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

IN RE JUUL LABS, INC. ANTITRUST  
LITIGATION

This Document Relates To:  
**All Indirect Purchaser Actions**

Master File No. 3:20-cv-02345-WHO

**INDIRECT PURCHASER  
PLAINTIFFS' AMENDED  
CONSOLIDATED  
CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiffs Daraka Larimore, Adam Matschullat, Keith May, Kerry Walsh, Allison  
2 Harrod, Kurt Doughty, Dylan Pang, Ivan Velez, Jr. and Michael Imai (“Plaintiffs”),  
3 individually and on behalf of all other persons similarly situated, by the undersigned  
4 attorneys, allege the following against Defendants Altria Group, Inc. and Altria Enterprises  
5 LLC (together, “Altria”) and Juul Labs, Inc. (“JUUL”) for damages, injunctive relief and  
6 other relief pursuant to federal antitrust laws, state antitrust laws, unfair competition and  
7 consumer protection laws. Plaintiffs demand a trial by jury. The allegations are based upon  
8 personal knowledge as to themselves and their own acts, and upon information and belief as  
9 to all other matters based upon publicly available information, the investigation conducted  
10 by and through their attorneys, and limited discovery conducted to date.

### 11 INTRODUCTION<sup>1</sup>

12 1. This class action involves agreements among horizontal competitors JUUL and  
13 Altria to eliminate competition by Altria in the market for closed-system electronic cigarettes  
14 (“Closed-System E-Cigarettes”) in exchange for a partial ownership interest in JUUL. These  
15 agreements effectuated a horizontal allocation of the market in that JUUL and Altria agreed  
16 that Altria would exit the market entirely and become a minority shareholder in JUUL.

17 2. This conduct constitutes a per se violation of Sections 1 and 3 of the Sherman Act  
18 and constitutes an unlawful acquisition in violation of Section 7 of the Clayton Act. In violation  
19 of Section 2 of the Sherman Act, JUUL monopolized the relevant market of Closed-System  
20 E-Cigarettes sold in the United States and its territories, and JUUL and Altria conspired to  
21 monopolize that market.

22 3. Defendants entered into written agreements including—the “Relationship  
23 Agreement”, dated December 20, 2018; the “Amended Relationship Agreement”, dated  
24 January 28, 2020; and a commitment letter from Altria to JUUL, dated October 5, 2018—  
25 that contained unequivocal non-compete provisions. On April 1, 2020, the Federal Trade  
26

27 <sup>1</sup> The allegations contained herein in the “Introduction” and “Factual Allegations”  
28 sections are substantially similar to the allegations in the Indirect Reseller Plaintiffs’  
Amended Consolidated Complaint filed on September 20, 2021.

1 Commission (“FTC”) filed an administrative complaint (“FTC Complaint”) challenging the  
2 lawfulness of both the agreements and the acquisition under Section 5 of the FTC Act (15  
3 U.S.C. § 45) and noted that the conduct in question violated Section 1 of the Sherman Act  
4 and Section 7 of the Clayton Act. *Federal Trade Comm’n v. Altria Group, Inc., et al.*, Dkt.  
5 No. 9393 (F.T.C. April 1, 2020).<sup>2</sup>

6 4. Unlike open-tank system e-cigarettes that allow users to mix their own liquids  
7 and are sold primarily in specialty vape shops, Closed-System E-Cigarettes have pre-filled,  
8 disposable pods or cartridges that are conveniently sold in a range of retail stores, including  
9 convenience stores and gas stations, and are easy to use by consumers. The JUUL system is  
10 a closed one such that it is not modifiable by the consumer.

11 5. JUUL’s Closed-System E-Cigarette consists of three components: (a) a flat,  
12 rectangular device consisting of an aluminum shell, a battery, a magnet (for the USB  
13 charger), a circuit board, an LED light, and a pressure sensor; (b) a USB charger; and (c) a  
14 pre-filled, non-reusable e-liquid cartridge (known as a “JUULpod”) that serves as a  
15 mouthpiece and contains a fixed concentration of nicotine mixed with flavoring and other  
16 additives that mimics the ability of a cigarette to deliver nicotine to the human brain. Since  
17 its entry into the Closed-System E-Cigarette market in June of 2015, JUUL quickly became the  
18 market leader, obtaining a 75% share by October of 2018.

19 6. The Altria Group was previously known as Philip Morris Companies, Inc. until  
20 2003 and is the leading manufacturer of combustible cigarettes in the United States and its  
21 territories. However, in the U.S., combustible cigarette sales volumes are declining between  
22 4% and 6% annually. To offset these steady losses, Altria invested heavily in developing  
23 alternative nicotine-delivery products such as Closed-System E-Cigarettes. Its CEO believed

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24 <sup>2</sup> A redacted version of the FTC Complaint is available at:  
25 [https://www.ftc.gov/system/files/documents/cases/d09393\\_administrative\\_part\\_iii\\_complai](https://www.ftc.gov/system/files/documents/cases/d09393_administrative_part_iii_complaint_public_version.pdf)  
26 [nt- public version.pdf](https://www.ftc.gov/system/files/documents/cases/d09393_administrative_part_iii_complai). The FTC action did not include claims under Section 2 of the  
27 Sherman Act, but the concurring statement of Commissioners Rohit Chopra (“Chopra”) and  
28 Rebecca Kelly Slaughter (“Slaughter”) also said that the facts would sustain a claim under  
Section 5 of the FTC Act based on a theory of a conspiracy to monopolize in violation of  
Section 2 of the Sherman Act.

1 that such products could overtake combustible cigarettes in sales within a decade.

2 7. Altria entered the Closed-System E-Cigarette market in 2013, when its  
3 subsidiary Nu Mark LLC (“Nu Mark”) began trials of the MarkTen Closed-System E-Cigarette.  
4 The product was launched nationally in July of 2014. Altria added to its Closed-System E-  
5 Cigarette portfolio by acquiring Green Smoke Inc. for nearly \$110 million in cash and \$20  
6 million in incentive payments in April of 2014. In February of 2018, it introduced the  
7 MarkTen Elite, a Closed-System E-Cigarette that resembled JUUL’s product in both  
8 appearance and structure. In 2018, Altria spent \$100 million to secure two-year commitments  
9 for prime retailer shelf-space for its MarkTen line. The same year, Altria launched its Apex  
10 product to compete with JUUL in online sales. In 2018, Altria generated over \$25.364 billion  
11 in worldwide net revenues.

12 8. Prior to JUUL’s entry into the Closed-System E-Cigarette market, Altria had a  
13 16% share of the e-cigarette market and was primed to become a dominant player in the  
14 Closed-System E-Cigarette market.

15 9. In light of declining sales in the market for combustible cigarettes and a shift by  
16 consumers to alternative nicotine delivery devices, Altria viewed participation in the Closed-  
17 System E-Cigarette market as important to its long-term survival.

18 10. The former CEO of the Altria Group, Marty Barrington (“Barrington”), laid  
19 out the rationale for his company’s investment in e-cigarettes during a Consumer Analyst  
20 Group of New York conference held on February 21, 2018:

21 [W]e knew the industry was evolving and adult tobacco consumers  
22 were seeking less harmful alternatives to combustible cigarettes.  
23 Preparing for this opportunity, we’ve spent years acquiring best-in-  
24 class regulatory and product development talent and building a  
compelling portfolio of non-combustible tobacco products with the  
potential to reduce risk.

25 \* \* \*

26 We aspire to be the U.S. leader in authorized, non-combustible,  
27 reduced-risk products. The range of tobacco products available in the  
28 U.S. is diverse when compared to many international markets, and  
different product platforms appeal to different U.S. adult tobacco  
consumers. That’s why we’re taking a portfolio approach, focusing  
on the three most promising platforms for U.S. adult tobacco

1 consumers: smokeless tobacco and oral nicotine-containing products,  
2 e-vapor and heated tobacco. . . .

3 Our approach is clear: to maintain our leadership in combustible  
4 tobacco products while vigorously pursuing this innovation  
5 aspiration. Going forward, our strategies are to:

- 6 • Maximize income from our combustible tobacco businesses;
- 7 • Grow income over time with non-combustible tobacco products;  
8 and
- 9 • Manage our diverse income streams and strong balance sheet to  
10 deliver consistent financial performance over the long term.

11 11. Altria was a serious competitor in the Closed-System E-Cigarette market.  
12 Because of Food and Drug Administration (“FDA”) regulations that became applicable to e-  
13 cigarettes for the first time in 2016, companies that wish to enter or remain in the market  
14 must pass through an onerous application process that can take years and cost a manufacturer  
15 tens of millions of dollars. Thus, industry observers and analysts predicted that deep-pocket  
16 Big Tobacco companies such as Altria were best positioned for long-run industry dominance.

17 12. JUUL’s rise presented Altria with a new and immediate threat on two fronts: it  
18 stood in the way of Altria’s goal of leading the e-cigarette category and threatened to disrupt  
19 Altria’s lucrative combustible cigarette business in the United States. Altria reacted to this  
20 threat by pursuing a dual-track strategy: (a) compete aggressively with JUUL, including  
21 through price promotions and product innovation; and (b) eliminate the threat by acquiring  
22 JUUL, its biggest Closed-System E-Cigarette competitor.

23 13. Negotiations between Altria and JUUL’s private equity sponsors began no later  
24 than August 2017 and were described in Altria slide presentations under a code name  
25 (“Project Tree”) as early as September 2017. The negotiations featured several iterations,  
26 including Altria acquiring JUUL entirely through various equity investment structures.  
27 Negotiations made intermittent progress, including exchanges of written terms in April 2018,  
28 but significant unresolved terms remained.

14. Altria’s negotiations with JUUL intensified in the summer of 2018. JUUL  
insisted that a precondition for a purchase of a stake in the company was that Altria exit the

1 market. As the FTC stated in paragraph 4 of the FTC Complaint, “[d]uring negotiations,  
2 [JUUL] insisted, and Altria recognized, that Altria’s exit from the e-cigarette market was a  
3 non-negotiable condition for any deal. When Altria sought to weaken or remove any  
4 obligation to exit that market, [JUUL] conveyed that any such attempt was completely  
5 unacceptable.” Altria accepted this condition in the commitment letter to JUUL dated October  
6 5, 2018 and began dismantling its e-cigarette operations, including removing the MarkTen  
7 Elite, Apex, and other e-cigarette products from the market.

8 15. Throughout the spring and summer of 2018, Altria continued to expand, plan  
9 for, market, and develop its suite of Closed-System E-Cigarette products that competed with  
10 JUUL. It continued on two fronts: (a) on the track to secure necessary Pre-Market Tobacco  
11 Approval from the FDA; and (b) to support and supplement its products in the marketplace,  
12 where it maintained a strong third-place position behind first-place JUUL and second-place  
13 Vuse brand.

14 16. Negotiations resumed and an agreement was signed on December 20, 2018.  
15 Altria acquired a 35% stake in JUUL for \$12.8 billion. The deal was reflected in a number  
16 of separate agreements, including: (a) the “Purchase Agreement”; (b) a “Services  
17 Agreement”, whereby Altria committed to provide various support services to JUUL; and  
18 (c) “Intellectual Property Licensing Agreement”, which Altria described in a Form 8-K filed  
19 with the Securities & Exchange Commission as giving JUUL a “non-exclusive, royalty-free  
20 perpetual, irrevocable, sublicensable license to Altria’s non-trademark licensable intellectual  
21 property rights in the e-vapor field. . . .” and (d) the aforementioned “Relationship  
22 Agreement” (the “Transaction”). In its Form 8-K, Altria specifically stated that:

23 The Relationship Agreement generally prohibits Altria from  
24 competing, or otherwise acquiring an interest in an entity competing,  
25 in the e-vapor business for a period of at least six years from Closing  
26 [of the Transaction], extendable thereafter unless terminated by  
27 Altria. If another person were to acquire 40% or more of Altria's  
28 voting power, or 30% of Altria's voting power combined with  
contractual control of a majority of Altria's board of directors, that  
person would also be subject to certain non-compete obligations set  
forth in the Relationship Agreement.

17. Altria knew that a partnership with JUUL would stifle competition. In an

1 October 2017 internal presentation, a “base scenario” assumption for the proposed  
2 Transaction was that “Juul grows without competition through 2020.”

3 18. As JUUL summarized in a set of draft talking points for the announcement of  
4 the transaction: “\$12 billion dollars that could have been spent competing with JUUL and  
5 our mission will now be used to help JUUL and our mission.”

6 19. The non-compete provisions of the Relationship Agreement constitute a naked  
7 restraint of trade in the form of a market allocation between horizontal competitors. These  
8 provisions remained in effect in the Amended Relationship Agreement entered into by Altria  
9 and JUUL on January 28, 2020. These agreements illegally restrained competition in the  
10 relevant market in violation of federal and state antitrust laws, unfair competition, and  
11 consumer protection laws.

12 20. As a direct and proximate result of Defendants’ anticompetitive conduct,  
13 Plaintiffs were overcharged and sustained injury to their business and property. Plaintiffs and  
14 members of the proposed Classes were injured by the elimination of Altria as a competitor  
15 in the Closed-System E-Cigarette market, the payment of supracompetitive prices for JUUL’s  
16 Closed-System E-Cigarettes<sup>3</sup> as a result, and were denied the benefits of competitive  
17 innovation that would have existed had Altria stayed in the Closed-System E-Cigarette market  
18 as an independent force.

19 **JURISDICTION AND VENUE**

20 21. Plaintiffs bring this action under Sections 4 and 16 of the Clayton Act, 15  
21 U.S.C. §§15, 26, to secure equitable and injunctive relief against Defendants for violating  
22 Section 1, 2 and 3 of the Sherman Antitrust Act, 15 U.S.C. §§ 1, 2 and 3, and Section 7 of  
23 the Clayton Act, 15 U.S.C. § 18. Plaintiffs also assert claims for actual and exemplary  
24 damages pursuant to state antitrust, unfair competition and consumer protection laws, and  
25 seek to obtain restitution, recover damages and secure other relief against Defendants for  
26 violations of those state laws. Plaintiffs and the proposed Classes also seek attorneys’ fees,

27 \_\_\_\_\_  
28 <sup>3</sup> References to purchases of JUUL’s Closed-System E-Cigarettes include purchases of  
the JUUL device itself and/or JUULpods.

1 costs, and other expenses under federal and state law.

2 22. This Court has jurisdiction over the subject matter of this action pursuant to  
3 Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, Section 1, 2 and 3 of the Sherman  
4 Antitrust Act, 15 U.S.C. §§ 1, 2, and 3, Section 7 of the Clayton Act, 15 U.S.C. § 18, and 28  
5 U.S.C. §§ 1331 and 1337. This Court has subject matter jurisdiction over the state law claims  
6 pursuant to 28 U.S.C. § 1332(d) and 1367 because this is a class action involving common  
7 questions of law or fact in which the aggregate amount in controversy exceeds \$5,000,000,  
8 exclusive of interest and costs, there are more than one hundred members of each of the  
9 proposed Classes, and at least one member of each of the proposed Classes is a citizen of a  
10 state different from that of one of the Defendants.

11 23. Venue is proper in this District pursuant to Section 12 of the Clayton Act, 15  
12 U.S.C. § 22, and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events  
13 giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected  
14 interstate trade and commerce discussed below has been carried out in this District, and one  
15 or more Defendants reside, are licensed to do business in, are doing business in, had agents  
16 in, or are found or transact business in this District.

17 24. The Court has personal jurisdiction over each Defendant. Each Defendant has  
18 transacted business, maintained substantial contacts, and/or committed overt acts in  
19 furtherance of the illegal scheme and conspiracy throughout the United States, including in  
20 this District. The scheme and conspiracy have been directed at, and have had the intended  
21 effect of, causing injury to persons residing in, located in, or doing business throughout the  
22 United States, including in this district.

23 **INTRADISTRICT ASSIGNMENT**

24 25. Pursuant to N.D. Cal. Civil Local Rule 3.2 (c) and (e), assignment of this case  
25 to the San Francisco Division of the United States District Court for the Northern District of  
26 California is proper because the interstate trade and commerce involved and affected by  
27 Defendants' violations of the antitrust laws was substantially conducted with, directed to or  
28 impacted Plaintiffs and/or members of the proposed Classes in counties located within the

1 Division, and JUUL's principal place of business is located within this Division.

2 **PARTIES**

3 26. Plaintiff Kurt Doughty is a resident of Rhode Island. Mr. Doughty purchased  
4 JUUL Closed-System E-Cigarettes indirectly from JUUL at various retail locations during the  
5 Class Period (defined below). Mr. Doughty was injured in his business or property in  
6 connection with his purchases during the Class Period as a result of Defendants'  
7 anticompetitive and unlawful conduct alleged herein.

