

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

United States District Court
Northern District of California

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

**ORDER REGARDING BELLWETHER
SELECTION AND CASE/TRIAL
SCHEDULE**

Re: Dkt. Nos. 926 and 927

I thank the parties for their revised proposed bellwether selection procedures and case schedules. With some modifications, I will adopt the plaintiffs’ suggestions because they are more likely to achieve a representative bellwether trial pool and meet in a realistic manner the aggressive trial schedule that I seek.

Bellwether Selection:

- Cut-off for Bellwether Selection Pool: Any action filed in or transferred to this Court by October 15, 2020 will be included in the bellwether selection pool.
- Selection of Bellwether Discovery Pool: On or before December 15, 2020, a total of 24 personal injury cases will be selected for the initial bellwether discovery pool. Plaintiff will select 6 cases, Defendants will collectively select 6 cases, and the Court will select 12 cases through a random selection process after excluding the 12 cases selected by the parties.
- Core Discovery: Core discovery of the bellwether discovery pool may begin immediately upon selection and will conclude on or before April 15, 2021. Core discovery for each discovery pool case will consist of no more than three case-specific fact witnesses: (1) the plaintiff, (2) a fact witness with knowledge as to plaintiff’s JUUL use and/or JUUL-related injury that the parties will meet and confer to determine the appropriate witness, and (3) a treating medical provider who was principally responsible for the diagnosis and treatment

1 of plaintiff's injury if the plaintiff received medical treatment for the injury alleged.

2 • Case Strikes: After core discovery of the bellwether discovery pool, the Defendants
3 (collectively) and Plaintiffs may each strike one case from nominee pool. Each party must
4 exercise its strike by April 22, 2021.

5 • Selection of Bellwether Trials: On April 30, 2021, each party shall simultaneously submit
6 under seal to the Court a letter not to exceed 12 pages identifying four cases from the
7 remaining nominee pool that they contend are representative bellwether trial cases, the
8 basis for their selections, and if appropriate, why the other cases are not representative or
9 suitable bellwether trial candidates. The Court will then select a total of four cases to be set
10 for bellwether trials, prioritizing for trial the order of the cases.¹

11 • Supplemental Fact Discovery: Additional fact discovery of the four bellwether trials may
12 begin immediately after the Court's selection. The supplemental fact discovery for the first
13 two bellwether trials must be completed by July 1, 2021. The deadline for supplemental
14 fact discovery of the remaining two bellwether trial cases will be determined following a
15 meet and confer of the parties, in consultation with the Court.

16 • Expert Discovery of Bellwether Trial Cases: Expert discovery for the first two
17 bellwether trial cases must be completed by September 22, 2021. Specific deadlines related
18 to expert discovery are set forth in Plaintiffs' proposed trial schedule (attached). Deadlines
19 for expert discovery of the two bellwether trial cases will be determined following a meet
20 and confer among the parties, in consultation with the Court.

21

22

23

24

25 ///

26

27

28

¹ The Court will try each of the bellwether trials in San Francisco and will not select any case for which *Lexecon* is an issue. We will discuss how to resolve any *Lexecon* disputes at the next Case Management Conference on September 21, 2020.

Case Schedule:

<p><u>Personal Injury (PI) Only:</u> Close of PI bellwether nominee pool (complaints must be on file)</p>	October 15, 2020
<p><u>Government Entity (GE) Only:</u> Deadline for submitting agreed upon or competing proposals for methodology for selecting GE bellwether trial cases</p>	October 15, 2020
<p><u>Government Entity (GE) Only:</u> Close of GE bellwether trial pool (complaints must be on file and PFS must be completed for all potential GE bellwether trial candidates)</p>	November 16, 2020
<p>Deadline for PI outstanding PFS Deadline for Plaintiffs and Defense to select their PI nominees and provide to the Court (Court will then randomly select eight cases). Deadline to submit agreed or competing GE bellwether nominees</p>	December 15, 2020
<p><u>Personal Injury Only:</u> Deadline to meet and confer on deferred pleading challenges</p>	January 7, 2021
<p><u>Class Cases Only:</u></p> <ul style="list-style-type: none"> • Plaintiffs Serve Class Certification Expert Reports • Motion for Class Certification (as to California subclass, federal nationwide class, any other state(s) agreed or ordered to be included in first class bellwether trial(s)) 	March 17, 2021
<p><u>Personal Injury Only:</u> Deadline for bellwether plaintiffs to amend complaints</p>	January 21, 2021
<p><u>Personal Injury Only:</u> Deadline for Defendants to file deferred pleading challenges</p>	February 5, 2021
<p><u>Personal Injury Only:</u> Deadline to oppose deferred pleading challenges</p>	March 1, 2021
<p><u>Personal Injury Only:</u> Deadline to reply to deferred pleading challenges</p>	March 15, 2021
<p><u>Personal Injury Only:</u> Hearing on deferred pleading challenges</p>	April 2, 2021

