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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC. ANTITRUST
 LITIGATION

Case No. 3:20-cv-02345-WHO

This Document Relates to:
 ALL DIRECT PURCHASER ACTIONS

**NON-MANAGEMENT DIRECTORS’
 ANSWER AND AFFIRMATIVE DEFENSES
 TO THIRD AMENDED CONSOLIDATED
 CLASS ACTION COMPLAINT**

1 Defendants Nicholas Pritzker and Riaz Valani (each a “Non-Management Director” and,
2 together, the “Non-Management Directors”) hereby answer the Third Amended Consolidated
3 Class Action Complaint (the “Complaint”) of Plaintiffs Jake Sieber, Devin Black, and Robert
4 Thompson, on behalf of themselves and all others similarly situated (each a “Plaintiff” and,
5 collectively, “Plaintiffs”) as follows: Except to the extent expressly admitted herein, each Non-
6 Management Director denies every allegation in the Complaint. No response is necessary to any
7 allegations in the headings or footnotes. The Non-Management Directors reserve the right to seek
8 to amend or supplement this Answer as may be necessary.

9 INTRODUCTION

10 1. This is an antitrust class action against Defendants Altria and JLI, concerning
11 anticompetitive agreements between them in which Altria agreed to refrain from competing
12 against JLI in the United States market for closed-system e-vapor products (“Closed-System E-
13 Vapor”) by withdrawing from the market in return for a substantial ownership interest in JLI.
14 Through these agreements, Altria and JLI agreed to cease competing and divide and allocate the
15 Closed-System E-Vapor market. Plaintiffs seek damages and injunctive relief for the collusive and
16 concerted restraint of trade orchestrated by Defendants.

17 **ANSWER:** This paragraph describes a court filing, which speaks for itself, and each Non-
18 Management Director denies any characterization of that court filing. Each Non-Management
19 Director admits that Plaintiffs have submitted a Third Amended Consolidated Class Action
20 Complaint seeking various forms of relief, but deny that Plaintiffs are entitled to any such relief.
21 Each Non-Management Director further admits that JLI and Altria entered into a series of
22 agreements as part of Altria’s investment in JLI in December 2018. Those agreements speak for
23 themselves, and each Non-Management Director denies any characterization of the agreements.
24 Each Non-Management Director lacks sufficient knowledge and information to admit or deny the
25 existence of a “United States market for closed-system e-vapor products (“Closed-System E-
26 Vapor”),” and denies those allegations on that basis. Each Non-Management Director denies the
27 remaining allegations in this paragraph.

28 2. E-Vapor products are electronic devices that deliver nicotine to a user by
vaporizing a liquid nicotine solution. In a closed system, the liquid is contained in a pre-filled,
sealed cartridge, pod, or tank. JLI was and is the dominant player in the Closed-System E-Vapor
market in the United States.

1 **ANSWER:** Each Non-Management Director admits that “E-Vapor products” include “electronic
2 devices that deliver nicotine to a user by vaporizing a liquid nicotine solution,” but denies that all
3 “E-Vapor products” fit that description. Each Non-Management Director further admits the term
4 “closed system” is often used to describe “E-Vapor products” in which the liquid solution to be
5 vaporized “is contained in a pre-filled, sealed cartridge, pod, or tank.” Each Non-Management
6 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
7 this paragraph, and denies those allegations on that basis.

8 3. Altria is one of the country’s largest tobacco companies. In light of declining sales
9 in the market for traditional combustible cigarettes and a shift by consumers to alternative nicotine
10 delivery devices, Altria viewed participation in the Closed-System E-Vapor market as essential to
11 its long-term survival. In 2013, Altria entered the market through its subsidiary Nu Mark LLC. Its
flagship product was the MarkTen e-cigarette. By mid-2017, Altria’s MarkTen e-cigarette had
achieved the second-highest market share in the Closed-System E-Vapor market.

12 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
13 response on their part is required. Insofar as a response is required, each Non-Management
14 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
15 this paragraph, and denies those allegations on that basis.