8 27. Plaintiff Allison Harrod is a resident of Florida. Ms. Harrod purchased JUUL  
9 Closed-System E-Cigarettes indirectly from JUUL at various retail locations during the Class  
10 Period. Ms. Harrod was injured in her business or property in connection with her purchases  
11 during the Class Period as a result of Defendants' anticompetitive and unlawful conduct  
12 alleged herein.

13 28. Plaintiff Daraka Larimore is a resident of Santa Barbara County, California.  
14 Mr. Larimore purchased JUUL Closed-System E-Cigarettes indirectly from JUUL at various  
15 retail locations during the Class Period. Mr. Larimore was injured in his business or property  
16 in connection with his purchases during the Class Period as a result of Defendants'  
17 anticompetitive and unlawful conduct alleged herein.

18 29. Plaintiff Adam Matschullat is a resident of San Diego County, California. Mr.  
19 Matschullat purchased JUUL Closed-System E-Cigarettes indirectly from JUUL at various  
20 retail locations during the Class Period. Mr. Matschullat was injured in his business or property  
21 in connection with his purchases during the Class Period as a result of Defendants'  
22 anticompetitive and unlawful conduct alleged herein.

23 30. Plaintiff Keith May is a resident of Palm Beach County, Florida. Mr. May  
24 purchased JUUL Closed-System E-Cigarettes indirectly from JUUL at various retail  
25 locations during the Class Period. Mr. May was injured in his business or property in  
26 connection with his purchases during the Class Period as a result of Defendants'  
27 anticompetitive and unlawful conduct alleged herein.

28 31. Plaintiff Dylan Pang is a resident of New York. Mr. Pang purchased JUUL

1 Closed-System E-Cigarettes indirectly from various retail locations during the Class Period.  
2 Mr. Pang was injured in his business or property in connection with his purchases during the  
3 Class Period as a result of Defendants’ anticompetitive and unlawful conduct alleged herein.

4 32. Plaintiff Kerry Walsh is a resident of Massachusetts. Ms. Walsh purchased  
5 JUUL Closed-System E-Cigarettes indirectly from various retail locations during the Class  
6 Period. Ms. Walsh was injured in her business or property in connection with her purchases  
7 during the Class Period as a result of Defendants’ anticompetitive and unlawful conduct  
8 alleged herein.

9 33. Plaintiff Ivan Velez, Jr. is a resident of Florida. Mr. Velez purchased JUUL  
10 Closed-System E-Cigarettes indirectly from JUUL at various retail locations during the Class  
11 Period. Mr. Velez was injured in his business or property in connection with his purchases  
12 during the Class Period as a result of Defendants’ anticompetitive and unlawful conduct  
13 alleged herein.

14 34. Plaintiff Michael Imai is a resident of Hawaii. Mr. Imai purchased JUUL  
15 Closed-System E-Cigarettes indirectly from JUUL at various retail locations during the Class  
16 Period. Mr. Imai was injured in his business or property in connection with his purchases  
17 during the Class Period as a result of Defendants’ anticompetitive and unlawful conduct  
18 alleged herein. Mr. Imai continues to indirectly purchase JUUL Closed-System E-Cigarette  
19 products, and intends to do so in the future, and thus faces the threat of continued harm unless  
20 the anticompetitive and unlawful conduct and agreements alleged herein is enjoined.

21 35. Defendant JUUL is a Delaware corporation with its principal place of business  
22 located at 560 20th Street, San Francisco, California 94107. JUUL is the leading  
23 manufacturer of Closed-System E-Cigarettes, generating over \$1 billion in net revenue in  
24 2018. JUUL was initially a division of Pax Labs (“Pax”), a maker of vaporizers based in San  
25 Francisco. Pax was founded in 2007 by James Monsees (“Monsees”) and Adam Bowen  
26 (“Bowen”). Pax raised \$13.9 billion in eight funding rounds from venture capitalists. As its  
27 sales grew, Pax spun off the division and incorporated it as a separate company. Tyler  
28 Goldman, then the Chief Executive Officer (“CEO”) of Pax, initially ran JUUL, but left in

1 2017. Kevin Burns (“Burns”), former head of yogurt maker Chobani, became the new CEO.  
2 Monsees is the company’s chief product officer and Bowen is the company’s chief  
3 technology officer. During the Class Period, JUUL sold its Closed-System E-Cigarettes  
4 directly or through its subsidiaries, agents and affiliates to purchasers throughout the United  
5 States. JUUL is a party to the anticompetitive and unlawful agreements alleged herein,  
6 including the aforementioned Relationship Agreement and Amended Relationship  
7 Agreement.

8 36. Defendant Altria Group, Inc. is a Virginia corporation headquartered at  
9 6601 West Broad Street, Richmond, Virginia 22320. Prior to 2008, Altria Group also owned  
10 the international operations of Philip Morris. In 2008, Altria separated the firm’s domestic  
11 and international operations. According to the Associated Press, the move cleared “the  
12 international tobacco business from the legal and regulatory constraints facing its domestic  
13 counterpart, Philip Morris USA.” Altria is one of the country’s largest tobacco companies  
14 and was, prior to the anticompetitive agreements alleged, a manufacturer of Closed-System  
15 E-Cigarettes. Altria stated that:

16 Altria Group holds diversified positions across tobacco, alcohol and  
17 cannabis. Through our wholly owned subsidiaries and strategic  
18 investments in other companies, we seek to provide category-  
19 leading choices to adult consumers, while returning maximum value  
20 to shareholders through dividends and growth.

19 Our tobacco companies – which have been the undisputed market  
20 leaders in the U.S. tobacco industry for decades – include some of  
21 the most enduring names in American business: Philip Morris USA,  
22 the maker of Marlboro cigarettes, and U.S. Smokeless Tobacco  
23 Company, the maker of Copenhagen and Skoal. We also own John  
24 Middleton, manufacturer of Black & Mild cigars, and Nat Sherman,  
25 a super-premium cigarette and cigar business. And we have 35  
26 percent ownership of JUUL Labs, Inc., the nation's leading e-vapor  
27 company.

24 37. During the Class Period, the Altria Group sold Closed-System E-Cigarettes  
25 directly or through its subsidiaries, agents and affiliates to purchasers throughout the United  
26 States and its territories. The Altria Group is a party to the anticompetitive and unlawful  
27 agreements alleged herein, including the aforementioned Relationship Agreement and  
28 Amended Relationship Agreement. In 2018, the Altria Group generated over \$25.364 billion

1 in worldwide net revenues.

2 38. Defendant Altria Enterprises LLC is a wholly owned subsidiary of the Altria  
3 Group and is located at 6601 West Broad Street, Richmond, Virginia 22320. Altria  
4 Enterprises is a party to the anticompetitive and unlawful agreements alleged herein,  
5 including the aforementioned Relationship Agreement and Amended Relationship  
6 Agreement.

7 39. Defendants Altria Group and Altria Enterprises are referred to collectively  
8 herein as “Altria.”

### 9 **AGENTS AND CO-CONSPIRATORS**

10 40. The anticompetitive and unlawful acts alleged against the Defendants in this  
11 class action complaint were authorized, ordered or performed by Defendants’ respective  
12 officers, agents, employees, or representatives, while actively engaged in the management,  
13 direction, or control of Defendants’ businesses or affairs.

14 41. Defendants’ agents operated under the authority and apparent authority of their  
15 principals.

16 42. Defendants, through their subsidiaries, affiliates and agents operated as a single  
17 unified entity.

18 43. Various persons and/or firms not named as Defendants herein may have  
19 participated as co-conspirators in the violations alleged herein and may have performed acts  
20 and made statements in furtherance thereof.

21 44. Each Defendant acted as the principal, agent or joint venture of, or for, each  
22 other with respect to the acts, violations, and common course of conduct alleged herein.

### 23 **FACTUAL ALLEGATIONS**

#### 24 **A. Development of E-Cigarettes and The Rise of JUUL**

25 45. By 2013, the e-cigarette business had revenues of \$1.7 billion a year. The  
26 numbers increased exponentially when JUUL entered the market. The following chart, taken  
27 from a 2018 research article, shows the dollar sales by company from 2011–17 with respect  
28 to retail channels tracked by the A.C. Nielsen Company (“Nielsen”):

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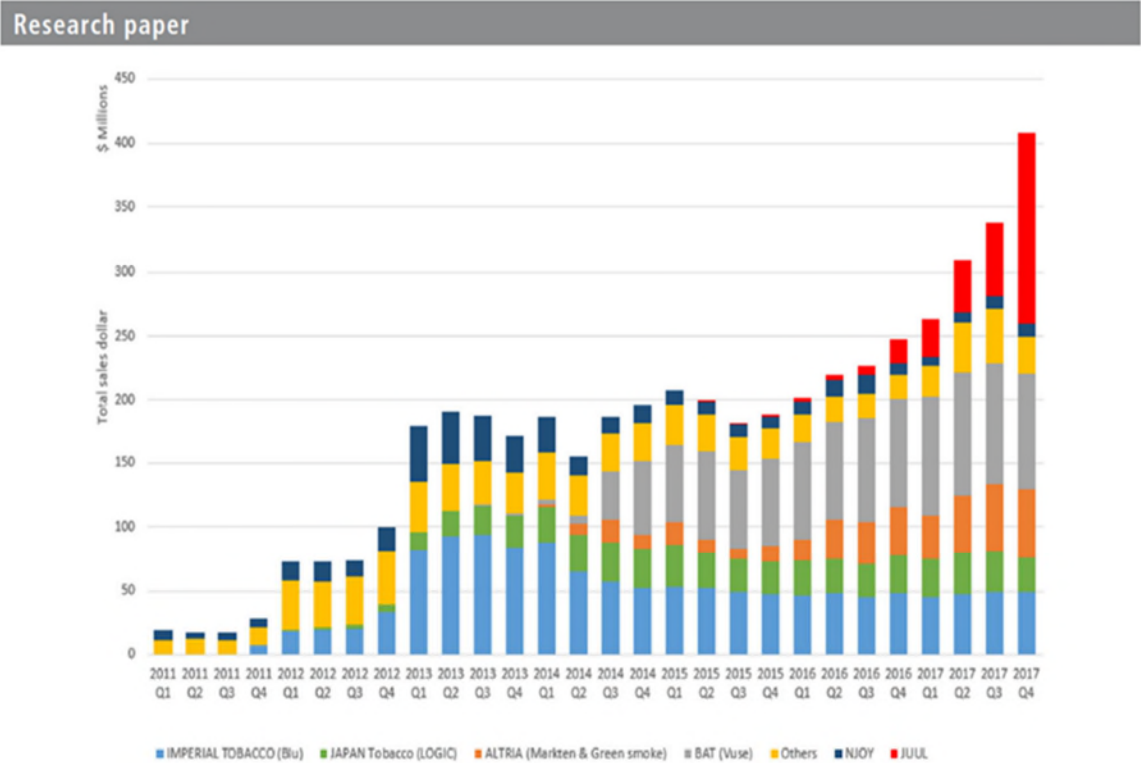
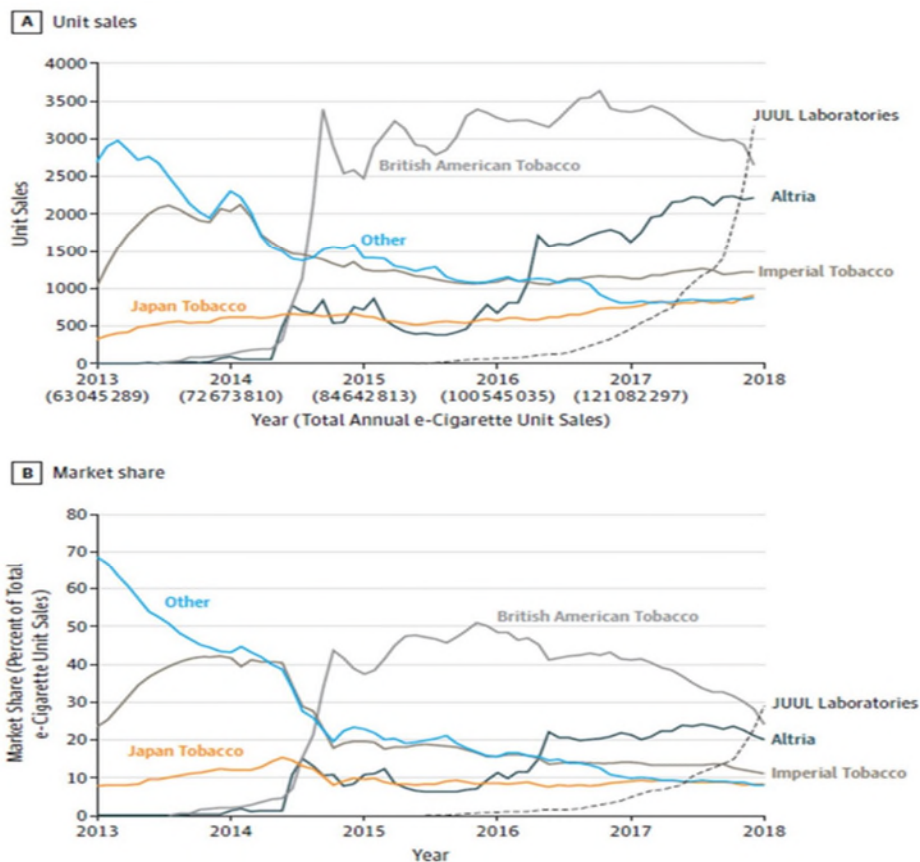


Figure 1 Sales dollar of e-cigarettes in Nielsen-tracked retail channels: by brand 2011–2017.

46. By the fourth quarter of 2017, JUUL had more sales than any of its competitors, although Altria’s sales numbers had been expanding over time.

47. The market shares of tobacco companies competing in the e-cigarette market declined as a result of JUUL’s entry and success. A 2018 research letter published in the *Journal of the American Medical Association* graphically depicts this development for the period from 2013–17.

Figure. e-Cigarette Unit Sales and Market Share of e-Cigarette Unit Sales, by Manufacturer—United States, 2013-2017

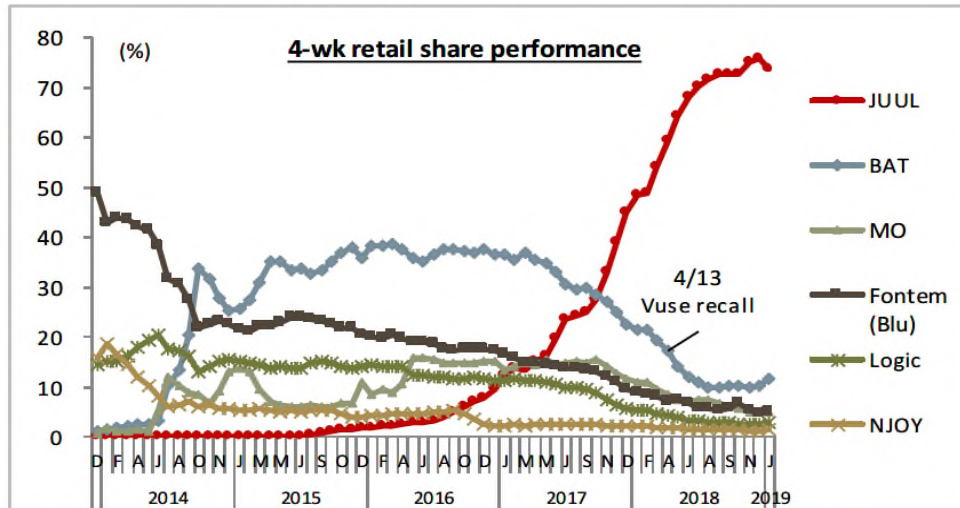


48. Other competitors in the Closed-System E-Cigarette market suffered setbacks that limited their ability to compete. For example, in April of 2018, R.J. Reynolds Vapor Co., a subsidiary of British American Tobacco, recalled its Vuse Vibe Power Units because of overheating, which led to a supply disruption.

49. By October of 2018, JUUL had obtained a monopolistic share of the Closed-System E-Cigarette market.

50. In a February 11, 2019 presentation, an analyst at Wells Fargo Securities, LLC said that JUUL “re-ignited” the e-cigarette category and depicted its dominance in the following chart.

## E-Cig \$ Share Performance Thru Nielsen 4-wk period ended 1/26



51. Altria is the “MO” listed in this chart and it reflects the company’s withdrawal from the market in late 2018 because of its non-compete agreement with JUUL.

