

1 GREGORY P. STONE (SBN 78329)
 gregory.stone@mto.com
 2 DANIEL B. LEVIN (SBN 226044)
 daniel.levin@mto.com
 3 BETHANY W. KRISTOVICH (SBN 241891)
 bethany.kristovich@mto.com
 4 JOHN M. GILDERSLEEVE (SBN 284618)
 john.gildersleeve@mto.com
 5 MUNGER, TOLLES & OLSON LLP
 350 South Grand Avenue, 50th Floor
 6 Los Angeles, CA 90071-3426
 Telephone: (213) 683-9100
 7 Facsimile: (213) 687-3702

8 RENEE D. SMITH (*pro hac vice*)
 renee.smith@kirkland.com
 9 KIRKLAND & ELLIS LLP
 300 North LaSalle
 10 Chicago, IL 60654
 Telephone: (312) 862-2000
 11 Facsimile: (312) 862-2200

12 PETER A. FARRELL, P.C. (*pro hac vice*)
 peter.farrell@kirkland.com
 13 KIRKLAND & ELLIS LLP
 1301 Pennsylvania Ave., N.W.
 14 Washington, DC 20004
 Telephone: (202) 389-5000
 15 Facsimile: (202) 389-5200

16 Attorneys for Defendant Juul Labs, Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19
 20 IN RE: JUUL LABS, INC., MARKETING,
 SALES PRACTICES, AND PRODUCTS
 21 LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**Reply Memorandum in Support of Motion
 to Dismiss Bellwether Government Entity
 Complaints**

22
 23 This Document Relates to:

Judge: Hon. William H. Orrick
 Date: September 21, 2020
 Time: 9:00 a.m.
 Ctrm.: 2

24 (1) *Tucson Unified School District v. JUUL*
Labs, Inc., et al.; (2) *County of Santa Cruz,*
 25 *Individually And on Behalf of The People of*
The State of California v. JUUL Labs, Inc., et
 26 *al.*; (3) *The Livermore Valley Joint Unified*
 27 *School District v. JUUL Labs, Inc., et al.*; (4)
The School Board of Broward County, Florida
 28 *v. JUUL Labs, Inc., et al.*; (5) *The School*

1 *Board of Escambia County, Florida, et al. v.*
2 *JUUL Labs, Inc., et al.*; (6) *Three Village*
3 *Central School District v. JUUL Labs, Inc., et*
4 *al.*; (7) *Central Bucks School District, Bucks*
5 *County, Pennsylvania v. JUUL Labs, Inc., et*
6 *al.*

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION ¹	1
II. ALL CLAIMS MUST BE DISMISSED.....	2
A. The Municipal Cost Recovery Rule Bars Plaintiffs’ Damages.....	2
B. Plaintiffs Fail to State a Public Nuisance Claim	3
1. Plaintiffs Fail to Plead Interference with a Public Right.....	5
2. Plaintiffs Fail to Plead that JLI Had Control over the Nuisance.....	7
3. Plaintiffs Fail to Plead a Special Injury.....	9
C. Plaintiffs Fail to State Negligence-Based Claims	10
1. The Economic Loss Rule Bars Plaintiffs’ Negligence Claims	10
2. JLI Did Not Owe a Duty to Plaintiffs	13
(a) A Special Relationship is Required, but is Lacking Here	13
(b) Foreseeability Does Not Alone Establish A Duty Under California, Florida, and Pennsylvania Law	15
3. The California and Pennsylvania Gross Negligence Claims Fail	17
D. Plaintiffs Fail to Plead Proximate Cause.....	17
E. The Statutory Consumer Protection Claims Must Be Dismissed	18
1. Three Village CSD Does Not Allege “Actual Damages”	18
2. The Florida School Boards Do Not Allege “Actual Damages”	19
III. CONCLUSION	20

