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*[Submitting Counsel on Signature Page]*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT, 26(F)  
REPORTS, AND PROPOSED AGENDA**

\_\_\_\_\_  
This Document Relates to:  
ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d) and the Court’s May 15, 2020 Minute Order (Dkt. No. 551), counsel for Defendants JUUL Labs, Inc. (“JLI”), Altria,<sup>1</sup> Director Defendants,<sup>2</sup> E-Liquid Defendants,<sup>3</sup> and Retailer and Distributor Defendants<sup>4</sup> (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as the “Parties”)

\_\_\_\_\_  
<sup>1</sup> “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), *see* Dkt. Nos. 387, 388.

<sup>2</sup> “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

<sup>3</sup> “E-Liquid Defendants” refers to: Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

<sup>4</sup> “Retailer and Distributor Defendants” refers to: McLane Company, Inc., Eby-Brown Company, LLC, Core-Mark Holding Company, Inc., Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

1 respectfully provide this Joint Case Management Statement in advance of the Further Case  
2 Management Conference scheduled for June 19, 2020.

3 **I. PARTICIPANT INFORMATION**

4 The conference will proceed via Zoom and the parties will not appear in person.<sup>5</sup> Anyone  
5 who wishes to attend the conference must log in using the information provided by the Court on  
6 the public docket.

7 **II. ISSUES TO BE DISCUSSED BELOW AND PROPOSED AGENDA**

- 8 1. Status of Case Filings
- 9 2. Case Management Matters
- 10 3. Discovery Status
- 11 4. Rule 26(f) Reports
- 12 5. ADR Status

13 **III. STATUS OF CASE FILINGS**

14 To date, 667 cases are pending in this MDL, naming 83 defendants. A list of these  
15 defendants is attached as **Exhibit A**. To date, 539 personal injury cases and 92 government entity  
16 cases (including 65 school districts, 19 counties, one city, and seven tribes) have been filed in this  
17 MDL.

18 There are 158 complaints pending in JCCP 5052, which is assigned to Judge Ann I. Jones  
19 of the Los Angeles Superior Court as the Coordination Trial Judge. There are 12 defendants  
20 named in those cases.

21 The Parties are also aware of eleven cases filed by state attorneys general across the  
22 country, specifically: California, Illinois, New York, North Carolina, Mississippi, Minnesota,  
23 Washington D.C., Arizona, Pennsylvania, New Mexico, and Massachusetts. Plaintiffs' Liaison  
24 Counsel are continuing their outreach to various State Attorneys General to discuss cooperation  
25 with this MDL.

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27 <sup>5</sup> Both Michael O'Donnell and Christopher Esbrook have submitted applications to the Court to  
28 be liaison counsel on behalf of the Retailer and Distributor Defendants and therefore respectfully  
request the ability to be active Zoom participants at Friday's conference.

1       **IV. CASE MANAGEMENT MATTERS**

2           **A. Appointment of Defendants' Liaison Counsel**

3           The E-Liquid Defendants have advised that they do not believe the formal appointment of  
4 liaison counsel to communicate their position or negotiate issues in this proceeding is necessary.  
5 They declined the offer to have Retail and Distributor Defendants' liaison counsel (to be  
6 appointed) serve as liaison on their behalf.

7           *Plaintiffs' position.* Plaintiffs have concerns that the E-Liquid Defendants' position will  
8 hamper efficient negotiation and cooperation between the parties. Given the size of this MDL  
9 proceeding, the role of liaison counsel has and will be critical to streamlining communication. By  
10 opting-out of this convention, the four E-Liquid Defendants represented by two different law  
11 firms with several different lawyers handling communications with Plaintiffs may inject needless  
12 delay to an otherwise high-functioning process. To promote efficiency, Plaintiffs request that the  
13 Court appoint a liaison for the E-Liquid Defendants, and in addition, the Court should appoint an  
14 overall defense liaison to handle overall coordination and communication on behalf of the various  
15 Defendants' groups so that, for example, Plaintiffs receive one consolidated set of edits to a joint  
16 statement, rather than fielding multiple competing versions.

17           *JLI's position.* JLI appreciates Plaintiffs' concerns regarding streamlining  
18 communications and will work to facilitate efficiencies and cooperation among the co-  
19 Defendants. Counsel for JLI does not represent the E-Liquid Defendants or other Defendants and  
20 believes it would be improper for JLI to serve as liaison counsel on their behalf, particularly  
21 where at least some are against such liaison counsel. Plaintiffs have elected to include the E-  
22 Liquid Defendants and other Defendants in their Complaints, and JLI does not have the authority  
23 to and should not shoulder the burden of speaking on their behalf. Counsel for JLI, however, is  
24 willing to work with Plaintiffs and Defendants to provide consolidated edits to Joint Case  
25 Management Statements to the extent feasible given time constraints and with other Defendants'  
26 consent.

27           *E-Liquid Defendants' Position.* There is no need for the E-Liquid Defendants to be  
28 represented by liaison counsel. The four E-Liquid Defendants are represented by only two sets of

1 counsel, and stand in a different position in the litigation from JLI and the Retailer/Distributor  
2 Defendants. Plaintiffs have stated no reason why having only two additional counsel will hamper  
3 efficient negotiation and cooperation among the parties, or would inject needless delay. In  
4 addition, counsel for the E-Liquid Defendants have conferred and confirmed there should be no  
5 issues collaborating to ensure the timely coordination with Plaintiffs and other defense counsel.

6 *The Retailer and Distributor Defendants' Position.* The Retailer and Distributor  
7 Defendants' position is that they have unique issues of fact and law vis-à-vis the E-Liquid  
8 Defendants such that it would not be efficient or practicable for liaison counsel to represent the  
9 Retailer and Distributor Defendants as well as the E-Liquid Defendants.

10 **B. Appointment of Common Benefit Special Master**

11 The relevant parties have conferred and reached agreement on the proposed terms of  
12 appointing the Hon. (Ret.) Gail A. Andler as the Common Benefit Special Master. Per the Court's  
13 May 15, 2020 minute order, Plaintiffs submit a proposed order along with a letter from Judge  
14 Andler and affidavit pursuant to Rule 53(b)(3)(A), attached as **Exhibit B**, to facilitate that  
15 appointment under Rule 53.

16 **C. Proposed Page Limits for Oppositions to Certain Pending Motions to Dismiss**

17 JLI, Altria, and Plaintiffs have conferred regarding the limits and format of Plaintiffs'  
18 oppositions to the pending motions to dismiss Plaintiffs' RICO and California Subclass claims.  
19 Plaintiffs, JLI, and Altria agree to a proposed format of two consolidated opposition briefs: one  
20 addressing all challenges to Plaintiffs' RICO claims limited to fifty pages, and the other  
21 addressing all challenges to the California Subclass claims limited to forty pages. The Parties  
22 have also conferred regarding JLI's and Altria's forthcoming motions to dismiss the seven  
23 Government Entity Complaints, and agree, subject to the Court's approval, that JLI may file one  
24 consolidated brief limited to 35 pages, and that Altria may file one consolidated brief limited to  
25 25 pages. The Parties also agree, subject to the Court's approval, that Plaintiffs shall have an  
26 equal number of pages to oppose the motions.

27  
28

1           **D.     Re-Filing of Amended Complaints and Motions to Dismiss**

2           Per the Court’s June 12, 2020 (Dkt. No. 663) order on motions to seal, Plaintiffs intend to  
3 file an unredacted Amended Consolidated Class Action Complaint on June 18, 2020. Altria has  
4 raised certain objections to the amended complaint, and Plaintiffs and Altria have agreed to meet  
5 and confer to attempt to resolve those objections.

6           Plaintiffs have formatted the Amended Consolidated Class Action Complaint so the  
7 paragraph numbers remain consistent with the original class complaint to allow for uniform  
8 citations across the motion to dismiss briefing. Plaintiffs intend to concurrently file the  
9 unredacted operative government entity complaints in each underlying case and the Amended  
10 Consolidated Master Complaint (Personal Injury), redacting only the paragraphs identified in the  
11 Court’s June 12 Order.

12           **E.     Coordination with Antitrust Actions**

13           Per the Court’s May 26th Order that the Antitrust Actions will not at present be  
14 considered member cases or “part” of this MDL, Plaintiffs have conferred with counsel in the  
15 Antitrust Actions regarding how to efficiently coordinate discovery and other aspects of the  
16 actions. *See* Dkt. Nos. 581, 583, n. 3. Plaintiffs will be prepared to address this topic at the June  
17 19th Case Management Conference.