52. A JUUL starter pack had a retail price of \$44.99, and a pack of four JUULpods cost \$15.99. The device and the JUULpods were available “directly from JUUL Labs, Inc., other online retailers, and at 12,000 convenience stores in the U.S.” By 2019, according to published reports, JUUL Closed-System E-Cigarettes were sold in 100,000 stores nationwide in addition to its own online retail portal.

### B. Altria Was Well-Positioned to Compete With JUUL

53. Prior to JUUL’s rise in popularity, Altria devoted a significant amount of time, money and resources competing with JUUL in the market for Closed-System E-Cigarettes in its oft-quoted quest to be a “market leader.”

54. Prior to Altria's agreement not to compete against JUUL, Altria was taking all necessary steps to bring its existing Closed-System E-Cigarette products to market. This meant efforts in two essential spheres. First, nicotine products are heavily regulated and require specific approvals which, in turn, need scientific support. Second, it meant continuing marketing efforts, ramping up manufacturing and distribution, all while continuing to develop future Closed-System E-Cigarettes to compete with JUUL.

1           55. Closed-System E-Cigarettes, like any new tobacco product, are subject to  
2 approval by the FDA. The FDA has had the ability to regulate tobacco products since the  
3 Family Smoking Prevention and Tobacco Control Act in 2009. In 2016, the FDA issued a  
4 rule deeming all tobacco products, including e-cigarette products, to be subject to these  
5 regulations. This is known in the industry as a “deeming rule.”<sup>4</sup> Accordingly, e-cigarettes  
6 new to the U.S. market after February 15, 2007 need approval prior to going to market, unless  
7 they were substantially equivalent to a product already on the market. The approval required  
8 for products new after 2007 is called Pre-Market Tobacco Approval (“PMTA”). Despite the  
9 name, the approval is not truly pre-market for all competitors. If the product has been on the  
10 market prior to August 8, 2016 – essentially, before the Deeming Rule – the product could  
11 continue to be sold while a PMTA was pursued. The FDA set a date of May 12, 2020 for  
12 those product applications (which was later moved to September 9, 2020 due to the COVID-  
13 19 pandemic). PMTA was required for both JUUL and Altria.

14           56. The PMTA requires specific, experimental support. In its Premarket Tobacco  
15 Guidance, the FDA acknowledges that it “does not believe there is adequate scientific  
16 information or regulatory experience with [e-cigarettes] to support a PMTA authorization  
17 using only information on earlier or other versions of the product ...” and accordingly “it is  
18 likely that applicants will conduct certain investigations themselves and submit their own  
19 research” because existing research in the public domain would not satisfy the criteria.<sup>5</sup> The  
20 Premarket Tobacco Guidance contained a section on the safety and ethics of “nonclinical and  
21 human subject studies” and included an invitation to applicants to discuss an investigational  
22 plan in advance with the Office of Science within the FDA’s Center for Tobacco Products.

23           57. Altria has decades of experience in the science of nicotine delivery devices, and  
24 specifically in designing scientific studies and presenting its results for the consideration of  
25 government regulators. In a November 2017 presentation to investors, Altria detailed the

26 \_\_\_\_\_  
27 <sup>4</sup> See Premarket Tobacco Product Applications for Electronic Nicotine Delivery  
28 Systems, Guidance for Industry, June 2019 (Docket No. FDA-2015-D-2496) (hereinafter,  
“Premarket Tobacco Guidance”).

<sup>5</sup> Premarket Tobacco Guidance, pp. 26, 31.

1 “substantial amount of work” it has already undertaken to prepare numerous regulatory  
2 applications for submission to the FDA for e-cigarettes. Altria explained that its “significant  
3 investments in regulatory science have laid the groundwork for these submissions, and much  
4 of the foundational research is already underway.”

5 58. The scientific studies cost tens of millions of dollars per product. Altria and  
6 JUUL were well-positioned to afford this cost. Other competitors might reasonably be  
7 expected to exit the market as their deadlines for PMTA neared, leaving the market to  
8 consolidate in the hands of the strongest few. When the September 9, 2020 extended deadline  
9 finally arrived, industry trade publications indicated that “many smaller manufacturers chose  
10 not to file applications at all, whereas some other companies submitted applications for only  
11 one or two products.”

12 59. As to the market, Altria had a solid position with its active and growing  
13 product offerings, third in market share behind JUUL, but gaining rapidly on second-place  
14 Vuse, which gained share early but was shown fading in Altria’s internal market analysis.

15 60. As reflected in a November 2017 document outlining Altria’s “internal strategic  
16 initiatives,” Altria was making plans to further secure its position by “improv[ing] production  
17 capability,” “establishing capacity” and other steps “to effectively compete with Juul.”

18 61. Altria management emphasized the importance of the Closed-System E-  
19 Cigarette market during investor presentations and through internal incentive compensation  
20 plans. For example, in February 2018, Altria’s then-COO Howard Willard (“Willard”)  
21 explained, “Nu Mark’s goal is to lead the U.S. e-vapor category with a portfolio of superior,  
22 potentially reduced-risk products that . . . generate cigarette-like margins at scale.”

23 62. Altria had a suite of products in its arsenal and pipeline that could compete with  
24 JUUL in the Closed-System E-Cigarette market in 2018, including the MarkTen, the MarkTen  
25 Elite, Apex, Green Smoke, CYNC, and Hudson.

26 63. The MarkTen Elite was launched in February 2018. The “Elite” was a slim  
27 electronic device with a rechargeable battery and prefilled pods (in a variety of flavors) that  
28 was similar to JUUL’s system. Altria closely studied JUUL’s product and tailored its

1 products to compete for market share. The MarkTen Elite, for example, was marketed with  
2 heavy promotional coupons to ensure that the start-up cost to the user was less than JUUL.  
3 Altria's internal comparisons determined that MarkTen Elite could be marketed in this way  
4 and still approach JUUL's gross margin, making this marketplace positioning sustainable for  
5 the long haul. One advertisement indicated that a MarkTen Elite device and two pod packs  
6 could be purchased for as little as \$5.99, and a battery and two pod packs could be purchased  
7 for \$9.95.

8 64. In a March 2018 analyst report, Deutsche Bank continued to report on Altria's  
9 "further expansion planned for later in the year" in order to "compete more directly with  
10 rapidly-growing Juul."

11 65. In April 2018, Altria remained primed to "[l]ead the U.S. inhalable reduced-  
12 harm tobacco category market" and estimated that its MarkTen product would continue to  
13 experience increasing retail market share.

14 66. In a May 2018 presentation, Altria outlined its plans to "accelerate our progress  
15 toward leadership with reduced risk products," "develop plans to win" against its competition  
16 and "accelerate [its] innovation pipeline."

17 67. In its July 2018 earnings release, Altria touted the growth of Nu Mark, driven  
18 by expanded distribution. The release stated that "Nu Mark expanded MarkTen Elite from  
19 over 6,000 stores in the first quarter to more than 23,000 stores by the end of the second  
20 quarter." Altria expended considerable resources creating store displays for each of its  
21 Closed-System E-Cigarettes, consistent with long-term competition in the market.

22 68. In its July 2018, "Game Plan Discussion," Nu Mark outlined its long-term  
23 strategies, which emphasized "product innovation" and "[m]aximiz[ing] all available  
24 pathways to bring new products to market." The discussion also highlighted Nu Mark's  
25 strategy to improve manufacturing to deliver products "at a competitive cost."

26 69. As of July 2018, Altria had long-term plans to compete in the Closed-System E-  
27 Cigarette market beyond 2022.

28 70. In August 2018, Altria continued to be focused on "accelerat[ing] retail roll-

1 out, improv[ing] retail execution and lower[ing] supply chain costs.”

2 71. As late as September 2018—just weeks prior to agreeing to withdraw all of e-  
3 cigarette products from the market—Altria was formulating agreements with Avail Vapor  
4 (an online and retail vape shop), with respect to the licensing of liquids used in Altria’s e-  
5 vapor products, commercializing Altria e-vapor products in Avail’s stores, and funding  
6 research and development for new innovative tobacco products and technologies.

7 72. Altria’s documents show that it did not slow the PMTA approval process for  
8 the MarkTen Elite until just days before agreeing to completely withdraw its products from  
9 the market.

- 10
- 11 • On October 9, 2018, Altria internally determined that “MarkTen PMTA is a  
go and should be staffed accordingly.”
  - 12 • On October 25, 2018, Altria externally announced withdrawal of other  
13 products, including the MarkTen Elite and Apex, from the market.

14 73. Even with the JUUL Transaction almost complete, and while making public  
15 announcements that distanced itself from direct competition with JUUL, Altria kept the  
16 scientific efforts for approval moving forward. If the Transaction had for any reason fallen  
17 through, Altria would not have paused or relented in its efforts to get its competing products  
18 approved.

19 74. Even after removing the MarkTen Elite product from the market, but before the  
20 Transaction was finalized, Altria took care in retiring the product. On its face, the  
21 announcement did not tip Altria’s hand that it was about to have an equity stake in the market-  
22 leading product, providing plausible deniability. But, the withdrawal of its Closed-System E-  
23 Cigarette products was done in such a way that Altria could easily resume marketing them if  
24 the Transaction fell through. Both scientifically and in the consumer marketplace, Altria had  
25 not fully committed to abandoning its own competitors to JUUL until the Transaction was  
26 publicly announced.

27  
28

1           **C. JUUL’s and Altria’s 2018 Negotiations and the Resultant Non-Compete**  
2           **Agreement**

3           75. The negotiations between Altria and JUUL that led to the Relationship  
4 Agreement of December 20, 2018 were not publicly disclosed. JUUL is a private company and  
5 has minimal public reporting obligations. Altria only reported on the end result, as reflected  
6 in its aforementioned Form 8-K. The allegations that follow are, therefore, based on the  
7 disclosures in the FTC Complaint, and limited internal Altria documents.

8           76. On November 9, 2017, Willard, the former CEO of Altria, and Billy Gifford  
9 (“Gifford”), the Altria Group’s CFO held a meeting with key Pax investors. Altria’s goal was  
10 to “[c]omplete an investment / acquisition that provides access to Juul product and Pax  
11 capabilities.”

12           77. On November 21, 2017, Willard and Jon Moore, Nu Mark’s Director of  
13 Marketing, had a call with representatives from Goldman Sachs (Pax’s financial advisor) to  
14 discuss the potential deal.

15           78. In the ensuing months, Perella Weinberg Partners (Altria’s financial advisor)  
16 engaged with Goldman Sachs regarding the potential deal and facilitated further discussions  
17 between Altria and JUUL.

18           79. On April 13, 2018, Willard sent Burns, and JUUL Board members Nick  
19 Pritzker (“Pritzker”) and Riaz Valani (“Valani”), an email, copying Gifford, recommending  
20 a “Follow Up Discussion” early the following week during which he and Gifford would be  
21 prepared to share various proposals, including a proposal that “proposes a way for us to  
22 collaborate on . . . Sharing market and financial projections to gain agreement on the  
23 standalone and partnership value for the enterprise; ii) An efficient and appropriate due  
24 diligence process; and iii) A process to ensure that the strategy alignment and chemistry  
25 between our respective operating teams is supportive of a productive partnership that can  
26 create substantial value above what is achievable under a standalone scenario in a dynamic  
27 tobacco category environment.”

28           80. On April 20, 2018, Burns sent Willard a letter reflecting JUUL’s “current

1 thinking on price, payment and related terms.” Among the key terms outlined was that  
2 “JUUL’s and Altria’s respective anti-trust counsel would discuss and develop a plan with  
3 respect to seeking and obtaining regulatory approval for the majority investment, including  
4 the treatment of any competitive products owned by Altria.”

5 81. By the summer of 2018, JUUL had made it clear to Altria that Altria’s  
6 acquisition of a stake in JUUL was conditioned on its withdrawal from the e-cigarette market  
7 and discontinuance of its MarkTen Elite brand, which JUUL perceived as a competitive  
8 threat.

9 82. On July 30, 2018, Pritzker sent Willard a draft term sheet for an agreement that  
10 incorporated this requirement. Specifically, the term sheet included the following key  
11 provision:

12 Promptly and in no event later than nine months following the  
13 purchase, subject to the license referenced above, [Altria] will divest  
14 (or if divestiture is not reasonably practicable, contribute at no cost  
15 to [JUUL], and if such contribution is not reasonably practicable,  
16 then cease to operate), all [Altria] assets related to the field in the  
U.S., including all electronic nicotine delivery systems and products  
it acquired, developed or has under development.

17 83. JUUL presented Altria with three options for meeting its demand for getting  
18 out of the e-cigarette business: (1) divest its e-cigarette assets; (2) contribute those assets to  
19 JUUL; or (3) cease operating those assets entirely. Continued competition from Altria’s e-  
20 cigarette products was unacceptable. JUUL’s former CFO confirmed that “what [JUUL was]  
21 more concerned with is we want a non-compete. How it’s going to be accomplished, right,  
22 needs to be determined, and, frankly, we were putting the onus on [Altria] to figure it out.”

23 84. On August 1, 2018, Pritzker, Valani, Burns, Willard, and Gifford, met at the  
24 Park Hyatt Hotel in Washington, D.C. to discuss the term sheet; no lawyers for either  
25 company were permitted to attend. It was clear to Willard that Altria’s exit from the e-cigarette  
26 market was a precondition to any deal with JUUL. Altria’s draft talking points dated August  
27 5, 2018, for Willard’s use on a call with JUUL, noted that “[i]f we establish this partnership,  
28

1 then we expect that Altria will . . . potentially exit our own vapor business,” and that “Altria  
2 has come a long way to accommodate you in this process, including . . . [[d]emonstrating  
3 flexibility with our existing vapor business, if necessary in order to form the partnership.”

4 85. In other draft talking points, also dated August 5, 2018, Altria stated more  
5 broadly that, if an agreement could not be reached, Altria was prepared to “break off these  
6 discussions, shake hands, and agree to be competitors.”

7 86. On August 9, 2018, Gifford sent over a markup of the term sheet to Pritzker,  
8 Valani, and Burns that was “to serve as the basis of discussion at our upcoming meeting.”  
9 That markup deleted a provision that would have required Altria to divest its e-cigarette  
10 business, contribute it to JUUL, or cease to operate it.

11 87. During the August 9, 2018 meeting of the JUUL Board of Directors, the Board  
12 “generally expressed disappointment at many of the terms contained in the [Altria] summary  
13 of terms.”

14 88. On August 15, 2018, Valani met with Dinny Devitre (“Devitre”), one of Altria’s  
15 Board Members, at Devitre’s office in New York. The purpose of this discussion was to go  
16 over a few key points of disagreement prior to a planned negotiating session in San Francisco  
17 between the Defendants. In connection with this discussion, JUUL delivered a blunt message  
18 to Altria: “You have retained the right under certain circumstances to compete not only with  
19 existing Mark Ten products, but also with products under development and future products.  
20 The commitment to divest Mark Ten has been stricken. This is not acceptable to us.”

21 89. During the week ending Friday, August 24, 2018, Altria’s General Counsel Murray  
22 Garnick (“Garnick”) was in San Francisco for negotiations with JUUL.

23 90. The negotiations stalled at that point, but Willard later capitulated. He stated  
24 that he would accept this precondition and then confirmed it in a letter to Pritzker, Valani, and  
25 Burns, dated October 5, 2018, assuring them that:

26 Altria would agree that it, and its current and future subsidiaries, will  
27 not compete in a manner consistent with our previous discussions in  
28 the U.S. e-vapor market for any period exclusive of the  
aforementioned transition period during which it provides support

1 services.

2 91. Burns forwarded Willard’s letter to JUUL’s Chief Legal Officer with a simple  
3 note: “Game on Again.” The concessions contained in the letter led to the restart of the  
4 negotiations. Soon after, Altria began to take key steps that would facilitate a possible wind  
5 down of its Nu Mark business.

6 92. On October 25, 2018, Altria announced that it was suspending its MarkTen Elite  
7 and Apex products, purportedly in deference to the FDA’s concerns about e-cigarettes that  
8 attracted juvenile buyers.

9 93. As a result, MarkTen Elite and Apex products were no longer available online and  
10 inventories in the hands of retailers would not be replenished. However, Altria sought to put  
11 MarkTen Elite “to bed in such a way that it can be easily revised [sic] later if the agile team  
12 wants to pursue it.”

13 94. On October 29, 2018, Garnick sent an email to Carmine Reale, Senior Assistant  
14 General Counsel at Altria, stating “We have a list of competitors for the term sheet – we  
15 developed it in SF – do you have it?”

