all tax liability that may be due or become due because of the payment contemplated under this Agreement is the responsibility of CEH, and that it will pay any such taxes that may be due related to such payment.

**Section 4.13. Headings.** The headings of the provisions in this Agreement are for convenient reference only, and the same shall not be, nor deemed to be, interpretive of the contents of such provision.

**Section 4.14. Jointly Drafted.** This Agreement was jointly drafted by the Parties. The doctrine of interpreting contract language against the drafter shall not apply.

**Section 4.15. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

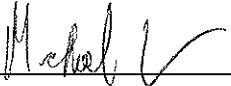
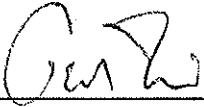
**WE THE UNDERSIGNED HEREBY CERTIFY THAT WE HAVE READ THIS**

ENTIRE AGREEMENT AND HAVE HAD THE TERMS AND CONSEQUENCES  
EXPLAINED BY OUR RESPECTIVE ATTORNEYS. WE FULLY UNDERSTAND ALL  
THE TERMS AND CONSEQUENCES OF THIS AGREEMENT AND BASED UPON  
SUCH, EXECUTE IT.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed  
as of the Effective Date. All persons executing this Settlement Agreement further confirm and  
state that they have carefully read the foregoing Settlement Agreement know the contents, and  
sign their name freely.

Center for Environmental Health

JUUL Labs, Inc.

By: <u></u>	By: <u></u>
Name: <u>Michael Green</u>	Name: <u>GERARD MASOLI</u>
Title: <u>Chief Executive Officer</u>	Title: <u>CHIEF LEGAL OFFICER</u>
Dated: <u>10/7/19</u>	Dated: <u>October 9, 2019</u>