18           **F.     Retailer/Distributor and E-Liquid Defendants’ Motions to Dismiss**

19           In the proposed motion to dismiss briefing schedule adopted by the Court on May 26th,  
20 the Retailer and Distributor Defendants indicated an intention to file motions to dismiss certain  
21 pleadings directly filed in this MDL proceeding on June 29, 2020. *See* Dkt. No. 583 at 3  
22 (“Retailer and Distributor Defendants’ Motions to Dismiss regarding directly filed cases”). The  
23 Retailer and Distributor Defendants have since indicated that they do not intend to bring these  
24 direct filing motions at this time. With respect to such directly filed cases, Plaintiffs agree that by  
25 not filing motions to dismiss directly filed cases at this time, the Retailer and Distributor  
26 Defendants (and E-Liquid Defendants) are not waiving their rights to challenge the Designated  
27 Forum any plaintiff identified as the court in which the plaintiff would have filed in the absence  
28 of direct filing. In accordance with the Joint Case Management Statement previously filed on

1 May 13, 2020 (Doc. 551), the Retailer and Distributor Defendants and E-Liquid Defendants have  
2 reserved their right to move to dismiss individual short-form complaints (or individual causes of  
3 action across all short-form complaints) at a later date to be set by the Court.

4 At least some Retailer and Distributor Defendants and E-Liquid Defendants intend to file  
5 their own motions to dismiss or stay, or joinders to the motions to dismiss or stay previously  
6 filed, on preemption or primary jurisdiction grounds in accordance with the previously briefing  
7 schedule entered by this Court.

8 In order to minimize the number of motions to dismiss before the Court, Plaintiffs and the  
9 Retailer and Distributor Defendants and E-Liquid Defendants have also been working on a  
10 stipulation to clarify whether certain claims in the Master Complaint were pleaded as to the  
11 Retailer and Distributor Defendants. The Retailer and Distributor Defendants also plan on  
12 continuing to meet and confer with Plaintiffs regarding having Plaintiffs clarify which remaining  
13 claims and allegations are alleged against each particular Retailer and Distributor Defendant. The  
14 E-Liquid Defendants plan to engage in similar discussions with Plaintiffs regarding a proposed  
15 stipulation and clarification over which claims are alleged against them.

16 Finally, Plaintiffs and the Retailer and Distributor Defendants are in the process of  
17 conferring regarding certain potential changes to the Short Form Complaint the Retailer and  
18 Distributor Defendants proposed. Plaintiffs and the Retailer and Distributor Defendants will  
19 submit any agreements or disputes before the July case management conference at the latest. The  
20 E-Liquid Defendants plan to engage in similar discussions with Plaintiffs concerning potential  
21 changes to the Short Form Complaints.

#### 22 **G. Bellwether Selection Procedure**

23 JLI, Altria, and Plaintiffs continue to confer regarding a procedure for selection of  
24 bellwether personal injury plaintiffs. JLI, Altria, and Plaintiffs will also involve the Retailer and  
25 Distributor Defendants, the Director Defendants, and the E-Liquid Defendants in this process. At  
26 the July Case Management Conference, the Parties shall submit joint or competing proposals.

#### 27 **H. Walgreens Boots Alliance, Inc. and Chevron Corporation**

28 On June 9, 2020, Plaintiffs were informed that Walgreens Boots Alliance, Inc. was

1 improperly named and that Walgreen Co. is the proper entity to name in each complaint where  
2 Walgreens Boots Alliance, Inc. was named. Similarly, on June 16, 2020, Plaintiffs were informed  
3 that Chevron Corporation was also improperly named and that Chevron U.S.A. Inc. (“Chevron  
4 U.S.A.”) is the correct entity. Plaintiffs requested documents or affidavits to support this claim  
5 and continue to confer with counsel for Walgreen Co. and Chevron U.S.A. on the issue.  
6 Defendants agreed that any claim already filed against Walgreens Boots Alliance, Inc. and  
7 Chevron Corporation shall apply to Walgreen Co. and Chevron U.S.A., respectively,  
8 retroactively.

9 **I. Deadline for Amending Non-Operative Government Entity Complaints**

10 The Court’s March 20, 2020 minute order set a July 1, 2020 deadline for amending all  
11 non-bellwether government entity complaints. Subsequent to that order, Plaintiffs, JLI, and Altria  
12 have identified various operative government entity complaints for purposes of motion practice,  
13 Plaintiffs have amended those complaints, and Plaintiffs, JLI, and Altria are now in the process of  
14 briefing motions to dismiss directed at those operative complaints. Plaintiffs also believe that it  
15 would be most efficient to adopt a “short-form amendment process,” similar to the one used in  
16 Opiate MDL, and would like additional time to meet and confer with the relevant defendants on  
17 this approach before amending. In light of this, Plaintiffs request that the Court adjourn the July  
18 1, 2020 deadline for filing amended non-operative complaints, and that the parties will meet and  
19 confer and propose a new amendment deadline to the Court that takes into account the pending  
20 motion practice, the need to select government entity bellwethers, and the availability of a short-  
21 form amendment procedure.

22 JLI and Altria have no objection to adjourning the July 1, 2020 deadline for filing  
23 amended complaints, but they do not agree that a short-form amendment process is appropriate  
24 here. JLI and Altria will meet and confer with Plaintiffs on this issue, and will present competing  
25 or agreed upon proposals for the Court’s consideration at the July 17, 2020 CMC.

26 **V. DISCOVERY STATUS AS TO PLAINTIFFS, JLI, AND ALTRIA**

27 Since the May 15 Case Management Conference, Plaintiffs, JLI, and Altria have  
28 continued to confer on open discovery issues.

1           **A. Authentication of Documents**

2           Plaintiffs, JLI, and Altria have engaged in meet-and-confers on a proposed authentication  
3 stipulation, and have narrowed disputes, but have not yet reached complete agreement:

4           Plaintiffs proposed the following:

5                   Any document produced from a Defendant’s or Plaintiff’s files is  
6 presumed to be authenticated under Federal Rule of Evidence 901  
7 unless otherwise agreed or ordered. Fed. R. Evid. 901. Nothing in  
8 this agreement or presumption is intended to or shall be construed  
9 as affecting any party’s rights with respect to the admissibility of  
any document, and all other evidentiary objections save for  
authentication, including hearsay objections, foundation objections,  
sponsoring witness requirements, are expressly preserved.

10           JLI and Altria proposed the following (with additional proposed language in bold):

11                   Any document produced from a Defendant’s or Plaintiff’s files is  
12 presumed to be authenticated under Federal Rule of Evidence 901  
13 unless otherwise agreed or ordered, **provided that the proponent**  
14 **first identify precisely what the proponent of the document**  
15 **purports it to be or claims that it is, and that the producing**  
16 **party agrees to that description.** Fed. R. Evid. 901. Nothing in  
this agreement or presumption is intended to or shall be construed  
as affecting any party’s rights with respect to the admissibility of  
any document, and all other evidentiary objections save for  
authentication, including hearsay objections, foundation objections,  
sponsoring witness requirements, are expressly preserved.

17           Plaintiffs, JLI, and Altria intend to seek guidance from Judge Corley on this issue.

18           **B. Document Requests and Interrogatories, and ESI Negotiations**

19           **JLI.** Plaintiffs have served JLI with five sets of requests for production and four sets of  
20 interrogatories. JLI responded to the first two sets of requests for production and the first set of  
21 interrogatories, and the parties have agreed on or are discussing response dates for the remaining  
22 discovery requests. Plaintiffs and JLI have exchanged proposals on custodians and search terms,  
23 and time period for productions. The parties continue to engage in good faith meet-and-confers on  
24 these and other discovery issues. In addition, Plaintiffs have repeatedly inquired about the scope  
25 and status of JLI’s collections and searches of Slack, which was used within the company during  
26 the relevant time period but poses unique ESI collection and search issues. Plaintiffs and JLI  
27 continue to meet and confer regarding reasonable and proportional search parameters for Slack  
28 review. Plaintiffs intend to promptly conclude these ESI negotiations and will raise any open



1 disputes with the Court by July. Plaintiffs and JLI have also agreed in principle to JLI's rolling  
2 production of privilege logs for documents produced to date. Once privilege logs are produced  
3 and reviewed, the Parties will meet and confer regarding privilege challenges and will present any  
4 unresolved disputes to Judge Corley.

5 **Altria.** Plaintiffs have served Altria with six sets of requests for production and four sets  
6 of interrogatories. Altria responded to the first two sets of production and the first set of  
7 interrogatories, and the parties have agreed on response deadlines for the remaining discovery  
8 requests.

9 Plaintiffs have asked Altria to produce relevant sets of documents it has produced in  
10 response to regulator inquiries. Altria has declined to provide Plaintiffs with copies of regulatory  
11 productions (aside from an initial small production Altria made in response to a Congressional  
12 investigation), and instead has requested that the parties negotiate search terms and custodians  
13 without reference to previous regulatory productions or demands. Plaintiffs and Altria have met  
14 and conferred regarding Altria's approach to identifying documents responsive to the requests for  
15 production, and on June 17, 2020 Altria provided Plaintiffs a list of proposed search parameters,  
16 including custodians and search terms. The parties will continue to work cooperatively on search  
17 parameters and the production of documents responsive to Plaintiffs' requests.