16 95. On November 12, 2018, JUUL’s CFO Tim Danaher (“Danaher”), Pritzker,  
17 Valani, Burns, Willard, Garnick, Chief Legal Officer Jerry Masoudi (“Masoudi”), and  
18 Altria’s Kevin Crosthwaite (“Crosthwaite”) participated in a conference call to “touch  
19 base.”

20 96. During the week of November 12, 2018, members of the Altria due diligence  
21 team flew to San Francisco for a “Diligence Trip.” Diligence meetings were held throughout  
22 the week. Among the attendees were Burns, Danaher, JUUL Americas President Bob  
23 Robbins, Monsees, Masoudi; and Altria’s Crosthwaite, Anthony Reale, TJ Edlich, David  
24 Wise, Brian Blaylock, Louanna Heuhsen, Mark Bradby, Mark Cruise, Rob Buell, Jason  
25 Flora, Matt Romyak, and Nicole Bielawski.

26 97. On November 15, 2018, Garnick emailed Willard, Gifford, and Crosthwaite,  
27 stating that “if Tree goes forward, we need to consider canceling Mark Ten now (and saving  
28 money by not doing the HPHC analysis).”

1           98. A few days later, Altria and JUUL agreed to the basic Transaction terms. On  
2 December 7, 2018, Altria announced that it was exiting the e-cigarette business entirely.

3           99. On or around December 9, 2018, Willard, Garnick, Gifford, and Crosthwaite  
4 met with the “Tree principals” in San Francisco to discuss the deal.

5           100. On December 9, 2018, Garnick emailed Masoudi at JUUL to discuss the deal.  
6 In response to Masoudi’s inquiry about whether Defendants could sign a non-compete that  
7 would go into effect prior to antitrust clearance, Garnick reassured him that “[t]his is of  
8 course a nonissue, since we are not in the market anymore.” This was only technically true:

- 9           • Altria had withdrawn some newer e-cigarette products on October 25, 2018,  
10 but only after deciding that PMTA for MarkTen, its best-selling existing e-  
11 cigarette, would move forward.
- 12           • Altria announced the withdrawal of its MarkTen, and complete exit from the  
13 Closed-System E-Cigarette market, on December 7, 2018.
- 14           • On December 9, 2018, two days later, Garnick said that antitrust clearance  
15 need not delay Altria’s noncompete with JUUL because Altria was “not in the  
16 market anymore.”

17           101. Altria rendered itself “not in the market anymore,” in Garnick’s words, so as to  
18 avoid a potential regulatory show-stopper, *exactly two days* prior to Garnick’s statement.

19           102. On December 20, 2018, the Altria-JUUL agreements were finalized.

20           In publicly announcing the deal, JUUL said in a press release: Today,  
21 we have been joined by an unlikely – and seemingly counterintuitive –  
22 investor in our journey. Altria today announced a minority  
23 investment of \$12.8 billion into JUUL for a 35% ownership in the  
24 company along with services to accelerate our mission. We  
25 understand the controversy and skepticism that comes with an  
26 affiliation and partnership with the largest tobacco company in the  
27 US. We were skeptical as well. But over the course of the last several  
28 months we were convinced by actions, not words, that in fact this  
partnership could help accelerate our success switching adult  
smokers. We understand the doubt. We doubted as well. We made it  
very clear that any investment would need to meet demanding and  
specific criteria to ensure that they are committed to our mission.

103. One of these criteria was that “an investor would have to allow JUUL to remain  
in control.” The anticompetitive non-compete clause was not mentioned by JUUL.

1           104. As JUUL summarized in a set of draft talking points for the announcement of  
2 the Transaction: “\$12 billion dollars that could have been spent competing with JUUL and  
3 our mission will now be used to help JUUL and our mission.”

4           105. Article 3.1 of the Relationship Agreement between JUUL and Altria set forth  
5 the non-compete agreement. It reads, in relevant part:

6                           [Altria] shall not . . . directly or indirectly (1) own, manage, operate,  
7 control, engage in or assist others in engaging in, the e-Vapor  
8 business; (2) take actions with the purpose of preparing to engage in  
9 the e-Vapor Business, including through engaging in or sponsoring  
10 research and development activities; or (3) Beneficially Own any  
11 equity interest in any Person, other than an aggregate of not more  
12 than four and nine-tenths percent (4.9%) of the equity interests of any  
13 Person which is publicly listed on a national stock exchange, that  
14 engages directly or indirectly in the e-Vapor Business (other than (x)  
15 as a result of [Altria’s] Beneficial Ownership of Shares or (y)  
16 engagement in, or sponsorship of, research and development  
17 activities not directed toward the e-Vapor Business and not  
18 undertaken with the purpose of developing or commercializing  
19 technology or products in the e-Vapor Business) . . . .

20                           Notwithstanding the foregoing, (x) the [Altria] and its Subsidiaries  
21 and controlled Affiliates may engage in the business relating to (I)  
22 its Green Smoke, MarkTen (or Solaris, which is the non-U.S.  
23 equivalent brand of MarkTen) and MarkTen Elite brands, in each  
24 case, as such business is presently conducted, subject to Section 4.1  
25 of the Purchase Agreement, and (II) for a period of sixty (60) days  
26 commencing on the date of this Agreement, certain research and  
27 development activities pursuant to existing agreements with third  
28 parties that are in the process of being discontinued.

19           106. Article 3.2 further prohibited competition on an indirect basis with respect to  
20 any upstream affiliates of Altria.

21           107. The Relationship Agreement was later amended on January 28, 2020.

22           108. The Transaction directly removed Altria as an independent competitor in the  
23 Closed-System E-Cigarette market, and prevented Altria from introducing new e-cigarette  
24 products in the future. Additionally, the deal further impeded competition to the extent that  
25 Altria worked with JUUL to ensure that purchasers of Altria’s tobacco products switch to  
26 JUUL rather than other Closed-System E-Cigarette companies’ products, thus creating greater  
27 barriers to market entry for new entrants.

28           109. As the FTC stated in paragraph 62 of the FTC Complaint, the effect of the

1 JUUL-Altria agreement was to: (a) “eliminat[e] MarkTen products from the relevant market,  
2 thereby eliminating current and future price competition between [JUUL and Altria], in  
3 particular promotional activity to create awareness and drive sales”; (b) eliminate “current  
4 and future innovation competition” between the companies; and (c) eliminate “current and  
5 future competition between [JUUL and Altria] for shelf space at retailers through rebates and  
6 other incentives.” All of these identified harms constitute injury to Plaintiffs and members of  
7 the Classes.

8 110. Altria acquired a 35% stake in JUUL for \$12.8 billion as a result of the  
9 Transaction. Altria was entitled to one “observer” on JUUL’s Board at least until the FTC  
10 cleared the Transaction, which it has not. As the FTC explained at paragraphs 23–24 of the  
11 FTC Complaint with respect to the other agreements entered into between JUUL and Altria:

12           Though it was later amended, under the initial Services Agreement,  
13 Altria agreed to provide certain services to [JUUL], divided between  
14 Initial and Extended Services. The Initial Services included leasing  
15 convenience store shelf space to [JUUL], regulatory consulting, and  
16 distribution support; the Extended Services included direct  
17 marketing support and sales services. Under the terms of the  
18 Relationship Agreement, the Non-Compete went into effect early in  
19 2019 when Altria began to perform Extended Services. The Services  
20 Agreement had an initial six-year term, subject to early termination  
21 by mutual consent or in case of material breach, bankruptcy, or  
22 insolvency. If the Services Agreement expired, Altria could  
23 discontinue the Non-Compete, at which point it would lose its right  
24 to appoint [JUUL] board members and its pre-emptive right to  
25 maintain its 35% stake in the company, but would regain its ability to  
26 compete in the market against [JUUL].

27           The Intellectual Property License Agreement grants [JUUL] a broad,  
28 non-exclusive, irrevocable license to Altria's e-cigarette intellectual  
property portfolio.

111. The Relationship Agreement constitutes per se antitrust violations of Section 1  
and 3 of the Sherman Act, collusive conduct in violation of Section 2 of the Sherman Act,  
and violates state antitrust and consumer protection laws. JUUL and Altria are separate  
companies; neither owned the other. No joint venture was created between them. They were  
horizontal competitors who agreed that one of them would exit the market.

1           **D. JUUL’s Regulatory Problems and Altria’s Responses**

2           112. Before the Transaction was finalized, JUUL was facing severe regulatory  
3 criticism for marketing its e-cigarette products to teenagers. In April of 2018, Dr. Scott  
4 Gottlieb (“Gottlieb”) of the FDA announced a “Youth Tobacco Prevention Plan” that would  
5 close access to e-cigarettes by minors; he pointed to numerous illegal sales of JUUL Products  
6 in this respect. In September of 2018, the FDA announced that it had undertaken the largest  
7 coordinated enforcement effort in its history issuing 1,300 warning letters or fines to retailers  
8 who sold JUUL and other e-cigarettes to minors as part of an “undercover blitz” of brick-  
9 and-mortar and online retailers. The agency also served JUUL and other manufacturers with  
10 comprehensive document requests. JUUL reported providing the agency with over 50,000  
11 pages of documents.

12           113. On November 3, 2018, JUUL discontinued retail sales of its mango, cucumber,  
13 creme and fruit JUULpods to third-party retailers and limited the distribution of these  
14 products to JUUL’s own online shop.

15           114. On September 9, 2019, the FDA sent JUUL a warning letter that stated:  
16 “[b]ased on our review of the information described above, FDA has determined that JUUL  
17 adulterated its products under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)) by  
18 selling or distributing them as modified risk tobacco products without an FDA order in effect  
19 that permits such sale or distribution.” Thus, JUUL was accused of illegally selling its  
20 Closed-System E-Cigarettes. JUUL responded by first eliminating sales in the United States  
21 and its territories of its fruit-flavored JUULpods on October 17, 2019. Thereafter, JUUL  
22 eliminated sales of mint-flavored JUULpods on November 7, 2019.

23           115. On February 6, 2019, Gottlieb wrote a letter to Willard of Altria saying that  
24 Altria’s plans for JUUL “contradict[ed] the commitments you made to the FDA in a meeting”  
25 held on October 18, 2018. He demanded another meeting and said that, “[w]hen we meet,  
26 Altria should be prepared to explain how this acquisition affects the full range of  
27 representations you made to the FDA and the public regarding your plans to stop marketing  
28 e-cigarettes and to address the crisis of youth use of e-cigarettes.” Altria, JUUL, and

1 Gottlieb met in March of 2019. Gottlieb was reported as saying that the meeting was  
2 “difficult” and that “he did not come away with any evidence that public health concerns  
3 drove Altria’s decision to invest in Juul.” The concurring statement of FTC Commissioners  
4 Chopra and Slaughter in support of the filing of the FTC Complaint reached a similar  
5 conclusion:

6 [I]n October 2018, Altria publicly claimed that it was discontinuing  
7 its e-cigarette product due to concerns about youth vaping. This  
8 appears to be a pretext, as it was simultaneously looking to strike a  
9 massive deal with JUUL. With Altria’s MarkTen out of the market,  
basic economic logic suggests that JUUL could capture those sales  
and further dominate the market.

10 116. In 2019, various states and municipalities began imposing bans on JUUL  
11 and/or vaping products.

12 117. Altria reacted by flexing its muscle as a shareholder and precipitating the ouster  
13 of some of JUUL’s management. In September 2019, Burns resigned as JUUL’s CEO, and  
14 was replaced by Crosthwaite, a Senior Vice-President of Altria who served as its Chief  
15 Growth Officer, oversaw Altria’s entry into the e-cigarette market, and was Altria’s  
16 designated interim “observer” on JUUL’s Board pursuant to the terms of the Relationship  
17 Agreement.

18 118. In October 2019, Crosthwaite brought in Joe Murillo (“Murillo”) of Altria as  
19 JUUL’s new chief regulatory officer; Murillo was the head of regulations at Altria and  
20 previously ran its e-cigarette business.

21 119. Altria then sought to revise some of its December 2018 agreements with JUUL.  
22 The Services Agreement, Voting Agreement, and Relationship Agreement were amended on  
23 January 28, 2020. The FTC describes the amendments as follows in paragraphs 26–28 of its  
24 Complaint:

25 Under the Revised Voting Agreement, after the Antitrust  
26 Conversion, Altria will instead have the right to (1) appoint two (of  
27 nine) [JUUL] directors; (2) nominate one (of three) [JUUL]  
28 independent directors; (3) appoint one (of four) members of a  
Nominating Committee (who would have the right to veto  
independent director nominations); (4) appoint two (of five)  
members and the chair of a new Litigation Oversight Committee

1 (which would have responsibility for managing litigation involving  
2 both Altria and [JUUL], i.e., “Joint Litigation Matters”); and (5)  
3 appoint one (of three) members of a Litigation Subcommittee (which  
4 would have authority, by unanimous vote, to change [JUUL’s] senior  
5 outside counsel responsible for Joint Litigation Matters). The  
6 Revised Voting Agreement would further grant [JUUL’s] CEO (1) a  
7 board seat, (2) a seat on the Litigation Oversight Committee, and (3)  
8 a seat on the Litigation Subcommittee.

9 The Amended Relationship Agreement gives Altria the option to be  
10 released from the Non-Compete if [JUUL] is prohibited by federal  
11 law from selling vaping products in the United States for at least a  
12 year or if Altria's internal valuation of the carrying value of its  
13 investment falls below 10% of its initial value of \$12.8 billion.

14 The Amended Services Agreement eliminates all services except for  
15 regulatory support services. The amendment was effective at signing  
16 except as regards to Altria's provision of retail shelf space to [JUUL],  
17 which service terminates after March 31, 2020.

18 120. On January 30, 2020 Altria filed an SEC Form 8-K that further described the  
19 Amended Relationship Agreement as follows:

20 The amendment to the Relationship Agreement provides for, among  
21 other things: (i) following antitrust clearance of the JUUL  
22 Investment, creation of a Litigation Oversight Committee of the  
23 JUUL board of directors, which will include two Altria designated  
24 directors (one of whom will chair such committee), that will have  
25 oversight authority and review of litigation management for matters  
26 in which JUUL and Altria are co-defendants and have or reasonably  
27 could have a written joint defense agreement in effect between them  
28 and, subject to certain limitations, will recommend to JUUL changes  
to outside counsel and litigation strategy by majority vote, with  
disagreements by JUUL’s management being resolved by majority  
vote of JUUL’s board of directors; and (ii) Altria to have the option  
to be released from its non-compete obligation (x) in the event JUUL  
is prohibited as a matter of federal law from selling vapor-based  
electronic nicotine delivery systems in the U.S. for a continuous  
period of at least 12 months (subject to tolling of this period in certain  
circumstances) or (y) if the carrying value of Altria’s investment in  
JUUL is not more than \$1.28 billion (which represents 10% of Altria’s  
\$12.8 billion initial carrying value of the JUUL investment).

29 121. The FDA has not yet prohibited JUUL from selling vaping products in the  
30 United States. On January 2, 2020, the agency adopted a policy that prioritized its  
31 enforcement efforts with respect to e-cigarettes. It stated:

32 On Aug. 8, 2016, all e-cigarettes and other ENDS [electronic nicotine  
33 delivery systems] products became subject to the FDA’s tobacco  
34 authorities, including the premarket authorization requirements in  
35 the Federal Food, Drug, and Cosmetic Act (FD&C Act). All e-  
36 cigarettes and other ENDS products on the market at that time needed

1 to have authorization from the FDA to be legally marketed. However,  
2 as an exercise of its enforcement discretion, the agency had deferred  
3 enforcement of the premarket authorization requirements. To date,  
4 no ENDS products have been authorized by the FDA — meaning that  
5 all ENDS products currently on the market are considered illegally  
6 marketed and are subject to enforcement, at any time, in the FDA’s  
7 discretion.

8 Beginning 30 days from the publication of the notice of availability  
9 of this guidance in the Federal Register, the FDA intends to prioritize  
10 enforcement against these illegally marketed ENDS products by  
11 focusing on the following groups of products that do not have  
12 premarket authorization:

13 —Any flavored, cartridge-based ENDS product (other than a  
14 tobacco- or menthol-flavored ENDS product);

15 —All other ENDS products for which the manufacturer has failed to  
16 take (or is failing to take) adequate measures to prevent minors’  
17 access; and

18 —Any ENDS product that is targeted to minors or likely to promote  
19 use of ENDS by minors.

20 Cartridge-based ENDS products are a type of ENDS product that  
21 consists of, includes, or involves a cartridge or pod that holds liquid  
22 that is to be aerosolized when the product is used. For purposes of  
23 this policy, a cartridge or pod is any small, enclosed unit (sealed or  
24 unsealed) designed to fit within or operate as part of an ENDS  
25 product.