16 4. In 2015, JLI entered the Closed-System E-Vapor market and made relatively
17 modest gains with consumers. However, by mid-2017, JLI began to experience rapid growth,
18 quickly captured a substantial market share, and overtook the MarkTen e-cigarette. By 2018, JLI
19 had obtained revenue market share of over 70 percent, stunning Altria and other competitors.
20 Altria believed that participation in the Closed-System E-Vapor market was a strategic priority
that was essential to its long-term survival. JLI’s swift rise posed a grave competitive threat to
Altria in the Closed-System E-Vapor market and had potential implications for Altria in the
traditional cigarette market.

21 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
22 response on their part is required. Insofar as a response is required, each Non-Management
23 Director admits that JLI (then known PAX Labs, Inc.) first offered a closed-system e-cigarette
24 product, known as JUUL, for sale to the general public in 2015. Each Non-Management Director
25 further admits that JUUL sales were insubstantial for approximately the first two years after
26 launch. Each Non-Management Director lacks sufficient knowledge and information to admit or
27 deny the remaining allegations in this paragraph, and denies those allegations on that basis.

28

1 5. In response to that threat, Altria adopted a two-prong strategy: aggressively
2 competing with JLI through price promotion and expanding and accelerating development of its
3 portfolio of products, while simultaneously engaging in discussions of either acquiring or gaining
4 a majority ownership stake in JLI.

4 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
5 response on their part is required. Insofar as a response is required, each Non-Management
6 Director lacks sufficient knowledge and information to admit or deny the allegations in this
7 paragraph, and denies those allegations on that basis.

8 6. Specifically, in February 2018, Altria introduced a new product known as the
9 MarkTen Elite—a pod-based product closely resembling JLI’s product. At the same time, Altria
10 heavily invested in research and advertising to promote and develop its Closed-System E-Vapor
11 products, MarkTen and MarkTen Elite. By mid-2018, Altria was reporting to investor groups that
12 its products were gaining traction with consumers.

11 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
12 response on their part is required. Insofar as a response is required, each Non-Management
13 Director lacks sufficient knowledge and information to admit or deny the allegations in this
14 paragraph, and denies those allegations on that basis.

15 7. At the same time, Altria attempted to negotiate with JLI to acquire an ownership
16 interest in JLI. At first, JLI refused. But in the fall of 2018, JLI agreed to negotiate with Altria,
17 under the condition that Altria stop competing with JLI in the Closed-System E-Vapor market. In
18 particular, JLI refused to proceed with negotiations unless and until Altria had withdrawn its
19 products. At first, Altria refused. On October 25, 2018, however, Altria agreed with JLI to cease
20 competing with JLI and announced its intention to withdraw its MarkTen products from the
21 market.

20 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
21 response on their part is required. Insofar as a response is required, each Non-Management
22 Director admits that, in 2018, Altria negotiated with JLI to acquire a non-voting interest in JLI.
23 Each Non-Management Director denies the remaining allegations in this paragraph.

24 8. Two months later, on or about December 7, 2018, Altria announced its intention to
25 cease competing in the Closed-System E-Vapor market entirely. Approximately two weeks after
26 making this announcement, on December 20, 2018, Altria disclosed that it had entered into a
27 series of agreements with JLI (collectively, the “Transaction”). Among other things, the
28 Transaction provided that Altria would acquire certain ownership interests in JLI and other rights,
in exchange for \$12.8 billion in cash and an agreement with Altria to withdraw from and exit the
Closed-System E-Vapor market.

1 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
2 response on their part is required. Insofar as a response is required, each Non-Management
3 Director responds as follows: Each Non-Management Director admits that, in December 2018,
4 Altria purchased a non-voting interest in JLI for \$12.8 billion. Each Non-Management Director
5 further admits that Altria and JUUL entered into a “series of agreements.” Those agreements
6 speak for themselves, and each Non-Management Directors denies any characterization of the
7 agreements. Each Non-Management Director lacks sufficient knowledge and information to admit
8 or deny the allegations in the first sentence in this paragraph, and denies those allegations on that
9 basis. Each Non-Management Director denies the remaining allegations in this paragraph.