### 18 **C. Third-Party Subpoenas**

19 To date, Plaintiffs have issued 152 third-party subpoenas and have initial contact or  
20 response from 64. Plaintiffs, JLI, and Altria are meeting and conferring over several disputes  
21 regarding third-party subpoenas and will advise the Court regarding any agreements or present  
22 disputes to Judge Corley promptly.

### 23 **D. Plaintiffs' Initial Disclosures**

24 JLI and Altria and Plaintiffs will meet and confer concerning the timing of Plaintiffs'  
25 Initial Disclosures in the class and government entity cases, which were held in abeyance given  
26 Plaintiffs' belief that they would be subsumed within Plaintiff Fact Sheets. JLI and Altria are  
27 considering whether Plaintiff Fact Sheets will be efficient for the class and government entity  
28

1 cases, and believe those discussions will further inform when Plaintiffs' Initial Disclosures should  
2 be served. Plaintiffs remain prepared to discuss these issues with these Defendants.

3 **E. Amended Deposition Protocol**

4 In light of the ongoing outbreak of COVID-19, the Parties will confer regarding the need  
5 for remote depositions and amending the deposition protocol or providing a supplemental order to  
6 provide an agreed upon procedure for remote depositions. The Director Defendants, the Retailer  
7 and Distributor Defendants, and the E-Liquid Defendants are also in the process of reviewing the  
8 deposition protocol and providing comments. The Parties will either submit a jointly revised  
9 deposition protocol or supplemental order to the Court or submit competing proposals to Judge  
10 Corley before the July conference.

11 **VI. RULE 26(F) REPORTS**

12 Since the May 15th Case Management Conference, Plaintiffs have continued Rule 26(f)  
13 conferences with the Director Defendants, Retailer and Distributor Defendants, and the E-Liquid  
14 Defendants.

15 Plaintiffs and the relevant Defendants agreed to provide this report, summarizing their  
16 conferences and highlighting points of agreement and any outstanding issues.

17 **A. Director Defendants Rule 26(f) Report**

18 1. Disclosures

19 The Director Defendants will make initial disclosures pursuant to Federal Rule of Civil  
20 Procedure 26(a)(1)(A)(i) by June 19, 2020.

21 As noted above, Plaintiffs have anticipated to date, based on the parties' discussions, that  
22 their initial disclosures will be subsumed within their responses the Plaintiff Fact Sheets and other  
23 discovery of the Plaintiffs. Director Defendants note, however, that only approximately 200 of the  
24 500 personal injury plaintiffs have served Plaintiff Fact Sheets and those Fact Sheets do not  
25 require provision of damages claims or calculations. The Fact Sheets and other discovery will be  
26 a subject for further discussion between the parties. Plaintiffs remain prepared to discuss these  
27 issues with Defendants, but note that Director Defendants will have the opportunity to probe  
28

1 further into damages issues relating to the personal injury plaintiffs, beginning with those selected  
2 as part of the bellwether pool.

3           2.     Discovery Phasing

4           Discovery discussions between Plaintiffs and the Director Defendants remain at an early  
5 stage. During their first Rule 26 conference, Plaintiffs and the Director Defendants agreed that  
6 discovery should proceed in a coordinated and phased fashion that would include early  
7 production of any materials provided to regulators. Defendants Monsees and Bowen represent  
8 that they themselves have not yet made a production of documents in any action, regulatory  
9 proceeding, legislative investigation, law enforcement agency, or otherwise, regarding the subject  
10 matters of these proceedings. However, Director Defendants Pritzker, Huh, and Valani represent  
11 that they did provide documents to JLI, which made a document production in response to a  
12 narrow FTC subpoena in the fall of 2019. Plaintiffs understood from the parties' Rule 26(f)  
13 conference that those materials would be produced to Plaintiffs in the MDL by no later than June  
14 15, 2020 and confirmed that agreement in writing. Defendants Pritzker, Huh, and Valani now  
15 represent, however, that they have asked JLI to produce to the Plaintiffs the relevant and  
16 responsive documents obtained from the Director Defendants which were produced by JLI to the  
17 FTC, and further represent that they understand that JLI will respond to that request promptly.  
18 Plaintiffs have reiterated their request for the prompt production of materials any of the Director  
19 Defendants have made (directly or indirectly) to any regulatory body.

20           3.     Scope of Discovery

21           Plaintiffs and the Director Defendants provide the below lists of topics on which they  
22 anticipate seeking discovery. Plaintiffs' and the Director Defendants' investigations are on-  
23 going, and discovery concerning additional topics may become necessary.

24           a.     *Subjects of Discovery from the Director Defendants*

- 25           •     Communications with or about legislative officials, health or law enforcement  
26 agencies, or other government entities, including schools, relating to JUUL,  
27 including its design, research, development, testing, manufacturing, marketing,  
28 advertising, distribution, sale, regulatory compliance, regulation, or potential  
regulation, including government inquiries or investigations into JUUL or JLI's  
business practices.

- 1 • The modes and substance of communications with or about tobacco entities,  
2 including but not limited to Altria or any of its subsidiaries, regarding any formal  
3 or informal business relationships, agreements, or sharing of information between  
4 JLI and the tobacco entity.
- 5 • Investigations or analyses comparing JUUL, or any of its components or  
6 ingredients, to any other tobacco products.
- 7 • The Director Defendants investments in JLI and/or ownership of JLI securities  
8 including pre-investment communications, due diligence, and investment-related  
9 income.
- 10 • Board materials and past and current policies and procedures relating to the design,  
11 development, distribution, sale, and quality control of JUUL products, and any  
12 communications relating to the same.
- 13 • Patents, patent applications and the information underlying the application,  
14 licensing agreements, or patent infringement actions relating to JUUL.
- 15 • Discovery related to nicotine salts or e-liquids or e-vapor, including any testing or  
16 clinical or non-clinical studies.
- 17 • Investigations into JUUL's effects and/or risks.
- 18 • JUUL's marketing, advertising, labeling and packaging, and any communications  
19 relating to the same.
- 20 • The purchase or consumption of JUUL by youth, and any communications relating  
21 to the same.

22 The Director Defendants received Plaintiffs' list only in connection with preparing the  
23 joint statement and have not had sufficient time to consider it fully. As an initial impression,  
24 however, Director Defendants believe that the list appears to consist largely of categories of  
25 documents that reside primarily in the custody of JLI. Director Defendants will meet and confer  
26 with Plaintiffs regarding the scope of these topics and the timing of production and, if agreement  
27 cannot be reached, pursue resolution with Magistrate Corley.

28 Plaintiffs remain available to continue these discussions.

b. *Subjects of Discovery from Plaintiffs*

**Plaintiffs' Position:** Plaintiffs are prepared to produce discovery that is reasonable and proportionate to their claims, and propose that discovery beyond the fact sheets (at least as to the personal injury cases) is focused in the first instance on the plaintiffs whose claims are most

1 likely to be tried: the personal injury plaintiffs in a limited bellwether pool, the class  
2 representatives and proposed class representatives from the selected bellwether states, and the  
3 bellwether government entities. Plaintiffs note that since many of the plaintiffs are minors (with  
4 parents as their representative), or young adults, who have suffered and are suffering serious  
5 injuries, they are vulnerable and sensitive and the Parties should be mindful of that in the  
6 discovery scope and process.

7 **Director Defendants' Position:** Director Defendants do not agree that discovery of  
8 plaintiffs should be limited to plaintiffs whose claims are most likely to be tried. Discovery from  
9 all plaintiffs – class, personal injury, and public entity – must be sufficient in pace and scope to  
10 allow all parties to fully understand the strength of plaintiffs' position on exposure, causation,  
11 alternate causation, injury, and damages. In addition, the pace and extent of Plaintiffs discovery  
12 should reflect some proportionality to what Plaintiffs have sought from Directors, JLI, Altria, and  
13 non-parties (approximately 152 non-party subpoenas served to date). Every nominal plaintiff –  
14 whether class representative, personal injury or governmental entity – chose to file suit and thus  
15 must provide discovery on the issues of exposure, causation, alternate causation, injury, and  
16 damages, among others. The Director Defendants will meet and confer with Plaintiffs on the  
17 scope of discovery of the Plaintiffs and, if resolution cannot be achieved, refer the matter to  
18 Magistrate Corley.

19 4. Changes to Default Discovery Limits

20 Plaintiffs and the Director Defendants agree that given the scope of this litigation, some  
21 modifications to the normal limits on discovery may be appropriate, for example modifying the  
22 limits on interrogatories and depositions. Plaintiffs intend to conduct a further Rule 26(f)  
23 conference with all parties to the MDL and will confer further concerning proposed limits on  
24 interrogatories and depositions, and case scheduling matters.