26 By not prioritizing enforcement against other flavored ENDS  
27 products in the same way as flavored cartridge-based ENDS  
28 products, the FDA has attempted to balance the public health  
concerns related to youth use of ENDS products with considerations  
regarding addicted adult cigarette smokers who may try to use ENDS  
products to transition away from combustible tobacco products. In  
addition to data showing that cartridge-based ENDS products are  
most commonly used among youth, important findings from the 2019  
Monitoring the Future survey focusing on youth use of JUUL  
indicate that youth preference for menthol- and tobacco- flavored e-  
cigarettes is much lower than that for mint- and fruit- flavored e-  
cigarettes. Because of the relatively low numbers of youth using both  
menthol- and tobacco-flavored, cartridge-based ENDS products,  
these products are not among the current enforcement priorities.  
However, should the FDA become aware of an increase of youth  
using any other flavored products (both cartridge-based or  
otherwise), the agency will take additional steps to address youth use  
of those products if necessary.

For all other products (cartridge-based or otherwise), including  
menthol-, tobacco-, and non-flavored ENDS products, the FDA will  
also prioritize enforcement where the manufacturer fails to take  
adequate measures to prevent youth access. For example, the FDA  
will consider whether the manufacturer has implemented adequate

1 programs to monitor retailer compliance with age-verification and  
2 sales restrictions or if it has established and enforced penalties  
3 against retailers that fail to comply with those programs. The agency  
4 also will consider whether the manufacturer uses adequate age-  
5 verification technology (or requires that retailers who sell its  
6 products use such technology) to prevent underage access to its  
7 website and to prevent underage sales through the internet. In  
8 addition, consideration will be given to whether the manufacturer  
9 limits (or requires retailers who sell its products to limit) the quantity  
10 of ENDS products that a customer may purchase within a given  
11 period of time.

12 The FDA also intends to prioritize enforcement with respect to any  
13 ENDS products that are targeted to youth or likely to promote use of  
14 ENDS by youth. Examples include: products marketed with labeling  
15 and/or advertising that resemble kid-friendly foods and drinks such  
16 as juice boxes or kid-friendly cereal; products marketed directly to  
17 minors by promoting ease of concealing the product or disguising it  
18 as another product; and products marketed with characters designed  
19 to appeal to youth.

20 Importantly, the FDA's enforcement priorities are not a "ban" on  
21 flavored or cartridge-based ENDS. The FDA has already accepted  
22 and begun review of several premarket applications for flavored  
23 ENDS products through the pathway that Congress established in the  
24 Tobacco Control Act. Manufacturers that wish to market any ENDS  
25 product – including flavored e-cigarettes or e-liquids – are required  
26 by law to submit an application to the FDA that demonstrates that  
27 the product meets the applicable standard in the law, such as whether  
28 the product is appropriate for the protection of the public health. If a  
company can demonstrate to the FDA that a specific product meets  
the applicable standard set forth by Congress, including considering  
how the marketing of the product may affect youth initiation and use,  
then the FDA could authorize that product for sale.

The guidance also states that, after May 12, 2020, the FDA intends  
to also prioritize enforcement against any ENDS products that  
continue to be sold and for which the manufacturers have not  
submitted a premarket application. For ENDS products other than  
those in the three groups described above, if premarket applications  
are submitted by that date, the FDA intends to continue to exercise  
enforcement discretion for up to one year pending FDA review of the  
applications, unless there is a negative action by the FDA on such  
application or the product is authorized to be marketed by the FDA.

122. While the FDA had the statutory power to force all e-cigarettes off the market  
as being sold illegally, it exercised its discretion not to do so and instead focused its  
enforcement authority on non-tobacco or non-menthol flavored e-cigarettes and e-cigarettes  
marketed to customers under the age of 21. JUUL ceased selling fruit-flavored and mint-  
flavored Closed-System E-Cigarettes in October and November of 2019 and had modified

1 its marketing policies so that it did not target persons under the age of 21. JUUL continues  
2 to market its Closed-System E-Cigarettes with Virginia Tobacco, Classic Tobacco, and  
3 Menthol flavoring.

4 123. The FDA required manufacturers to submit premarket applications for e-  
5 cigarettes pursuant to the Tobacco Control Act by May 12, 2020, and this requirement applies  
6 to e-cigarettes already being marketed. Tobacco-flavored or menthol-flavored e-cigarettes  
7 not being marketed to people under the age of 21 will be subject to an informal grace period  
8 of up to one year while the applications are being considered.

9 124. The FDA subsequently extended the May 12, 2020 filing deadline to  
10 September 9, 2020 in light of the COVID-19 pandemic.

11 125. JUUL filed a premarket application on July 30, 2020. So, JUUL will not yet be  
12 “prohibited by federal law from selling vaping products in the United States,” and the non-  
13 compete clause contained in the Relationship Agreement between JUUL and Altria remains  
14 in full force and effect.<sup>6</sup>

## 15 MARKET STRUCTURE

### 16 Relevant Market

17 126. The relevant product market for the purposes of this action is Closed-System  
18 E-Cigarettes.

19 127. E-cigarettes are battery-powered devices that vaporize a liquid solution  
20 containing nicotine (an “e-liquid”). There are two broad categories of e-cigarettes: closed-  
21 system and open-tank. Closed-System E-Cigarettes consist of a device housing a battery and  
22 a heating mechanism, and are used with cartridges or pods that are pre-filled with e-liquid  
23 and are non-reusable.

24 128. Examples of closed-system devices include cig-a-likes, which are similar to  
25 combustible cigarettes in size and shape (such as the MarkTen), and pod-based products,

26 \_\_\_\_\_  
27 <sup>6</sup> Likewise, Altria has not written down the value of its \$12.8 billion investment in  
28 JUUL below \$1.28 billion. It has written down the value of that investment by a total of \$11.2  
billion, in separate write-offs undertaken in October 2019, January 2020 and October 2020.

1 such as JUUL, MarkTen Elite, or Apex, which look like USB drives. Subsequent to the FDA  
2 flavor ban that went into effect in February 2020, closed-system pods and cartridges are  
3 available only in tobacco and menthol flavors.

4 129. By contrast, open-tank e-cigarettes incorporate refillable tanks that customers  
5 manually fill with e-liquid. Because customers are able to select from (and mix together) a  
6 wide assortment of e-liquids, open-tank e-cigarettes allow a more customizable experience  
7 whereby users can experiment with different flavors and nicotine strengths. In addition,  
8 unlike closed-systems, users can customize the individual components of an open-tank  
9 system, such as the battery, heating coil, and atomizer (which houses the heating coil).

10 130. Closed-System E-Cigarettes are largely sold in different channels than open-  
11 tank products, and open-tank customers tend to seek a different experience than closed-  
12 system customers, which prefer the smaller size, convenience, and ease of use of closed-  
13 systems.

14 131. The vast majority of Closed-System E-Cigarettes are sold through the multi-  
15 outlet channel, which consists primarily of convenience stores. Convenience stores offer a  
16 limited range of e-cigarette products, focusing on the highest-velocity brands.

17 132. In contrast, open-tank e-cigarettes are sold almost exclusively at dedicated  
18 vape shops, retail outlets that typically carry an extensive selection of e-liquids and parts for  
19 open-tank products and offer a high level of customer service.

20 133. Most e-cigarette users are exclusive users of one design.

21 134. Certain possible health differences between closed-systems versus open-system  
22 e-cigarettes have been reported.

23 135. Altria reported on its sales and projected sales of e-cigarettes based on whether  
24 they were closed or open systems.

25 136. Altria's marketing studies differentiated between closed-system and open-  
26 system vapors.

27 137. Defendants considered their respective JUUL and MarkTen product lines to be  
28 direct competitors with each other and with other Closed-System E-Cigarette products, and

1 set prices based on competition with each other and with other closed-system products.  
2 Defendants acknowledged that their Closed-System E-Cigarettes did not directly compete  
3 with open-tank products.

4 138. There are no reasonable substitutes for Closed-System E-Cigarettes. Closed-  
5 System E-Cigarettes appeal to purchasers because they are discreet due to their small size,  
6 and convenient due to their self-contained, ready-to-use format. Open-tank e-cigarettes are  
7 not an adequate substitute for Closed-System E-Cigarettes because they are larger, more  
8 complex, and require more manual operation by the user. Open-tank e-cigarettes generally  
9 appeal to a different customer type, one that appreciates their complexity and customizable  
10 nature.

11 139. As former FDA Commissioner Gottlieb noted in a Wall Street Journal article,  
12 “[n]ot all e-cigs are equal.” He urged the FDA to treat open and Closed-System E-Cigarettes  
13 differently based on their “different potential benefits and patterns of use....”

14 140. The relevant geographic market is no broader than the United States. Because  
15 of FDA requirements, foreign firms cannot import e-cigarettes into the United States without  
16 prior FDA approval.

### 17 **The E-Cigarette Market’s High Barriers to Entry**

18 141. Under the FDA regulatory framework, a manufacturer of a new tobacco  
19 product, including an e-cigarette, must submit a PMTA to the FDA.

20 142. An e-cigarette that was on the market prior to August 8, 2016 may remain on  
21 the market, but the manufacturer of that product must have filed a PMTA in order to continue  
22 marketing it, and must remove the product in the event the PMTA is denied. An e-cigarette  
23 that was not on the market prior to August 8, 2016 cannot be marketed until it receives PMTA  
24 approval.

25 143. Preparing a PMTA requires a significant amount of resources—time, research,  
26 and money—creating high barriers to entry in the e-cigarette market.

27 144. JUUL estimated that preparing a PMTA for an e-cigarette would require  
28 approximately two and a half years after finalizing the product design. Clinical testing alone

1 for certain products can take years.

2 145. Altria estimated “that a PMTA for an [e-cigarette] would cost approximately  
3 \$6 million per [ ] SKU” and JUUL estimated between \$5 and \$10 million per SKU. According  
4 to the FTC Complaint, Defendants’ internal documents suggest that these figures may  
5 significantly underestimate the cost of the PMTA process. Another Big Tobacco company  
6 has estimated that it would cost approximately \$26 million to complete the process.

7 146. “JUUL’s success can be partly attributed to its first mover advantage and the  
8 high barriers to entry in the US due to the FDA’s deeming regulations.” Altria is one of the  
9 few companies with the regulatory expertise, established Research & Development team,  
10 and sufficiently deep pockets to be a viable challenger to JUUL.

11 147. The FDA announced on January 2, 2020 that it had finalized a new  
12 enforcement policy which went into effect on February 6, 2020, prohibiting all non-  
13 tobacco/non-menthol flavors for cartridge-based e-cigarettes until a PMTA authorization is  
14 obtained.

15 148. Altria identified other barriers to entry in the e-cigarette market, including:  
16 product standards (including industry expertise and cost of implementation), operations  
17 (including ability to optimize costs and access to consumers), and the evolving category of  
18 reduced-risk products.

19 **Market Concentration**

20 149. At the time of Altria’s exit, the relevant market was already highly  
21 concentrated. Following Altria’s exit, it became even more concentrated.

22 150. The Department of Justice and Federal Trade Commission, consistent with the  
23 Horizontal Merger Guidelines and federal court decisions, measure market concentration  
24 using the Herfindahl-Hirschman Index (“HHI”). The HHI is calculated by totaling the  
25 squares of the market shares of each firm in the relevant market. Under the Horizontal Merger  
26 Guidelines, a merger is presumed to enhance market power when the merger increases HHI  
27 by more than 200 points in a highly concentrated market, *i.e.*, in a market where the HHI is  
28 above 2,500.

1           151. In the U.S. market for Closed-System E-Cigarettes, the Transaction resulted in  
2 a post-Transaction HHI exceeding 2,500, with an increase in HHI of more than 200. Thus,  
3 the Transaction resulted in concentration that establishes a presumption of competitive harm  
4 in the relevant market.

5 **Monopoly Power**

6           152. Throughout the Class Period, JUUL dominated the relevant market and  
7 maintained power to control prices and exclude competition in that market.

8           153. According to a Wells Fargo report on the tobacco industry based on Nielsen  
9 scanner data, JUUL had amassed a 72 percent market share by August 2018. Altria's market  
10 share at that time was 8 percent.

11           154. Altria began pulling its products off the market in October 2018. By November,  
12 Altria's market share had fallen to 4 percent, and JUUL's had grown to over 75 percent.

13           155. By December 2018, Altria had pulled its e-cigarette products off the market  
14 entirely.

15           156. The Transaction not only eliminated one of JUUL's most successful  
16 competitors, it gave JUUL access to Altria's vast resources and capital.

17           157. The Transaction was intended to, and did, increase JUUL's monopoly power  
18 in the relevant market.

19 **ANTICOMPETITIVE EFFECTS**

20           158. Defendants' conduct had the purpose, capacity, tendency, and effect of  
21 unreasonably restraining competition, and the Transaction substantially lessened competition  
22 in the U.S. market for Closed-System E-Cigarettes, including by:

- 23           • Eliminating Altria's Closed-System E-Cigarette products from the relevant  
24 market eliminating current and future price competition between Defendants,  
25 in particular promotional activity to create awareness and drive sales;
- 26           • Eliminating current and future innovation competition between Defendants;  
27 and
- 28           • Eliminating current and future competition between Defendants for shelf space

1 at retailers through rebates and other incentives.

2 159. Altria's agreement to exit the relevant market eliminated JUUL's most  
3 competitive rival. As a large, well-established, and well-funded company with longstanding  
4 relationships and significant shelf space with retailers nationwide, Altria had the resources  
5 and infrastructure to drive sales and compete aggressively.

6 160. Before the shutdown of Nu Mark, JUUL and Altria relied on price promotions  
7 to drive sales of their respective e-cigarette products. In addition, each monitored the other's  
8 pricing in setting its own strategy. Altria's decision to withdraw its Closed-System E-  
9 Cigarettes from the market brought this price competition to an end.

10 161. In addition to price competition, JUUL and Altria competed through product  
11 innovation, including device features and e-liquid formulations. For example, it was JUUL's  
12 success that prompted Altria to acquire and further develop various pod-based Closed-  
13 System E-Cigarettes (including MarkTen Elite), and to commit significant resources toward  
14 developing e-liquid formulations with nicotine salts and higher nicotine concentrations.

15 162. In the fall of 2018, Altria continued both its marketing and development efforts,  
16 and its move towards regulatory approvals. As a hedge against the risk that a deal with JUUL  
17 might fall through, Altria began implementing a "Plan B" that included the formation of  
18 "Growth Teams" that were charged with developing next generation e-cigarette products. At  
19 the time, Altria executives were willing to commit millions of dollars to these efforts, which  
20 only ended as, and in tandem with, the execution of the Transaction.

21 163. Altria leveraged its ownership of leading brands across multiple tobacco  
22 categories in order to secure substantial and favorable shelf space at retailers throughout the  
23 United States. In 2018, for example, Altria launched a major campaign to secure shelf space  
24 for its innovative tobacco products (including e-cigarettes), offering retailers product  
25 discounts, slotting fees, and fixture payments. After the Transaction, instead of competing  
26 for shelf space, Altria leased its shelf space to JUUL, effectively replacing its own MarkTen  
27 products with JUUL Closed-System E-Cigarettes.

28 164. Before committing to the Transaction, Altria intended to remain in the relevant

1 market for the long term. Altria’s documents and executive statements repeatedly evince their  
2 recognition that e-cigarettes were the future of the tobacco industry and their absolute  
3 commitment to participate in that future.

- 4 • Murillo stated: “And so we knew that the e-vapor category was a super  
5 important reduced risk opportunity for the company, and we were, you know,  
6 doing everything we could do to advance that.”
- 7 • Barrington stated to investors: “We aspire to be the U.S. leader in authorized,  
8 non-combustible, reduced-risk products.”
- 9 • Willard, in an interview with the Wall Street Journal, stated: “At a time when  
10 e-vapor is going to grow rapidly and likely cannibalize the consumers we have  
11 in our core business, if you don’t invest in the new areas you potentially put  
12 your ability to deliver that financial result at risk.”

13 165. Altria sought a short cut to market leadership by investing in its competitor.

14 166. Altria agreed to abandon its long-standing and significant efforts at current and  
15 future competition in exchange for a significant share of JUUL profits resulting from a  
16 significantly less competitive marketplace.

17 167. Altria stood to benefit from increased JUUL retail prices on two fronts: (a)  
18 through increased JUUL profits as a direct investor in JUUL; and (b) through less  
19 cannibalization of Altria’s combustible cigarette market. Altria’s internal analysis shows  
20 higher gross margins for combustible cigarettes with increasing JUUL retail prices.