10 9. The Transaction was anticompetitive, and its effects are enduring. Defendants’
11 conduct has illegally restrained competition in the Closed-System E-Vapor market in violation of
12 the Sherman and Clayton Acts. As a direct and proximate result of Defendants’ anticompetitive
13 conduct, prices for Closed-System E-Vapor were raised, fixed, maintained, and/or stabilized at
14 supracompetitive levels. Altria’s investment in JLI and Altria’s exit from the market eliminated its
15 existing Closed-System E- Vapor products and halted its ongoing innovation efforts toward
developing new and improved products. Thus, consumers, including Plaintiffs and members of the
Class, lost the benefit of current and future head-to-head competition between Altria and JLI, and
between Altria and other competitors.

16 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
17 response is required, each Non-Management Director denies them. Each Non-Management
18 Director lacks sufficient knowledge and information to admit or deny the allegations in the fourth
19 sentence in this paragraph, and denies those allegations on that basis. Each Non-Management
20 Director denies the remaining allegations in this paragraph.

21 **JURISDICTION AND VENUE**

22 10. Plaintiffs bring this action on their own behalf as well as that of the Class to
23 recover damages, including treble damages, costs of suit, and reasonable attorneys’ fees arising
24 from Defendants’ violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the
Clayton Act, 15 U.S.C. § 18, as well as any and all equitable relief afforded them under the federal
laws pleaded herein.

25 **ANSWER:** This paragraph describes a court filing, which speaks for itself, and each Non-
26 Management Director denies any characterization of that court filing. Each Non-Management
27 Director admits that Plaintiffs have submitted a Third Amended Consolidated Class Action
28 Complaint seeking various forms of relief, but denies that Plaintiffs are entitled to any such relief.

1 11. Jurisdiction and venue are proper in this judicial district pursuant to Section 12 of
2 the Clayton Act (15 U.S.C. § 22), and 28 U.S.C. § 1391(b), (c) and (d), because a substantial part
3 of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the
4 affected interstate trade and commerce was carried out in this District, and one or more of the
5 Defendants reside in this District or are licensed to do business in this District. Each Defendant
6 has transacted business, maintained substantial contacts, or committed overt acts in furtherance of
7 the illegal scheme and conspiracy throughout the United States, including in this District. The
8 scheme and conspiracy has been directed at, and has had the intended effect of, causing injury to
9 persons residing in, located in, or doing business throughout the United States, including in this
10 District.

7 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
8 response is required, each Non-Management Director states that he is not contesting that this
9 action may be heard by this Court. Each Non-Management Director denies any remaining
10 allegations in this paragraph.

11 **INTRADISTRICT ASSIGNMENT**

12 12. Pursuant to Civil Local Rule 3.2 (c) and (e), assignment of this case to the San
13 Francisco Division of the United States District Court for the Northern District of California is
14 proper because the interstate trade and commerce involved and affected by Defendants' violations
15 of the antitrust laws was substantially conducted with, directed to or impacted Plaintiffs and
16 members of the Class in counties located within the Division. Furthermore, JLI's principal place
17 of business is located within this Division.

16 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
17 response is required, each Non-Management Director states that he is not contesting that this
18 action may be heard by this Court. Each Non-Management Director denies any remaining
19 allegations in this paragraph.

20 **PARTIES**

21 **A. Plaintiffs**

22 13. Plaintiff Jake Sieber is a resident of the State of Texas. Sieber purchased Closed-
23 System E-Vapor products, including devices and pods, directly from JLI during the relevant
24 period. Sieber created an account with JLI on Juul.com before August 8, 2018. Sieber did not
25 agree to arbitrate his claims against JLI. Sieber was injured in connection with his purchases
26 during the Class Period as a result of Defendants' anticompetitive and unlawful agreements
27 alleged herein.

26 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
27 response on their part is required. Insofar as a response is required, the fourth and fifth sentences
28 in this paragraph state legal conclusions that require no response. Insofar as a response is

1 required, each Non-Management Director denies them, including the allegation of the existence of
2 “anticompetitive and unlawful agreements.” Each Non-Management Director lacks sufficient
3 knowledge and information to admit or deny the remaining allegations in this paragraph, and
4 denies those allegations on that basis.