25 5. Evidence Preservation and ESI

26 Plaintiffs and the Director Defendants have met and conferred regarding the preservation  
27 of evidence. Plaintiffs and the Director Defendants have confirmed that they are not aware of any  
28 evidence preservation issues at this time. The Director Defendants have confirmed that they are

1 taking reasonable steps to preserve relevant and proportional ESI as well as hard copy records.  
 2 Plaintiffs and the Director Defendants are meeting and conferring regarding the preservation of  
 3 relevant devices and products by the Director Defendants and by all Plaintiffs.

4 Co-lead Counsel have issued instructions to all Plaintiffs' counsel to preserve the relevant  
 5 devices and all hard copy and electronic records concerning the issues reasonably evident in this  
 6 action.

7 The Court has entered ESI and Protective Orders in this litigation.

8 6. Privileged Material

9 The Court entered Case Management Order No. 4: Rule 502(d) and Privileged Materials  
 10 Order which governs the production of privileged materials, the timing and contents of privilege  
 11 logs, and the process for challenging privilege designations. Dkt. No. 322.

12 **B. Retailer and Distributor Defendants Rule 26(f) Report**

13 1. Disclosures

14 Retailer and Distributor Defendants have agreed to make initial disclosures pursuant to  
 15 Federal Rule of Civil Procedure 26(a)(1)(A)(i) on the following dates:

16 McLane Company, Inc.	June 17, 2020
17 Eby-Brown Company, LLC.	July 1, 2020
18 Circle K Stores, Inc.	July 1, 2020
19 7-Eleven, Inc.	July 1, 2020
20 Core-Mark	July 15, 2020
21 Speedway	July 16, 2020
22 Chevron	TBD <sup>6</sup>
23 Walgreens	TBD

24 These Defendants agree to prioritize the disclosure of insurance information in their initial  
 25 disclosures.

26 \_\_\_\_\_  
 27 <sup>6</sup> Plaintiffs' counsel and Chevron's counsel had their initial Rule 26 conference on June 17.  
 28 Plaintiffs requested that Chevron make initial Rule 26(a) disclosures no later than July 16, 2020.  
 Chevron's counsel will confer with its client on Plaintiffs' request.

1 Walmart and Walgreen Co. are in the process of appointing new counsel of record for this  
2 MDL. As such, Walmart and Plaintiffs have temporarily postponed Rule 26(f) discussions until  
3 the appointment of new counsel is finalized. Walmart anticipates providing further updates in this  
4 regard in advance of the July Case Management Conference. Walgreen Co. continues to engage  
5 in Rule 26(f) discussions with Plaintiffs during retention of new counsel, including selecting a  
6 date to make initial disclosures.

7 2. Discovery Phasing

8 Plaintiffs intend to proceed with discovery in a coordinated fashion, but without formal  
9 phasing.<sup>7</sup> Plaintiffs will emphasize seeking the production of the documents and information  
10 necessary to begin depositions and continue advancing the litigation.

11 3. Scope of Discovery

12 Plaintiffs and the Retailer and Distributor Defendants provide the below lists of topics on  
13 which they anticipate seeking discovery. All parties' investigation is ongoing, and discovery  
14 concerning additional topics may become necessary.

15 4. Subjects of Discovery with Respect to the Retailer and Distributor  
16 Defendants

17 a. *Subjects of Discovery from the Retailer and Distributor Defendants*

18 Plaintiffs provide the below lists of topics on which they anticipate seeking discovery  
19 from Retailer and Distributor Defendants. Plaintiffs and the Retailer and Distributor Defendants  
20 will confer regarding these topics, their applicability to particular Retailer or Distributor  
21 Defendants, the scope of these topics, and other issues. Like the Director Defendants, the  
22 Retailer and Distributor Defendants received the below list for the first time in connection with  
23 this statement and likewise have not had an opportunity to fully consider it. Plaintiffs further  
24 note that their investigation is ongoing and discovery concerning additional topics may become  
25 necessary.

26 \_\_\_\_\_  
27 <sup>7</sup> While the Retailer and Distributor Defendants agree formal phasing is not needed at this time,  
28 nothing in this case management statement should be construed to prevent Retailer or Distributor  
Defendants from seeking phasing at a later date.

- 1 • Current and historical business relationships with other Defendants.
- 2 • Communications with other Defendants regarding JUUL.
- 3 • ESI and document retention.
- 4 • Regulatory or other government inquiries or investigations into JUUL and retailers
- 5 and distributors.
- 6 • Marketing efforts with respect to ENDS, including JUUL.
- 7 • Warnings or instructions provided to customers regarding ENDS, including JUUL.
- 8 • Lobbying efforts with respect to ENDS, including JUUL.
- 9 • Data regarding sales to minors and efforts to prevent such sales.
- 10 • Data regarding when products with different packaging reached the retailer and
- 11 process for removing products for sale.
- 12 • Data reflecting which distributor sold to which retail chains. This data may
- 13 facilitate removing certain distributors from complaints going forward.
- 14 • Contacts between JLI, the Management Defendants and the Retailer and
- 15 Distributer Defendants prior to the initial sale of JUUL products to the public.
- 16 • The nature and details of any contracts, business arrangements, incentive programs
- 17 or service agreements between JLI or Altria and the Retailer and Distributer
- 18 Defendants related to the sale of JUUL products.
- 19 • The nature and details of any contracts, business arrangements, incentive programs
- 20 or service agreements between the Distributer Defendants and the Retailer
- 21 Defendants.
- 22 • The marketing, promotion, advertising and sales activities undertaken by the and
- 23 Retailer and Distributer Defendants related to JUUL products.
- 24 • The volume of JUUL products sold by the Retailer Defendants to youth / underage
- 25 customers.

26 b. ***Preliminary Subjects of Discovery from Plaintiffs***

27 *Plaintiffs' position.* As this Court well knows, Plaintiffs, JLI, and Altria met and  
28 conferred over the form and content of the Plaintiff Fact Sheet over many weeks. The version that



1 JLI and Altria initially proposed was 33 pages, with more than 88 questions (not including  
2 subparts) seeking extensive and detailed personal information, including Plaintiffs' use of illicit  
3 drugs. After vigorous negotiations entailing compromises on both sides, and with the guidance  
4 and input from Judge Corley on numerous hotly disputed topics, the parties ultimately reached an  
5 agreement as reflected in the operative Plaintiff Fact Sheet. The Retailer and Distributor  
6 Defendants have proposed dozens of additional questions to the Plaintiff Fact Sheet that largely  
7 track the scope and types of questions that were discussed and rejected through the proceedings  
8 described above. While Plaintiffs appreciate that the Retailer and Distributor Defendants did not  
9 participate in the development of the Plaintiff Fact Sheet, Plaintiffs contend that their interests in  
10 obtaining information relevant to the personal injury claims and defenses were ably represented  
11 by JLI and Altria's multiple counsel. To the extent the Retailers and Distributor Defendants have  
12 additional questions that are both important and unique to the claims against them (such as, for  
13 example, Plaintiffs' participation in retailer loyalty programs), Plaintiffs are open to considering  
14 adding those additional questions and or having a supplemental discrete additional question or  
15 two in a supplemental form relating to retailer loyalty programs applicable only to plaintiffs who  
16 named the Retailer and Distributor defendants (some plaintiffs only purchased JUUL online or  
17 from other retailers not named in the Master Long Form Complaint and Short Form Complaint).  
18 For those plaintiffs who did have loyalty program memberships, we would expect a Defense Fact  
19 Sheet from those Defendants to provide all data on purchases and communications with the  
20 individual plaintiffs. Otherwise, Plaintiffs believe that re-litigating the content of the Plaintiff Fact  
21 Sheet would be counterproductive, especially since hundreds of fact sheets have been submitted  
22 and are in the works in their present form and would instead propose that the Retailers and  
23 Distributors first review the Plaintiff Fact Sheet responses and records gathered pursuant to the  
24 authorizations that will be provided, and then direct their more probing questions to those  
25 Plaintiffs selected for bellwether trial discovery. As previously noted, Plaintiffs are prepared to  
26 produce discovery that is reasonable and proportionate to their claims, and propose that discovery  
27 is focused in the first instance on the plaintiffs whose claims are most likely to be tried: the  
28 personal injury plaintiffs in a limited bellwether pool. Plaintiffs want to highlight that since many

1 of the plaintiffs are minors (with parents as their representative), or young adults, who have  
2 suffered and are suffering serious injuries, they are vulnerable and sensitive and the Parties should  
3 be mindful of that in the discovery scope and process.

4 *Retailer and Distributor Defendants' Position.* The Retailer and Distributor Defendants  
5 have proposed to Plaintiffs certain amendments and additions to the Plaintiff Fact Sheet, which  
6 they are in the process of conferring about with Plaintiffs' counsel. The Retailer and Distributor  
7 Defendants were not parties to the case when the Court approved the forms for the Plaintiff Fact  
8 Sheet and Short Form Complaint. The Retailer and Distributor Defendants certainly have unique  
9 questions of their own that are appropriate for inquiry, as Plaintiffs note above.