21 168. Altria’s valuation of its investment in JLI is directly tied to the pricing and  
22 margins for JUUL Closed-System E-Cigarettes. Reduced competition and supracompetitive  
23 JUUL prices increase the value of Altria’s investment.

24 169. Defendants cannot demonstrate cognizable efficiencies that would be  
25 sufficient to rebut the presumption that the Transaction substantially lessened competition in  
26 the relevant market. Nor can Defendants demonstrate pro-competitive benefits of the  
27 transaction that could not have been achieved through alternative, less restrictive means.

28 170. Defendants’ unlawful conduct eliminated competition in the relevant market

1 and deprived Plaintiffs and the Classes of the benefits of free and unrestrained competition  
2 that the antitrust laws were designed to ensure.

3 171. In addition to paying supracompetitive prices, Plaintiffs and members of the  
4 Class(es) are planned or likely future purchasers of JUUL Closed-System E-Cigarettes. Each  
5 Plaintiff has purchased JUUL Closed-System E-Cigarettes during the relevant period. Some  
6 Plaintiffs and members of the Class(es) continue to use JUUL Closed-System E-Cigarettes,  
7 and while others have or may attempt to cease using Closed-System E-Cigarettes, efforts at  
8 cessation are often unsuccessful or require multiple attempts, which means that each Plaintiff  
9 and member of the Class(es) is a likely future purchaser. In the absence of injunctive relief,  
10 Plaintiffs and members of the Class(es) face likely future harm if no relief is achieved that  
11 cures the harm to competition in the market.

#### 12 **CLASS ACTION ALLEGATIONS**

13 172. Plaintiffs bring this class action on behalf of themselves and all others similarly  
14 situated under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking  
15 damages and injunctive relief on behalf of the following class (the “Nationwide Class”):

16 All persons or entities in the United States that purchased Closed-  
17 System E-Cigarettes and/or pods indirectly from JUUL, for personal  
18 use and not resale, from October 25, 2018 through and until the  
19 anticompetitive effects of Defendants’ unlawful conduct cease (the  
20 “Class Period”). The following persons and entities are excluded  
21 from the Class: Defendants and their counsel, officers, directors,  
22 management, employees, parents, subsidiaries, and affiliates; federal  
governmental entities and instrumentalities of the federal  
government, states and their subdivisions, agencies and  
instrumentalities; and the judges in this case and any members of  
their immediate families.

23 173. Plaintiffs also bring this class action on behalf of themselves and all others  
24 similarly situated under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure,  
25 seeking damages and injunctive relief on behalf of the following multistate Cartwright Act  
26 Class (“the Cartwright Act Class”):

27 All persons or entities in the States of Arizona, Arkansas, California,  
28 the District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine,

1 Massachusetts, Michigan, Minnesota, Mississippi, Missouri,  
2 Nebraska, Nevada, New Hampshire, New Mexico, New York, North  
3 Carolina, North Dakota, Oregon, Rhode Island, South Carolina,  
4 South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia,  
5 and Wisconsin (the “Indirect Purchaser States”) who purchased  
6 Closed-System E-Cigarettes and/or pods indirectly from JUUL, for  
7 personal use and not resale, from October 25, 2018 through and until  
8 the anticompetitive effects of Defendants’ unlawful conduct cease  
9 (the “Class Period”).

10 174. Additionally, Plaintiffs bring this class action on behalf of themselves and all  
11 others similarly situated under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure,  
12 seeking damages and injunctive relief on behalf of the following state classes (“State  
13 Classes”):

14 The California Class: All persons or entities in the State of California  
15 that purchased Closed-System E-Cigarettes and/or pods indirectly  
16 from JUUL, for personal use and not resale, from October 25, 2018  
17 through and until the anticompetitive effects of Defendants’ unlawful  
18 conduct cease (the “Class Period”).

19 The Florida Class: All persons or entities in the State of Florida that  
20 purchased Closed-System E-Cigarettes and/or pods indirectly from  
21 JUUL, for personal use and not resale, from October 25, 2018  
22 through and until the anticompetitive effects of Defendants’ unlawful  
23 conduct cease (the “Class Period”).

24 The Hawaii Class: All persons or entities in the State of Hawaii that  
25 purchased Closed-System E-Cigarettes and/or pods indirectly from  
26 JUUL, for personal use and not resale, from October 25, 2018  
27 through and until the anticompetitive effects of Defendants’ unlawful  
28 conduct cease (the “Class Period”).

The Massachusetts Class: All persons or entities in the State of  
Massachusetts that purchased Closed-System E-Cigarettes and/or  
pods indirectly from JUUL, for personal use and not resale, from  
October 25, 2018 through and until the anticompetitive effects of  
Defendants’ unlawful conduct cease (the “Class Period”).

The New York Class: All persons or entities in the State of New  
York that purchased Closed-System E-Cigarettes and/or pods  
indirectly from JUUL, for personal use and not resale, from October  
25, 2018 through and until the anticompetitive effects of Defendants’  
unlawful conduct cease (the “Class Period”).

The Rhode Island Class: All persons or entities in the State of Rhode

1 Island that purchased Closed-System E-Cigarettes and/or pods  
2 indirectly from JUUL, for personal use and not resale, from October  
3 25, 2018 through and until the anticompetitive effects of Defendants'  
unlawful conduct cease (the "Class Period").

4 175. The same persons and entities excluded from the Nationwide Class are  
5 excluded from the Cartwright Act Class and each State Class.

6 176. Each Class is sufficiently numerous. Plaintiffs believe that each Class is so  
7 numerous that joinder of all members is impracticable. Moreover, given the costs of complex  
8 antitrust litigation, it would be uneconomical for many plaintiffs to bring individual claims  
9 and join them together.

10 177. Plaintiffs will fairly and adequately protect and represent the interests of the  
11 Class(es). The interests of Plaintiffs are aligned with, and not antagonistic to, those of the  
12 other members of the Class(es).

13 178. Plaintiffs are represented by counsel who are experienced and competent in the  
14 prosecution of class action antitrust litigation and have particular experience with indirect  
15 antitrust litigation on behalf of purchasers.

16 179. Questions of law and fact common to members of the Class(es) predominate  
17 over questions, if any, that may affect only individual class members, because Defendants'  
18 actions are generally applicable to the Class(es). Such generally applicable questions are  
19 inherent in Defendants' wrongful conduct.

20 180. Questions of law and fact common to the Class(es) include:

21 a. whether the conduct alleged herein constitutes a violation of the federal  
22 antitrust laws;

23 b. whether the U.S. and various state markets for Closed-System E-  
24 Cigarettes constitute a relevant market;

25 c. whether Defendants possess sufficient market power in the relevant  
26 market to cause anticompetitive effects;

27 d. whether JUUL possesses monopoly power in the relevant market;

28

1 e. whether the conduct alleged herein caused anticompetitive effects in the  
2 relevant market;

3 f. whether JUUL monopolized and Defendants conspired to monopolize the  
4 U.S. and various state markets for Closed-System E-Cigarettes;

5 g. whether Defendants' conduct caused Plaintiffs and the Class(es) to pay  
6 supracompetitive prices for JUUL Closed-System E-Cigarettes and thereby suffer antitrust  
7 injury;

8 h. the appropriate injunctive relief for the Class(es); and

9 i. the appropriate measure of damages sustained by Plaintiffs and other  
10 members of the Class(es).

11 181. Class action treatment is a superior method for the fair and efficient  
12 adjudication of the controversy. Such treatment will permit a large number of similarly  
13 situated persons to prosecute their common claims in a single forum simultaneously,  
14 efficiently, and without the unnecessary duplication of evidence, effort, or expense that  
15 numerous individual actions would engender. The benefits of proceeding with the class  
16 mechanism, including providing injured persons or entities a method for obtaining redress  
17 on claims that could not practicably be pursued individually, substantially outweighs  
18 potential difficulties in management of this class action.

19 182. Plaintiffs know of no special difficulty to be encountered in litigating this  
20 action that would preclude its maintenance as a class action.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of Sections 1 and 3 of the Sherman Act, 15 U.S.C. §§ 1, 3**  
24 **(On Behalf of the Nationwide Class for Injunctive Relief)**

25 183. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
26 paragraphs as if fully set forth herein.

27 184. Defendants entered into and engaged in a continuing combination, conspiracy  
28 or agreement to unreasonably restrain trade or commerce in violation of Sections 1 and 3 of  
the Sherman Act (15 U.S.C. §§ 1, 3) by artificially reducing or eliminating competition with

1 respect to the sale, marketing and distribution of Closed-System E-Cigarettes sold to  
2 purchasers in the United States and its territories.

3 185. Defendants have combined and conspired to divide and allocate the market for  
4 Closed-System E-Cigarettes by eliminating Altria as a competitor, with the intended effect  
5 of raising, maintaining or stabilizing the prices of Closed-System E-Cigarettes sold to  
6 purchasers in the United States and its territories.

7 186. These violations of Section 1 and 3 consisted of, inter alia: (a) the unlawful  
8 Relationship Agreement between Altria and JUUL entered into on December 20, 2018 by  
9 which Altria agreed to exit the e-cigarette market in exchange for a 35% stake in JUUL; (b)  
10 the unlawful Amended Relationship Agreement entered into between Altria and JUUL on  
11 January 28, 2020 that perpetuated this withdrawal; and (c) the commitment given in writing  
12 by Altria to JUUL on October 5, 2018 to withdraw Altria's MarkTen Elite products. The  
13 purpose of all of these agreements was to raise, maintain or stabilize prices of Closed-System  
14 E-Cigarette products, eliminate e-cigarette promotional activity by Altria, and eliminate  
15 Altria's independent presence as an innovative force with respect to Closed-System E-  
16 Cigarettes.

17 187. Defendants' activities, as set forth herein, constitute a per se violation of  
18 Sections 1 and 3 of the Sherman Act.

19 188. Defendants' conduct is also unlawful under the rule-of-reason standard of  
20 antitrust liability because at all relevant times Defendants possessed significant market power  
21 in the market for Closed-System E-Cigarettes and their conduct had actual anticompetitive  
22 effects with no or insufficient offsetting pro-competitive justifications.

23 189. Defendants' anticompetitive and unlawful conduct has proximately caused  
24 injury to Plaintiffs and members of the Class by eliminating independent competition by  
25 Altria on price, promotional activity, and innovation, reducing consumer choice, and  
26 allowing JUUL to raise, maintain or stabilize the prices of Closed-System E-Cigarettes sold  
27 to purchasers in the United States and its territories.

28 190. Defendants' unlawful conduct is ongoing and has not ceased. The present and

1 future conduct by Defendants creates irreparable injury to both the Plaintiffs and the Class.  
2 Plaintiffs and the Class are therefore entitled to injunctive relief pursuant to 15 U.S.C. § 26.

3 **SECOND CLAIM FOR RELIEF**  
4 **Violation of Section 2 of the Sherman Act - Monopolization,**  
5 **15 U.S.C. § 2, Against JUUL**  
6 **(On Behalf of the Nationwide Class for Injunctive Relief)**

7 191. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
8 paragraphs as if fully set forth herein.

9 192. At all times relevant to this action, JUUL had monopoly power in the market  
10 for the sale of Closed-System E-Cigarettes in the United States. JUUL controls a dominant  
11 share of the relevant market in the United States. Moreover, there are high barriers to entry  
12 in the market for Closed-System E-Cigarettes, including both technological and regulatory  
13 barriers.

14 193. JUUL has engaged in exclusionary conduct designed to prevent competition  
15 on the merits in the relevant market for Closed-System E-Cigarettes, and thereby maintain  
16 and enhance its monopoly position in that market.

17 194. JUUL's anticompetitive conduct has decreased price competition in the  
18 relevant market, deprived purchasers of free choice, and imposed antitrust price injury on  
19 Plaintiffs and members of the Nationwide Class.

20 195. There are no legitimate business or pro-competitive justifications for  
21 Defendants' conduct and any purported legitimate business justifications are mere pretexts.  
22 Even if such a justification existed, any purported pro-competitive benefits can be achieved  
23 through alternative means less restrictive of competition.

24 196. If not enjoined, JUUL will continue to engage in anticompetitive conduct that  
25 will further injure purchasers and competition.

26 **THIRD CLAIM FOR RELIEF**  
27 **Violation of Section 2 of the Sherman Act – Attempted Monopolization,**  
28 **15 U.S.C. § 2, Against JUUL**  
**(On Behalf of the Nationwide Class for Injunctive Relief)**

197. Plaintiffs repeat and reassert each of the allegations contained in the preceding

1 paragraphs as if fully set forth herein.

2 198. JUUL has monopoly power, or at a minimum, a dangerous probability of  
3 success in acquiring monopoly power, in the Closed-System E-Cigarette market.

4 199. JUUL has willfully, knowingly, and with specific intent to do so, attempted to  
5 monopolize the Closed-System E-Cigarette market in violation of Section 2 of the Sherman  
6 Antitrust Act, 15 U.S.C. § 2.

7 200. JUUL's anticompetitive conduct alleged herein has been directed at  
8 accomplishing the unlawful objective of controlling prices and/or preventing competition in  
9 the Closed-System E-Cigarette market.

10 201. JUUL's ongoing anticompetitive conduct presents a dangerous probability that  
11 it will succeed, to the extent it has not already, in its attempt to monopolize the relevant  
12 market.

13 202. Plaintiffs and members of the Nationwide Class are each entitled to seek  
14 declaratory and injunctive relief under § 2 of the Sherman Antitrust Act, and other applicable  
15 law, to correct the anticompetitive effects caused by JUUL's unlawful conduct.

16 **FOURTH CLAIM FOR RELIEF**

17 **Violation of Section 2 of the Sherman Act – Conspiracy to Monopolize,**  
18 **15 U.S.C. § 2**

19 **(On Behalf of the Nationwide Class for Injunctive Relief)**

20 203. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
21 paragraphs as if fully set forth herein.

22 204. Defendants entered into and engaged in a continuing combination, conspiracy  
23 or agreement to maintain and enhance JUUL's monopoly in violation of Section 2 of the  
24 Sherman Act (15 U.S.C. §§ 2) by engaging in exclusionary conduct designed to prevent  
25 competition on the merits in the relevant market for Closed-System E-Cigarettes.  
26 Specifically, in exchange for a minority stake in JUUL, Altria agreed to withdraw from the  
27 market, thereby securing JUUL's ability to achieve monopoly profits by eliminating a  
28 competitor well-situated to compete on price and innovation.

205. Overt acts in furtherance of this conspiracy consisted of, inter alia: (a) the

1 unlawful Relationship Agreement between Altria and JUUL entered into on December 20,  
2 2018 by which Altria agreed to exit the e-cigarette market in exchange for a 35% stake in  
3 JUUL; (b) the unlawful Amended Relationship Agreement entered into between Altria and  
4 JUUL on January 28, 2020 that perpetuated this withdrawal; and (c) the commitment given  
5 in writing by Altria to JUUL on October 5, 2018 to withdraw Altria's MarkTen Elite  
6 products.

7 206. Defendants engaged in these acts with the specific intent of eliminating  
8 competition on the merits, and thereby reaping and sharing artificially inflated monopoly  
9 profits.

10 207. Defendants' anticompetitive and unlawful conduct has proximately caused  
11 injury to Plaintiffs and members of the Nationwide Class by eliminating independent  
12 competition by Altria on price, promotional activity, and innovation, reducing consumer  
13 choice, and allowing JUUL to raise, maintain or stabilize the prices of Closed-System E-  
14 Cigarettes sold to purchasers in the United States and its territories.

15 208. Defendants' unlawful conduct is ongoing and has not ceased. If not enjoined,  
16 Defendants will continue to engage in anticompetitive conduct that will further injure  
17 purchasers and competition.

18 **FIFTH CLAIM FOR RELIEF**  
19 **Violation of Section 7 of the Clayton Act,**  
20 **15 U.S.C. § 18**  
21 **(On Behalf of the Nationwide Class for Injunctive Relief)**

22 209. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
23 paragraphs as if fully set forth herein.

24 210. The Transaction between Altria and JUUL, in which Altria received a  
25 substantial ownership stake in JUUL and for the purposes of which Altria withdrew its  
26 existing e-cigarettes from the market and halted its innovation on future products,  
27 substantially lessened competition in the United States market for Closed-System E-  
28 Cigarettes.

211. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs

1 and members of the Nationwide Class were injured in their business or property.