TABLE OF AUTHORITIES

	<u>Page(s)</u>
FEDERAL CASES	
1 <i>Allegheny Gen. Hosp v. Philip Morris, Inc.</i> ,	
2 228 F.3d 429 (3d Cir. 2000).....	17
3 <i>Alvarado v. Fed. Express Corp.</i> ,	
4 2008 WL 2340211 (N.D. Cal. June 5, 2008)	5
5 <i>Amerisure Mut. Ins. Co. v. Auchter Co.</i> ,	
6 673 F.3d 1294 (11th Cir. 2012).....	11
7 <i>Ashley Cty. v. Pfizer, Inc.</i> ,	
8 552 F.3d 659 (8th Cir. 2009).....	17
9 <i>Ass’n of Wash. Pub. Hosp. Districts v. Philip Morris, Inc.</i> ,	
10 241 F.3d 696 (9th Cir. 2001).....	17
11 <i>Baptiste v. Bethlehem Landfill Co.</i> ,	
12 965 F.3d 214 (3d Cir. 2020).....	9, 10
13 <i>Blue Cross & Blue Shield of New Jersey, Inc. v. Philip Morris USA Inc.</i> ,	
14 344 F.3d 211 (2d Cir. 2009), <i>certified question accepted</i> , 100 N.Y.2d 636 (2003),	
15 <i>certified question answered</i> , 3 N.Y.3d 200 (2004)	18
16 <i>Bradshaw v. Rawlings</i> ,	
17 612 F.2d 135 (3d Cir. 1979).....	14
18 <i>Camden Cty. Board of Chosen Freeholders v. Beretta, U.S.A. Corp.</i> ,	
19 273 F.3d 536 (3d Cir. 2001).....	4
20 <i>City of Flagstaff v. Atchison, Topeka & Santa Fe Ry. Co.</i> ,	
21 719 F.2d 322 (9th Cir. 1983).....	2
22 <i>City of Philadelphia v. Beretta U.S.A. Corp.</i> ,	
23 126 F. Supp. 2d 882 (E.D. Pa. 2000)	4, 7, 8, 9
24 <i>Cook v. MillerCoors, LLC</i> ,	
25 829 F. Supp. 2d 1208 (M.D. Fla. 2011)	15
26 <i>Cty. of Erie, N.Y. v. Colgan Air, Inc.</i> ,	
27 2012 WL 1029542 (W.D.N.Y Mar. 26, 2012), <i>aff’d</i> , 711 F.3d 147 (2d Cir. 2013)	
28	2, 3
<i>Cty. of Suffolk v. Long Island Lighting Co.</i> ,	
728 F.2d 52 (2d Cir. 1984).....	12

TABLE OF AUTHORITIES
(Continued)

		<u>Page(s)</u>
1		
2		
3	<i>Del Webb Communities, Inc. v. Partington,</i>	
4	652 F.3d 1145 (9th Cir. 2011).....	4
5	<i>Douglas Asphalt Co. v. QORE, Inc.,</i>	
6	657 F.3d 1146 (11th Cir. 2011).....	1, 4
7	<i>In re Facebook, Inc., Consumer Privacy User Profile Litig.,</i>	
8	402 F. Supp. 3d 767 (N.D. Cal. 2019)	17
9	<i>Fresh Air for the Eastside, Inc. v. Waste Mgmt. of New York, L.L.C.,</i>	
10	405 F. Supp. 3d 408 (W.D.N.Y. 2019)	9
11	<i>Gordon v. Hain Celestial Grp., Inc.,</i>	
12	2017 WL 213815 (S.D.N.Y. Jan. 18, 2017).....	13
13	<i>Guest v. Hansen,</i>	
14	2007 WL 4561104 (N.D.N.Y. Dec. 18, 2007)	14
15	<i>Guttmann v. Nissin Foods (U.S.A.) Co.,</i>	
16	2015 WL 4309427 (N.D. Cal. 2015).....	5
17	<i>Ileto v. Glock Inc.,</i>	
18	349 F.3d 1191 (9th Cir. 2003).....	4, 16
19	<i>Johnson v. Bryco Arms,</i>	
20	304 F. Supp. 2d 383 (E.D.N.Y. 2004).....	14
21	<i>Jordan v. City of Philadelphia,</i>	
22	66 F. Supp. 2d 638 (E.D. Pa. 1999)	17
23	<i>Kleinknecht v. Gettysburg Coll.,</i>	
24	989 F.2d 1360 (3d Cir. 1993).....	16
25	<i>McCarthy v. Olin Corp.,</i>	
26	119 F.3d 148 (2d Cir. 1997).....	14
27	<i>McMahan v. Toto,</i>	
28	311 F.3d 1077 (11th Cir. 2002).....	8
	<i>In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.,</i>	
	2015 WL 4092326 (S.D.N.Y. July 2, 2015)	4, 8
	<i>In re Nat’l Prescription Opiate Litig.,</i>	
	___ F. Supp. 3d. ___, 2020 WL 1669655 (N.D. Ohio Apr. 3, 2020).....	8, 16, 17, 19
	<i>In re Nat’l Prescription Opiate Litig.,</i>	
	440 F. Supp. 2d 772 (N.D. Ohio 2020).....	9, 10

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.