5 14. Plaintiff Devin Black is a resident of the State of New York. Black purchased
6 Closed System E-Vapor products, including devices and pods, directly from JLI during the
7 relevant period. Black created an account with JLI on Juul.com before August 8, 2018. Black did
8 not agree to arbitrate his claims against JLI. Black was injured in connection with his purchases
during the Class Period as a result of Defendants’ anticompetitive and unlawful agreements
alleged herein.

9 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
10 response on their part is required. Insofar as a response is required, this paragraph states legal
11 conclusions that require no response. Insofar as a response is required, each Non-Management
12 Director denies them, including the allegation of the existence of “anticompetitive and unlawful
13 agreements.” Each Non-Management Director lacks sufficient knowledge and information to
14 admit or deny the remaining allegations in this paragraph, and denies those allegations on that
15 basis.

16 15. Plaintiff Robert Thompson is a resident of the State of Florida. Thompson
17 purchased Closed System E-Vapor products, including devices and pods, directly from JLI during
the relevant period. Thompson created an account with JLI on Juul.com before August 8, 2018.
18 Thompson did not agree to arbitrate his claims against JLI. Thompson was injured in connection
with his purchases during the Class Period as a result of Defendants’ anticompetitive and unlawful
19 agreements alleged herein.

20 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
21 response on their part is required. Insofar as a response is required, this paragraph states legal
22 conclusions that require no response. Insofar as a response is required, each Non-Management
23 Director denies them, including the allegation of the existence of “anticompetitive and unlawful
24 agreements.” Each Non-Management Director lacks sufficient knowledge and information to
25 admit or deny the remaining allegations in this paragraph, and denies those allegations on that
26 basis.

1 **B. Corporate Defendants**

2 16. Defendant Juul Labs, Inc. (“JLI”), is a Delaware corporation with its principal
3 place of business located at 560 20th Street, San Francisco, California. JLI is the leading
4 manufacturer of Closed-System E-Vapor products, generating over \$1 billion in sales in 2018.
5 During the Class Period, JLI sold Closed-System E-Vapor products, including devices and pods,
6 under the brand name JUUL directly or through its subsidiaries, agents and affiliates to purchasers
7 throughout the United States. JLI is a party to the anticompetitive and unlawful agreements
8 alleged herein.

9 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
10 response on their part is required. Insofar as a response is required, this paragraph states legal
11 conclusions that require no response. Insofar as a response is required, each Non-Management
12 Director denies them, including the allegation that “JLI is a party to [] anticompetitive and
13 unlawful agreements.” Each Non-Management Director admits that JLI is a Delaware
14 corporation. Each Non-Management Director further admits that JLI sells JUUL-branded
15 vaporizer devices and related accessories, including pods. Each Non-Management Director denies
16 that JLI’s principal place of business is in San Francisco, California. Each Non-Management
17 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
18 this paragraph, and denies those allegations on that basis.

19 17. Defendant Altria Group, Inc. (“Altria”) is a Virginia corporation headquartered at
20 6601 West Broad Street, Richmond, Virginia. Altria is one of the country’s largest tobacco
21 companies and was, prior to the anticompetitive Transaction alleged, a manufacturer of Closed-
22 System E-Vapor products. Before exiting the Closed-System E-Vapor market pursuant to the
23 Transaction, Altria sold Closed-System E-Vapor products, including devices, cartridges and pods,
24 directly or through its subsidiaries, agents and affiliates to purchasers throughout the United
25 States. Altria is a party to the anticompetitive and unlawful Transaction alleged herein. Prior to the
26 anticompetitive and illegal Transaction, Altria sold and marketed Closed-System E-Vapor
27 products under the brand names MarkTen and Green Smoke, and a closed-system pod-based
28 product under the brand name MarkTen Elite. In 2018, Altria generated over \$25 billion in sales.

ANSWER: This paragraph is not directed at the Non-Management Directors, and therefore no
response on their part is required. Insofar as a response is required, this paragraph states legal
conclusions that require no response. Insofar as a response is required, each Non-Management
Director denies them, including the allegation that “Altria is a party to [an] anticompetitive and
unlawful Transaction.” Each Non-Management Director lacks sufficient knowledge and

1 information to admit or deny the remaining allegations in this paragraph, and denies those
2 allegations on that basis.