2 **SIXTH CLAIM FOR RELIEF**  
3 **Violation of California’s Cartwright Act,**  
4 **Cal. Bus. & Prof. Code § 16700, *et seq.***  
5 **(On Behalf of the Nationwide Class for Damages)**

6 212. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
7 paragraphs as if fully set forth herein.

8 213. The California Business & Professions Code generally governs conduct of  
9 corporate entities. The Cartwright Act, Cal. Bus. & Prof. Code §§ 16700-16770, governs  
10 antitrust violations in California.

11 214. California policy is that “vigorous representation and protection of consumer  
12 interests are essential to the fair and efficient functioning of a free enterprise market  
13 economy,” including by fostering competition in the marketplace. Cal. Bus. & Prof. Code §  
14 301.

15 215. Under the Cartwright Act, indirect purchasers have standing to maintain an  
16 action based on the facts alleged in this Complaint. Cal. Bus. & Prof. Code § 16750(a).

17 216. A trust in California is any combination intended for various purposes,  
18 including but not limited to creating or carrying out restrictions in trade or commerce,  
19 limiting or reducing the production or increasing the price of merchandise, or preventing  
20 competition in the market for a commodity. Cal. Bus. & Prof. Code § 16720. Every trust in  
21 California is unlawful except as provided by the Code. *Id.* at § 16726.

22 217. Plaintiffs purchased JUUL Closed-System E-Cigarettes, including within the  
23 State of California, during the Class Period. But for Defendants’ conduct set forth herein, the  
24 price of JUUL Closed-System E-Cigarettes would have been lower, in an amount to be  
25 determined at trial.

26 218. Defendants enacted a combination of capital, skill or acts for the purpose of  
27 creating and carrying out restrictions in trade or commerce, in violation of Cal. Bus. & Prof.  
28 Code § 16700, *et seq.*

219. Defendants wrongfully concealed the facts alleged herein giving rise to their

1 unlawful conduct preventing Plaintiffs in the exercise of due diligence from uncovering the  
2 unlawful conduct.

3 220. Plaintiffs and members of the Nationwide Class were injured in their business  
4 or property, with respect to purchases of JUUL's Closed-System E-Cigarettes and are entitled  
5 to all forms of relief, including recovery of treble damages, interest, and injunctive relief,  
6 plus reasonable attorneys' fees and costs.

7 221. Application of California law to claims based on purchases of JUUL Closed-  
8 System E-Cigarettes that occurred outside of California would not violate the Due Process  
9 Clause of the United States Constitution. JUUL engaged in anticompetitive conduct in  
10 California, and the connection between such conduct and California is not merely "slight and  
11 casual" or *de minimis*.

12 222. JUUL's principal place of business is in San Francisco, California.

13 223. A substantial amount of JUUL's sales occurred through California retail stores.

14 224. JUUL hosted events targeted at high population areas, including California.

15 225. JUUL executives responsible for orchestrating the non-compete arrangement  
16 with Altria are based in California.

17 226. JUUL hosted numerous meetings with Altria leading up the Transaction in the  
18 State of California, including the diligence meetings that took place in November 2018  
19 surrounding the close of the Transaction.

20 227. At the diligence meetings, Defendants discussed various topics regarding the  
21 Transaction and non-compete arrangement.

22 228. After the Transaction, Defendants' key executives and staff met regularly in  
23 JUUL's San Francisco headquarters to implement the terms of the Transaction.

24 229. Defendants' conduct caused harm to all members of the Nationwide Class.

25 230. The State of California has a clear, substantial, legitimate, and compelling  
26 interest in protecting competition in California and entertaining claims by all victims of  
27 Defendants' unlawful and anticompetitive conduct that emanated from within California's  
28 borders, not only those by California residents, and not only those by persons who purchased

1 JUUL Closed-System E-Cigarettes within the State.

2 **SEVENTH CLAIM FOR RELIEF**  
3 **Violation of California’s Cartwright Act,**  
4 **Cal. Bus. & Prof. Code § 16700, *et seq.***  
5 **(On Behalf of the Cartwright Act Class for Damages)**

6 231. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
7 paragraphs as if fully set forth herein.

8 232. The California Business & Professions Code generally governs conduct of  
9 corporate entities. The Cartwright Act, Cal. Bus. & Prof. Code §§ 16700-16770, governs  
10 antitrust violations in California.

11 233. California policy is that “vigorous representation and protection of consumer  
12 interests are essential to the fair and efficient functioning of a free enterprise market  
13 economy,” including by fostering competition in the marketplace. Cal. Bus. & Prof. Code §  
14 301.

15 234. Under the Cartwright Act, indirect purchasers have standing to maintain an  
16 action based on the facts alleged in this Complaint. Cal. Bus. & Prof. Code § 16750(a).

17 235. A trust in California is any combination intended for various purposes,  
18 including but not limited to creating or carrying out restrictions in trade or commerce,  
19 limiting or reducing the production or increasing the price of merchandise, or preventing  
20 competition in the market for a commodity. Cal. Bus. & Prof. Code § 16720. Every trust in  
21 California is unlawful except as provided by the Code. *Id.* at § 16726.

22 236. Plaintiffs purchased JUUL Closed-System E-Cigarettes, including within the  
23 State of California, during the Class Period. But for Defendants’ conduct set forth herein, the  
24 price of JUUL Closed-System E-Cigarettes would have been lower, in an amount to be  
25 determined at trial.

26 237. Defendants enacted a combination of capital, skill or acts for the purpose of  
27 creating and carrying out restrictions in trade or commerce, in violation of Cal. Bus. & Prof.  
28 Code § 16700, *et seq.*

238. Defendants wrongfully concealed the facts alleged herein giving rise to their

1 unlawful conduct preventing Plaintiffs in the exercise of due diligence from uncovering the  
2 unlawful conduct.

3 239. Plaintiffs and members of the Cartwright Act Class were injured in their  
4 business or property, with respect to purchases of JUUL's Closed-System E-Cigarettes and  
5 are entitled to all forms of relief, including recovery of treble damages, interest, and  
6 injunctive relief, plus reasonable attorneys' fees and costs.

7 240. Application of California law to claims based on purchases of JUUL Closed-  
8 System E-Cigarettes that occurred outside of California would not violate the Due Process  
9 Clause of the United States Constitution. JUUL engaged in anticompetitive conduct in  
10 California, and the connection between such conduct and California is not merely "slight and  
11 casual" or *de minimis*.

12 241. JUUL's principal place of business is in San Francisco, California.

13 242. A substantial amount of JUUL's sales occurred through California retail stores.

14 243. JUUL hosted events targeted at high population areas, including California.

15 244. JUUL executives responsible for orchestrating the non-compete arrangement  
16 with Altria are based in California.

17 245. JUUL hosted numerous meetings with Altria leading up the Transaction in the  
18 State of California, including the diligence meetings that took place in November 2018  
19 surrounding the close of the Transaction.

20 246. At the diligence meetings, Defendants discussed various topics regarding the  
21 Transaction and non-compete arrangement.

22 247. After the Transaction, Defendants' key executives and staff met regularly in  
23 JUUL's San Francisco headquarters to implement the terms of the Transaction.

24 248. Defendants' conduct caused harm to all members of the Cartwright Act Class.

25 249. The State of California has a clear, substantial, legitimate, and compelling  
26 interest in protecting competition in California and entertaining claims by all victims of  
27 Defendants' unlawful and anticompetitive conduct that emanated from within California's  
28 borders, not only those by California residents, and not only those by persons who purchased

1 JUUL Closed-System E-Cigarettes within the State.

2 **EIGHTH CLAIM FOR RELIEF**  
3 **Violation of California’s Cartwright Act,**  
4 **Cal. Bus. & Prof. Code § 16700, *et seq.***  
5 **(By Plaintiffs Daraka Larimore and Adam Matschullat**  
6 **on Behalf of the California Class for Damages)**

7 250. Plaintiffs Daraka Larimore and Adam Matschullat repeat and reassert each of  
8 the allegations contained in the preceding paragraphs as if fully set forth herein.

9 251. The California Business & Professions Code generally governs conduct of  
10 corporate entities. The Cartwright Act, Cal. Bus. & Prof. Code §§ 16700-16770, governs  
11 antitrust violations in California.

12 252. California policy is that “vigorous representation and protection of consumer  
13 interests are essential to the fair and efficient functioning of a free enterprise market  
14 economy,” including by fostering competition in the marketplace. Cal. Bus. & Prof. Code §  
15 301. 143. Under the Cartwright Act, indirect purchasers have standing to maintain an action  
16 based on the facts alleged in this Complaint. Cal. Bus. & Prof. Code § 16750(a).

17 253. A trust in California is any combination intended for various purposes,  
18 including but not limited to creating or carrying out restrictions in trade or commerce,  
19 limiting or reducing the production or increasing the price of merchandise, or preventing  
20 competition in the market for a commodity. Cal. Bus. & Prof. Code § 16720. Every trust in  
21 California is unlawful except as provided by the Code. *Id.* at § 16726.

22 254. Plaintiffs Daraka Larimore and Adam Matschullat purchased JUUL Closed-  
23 System E-Cigarettes within the State of California during the Class Period. But for  
24 Defendants’ conduct set forth herein, the price of JUUL’s Closed-System E-Cigarettes would  
25 have been lower, in an amount to be determined at trial.

26 255. Defendants enacted a combination of capital, skill or acts for the purpose of  
27 creating and carrying out restrictions in trade or commerce, in violation of Cal. Bus. & Prof.  
28 Code § 16700, *et seq.*

256. Defendants wrongfully concealed the facts alleged herein giving rise to their

1 unlawful conduct preventing California plaintiffs in the exercise of due diligence from  
2 uncovering the unlawful conduct.

3 257. Plaintiffs Daraka Larimore and Adam Matschullat and members of the  
4 California Class were injured in their business or property, with respect to purchases of  
5 JUUL's Closed-System E-Cigarettes in California and are entitled to all forms of relief,  
6 including recovery of treble damages, interest, and injunctive relief, plus reasonable  
7 attorneys' fees and costs.

8 **NINTH CLAIM FOR RELIEF**

9 **Violations of California's Unfair Competition Law,**  
10 **Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL")**  
11 **(On Behalf of the Nationwide Class for Restitution)**

12 258. Plaintiffs repeat and reassert paragraphs 1 to 182 as if fully set forth herein.

13 259. Defendants have engaged in unfair competition or unfair, unconscionable,  
14 deceptive or fraudulent acts or practices in violation of the UCL by engaging in the acts and  
15 practices specified above.

16 260. During the Class Period, Defendants' conduct substantially affected California  
17 commerce and purchasers.

18 261. This claim is brought pursuant to sections 17203 and 17204 of California  
19 Business and Professions Code to obtain restitution from these Defendants for acts, as alleged  
20 herein, that violated the UCL.

21 262. Defendants' acts, omissions, misrepresentations, practices, and non-  
22 disclosures, as described above, whether or not in violation of section 16720, *et seq.*, of  
23 California Business and Professions Code, and whether or not concerted or independent acts,  
24 are otherwise unfair, unconscionable, or fraudulent. Plaintiffs and members of the  
25 Nationwide Class are entitled to full restitution and/or disgorgement of all revenues, earnings,  
26 profits, compensation, and benefits that may have been obtained by Defendants as a result of  
27 such business acts or practices.

28 263. The conduct alleged herein is continuing and there is no indication that  
Defendants will not continue such activity.

1           264. The unfair business practices of Defendants, and each of them, as described  
2 above, have caused and continue to cause Plaintiffs and the members of the Nationwide Class  
3 to pay supracompetitive and artificially inflated prices for JUUL’s Closed-System E-  
4 Cigarettes. Plaintiffs and the members of the Nationwide Class suffered injury in fact and  
5 lost money or property as a result of such unfair competition.

6           265. Plaintiffs and members of the Nationwide Class are entitled to equitable relief  
7 including restitution and/or disgorgement of all revenues, earnings, profits, compensation,  
8 and benefits that may have been obtained by Defendants as a result of such business practices,  
9 pursuant to California Business and Professions Code sections 17203 and 17204.

10           266. Plaintiffs have no adequate remedy at law with respect to this claim, which is  
11 plead in the alternative to Plaintiffs’ legal claims, and which is rooted in a different legal  
12 theory than Plaintiffs’ legal claims.

13           267. Application of California law to claims based on purchases of JUUL Closed-  
14 System E-Cigarettes that occurred outside of California would not violate the Due Process  
15 Clause of the United States Constitution. JUUL engaged in anticompetitive conduct in  
16 California, and the connection between such conduct and California is not merely “slight and  
17 casual” or *de minimis*.

18           268. JUUL’s principal place of business is in San Francisco, California.

19           269. A substantial amount of JUUL’s sales occurred through California retail stores.

20           270. JUUL hosted events targeted at high population areas, including California.

21           271. JUUL executives responsible for orchestrating the non-compete arrangement  
22 with Altria are based in California.

23           272. JUUL hosted numerous meetings with Altria leading up the Transaction in the  
24 State of California, including the diligence meetings that took place in November 2018  
25 surrounding the close of the Transaction.

26           273. At the diligence meetings, Defendants discussed various topics regarding the  
27 Transaction and non-compete arrangement.

28           274. After the Transaction, Defendants’ key executives and staff met regularly in

1 JUUL's San Francisco headquarters to implement the terms of the Transaction.

2 275. Defendants' conduct caused harm to all members of the Nationwide Class.

3 276. The State of California has a clear, substantial, legitimate, and compelling  
4 interest in protecting competition in California and entertaining claims by all victims of  
5 Defendants' unlawful and anticompetitive conduct that emanated from within California's  
6 borders, not only those by California residents, and not only those by persons who purchased  
7 JUUL Closed-System E-Cigarettes within the State.

8 **TENTH CLAIM FOR RELIEF**

9 **Violations of California's Unfair Competition Law,**  
10 **Cal. Bus. & Prof. Code § 17200, *et seq.***  
11 **(By Plaintiffs Daraka Larimore and Adam Matschullat**  
12 **on Behalf of the California Class for Restitution)**

13 277. Plaintiffs Daraka Larimore and Adam Matschullat repeat and reassert  
14 paragraphs 1 to 182 as if fully set forth herein.

15 278. Defendants have engaged in unfair competition or unfair, unconscionable,  
16 deceptive or fraudulent acts or practices in violation of the UCL by engaging in the acts and  
17 practices specified above.

18 279. During the Class Period, Defendants' conduct substantially affected California  
19 commerce and purchasers.

20 280. This claim is brought pursuant to sections 17203 and 17204 of California  
21 Business and Professions Code to obtain restitution from these Defendants for acts, as alleged  
22 herein, that violated the UCL.

23 281. Defendants' acts, omissions, misrepresentations, practices, and non-  
24 disclosures, as described above, whether or not in violation of section 16720, *et seq.*, of  
25 California Business and Professions Code, and whether or not concerted or independent acts,  
26 are otherwise unfair, unconscionable, or fraudulent.

27 282. Plaintiffs Daraka Larimore and Adam Matschullat purchased JUUL's Closed-  
28 System E-Cigarettes within the State of California during the Class Period. But for  
Defendants' conduct set forth herein, the price of JUUL's Closed-System E-Cigarettes would

1 have been lower, in an amount to be determined at trial.

2 283. Plaintiffs Daraka Larimore and Adam Matschullat and members of the  
3 California Class are entitled to full restitution and/or disgorgement of all revenues, earnings,  
4 profits, compensation, and benefits that may have been obtained by Defendants as a result of  
5 such business acts or practices.

6 284. The conduct alleged herein is continuing and there is no indication that  
7 Defendants will not continue such activity.

8 285. The unfair business practices of Defendants, and each of them, as described  
9 above, have caused and continue to cause Plaintiffs and the members of the California Class  
10 to pay supracompetitive and artificially inflated prices for JUUL's Closed-System E-  
11 Cigarettes. Plaintiffs and the members of the California Class suffered injury in fact and lost  
12 money or property as a result of such unfair competition.

13 286. Plaintiffs Daraka Larimore and Adam Matschullat and the members of the  
14 California Class are entitled to equitable relief including restitution and/or disgorgement of  
15 all revenues, earnings, profits, compensation, and benefits that may have been obtained by  
16 Defendants as a result of such business practices, pursuant to California Business and  
17 Professions Code sections 17203 and 17204.

18 287. Plaintiffs have no adequate remedy at law with respect to this claim, which is  
19 plead in the alternative to Plaintiffs' legal claims, and which is rooted in a different legal  
20 theory than Plaintiffs' legal claims.