10 Further, the Retailer and Distributor Defendants respectfully disagree that the only areas  
11 of the Plaintiff Fact Sheet appropriate for addition or amendment are "an additional question or  
12 two" as Plaintiffs suggest above. As just one example, Plaintiffs have brought claims against all  
13 Retailer and Distributor Defendants sounding in strict liability. The Retailer and Distributor  
14 Defendants therefore respectfully submit they are entitled to ask unique questions of Plaintiffs  
15 regarding their usage of the product. Plaintiffs have also amended their complaint since the  
16 current version of the Plaintiff Fact Sheet was adopted. Further still, as Director Defendants note  
17 above, the current form of the Plaintiff Fact Sheet does not include a calculation of damages, and  
18 Plaintiffs have not, to date, submitted initial disclosures pursuant to Federal Rule of Civil  
19 Procedure 26 calculating damages. These areas, and possibly others, are appropriate for further  
20 inquiry. And the Retailer and Distributor Defendants do not yet have access to the Plaintiff Fact  
21 Sheets that have been served to date, although they are working with the vendor and Plaintiffs to  
22 get access set up promptly. The Retailer and Distributor Defendants will continue to confer with  
23 Plaintiffs regarding the Plaintiff Fact Sheet, and other topics of discovery and information to be  
24 requested from Plaintiffs, and Plaintiffs and the Retailer and Distributor Defendants will either  
25 submit a joint Plaintiff Fact Sheet or their own proposals in advance of the July case management  
26 conference.

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1 Furthermore, the Retailer and Distributor Defendants anticipate that the Documents and  
2 Authorizations identified in Section XIII of the Plaintiff Fact Sheet will be produced once  
3 Plaintiffs begin tendering their Plaintiff Fact Sheets.

4 Moreover, as explained above by the Director Defendants, the Retailer and Distributor  
5 Defendants do not agree that discovery of plaintiffs should be limited to plaintiffs whose claims  
6 are most likely to be tried.

7 5. Changes to Default Discovery Limits

8 Plaintiffs and Retailer and Distributor Defendants continue to meet and confer regarding  
9 whether, given the scope of this litigation, some modifications to the normal limits on discovery  
10 may be appropriate, for example modifying the limits on interrogatories and depositions.

11 6. Proposed Case Schedule

12 Plaintiffs and the Retailer and Distributor Defendants are also meeting and conferring  
13 with a goal of agreeing to a discovery plan and schedule tailored to the MDL.

14 7. Evidence Preservation and ESI

15 Plaintiffs and the Retailer and Distributor Defendants have begun discussions concerning  
16 the matters set forth in the Northern District of California Guidelines for the Discovery of  
17 Electronically Stored Information and provide the following updates:

18 *a. ESI Search and Production Methodology*

19 Eby-Brown Company, LLC, Circle K Stores, Inc. and 7-Eleven, Inc.: The parties met and  
20 conferred on the search terms and methodology for electronic discovery. The parties continue to  
21 confer regarding the start date for electronic discovery. The parties will continue to meet and  
22 confer regarding lists of potential custodians and search terms as appropriate.

23 *b. ESI Protocol*

24 The Retailer and Distributor Defendants will be proposing amendments to the ESI  
25 protocol to address, among other things, their differing ESI from the protocol already entered in  
26 the case. Plaintiffs are open to hearing from the Retailer and Distributor Defendants what changes  
27 they believe are necessary to protect their unique interests and will consider reasonable and  
28 narrowly tailored requests, but object to re-litigating the general terms of the ESI Protocol for

1 many of the same reasons discussed above regarding the Plaintiff Fact Sheet. The Retailer and  
2 Distributor Defendants will confer with Plaintiffs' counsel regarding these proposed amendments  
3 and submit any agreements or disputes to the Court before the July case management conference.

4 *c. Preservation of Evidence*

5 Circle K Stores, Inc. and 7-Eleven, Inc.: Circle K Stores, Inc. and 7-Eleven, Inc. agreed to  
6 preserve all master files containing print advertising materials JLI sent for the purpose of  
7 marketing JUUL products, including but not limited to materials for stickers, shelf hangers,  
8 signage, and other printed marketing materials. Circle K Stores, Inc. and 7-Eleven, Inc. also  
9 agreed to preserve exemplars, to be mutually agreed upon, of physical marketing materials such  
10 as display cases and signage, and to investigate whether they possess any photos of marketing  
11 materials or displays that can be preserved for discovery.

12 The parties also discussed the preservation of surveillance footage. Plaintiffs understand  
13 that for 7-Eleven, Inc. it may be unduly costly and burdensome for Defendants to preserve this  
14 evidence on an ongoing basis, because the footage is stored on devices at individual retail  
15 locations for a period of 60 to 90 days only, and then overwritten. Circle K Stores, Inc. will  
16 provide additional information regarding its surveillance footage to Plaintiffs and will continue to  
17 meet and confer regarding the extent of the burden to preserve such data. Plaintiffs have  
18 requested that these Defendants preserve any surveillance footage produced to any regulator or  
19 law enforcement entity in connection with sales of nicotine products to minors, if such footage  
20 exists.

21 Eby-Brown Company, LLC: Although Eby-Brown Company, LLC is not aware of any  
22 marketing materials or related instructions, in connection with JLI's products distributed to  
23 retailers, that have been in its possession, custody, or control during the relevant time period  
24 covered herein, the parties have agreed that Eby-Brown Company, LLC will preserve any such  
25 items it discovers, except for such items that are being shipped in the ordinary course of business.  
26 The parties agreed that surveillance footage of its drivers in the trucks is not relevant, and  
27 Defendant does not possess any in-store surveillance footage to be preserved.

28

1                   8.     Protective Order

2             The Court entered a Protective Order governing the production of discovery material—  
3 including ESI—on December 13, 2019. Dkt. No. 308. The Retailer and Distributor Defendants  
4 requested changes to the protective order to account for intra-defendant confidentiality issues.  
5 Plaintiffs are evaluating this request and will confer with all Defendants regarding these changes.  
6 As with the proposed changes to the ESI Protocol and Plaintiff Fact Sheet, Plaintiffs will consider  
7 changes to the Protective Order that are reasonable and narrowly tailored to unique issues that are  
8 important to the Retailer and Distributor Defendants, but are not otherwise inclined to reopen  
9 negotiations that may inject undue delay into the discovery process. The parties will continue to  
10 meet and confer and submit any agreements or disputes to the Court before the July case  
11 management conference.

12                   9.     Privileged Material

13             On December 17, 2019, the Court entered Case Management Order No. 4: Rule 502(d)  
14 and Privileged Materials Order which governs the production of privileged materials, the timing  
15 and contents of privilege logs, and the process for challenging privilege designations. Dkt. No.  
16 322. The Retailer and Distributor Defendants have agreed to sign on to Case Management Order  
17 No. 4: Rule 502(d) and Privileged Materials Order.

18             **C.     E-Liquid Defendants Rule 26(f) Report**

19                   1.     Disclosures

20             Plaintiffs and Tobacco Technology, Inc. (“TTI”) and eLiquitech, Inc. (“eLiquitech”) are  
21 scheduling a Rule 26(f) conference to discuss, among other things, the timing of TTI and  
22 eLiquitech’s initial disclosures.

23             Mother Murphy’s Laboratories, Inc. and Alternative Ingredients, Inc. welcome the  
24 opportunity to work with Plaintiffs to consider the nature and basis of their claims and defenses,  
25 document preservation, and the scope of discovery. Specifically, Mother Murphy’s Laboratories,  
26 Inc. and Alternative Ingredients, Inc. have expressed some concern in proceeding with  
27 substantive discovery as proposed by the Plaintiffs where this Court’s Order indicates they do not  
28 have to answer or otherwise respond to either the Amended Master Consolidated Complaint

1 (Personal Injury); there are pending dispositive motions to dismiss and/or stay based on pre-  
2 emption and primary jurisdiction; Mother Murphy's Laboratories, Inc. and Alternative  
3 Ingredients, Inc. continue to object to the personal jurisdiction of the Northern District of  
4 California; and, before Plaintiffs have clarified the claims that have been asserted against Mother  
5 Murphy's Laboratories, Inc. and Alternative Ingredients, Inc., as they are doing for Retailer and  
6 Distributor Defendants.

7 In an effort to accommodate Plaintiffs' desire to proceed with substantive discovery,  
8 Mother Murphy's Laboratories, Inc. and Alternative Ingredients, Inc. have proposed stipulating to  
9 the choice of procedural and substantive law applicable to claims against only these defendants.  
10 Absent agreement of the Plaintiffs, Mother Murphy's Laboratories, Inc. and Alternative  
11 Ingredients, Inc. remain concerned that ignoring these issues and proceeding with discovery may  
12 cause unnecessary confusion and later delay. Mother Murphy's Laboratories, Inc. and  
13 Alternative Ingredients, Inc. continue to confer with Plaintiffs regarding the possibility of  
14 proceeding with the cases in MDL for purposes of discovery, and move forward with identifying  
15 appropriate topics for discovery.