1	<u>Personal Injury Only:</u>	April 30, 2021
2	Deadline for the parties to submit their proposed bellwether trial selections to the Court	
3	<u>Class Cases Only:</u>	June 16, 2021
4	<ul style="list-style-type: none"> • Opposition to Motion for Class Certification; • Defendants Serve Class Certification Response Reports • Defendants File <i>Daubert</i> Motions for Class Plaintiffs' Class Certification Experts 	
5		
6		
7	<u>Class Cases Only:</u>	July 14, 2021
8	<ul style="list-style-type: none"> • Reply in Support of Motion for Class Certification; • Plaintiffs Serve Class Certification Rebuttal Reports • Class Plaintiffs File <i>Daubert</i> Motions for Defendants' Class Certification Experts; • Class Plaintiffs File Oppositions to Defendants' <i>Daubert</i> Motions 	
9		
10		
11		
12	<u>Class Cases Only:</u>	July 28, 2021
13	Defendants file Oppositions to Class Plaintiffs' <i>Daubert</i> Motions	
14	Substantial Completion of Fact Discovery	June 18, 2021
15	<u>Class Cases Only:</u>	August 13, 2021
16	Hearing on Motion for Class Certification	
17	Exchange of Generic Expert Reports	July 2, 2021
18	<u>Personal Injury Only:</u>	July 1, 2021
19	Deadline for supplemental case specific discovery in the First Two Trial Cases	
20	Exchange of Case-Specific Expert Reports in GE Bellwether Cases	July 1, 2021
21	Exchange of Rebuttal Generic Expert Reports	July 30, 2021
22	Exchange of Case-Specific Expert Reports in First Two PI Trial Cases	July 15, 2021
23	Exchange of Case-Specific Rebuttal Reports in GE and First Two PI BWs	August 16, 2021
24	Close of Expert Discovery (Generic and Case Specific Bellwether GE and First Two PI Trial Cases)	September 22, 2021
25		
26	MSJ and <i>Daubert</i> Motions	September 30, 2021
27		
28	MSJ and <i>Daubert</i> Oppositions	October 29, 2021

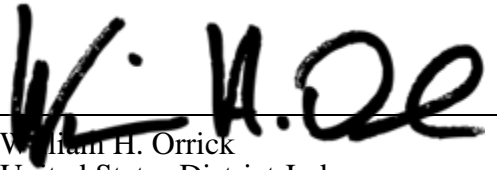
United States District Court
Northern District of California

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

MSJ and <i>Daubert</i> Replies	November 12, 2021
Oral Argument: MSJ and <i>Daubert</i> Motions	December 10, 2021
Exchange of Civil Local Rule 16-10(b)(7), (8), (9), and (10) Materials	December 15, 2021
Pretrial Conference Statement, Jury Instructions, Exhibit List and Objections, Deposition Designations and Objections, and Motions in <i>Limine</i>	January 17, 2022
Pretrial Conference (Class, GE and First Two PI Trial Cases)	January 31, 2022
First Bellwether²	February 22, 2022
Second Bellwether	March 28, 2022
Third Bellwether	May 9, 2022
Fourth Bellwether	June 20, 2022
Fifth Bellwether	August 1, 2022

IT IS SO ORDERED.

Dated: September 9, 2020


William H. Orrick
United States District Judge

² I will determine the order of the bellwether trials after May 1, 2021.