21 **ELEVENTH CLAIM FOR RELIEF**

22 **Violation of the Florida Deceptive and Unfair Trade Practices Act,**

23 **Fla. Stat. § 501.201(2), *et seq.***

24 **(By Plaintiffs Allison Harrod, Keith May and Ivan Velez, Jr.**

25 **On Behalf of the Florida Class for Damages)**

26 288. Plaintiffs Allison Harrod, Keith May and Ivan Velez, Jr., for themselves and  
27 on behalf of the Florida Class, repeat and reassert each of the allegations contained in the  
28 preceding paragraphs as if fully set forth herein.

29 289. The Florida Deceptive & Unfair Trade Practices Act, Florida Stat. §§ 501.201,

1 et seq. (the “FDUTPA”), generally prohibits “unfair methods of competition, unconscionable  
2 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or  
3 commerce,” including practices in restraint of trade. Florida Stat. § 501.204(1).

4 290. The primary policy of the FDUTPA is “[t]o protect the consuming public and  
5 legitimate business enterprises from those who engage in unfair methods of competition, or  
6 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or  
7 commerce.” Florida Stat. § 501.202(2).

8 291. A claim for damages under the FDUTPA has three elements: (1) a prohibited  
9 practice; (2) causation; and (3) actual damages.

10 292. Under Florida law, indirect purchasers have standing to maintain an action  
11 under the FDUTPA based on the facts alleged in this Complaint. Fla. Stat. § 501.211(a)  
12 (“anyone aggrieved by a violation of this [statute] may bring an action...”).

13 293. Plaintiffs Allison Harrod, Keith May and Ivan Velez, Jr. purchased JUUL’s  
14 Closed-System E-Cigarettes within the State of Florida during the Class Period. But for  
15 Defendants’ conduct set forth herein, the price of JUUL’s Closed-System E-Cigarettes would  
16 have been lower, in an amount to be determined at trial.

17 294. Defendants entered into a contract, combination or conspiracy between two or  
18 more persons in restraint of, or to monopolize, trade or commerce in the Closed-System E-  
19 Cigarette market, a substantial part of which occurred within Florida.

20 295. Defendants established, maintained or used a monopoly, or attempted to  
21 establish a monopoly, of trade or commerce in the market for Closed-System E-Cigarettes,  
22 for the purpose of excluding competition or controlling, fixing or maintaining prices in  
23 Florida at a level higher than the competitive market level, beginning at least as early as  
24 October 25, 2018 and continuing through the date of this filing.

25 296. Accordingly, Defendants’ conduct was an unfair method of competition, and  
26 an unfair or deceptive act or practice within the conduct of commerce within the State of  
27 Florida.

28 297. Defendants’ unlawful conduct substantially affected Florida’s trade and

1 commerce.

2 298. As a direct and proximate cause of Defendants’ unlawful conduct, Plaintiffs  
3 and the members of the Florida Class have been injured in their business or property by virtue  
4 of overcharges for JUUL’s Closed-System E-Cigarettes and are threatened with further  
5 injury.

6 299. By reason of the foregoing, Plaintiffs Allison Harrod, Keith May and Ivan  
7 Velez, Jr. and the members of the Florida Class are entitled to seek all forms of relief,  
8 including injunctive relief pursuant to Florida Stat. §501.208 and declaratory judgment,  
9 actual damages, reasonable attorneys’ fees and costs pursuant to Florida Stat. § 501.211.

10 **TWELFTH CLAIM FOR RELIEF**  
11 **Violation of the Hawaii Antitrust Statute,**  
12 **Haw. Rev. Stat. § 480-1, *et seq.***  
13 **(By Plaintiff Michael Imai On Behalf**  
14 **of the Hawaii Class for Damages)**

15 300. Plaintiff repeats and reasserts each of the allegations contained in the preceding  
16 paragraphs as if fully set forth herein.

17 301. The Hawaii Antitrust Act prohibits “every contract, combination in the form of  
18 trust or otherwise, or conspiracy, in restraint of trade or commerce in the State,” including  
19 acts to (i) “fix, control, or maintain, the price of any commodity;” (ii) “limit, control, or  
20 discontinue, the production, manufacture, or sale of any commodity for the purpose or with  
21 the result of fixing, controlling or maintaining its price”; and (iii) “fix, control, or maintain,  
22 any standard of quality of any commodity for the purpose or with the result of fixing,  
23 controlling, or maintaining its price.” Haw. Rev. Stat. § 480-4(a) and 4(b).

24 302. Plaintiff Michael Imai purchased JUUL Closed-System E-Cigarettes within the  
25 State of Hawaii during the Class Period. But for Defendants’ conduct set forth herein, the  
26 price of JUUL Closed-System E-Cigarettes would have been lower, in an amount to be  
27 determined at trial.

28 303. Defendants contracted, combined, or conspired to restrain the trade or  
commerce in the market for JUUL Closed-System E-Cigarettes and their conduct

1 substantially affected Hawaii commerce, in violation of Haw. Rev. Stat. §§ 480-1, *et seq.*

2 304. Plaintiff and members of the Hawaii Class were injured with respect to  
3 purchases of JUUL Closed-System E-Cigarettes as a result of paying supracompetitive prices  
4 caused by Defendants' conduct.

5 305. Under Hawaii law, an indirect purchaser may bring an action under the Hawaii  
6 Antitrust Act based on the facts alleged in this Complaint.

7 306. Defendants wrongfully concealed the facts alleged herein giving rise to their  
8 unlawful conduct preventing Hawaii plaintiffs in the exercise of due diligence from  
9 uncovering the unlawful conduct

10 307. By reason of the foregoing, Plaintiff Michael Imai and members of the Hawaii  
11 Class are entitled to all forms of relief available under Haw. Rev. Stat. §§ 480, *et seq.*,  
12 including treble damages, costs and disbursements, reasonable attorneys' fees, and injunctive  
13 relief necessary to prevent and restrain violations thereof.

14 **THIRTEENTH CLAIM FOR RELIEF**  
15 **Violation of Hawaii Unfair and Deceptive Trade Practices Act**  
16 **Haw. Rev. Stat. § 480-2.**  
17 **(By Plaintiff Michael Imai On Behalf**  
18 **of the Hawaii Class for Damages)**

19 308. Plaintiff repeats and reasserts each of the allegations contained in the preceding  
20 paragraphs as if fully set forth herein.

21 309. Plaintiff Michael Imai and members of the Hawaii Class purchased JUUL  
22 Closed-System E-Cigarettes within the State of Hawaii during the Class Period for personal,  
23 family, or household purposes.

24 310. By reason of the conduct alleged herein, Defendants have violated in violation  
25 of Haw. Rev. Stat. § 480-2.

26 311. Defendants have engaged in "unfair competition or unfair or deceptive acts or  
27 practices" within the meaning of Haw. Rev. Stat. § 480-2, with the intent to injure  
28 competitors and consumers through supracompetitive profits.

312. During the Class Period, Defendants' unlawful conduct substantially affected  
Hawaii commerce and consumers.



1 establish a monopoly, of trade or commerce in the market for Closed-System E-Cigarettes, a  
2 substantial part of which occurred within Massachusetts, for the purpose of excluding  
3 competition or controlling, fixing, or maintaining prices in the Closed-System E-Cigarette  
4 market.

5 323. Defendants' conduct was an unfair method of competition, and an unfair or  
6 deceptive act or practice within the conduct of commerce within the State of Massachusetts

7 324. Defendants' unlawful conduct substantially affected Massachusetts' trade and  
8 commerce.

9 325. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiff  
10 Kerry Walsh and the members of the Massachusetts Class have been injured in their business  
11 or property and are threatened with further injury.

12 326. By reason of the foregoing, the Plaintiff Kerry Walsh and the Massachusetts  
13 Class are entitled to seek all forms of relief, including up to treble damages and reasonable  
14 attorney's fees and costs under Mass. Gen. Laws ch. 93A § 9.

15 **FIFTEENTH CLAIM FOR RELIEF**  
16 **Violation of Section 340 of New York General Business Law**  
17 **(By Plaintiffs Dylan Pang and Ivan Velez, Jr. On Behalf**  
18 **of the New York Class for Damages)**

19 327. Plaintiffs repeat and reassert each of the allegations contained in the preceding  
20 paragraphs as if fully set forth herein.

21 328. Article 22 of New York General Business Law generally prohibits monopolies  
22 and contracts or agreements in restraint of trade. The prohibitions were established with the  
23 goal of encouraging competition or the free exercise of any activity in the conduct of  
24 business, trade, or commerce in New York. N.Y. Gen. Bus. Law § 340(1).

25 329. Plaintiffs Dylan Pang and Ivan Velez, Jr. purchased JUUL's Closed-System E-  
26 Cigarettes within the State of New York during the Class Period. But for Defendants' conduct  
27 set forth herein, the price of JUUL's Closed-System E-Cigarettes would have been lower, in  
28 an amount to be determined at trial.

330. Defendants entered into a contract, combination or conspiracy between two or

1 more persons in restraint of, or to monopolize, trade or commerce in the Closed-System E-  
2 Cigarette market, a substantial part of which occurred within New York.

3 331. Defendants established, maintained or used a monopoly, or attempted to  
4 establish a monopoly, of trade or commerce in the market for Closed-System E-Cigarettes,  
5 for the purpose of excluding competition or controlling, fixing or maintaining prices in New  
6 York at a level higher than the competitive market level, beginning at least as early as October  
7 25, 2018 and continuing through the date of this filing.

8 332. Accordingly, Defendants' conduct was an unfair method of competition, and  
9 an unfair or deceptive act or practice within the conduct of commerce within the State of  
10 New York.

11 333. Defendants' unlawful conduct substantially affected New York trade and  
12 commerce.

13 334. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiffs  
14 and the members of the New York Class have been injured in their business or property by  
15 virtue of overcharges for JUUL's Closed-System E-Cigarettes and are threatened with further  
16 injury.

17 335. By reason of the foregoing, Plaintiffs Dylan Pang, Ivan Velez, Jr. and the  
18 members of the New York Class are entitled to seek all forms of relief, including actual  
19 damages, treble damages, costs not exceeding \$10,000 and reasonable attorneys' fees.

20 **SIXTEENTH CLAIM FOR RELIEF**  
21 **Violation of the Rhode Island Antitrust Act**  
22 **R.I. Gen. Laws § 6-36-1, *et seq.***  
23 **(By Plaintiff Kurt Doughty On Behalf**  
24 **of the Rhode Island Class for Damages)**

25 336. Plaintiff repeats and reasserts each of the allegations contained in the preceding  
26 paragraphs as if fully set forth herein.

27 337. By reason of the conduct alleged herein, Defendants have entered into an  
28 unlawful contract, combination, or conspiracy in restraint of, or to monopolize, trade or  
commerce in violation of R.I. Gen. Law § 6-36-4.

338. Defendants established, maintained, used a monopoly, conspired to use a

1 monopoly, or attempted to establish a monopoly, of trade or commerce in the e-cigarette  
2 market, a substantial part of which occurred within Rhode Island, for the purpose of  
3 controlling, fixing, or maintaining prices in the Closed-System E-Cigarette market in  
4 violation of R.I. Gen. Law § 6-36-5.

5 339. Plaintiff Kurt Doughty purchased JUUL Closed-System E-Cigarettes within the  
6 State of Rhode Island during the Class Period. But for Defendants' conduct set forth herein,  
7 the price of JUUL Closed-System E-Cigarettes would have been lower, in an amount to be  
8 determined at trial.

9 340. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiff  
10 Kurt Doughty and the members of the Rhode Island Class have been injured in their business  
11 or property and are threatened with further injury.

12 341. By reason of the foregoing, Plaintiff Kurt Doughty and the members of the  
13 Rhode Island Class seek all relief available under R.I. Gen Laws § 6-36-1, *et seq.*

14 **SEVENTEENTH CLAIM FOR RELIEF**

15 **Violation of the Rhode Island Unfair Trade Practice and  
16 Consumer Protection Act, R.I. Gen. Laws § 6-13-1.1-1, *et seq.***

17 **(By Plaintiff Kurt Doughty On Behalf  
18 of the Rhode Island Class for Damages)**

19 342. Plaintiff repeats and reasserts each of the allegations contained in the preceding  
20 paragraphs as if fully set forth herein.

21 343. Defendants have engaged in unfair competition or unfair, unconscionable or  
22 deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice and  
23 Consumer Protection Act, R.I. Gen. Laws §§ 6-13.1-1 *et seq.*

24 344. Plaintiff Kurt Doughty and members of the Rhode Island Class purchased  
25 JUUL Closed-System E-Cigarettes within the State of Rhode Island during the Class Period  
26 for personal, family or household purposes.

27 345. Defendants agreed to and did in fact act in restraint of trade or commerce in a  
28 market that includes Rhode Island by affecting, fixing, controlling and/or maintaining at  
artificial and non-competitive levels the prices at which JUUL's Closed-System E-Cigarettes

1 were sold, distributed or obtained in Rhode Island.

2 346. Defendants deliberately failed to disclose material facts to Plaintiff and  
3 members of the Rhode Island Class concerning Defendants' unlawful activities and  
4 artificially inflated prices for JUUL's Closed-System E-Cigarettes. Defendants owed a duty  
5 to disclose such facts, and breached that duty.

6 347. Defendants' unlawful conduct had the following effects: (1) Closed-System E-  
7 Cigarette price competition was restrained, suppressed and eliminated throughout Rhode  
8 Island; (2) Closed-System E-Cigarette prices were raised, fixed, maintained and stabilized at  
9 artificially high levels throughout Rhode Island; (3) Plaintiff and members of the Rhode  
10 Island Class were deprived of free and open competition; and (4) Plaintiff and members of  
11 the Rhode Island Class paid supracompetitive, artificially inflated prices for JUUL's Closed-  
12 System E-Cigarettes.

13 348. As a direct and proximate result of Defendants' conduct, Plaintiff Kurt Doughty  
14 and members of the Rhode Island Class suffered an ascertainable loss of money or property.  
15 That loss was caused by the Defendants' willful and deceptive conduct as described herein.

16 349. Defendants' deception, including their affirmative misrepresentations and  
17 omissions concerning the price of JUUL's Closed-System E-Cigarettes, misled all purchasers  
18 acting reasonably under the circumstances to believe that they were purchasing e-cigarettes  
19 at prices set by a free and fair market. Defendants' affirmative misrepresentations and  
20 omissions constitute information important to Plaintiff and members of the Rhode Island  
21 Class as they related to the cost of JUUL's Closed-System E-Cigarettes.

22 350. Defendants have engaged in unfair competition or unfair or deceptive acts or  
23 practices in violation of Rhode Island Gen. Laws § 6-13.1-1 *et seq.*, and, accordingly,  
24 Plaintiff Kurt Doughty and members of the Rhode Island Class seek all relief available under  
25 that statute.

26 **LACK OF ADEQUATE REMEDIES AT LAW**

27 351. To the extent that equitable relief is sought under any of the above claims,  
28 Plaintiffs plead such claims in the alternative to any legal claims and further plead that their

1 legal claims do not provide adequate remedies at law. Plaintiffs' legal claims under the  
2 antitrust laws are not adequate to provide relief for Plaintiffs' equitable claims alleging only  
3 unfair conduct. The legal claims thus do not inherently provide the same relief for the same  
4 harms as the equitable claims.

5 352. Until discovery and other pretrial matters are complete, the extent to which the  
6 legal claims may provide the same relief for the same harms as could be available under  
7 claims providing equitable relief is unknown. Restitution may, for example, be measured  
8 differently than legal damages and provide for a different amount of relief. The difference  
9 between the value of restitutionary and legal relief will therefore be unknown until, at the  
10 earliest, the completion of expert reports and discovery.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs demand judgment as follows:

13 (A) Declaring this action to be a class action pursuant to Fed. R. Civ. P. 23, and  
14 designating Plaintiffs as class representatives and Plaintiffs' counsel as Class Counsel;

15 (B) Awarding Plaintiffs and the Class(es) damages and/or restitution in an amount  
16 to be determined at trial, plus interest in accordance with law;

17 (C) Entering judgment against Defendants and in favor of Plaintiffs and the  
18 Class(es);

19 (D) Declaring the agreements alleged herein invalid and unenforceable;

20 (E) Granting injunctive relief that restores Defendants' incentives to compete in  
21 the relevant market, including, as appropriate, divestiture of Altria's equity stake in JUUL,  
22 rescission of Altria's purchase of that stake, and/or any other relief;

23 (F) Awarding Plaintiffs and the Class(es) their costs of suit, including reasonable  
24 attorneys' fees, as provided by law; and

25 (G) Awarding such further and additional relief as the case may require and the  
26 Court may deem just and proper under the circumstances.

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**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

Dated: September 20, 2021

/s/ Robin F. Zwerling  
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