16 Plaintiffs do not agree to stipulate that North Carolina substantive and procedural law  
17 applies to all claims against Mother Murphy's Laboratories and Alternative Ingredients, Inc. If  
18 necessary, Plaintiffs will seek relief from Judge Corley if the parties are unable to resolve their  
19 disagreement over whether discovery as to these defendants may proceed.

20 2. Discovery Phasing

21 Plaintiffs intend to proceed with discovery in a coordinated fashion, but without formal  
22 phasing. Plaintiffs will emphasize seeking the production of the documents and information  
23 necessary to begin depositions and continue advancing the litigation.

24 3. Scope of Discovery

25 Plaintiffs' and E-Liquid Defendants' investigation is ongoing, and discovery concerning  
26 additional topics may become necessary.

27 a. *Subjects of Discovery from the E-Liquid Defendants*

28 Plaintiffs provide the below lists of topics on which they anticipate seeking discovery.

- 1 • Current and historical business relationships with other Defendants.
- 2 • ESI and document retention.
- 3 • The identity and composition of ingredients, additives, formulas, and e-liquids
- 4 supplied to or manufactured for JLI or for use in JUUL (collectively “e-liquids”).
- 5 • Risk/hazard assessments of e-liquids.
- 6 • Toxicological and HPHC testing of e-liquids and e-liquid aerosols.
- 7 • The addictive potential or other abuse liability for e-liquids and e-liquid aerosols.
- 8 • The identities and locations of e-liquid manufacturing facilities.
- 9 • Occupational hazards arising during the manufacture of e-liquids.
- 10 • Industry/regulatory standards and internal policies and procedures governing the
- 11 manufacture and supply of e-liquids.
- 12 • Consumer marketing research and marketing of e-liquids.
- 13 • E-liquid labeling including warnings.
- 14 • Regulatory or other government inquiries or investigations into JUUL and e-
- 15 liquids.
- 16 • Lobbying efforts with respect to ENDS, including JUUL.

17 b. *Subjects of Discovery from Plaintiffs*

18 Plaintiffs are prepared to produce discovery that is reasonable and proportionate to their  
 19 claims, and propose that discovery is focused in the first instance on the plaintiffs whose claims  
 20 are most likely to be tried: the personal injury plaintiffs in a limited bellwether pool. Plaintiffs  
 21 want to highlight that since many of the plaintiffs are minors (with parents as their  
 22 representative), or young adults, who have suffered and are suffering serious injuries, they are  
 23 vulnerable and sensitive and the Parties should be mindful of that in the discovery scope and  
 24 process.

25 4. Changes to Default Discovery Limits

26 Plaintiffs and the E-Liquid Defendants agree that given the scope of this litigation, some  
 27 modifications to the normal limits on discovery are appropriate, for example modifying the limits  
 28 on interrogatories and depositions.

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5. Proposed Case Schedule

Plaintiffs and the E-Liquid Defendants are also meeting and conferring with a goal of agreeing to a discovery plan and schedule tailored to the MDL.

6. Evidence Preservation and ESI

The Court has entered ESI and Protective Orders in this litigation.

7. Privileged Material

On December 17, 2019, the Court entered Case Management Order No. 4: Rule 502(d) and Privileged Materials Order which governs the production of privileged materials, the timing and contents of privilege logs, and the process for challenging privilege designations. Dkt. No. 322.

**VII. ADR STATUS**

Pursuant to Civil Local Rule 16-10(d), the Parties report that on May 18, 2020, the Court appointed Settlement Master Thomas J. Perrelli. Dkt No. 564.



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Dated: June 17, 2020

Respectfully submitted,

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By: /s/ Sarah R. London

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# **EXHIBIT A**

## List of Defendants

1	JUUL Labs Inc.
2	Altria Group, Inc.,
3	Philip Morris USA, Inc.
4	PAX Labs, Inc.
5	Adam Bowen
6	James Monsees
7	Altria Group Distribution Company
8	Altria Client Services
9	Nu Mark LLC
10	Nu Mark Innovations, Ltd.
11	Eonsmoke, LLC
12	Home Oil Company, Inc.
13	The Hobo Pantry Foodstore #19
14	Circle K Stores, Inc, and Its Manager, Christa Dennard
15	My Vapor Hut, Inc. d/b/a 1ST Wave Vapor
16	Edgar F. Di Puglia as owner of The Smoke House Smoke Shop
17	Market 24 LLC
18	Guru Kop, Inc d/b/a Pantry 1 Food Mart
19	Lit Smoke Shop LLC.
20	MWDBC Store 3 LLC dba Beyond Vape
21	New York Smoke Shop Inc.
22	Shreeji Smoke Shop Inc. dba Shreeji Smoke & Vape Shop
23	Tobacco and Wireless Sales LLC
24	Mohammed Shalash
25	Hilliard Smoke House
26	Olive Smoke Shop LLC d/b/a Franco's Smoke Shop
27	Phillip Rocke, LLC
28	Buckshot Vapors, Inc.
29	The Vaping Rabbit, LLC
30	Black Note, Inc.
31	Holdfast Vapors, LLC
32	Direct Vapor, LLC
33	e-Juice Vapor, Inc.
34	Marina Vape, LLC
35	Hookah Imports, Inc.
36	Mig Vapor, LLC
37	Mighty Vapors, LLC
38	Kilo E-Liquids, Inc.

39	Vape Wild, LLC
40	Dash Vaptes, Inc.
41	Meo, Inc.
42	Shwartz E-Liquid, LLC
43	Carter Elixiers, Inc.
44	Shenzhen Ivps Technology Corporation, Ltd.
45	Altria Enterprises LLC
46	Nicholas Pritzker
47	Hoyoung Huh
48	Riaz Valani
49	Mother Murphy's Labs, Inc.
50	Alternative Ingredients, Inc.
51	Tobacco Technology, Inc.
52	Eliquitech, Inc.
53	McLane Company, Inc.
54	Eby-Brown Company, LLC
55	Core-Mark Holding Company, Inc.
56	Speedway LLC
57	7-Eleven, Inc.
58	Walmart
59	Walgreens Boots Alliance, Inc.
60	Gulf Mart
61	Lehal Associates Inc. dba Delta Gas
62	Sheetz Inc.
63	Evolv LLC
64	Mamasan LLC
65	Axiocore Corporation dba Yogi E Liquid
66	Chevron Corporation
67	Mega Select Inc. d/b/a The Hook Up
68	XMMS LLC d/b/a Climax or Climax Smoke Shope
69	Wawa, Inc.
70	Limbachkrupa LLC d/b/a Citgo #14247111 Thank You Come Again
71	Univar Solutions Inc.
72	Smoke Zone 2 Inc.
73	Imperial Brands P.L.C.
74	R.J. Reynolds Vapor Company
75	Reynolds American Inc.
76	Loec, Inc.
77	Lorillard, Llc
78	Fontem Ventures B.V.

79	Fontem U.S., Inc.
80	British American Tobacco P.L.C., Inc.
81	NJOY, LLC f/k/a NJOY Vapor Products, LLC
82	Puff-n-Snuff, Inc.
83	Landmark Convenience, LLC



# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Case No. 19-md-02913-WHO

**[PROPOSED] ORDER APPOINTING  
HON. (RET.) GAIL A. ANDLER AS  
COMMON BENEFIT SPECIAL  
MASTER**

This Document Relates to:  
ALL ACTIONS

On May 27, 2020, the Court entered Case Management Order 5(A) establishing a Common Benefit Fee and Expense Fund (“the Fund”). Dkt. No. 586. To audit reported common benefit time and costs, and to resolve any common benefit disputes that may arise the Court appoints Hon. (Ret.) Gail A. Andler as a Special Master, under Rule 53 of the Federal Rules of Civil Procedure. The Court noticed its intent to appoint Judge Andler as Common Benefit Special Master and provided the parties with an opportunity to be heard. Dkt. No. 562. No objection was raised. Accordingly, the Court orders as follows:

1. The Court appoints Hon. (Ret.) Gail A. Andler as Common Benefit Special Master to facilitate the submission of appropriate requests for fees and expenses from the Fund on an ongoing basis.