3 **C. Individual Defendants**

4 18. Defendant Kevin “KC” Crosthwaite is the Chief Executive Officer and Chairman
5 of Juul Labs, Inc. Crosthwaite is a resident and citizen of Virginia. Crosthwaite became CEO of
6 JLI in September 2019. Before that, from June 2018 to September 2019, Crosthwaite was the
7 Chief Growth Officer for Altria. In that role, he was involved in the development and growth of
8 Altria’s Nu Mark MarkTen product line, which directly competed with JLI. Crosthwaite actively
9 and knowingly engaged in the anticompetitive conduct alleged herein. Crosthwaite was
10 instrumental in negotiating Altria’s attempts to acquire and ultimately invest in JLI. Crosthwaite
11 was instrumental in negotiating and implementing the anticompetitive provisions of the
12 Transaction. Crosthwaite implemented the Transaction, by among other things, overseeing the
13 withdrawal of the MarkTen products, as well as Altria’s due diligence of JLI. In January 2019,
14 Crosthwaite was named as Altria’s “independent” observer on JLI’s Board of Directors. Plaintiffs
15 are informed and believe, and on that basis allege, that Crosthwaite benefited personally from the
16 anticompetitive nature of the Transaction either through direct shareholding in the parties to the
17 Transaction or through other forms of compensation and financial benefits.

18 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
19 response on their part is required. Insofar as a response is required, this paragraph states legal
20 conclusions that require no response. Insofar as a response is required, each Non-Management
21 Director denies them, including the allegation that K.C. Crosthwaite engaged or participated in
22 “anticompetitive conduct” or any “anticompetitive . . . Transaction.” Each Non-Management
23 Director admits that K.C. Crosthwaite is the Chief Executive Officer and Chairman of JLI, and
24 served as Altria’s Chief Growth Officer and as an observer on JLI’s Board of Directors before
25 joining JLI in 2019. Each Non-Management Director further admits that K.C. Crosthwaite was
26 involved in the negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-
27 Management Director lacks sufficient knowledge and information to admit or deny the remaining
28 allegations in this paragraph, and denies those allegations on that basis.

19 19. Defendant Nicholas J. Pritzker is a venture capital investor and co-founder of Tao
20 Capital Partners. Tao Invest, the direct investment entity affiliated with Tao Capital Partners, was
21 a significant early investor in JLI. Pritzker has, at all relevant times, been a member of JLI’s Board
22 of Directors. Pritzker joined JLI’s Board of Directors in December 2017 and was a member of the
23 Board when it authorized the anticompetitive Transaction. In 2018, Pritzker represented to Altria
24 that he and Defendant Riaz Valani controlled a combined 44% of JLI’s stock. Pritzker is a resident
25 and citizen of the State of California. Pritzker obtained substantial income from the proceeds of
26 the anticompetitive agreement. Pritzker was instrumental in negotiating and implementing the
27 anticompetitive provisions of the Transaction. Pritzker actively and knowingly engaged in the
28

1 anticompetitive conduct alleged herein. Pritzker attended meetings and communicated with
2 employees of Altria in order to enter into the anticompetitive Transaction.

3 **ANSWER:** This paragraph is not directed at Riaz Valani, and therefore no response on his part
4 is required. Insofar as a response is required, this paragraph states legal conclusions that require
5 no response. Insofar as a response is required, Riaz Valani denies them, including the allegation
6 that Nicholas Pritzker engaged or participated in “anticompetitive conduct” or any
7 “anticompetitive Transaction.” Riaz Valani admits that Nicholas Pritzker is a member of the JLI
8 Board of Directors, was a member when the JLI Board of Directors authorized Altria’s purchase
9 of a non-voting interest in JLI, and was involved in the negotiation of that purchase. Riaz Valani
10 denies that Nicholas Pritzker joined the JLI Board of Directors in December 2017. Riaz Valani
11 lacks sufficient knowledge and information to admit or deny the remaining allegations in this
12 paragraph, and denies those allegations on that basis. Nicholas Pritzker adopts Riaz Valani’s
13 response regarding legal conclusions and further denies them. Nicholas Pritzker admits that he
14 resides in California, that he co-founded Tao Capital Partners, and that he could be described as a
15 “venture capital investor.” Nicholas Pritzker further admits that he is a member of the JLI Board
16 of Directors, was a member when the JLI Board of Directors authorized Altria’s purchase of a
17 non-voting interest in JLI, and was involved in the negotiation of that purchase. Nicholas Pritzker
18 denies that he joined the JLI Board of Directors in December 2017. Nicholas Pritzker denies the
19 remaining allegations in this paragraph.