- 1                   2. The Common Benefit Special Master shall have the responsibilities set forth in  
2                   Section V of the Common Benefit Order 5(A) (Dkt. No. 586).
- 3                   3. Judge Andler’s duties will include monitoring, auditing, conducting legal  
4                   analysis and advising Co-Lead Counsel for Plaintiffs on all matters relating to  
5                   common benefit time, fees, expenses and disbursements.
- 6                   4. Judge Andler’s authority is limited to reviewing and making recommendations  
7                   regarding submissions for common benefit fees and expenses. This shall  
8                   include the authority to make initial determinations and findings regarding  
9                   whether certain tasks, categories of costs, or level of fee requests are properly  
10                  sought. To the extent carrying out such duties requires construing agreements,  
11                  interpreting orders, resolving disputes that may arise between any parties  
12                  authorized to submit common benefit time and or expenses, and or reviewing  
13                  evidence, Judge Andler shall have that authority as well. Judge Andler will not  
14                  adjudicate or assist the Court with adjudicating any issue outside the propriety  
15                  of requests for common benefit fees and costs.
- 16                  5. In keeping with the procedure set forth in Case Management Order No. 5  
17                  (“CMO-5”), Co-Lead Counsel for Plaintiffs shall submit quarterly reports of all  
18                  approved common benefit fees and expenses sought in this proceeding,  
19                  beginning August 15, 2020. Judge Andler shall provide quarterly reports to the  
20                  MDL Co-Leads and JCCP Co-Leads for Plaintiffs (“JCCP Co-Leads”) as to her  
21                  review of the common benefit time and cost submissions. Within thirty days of  
22                  each report being provided to the MDL Co-Lead Counsel for Plaintiffs, the  
23                  MDL Co-Lead Counsel for Plaintiffs shall submit a report to the Court,  
24                  including Judge Andler’s findings, as well as any matters that the Co-Leads  
25                  believe merit the Court’s attention. Because of the nature of the information  
26                  contained in this submission, it may be made *ex parte* and will not be submitted  
27                  to Defendants or Defendants’ Counsel and will not be posted on any docket.
- 28

- 1 6. As Special Master, Judge Andler shall maintain those records upon which she  
2 bases her recommendations as set forth in her quarterly reports on a platform  
3 established by the Plaintiffs Steering Committee (“PSC”), in consultation with  
4 the JCCP leadership, for entry or analysis of common benefit time and expenses,  
5 and shall make those records available for inspection.
- 6 7. Prior to the submission of the quarterly report described in CMO-5 and CMO-  
7 5(A), Judge Andler shall work directly with the MDL Co-Lead Counsel for  
8 Plaintiffs and the JCCP Co-Leads to resolve any issues regarding the quarterly  
9 fee and expense requests. Judge Andler has the authority to schedule and  
10 sequence this review process as she deems appropriate. Judge Andler shall have  
11 authority to alter the reporting deadlines specified in CMO-5 to accommodate  
12 her supervisory role, informally resolve any disputes, and ensure that each  
13 quarterly report is complete.
- 14 8. Judge Andler shall be responsible for and shall have the authority to engage  
15 appropriate support personnel to assist in carrying out her duties as Special  
16 Master.
- 17 9. With approval from MDL Co-Lead Counsel for Plaintiffs and the JCCP Co-  
18 Leads, Judge Andler may have *ex parte* communications with any attorney  
19 submitting requests for common benefit time or expenses. Where necessary,  
20 the existence of such communications and their contents shall be noted and  
21 reasonably summarized in the quarterly report. Judge Andler may communicate  
22 to the Court—on an *ex parte* basis—non-confidential information where  
23 necessary for the full and fair implementation of this Order.
- 24 10. The PSC and JCCP leadership shall compensate Judge Andler privately and as  
25 specified in a separate agreement. Judge Andler shall maintain billing records  
26 with general descriptions of the activities undertaken. Any disputes regarding  
27 compensation, costs and expenses shall be brought to the Court’s attention.  
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11. The Court shall retain sole authority to issue final rulings on matters formally submitted for adjudication. No party shall be bound by the recommendations of the Special Master absent a court order.
12. In accordance with Rule 53(b)(2), the Court directs Judge Andler to proceed with all reasonable diligence.

**IT IS SO ORDERED.**

---

Hon. William H. Orrick  
United States District Court Judge

Hon. William Orrick  
San Francisco Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: In re: Juul Labs, Inc. Marketing, Sales Practices & Products Liability Litigation, No. 3:19 and 2913-WHO

Dear Judge Orrick:

This letter confirms my willingness to serve as a Special Master regarding the Common Benefit Fund. Attached to this letter are the required affidavit under Rule 53(b)(3)(A) and a copy of my CV. I have reviewed the attached Service List provided for defendants and do not believe I have any open cases with any of the attorneys listed or their clients. I am asking my Case Manager to do a more thorough computer search and will update the disclosures. Some of the firms may have open mediations or arbitrations pending with me but I do not recognize the attorneys listed as presently before me. As to the plaintiffs' counsel, I have reviewed your Order of those appointed to the Plaintiffs' Leadership and Steering Committee. I do not believe any of the attorneys identified in your order presently have open mediations or arbitrations before me. I am asking my Case Manager to do a more thorough computer search and will update the disclosures. Some of the firms may have open mediations or arbitrations pending with me but I do not recognize the attorneys listed as presently before me. During my tenure as Special Master, supplemental reports will be run and disclosures will be made in order to comply with my ongoing obligations to avoid conflicts of interest.

I understand my duties will include monitoring, auditing, conducting legal analysis and advising Co-Lead Counsel for Plaintiffs on all matters relating to common benefit time, fees, expenses and disbursements. I understand that my duties and the limits on my authority will be set forth with more specificity in the Order Appointing Special Master. I understand I will not adjudicate or assist the Court with adjudicating any issues outside the propriety of requests for common benefit fees and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gandler", written in a cursive style.

Judge Gail Andler (Ret.)



## Hon. Gail A. Andler (Ret.)

### Case Manager

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## Biography

*Available to conduct virtual/remote mediations and other ADR proceedings on a variety of online platforms, including Zoom.*

**Hon. Gail A. Andler (Ret.)** joined JAMS as a full-time neutral after more than 21 years on the Orange County Superior Court where she served from 2007-2017 on the Complex Civil Litigation Panel. Judge Andler has experience across the legal spectrum including complex business, trade secret, employment, product liability, catastrophic personal injury and real estate disputes. She has managed and resolved large coordinated and consolidated product defect and injury cases in the pharmaceutical, medical device, and automotive industries, in addition to consumer and employment class actions and PAGA cases. Her time with the court also included serving two terms as the Presiding Judge of the Superior Court's Appellate Division and she is the past President of the American College of Business Court Judges.

Prior to her appointment to the bench, Judge Andler represented individuals and closely held corporations in business and real estate litigation, including developers and design professionals. She also gained substantial jury trial experience as a prosecutor.

Judge Andler has been praised by attorneys for her commitment to finding resolution in tandem with her creativity. As a judge, she worked with parties to find common ground and create efficiencies in the legal process.

### ADR Experience and Qualifications

- More than 21 years on the Orange County Superior Court

- Two terms as Presiding Judge of the Superior Court's Appellate Division
- Developed the Early Legal Assessment program, similar to a confidential mediation offered by the courts where parties agree to having a neutral assess their case
- Served on the Orange County Superior Court's ADR Committee
- Volunteered to conduct settlement conferences at law firms when the Court was closed during the court funding crisis

## Representative Matters

- **Business/Commercial**
  - Wide variety of actions alleging breach of contract or tort in commercial transactions; disputes concerning purchase and sale of business or business assets including intellectual property; Trade Secret and unfair competition litigation; partnership disputes; corporate governance disputes
- **Child Sexual Abuse/Misconduct**
  - As a neutral, mediated and arbitrated cases ranging from allegations minors were improperly exposed to adult nudity, on one end of the spectrum, to molestation and rape in the other, including statutory rape
  - Title IX hearings for colleges and universities
  - SafeSport training
  - Former sex crimes prosecutor
  - Former Supervising Judge of Juvenile Dependency Court presiding over a caseload of, and supervising other judges with, cases of child sexual abuse
  - Trained as a CASA advocate on the impacts and signs of child sexual trauma
  - As a judge heard civil cases (in addition to criminal and family) alleging coaches, teachers, spiritual leaders, and others engaged in improper sexual conduct or sexually abused minors
- **Class Action/Mass Tort**
  - Data Breach and privacy claims, including consumer class action alleging the release of thousands of records of confidential medical information by defendant hospital
  - Pharmaceutical and medical device cases, including allegations that pain pumps, SSRIs, pain patches, and eye drops caused serious bodily injury or death
  - Multiple related claims brought against automobile manufacturer for defective engines in vehicles
  - Hundreds of related claims coordinated with MDL alleging defective manufacture and design of plumbing products with related coverage and subrogation actions
  - California Uniform Fraudulent Transfer Act claims to recover damages from investors who were alleged to have profited from a Ponzi scheme perpetrated against members of a tight knit ethnic community
  - Home loan mortgage fraud claims, including mass action brought by more than 800 borrowers
  - Food additive and nutritional supplement cases, including consumer class action against vitamin manufacturer alleging product caused male gynecomastia, and action by individual alleging microwave popcorn flavoring caused lung disease
- **Construction/Construction Defect**
  - Construction defect disputes involving commercial and residential developments
- **Employment**
  - Wrongful termination and discrimination lawsuit against one of the largest multinational electronics manufacturing companies in the world, based in China
  - Hostile work environment, gender discrimination and retaliation claims brought against large law enforcement agency
  - Employment class action on behalf of more than 1,000 sales representatives against a large electronics manufacturer alleging failure to timely pay commissions
  - Employment wage and hour class actions and Private Attorney General Act (PAGA) claims brought by workers in health care, retail, restaurant, transportation, hospitality, automobile insurance, and manufacturing industries
  - Employment cases involving issues of theft of trade secrets
  - Employment cases involving whistleblower and retaliation claims
  - Cases with claims of alleged labor code violations based on alleged employee misclassification
  - Pay Equity class actions and individual mediations
  - Key employee breach of employment contract mediations
- **Eminent Domain/Inverse Condemnation**
  - Eminent Domain cases involving goodwill and other damage claims by multiple businesses



impacted by large transportation authority projects

- Claims by property owners of regulatory or other takings as a result of government action or inaction
- **Entertainment & Sports**
  - Action brought by high-profile musician and actor involving a breach of contract in the purchase of stock of an international media and sponsorship company
  - Action brought by athlete, barred from competing in the Olympics due to “doping”, against manufacturer of nutritional supplements
  - Action by and against prominent coach of sports organization involving allegations of improper conduct by coach toward female athletes, and alleging age discrimination by organization against coach
  - Action against prominent non-profit organizer of annual race alleging improper release of private information of participants
  - Licensing dispute between former Olympian and prominent athlete and manufacturer/retailer of products
  - Financing dispute between a sports organization and investors, with allegations of fraud
  - Numerous cases across sport alleging misconduct by coaches and trainers
  - Disputes between studios and filmmakers regarding release dates, marketing, and other issues
  - Dispute between members of a LLC relating to a reality television show
  - Dispute between parties as to entitlement to designation of Executive Producer
- **Environmental/Real Estate**
  - High profile environmental challenges relating to the approval of a project to redirect and pump subsurface water from the Mojave Desert involving issues of water rights
  - Landslide litigation involving several homeowners against a public utility
  - Inverse condemnation action following a major flood and significant property damage alleging that a city inadequately designed and maintained its storm drainage systems; inverse condemnation alleging regulatory taking prohibiting development of property; inverse condemnation by owner of coastal property for subsurface work done by utility causing vibrations and possibly increasing likelihood of landslide; business losses from Eminent Domain taking
- **Estate/Probate/Trusts**
  - Trust litigation pertaining to substantial business interests and real estate holdings, consolidating probate and civil litigation including legal malpractice claims
  - Trust litigation brought by widow in prominent family seeking to modify trust restrictions and recover damages
  - Trust litigation seeking removal of trustee by siblings for self-dealing in operating trust assets
- **Family Law**
  - Trials and hearings as assigned trial judge including discovery disputes
  - Mediations of cases involving high profile and high net worth individuals
- **Health Care**
  - Reimbursement disputes
  - Payor-provider disputes
  - Fraud and abuse/kickback allegations
  - Hospital-physician and physician-medical practice disputes
  - Data breach and privacy disputes
- **Insurance**
  - Complex insurance coverage action arising from an underlying environmental contamination lawsuit and consent agreement to remediate
  - Numerous insurance bad faith claims, including one brought by the owner of a luxury yacht for failure to cover damages occurring international waters
  - Managed related multi-party cases seeking contribution and declaratory relief relating to the collapse of a large collective healthcare industry self-funded worker’s compensation program
  - Subrogation cases, including coordinated cases relating to plumbing products
- **Personal Injury/Torts**
  - Wrongful death resulting from a vehicle rollover, where plaintiff alleged improper manufacture and design of seatbelt
  - Wrongful death of children struck and killed at school by driver who lost control of vehicle
  - Wrongful death alleged to result from psychiatric malpractice
  - Catastrophic injury to skier for collision with snow grooming machine
  - Multiple plaintiff wrongful death and injury cases involving driver who ran over pedestrians at a church

- Traumatic brain injury cases, including TBI injury to minor in skateboarding accident
- Wrongful death resulting from loading dock injury
- Wrongful death relating to police pursuit
- Injuries to patients attributed to medical and dental procedures
- Sexual abuse claims against faith-based organization and schools; negligent and intentional transmission of disease; bullying; sexual harassment
- High profile case involving allegations of conspiracy, invasion of privacy and other tort claims brought by politicians against police officer's association and law firm
- **Professional Liability/Attorneys' Fees**
  - Adjudicated and mediated disputes regarding fee sharing between lawyers as well as attorney-client fee disputes
  - Mediated disputes involving allegations of unconscionable or illegal fees and violations of the Rules of Professional Conduct

## Honors, Memberships, and Professional Activities

- **Honors**
  - Recipient, Distinguished Judicial Fellows Award, OCBF Project Youth
  - Recipient, American Board of Trial Advocates (ABOTA) Trial Judge of the Year
  - Recipient, Orange County Bar Association Business Law Section Trial Judge of the Year
  - Recipient, 2016 Orange County Women Lawyers' Judge of the Year
  - Recipient, 2016 Celtic Bar Association Judge of the Year
  - Recipient, American Board of Trial Advocates (ABOTA) Judicial Civility Award
  - Recipient, Orange County Trial Lawyers' Jerrold Oliver Award
  - Recipient, Loyola Law School Orange County Distinguished Alumni Award
  - Recipient, Constitutional Rights Foundation Mock Trial Judge of the Year
  - Recipient, Boy Scouts' Learning for Life Women of Excellence award
  - Recipient, Court Appointed Special Advocates (CASA) judicial award
  - Honoree, ABA Business Law Section's Women Business Advocates Committee for contributions to the enhancement of women in the legal profession
  - Judicial Advisor to the Steering Committee on Trade Secrets (The Sedona Conference)
- **Memberships & Professional Activities**
  - Chair, Orange County Bar Association Masters Division
  - Board Member, Court Appointed Special Advocates (CASA)
  - Attended the Straus Institute 40 Hour program "Mediating the Litigated Case" in 2016
  - American College of Business Court Judges. Executive Committee/past President
  - ABA Business Law Section: Chair of the Practice Development Committee, Vice Chair of the Business and Corporate Litigation Committee; Co-Chair, Women Business and Commercial Advocates; Member, Task Force on Multi-Jurisdiction Litigation; Member, Working Group for the Preparation of Business Conduct Standards directed to the Eradication of Forced Labor in Supply Chains
  - ABA Judicial Division, National Conference of State Trial Judges, Executive Committee
  - Judicial Advisory Board, The Sedona Conference
  - Board member and officer, Orange County Bar Association Masters' Division
  - Judicial Advisory Board Member, Association of Business Trial Lawyers (ABTL)
  - Founding Judicial Fellow, Orange County Bar Foundation
  - Advisory Board, Loyola Law School Advocacy Institute
  - OCBA Leadership Development Committee
  - OCBA Civic Center Homeless Task Force
  - Previously served as Contributing Editor, Orange County Lawyer magazine and as Mock Trial and Peer Court Judge (Constitutional Rights Foundation)
  - California Society for Healthcare Attorneys
  - American Health Lawyers Association
  - Judicial Advisor to the Steering Committee on Trade Secrets, The Sedona Conference
  - Moderated the OCBA Insurance Law Section Meeting, March 2018

## Background and Education

- Judge, Orange County Superior Court, 1994-2016
- J.D., Loyola Law School
- A.B., cum laude, University of California, Los Angeles

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**DECLARATION OF GAIL ANDLER**  
**TENDERED PURSUANT TO FED.R.CIV. P. 53**

I am a retired judge presently serving as a neutral Mediator, Arbitrator, and Special Master through JAMS. I served on the Superior Court in the State of California where I presided over a Complex Civil calendar. My caseload included mass tort and product liability matters where there were parallel state coordination proceedings and MDL proceedings. In that regard, I coordinated hearings with the presiding MDL judge. In the state coordination proceedings, I appointed counsel to a leadership structure and reviewed and ruled upon applications for common benefit disbursements.

I have familiarized myself with the issues involved in the Multi-District Litigation captioned In re: Juul Labs, Inc. Marketing, Sales Practices and Products Liability Litigation, No. 3:19 and 2913-WHO. As a result of my knowledge of that case, I can attest and affirm that there are no non-disclosed grounds for disqualification under 28 U.S.C. §455 that would prevent me from serving as the Special Master in the captioned matter.

At my direction, my Case Manager at JAMS, Nicole Burns, did an electronic search of matters involving counsel in this case who have been identified to me as of this date as attorneys who may potentially request reimbursement from the Common Benefit Fund. My Disclosure checklist, signed under oath, is attached to this Declaration. During my tenure as Special Master, supplemental reports will be run, and disclosures made, in order to comply with my ongoing obligations to avoid conflicts of interest.

I declare the foregoing to be true and correct under penalty of perjury according to the laws of the state of California.

Dated: June 17, 2020

Signed: 