20 20. Defendant Riaz Valani is a venture capital investor and General Partner at private-
21 equity investment firm Global Asset Capital. Global Asset Capital is a significant investor in JLI.
22 Valani has, at all relevant times, been a member of JLI’s Board of Directors, including when it
23 authorized the anticompetitive Transaction. Valani has been listed as a JLI board member on SEC
24 filings beginning as early as 2011. In 2018, Valani represented to Altria that he and Pritzker
25 controlled a combined 44% of JLI’s stock. Valani is a resident and citizen of California. Valani
obtained substantial income from the proceeds of the Transaction. Valani actively and knowingly
engaged in the anticompetitive conduct alleged herein. Valani attended meetings and
communicated with employees of Altria in order to enter and implement the anticompetitive
Transaction.

26 **ANSWER:** This paragraph is not directed at Nicholas Pritzker, and therefore no response on his
27 part is required. Insofar as a response is required, this paragraph states legal conclusions that
28 require no response. Insofar as a response is required, Nicholas Pritzker denies them, including

1 the allegation that Riaz Valani engaged or participated in “anticompetitive conduct” or any
2 “anticompetitive Transaction.” Nicholas Pritzker admits that Riaz Valani is a member of the JLI
3 Board of Directors, was a member when the JLI Board of Directors authorized Altria’s purchase
4 of a non-voting interest in JLI, and was involved in the negotiation of that purchase. Nicholas
5 Pritzker lacks sufficient knowledge and information to admit or deny the remaining allegations in
6 this paragraph, and denies those allegations on that basis. Riaz Valani adopts Nicholas Pritzker’s
7 response regarding legal conclusions and further denies them. Riaz Valani admits that he could be
8 described as a “venture capital investor.” Riaz Valani further admits that he is a member of the
9 JLI Board of Directors, was a member when the JLI Board of Directors authorized Altria’s
10 purchase of a non-voting interest in JLI, and was involved in the negotiation of that purchase.
11 Riaz Valani does not contest personal jurisdiction in the State of California. Riaz Valani lacks
12 sufficient knowledge and information to admit or deny the allegations in the fourth sentence in this
13 paragraph, and denies those allegations on that basis. Riaz Valani denies the remaining allegations
14 in this paragraph.

15 21. Defendant Dinyar Devitre has, at all relevant times, been a member of the Board of
16 Directors of Altria, including when it authorized the anticompetitive Transaction, and currently
17 chairs Altria’s Finance Committee. Devitre is a resident and citizen of New York. Devitre actively
18 and knowingly engaged in the anticompetitive conduct alleged herein. Devitre was instrumental in
19 negotiating and implementing the anticompetitive provisions of the Transaction. Devitre attended
20 meetings and communicated with employees and board members of JLI in order to enter and
21 implement the anticompetitive Transaction. Plaintiffs are informed and believe, and on that basis
22 allege, that Devitre benefited personally from the anticompetitive nature of the Transaction either
23 through direct shareholding in the parties to the Transaction or through other forms of
24 compensation and financial benefits.

25 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
26 response on their part is required. Insofar as a response is required, this paragraph states legal
27 conclusions that require no response. Insofar as a response is required, each Non-Management
28 Director denies them, including the allegation that Dinyar Devitre engaged or participated in
“anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
admits that Dinyar Devitre is a member of the Altria Board of Directors, was a member when the
Altria Board of Directors authorized Altria’s purchase of a non-voting interest in JLI, and was
involved in the negotiation of that purchase. Each Non-Management Director lacks sufficient

1 knowledge and information to admit or deny the remaining allegations in this paragraph, and
2 denies those allegations on that basis.

3 22. Defendant Kevin Burns was Chief Executive Office of JLI from December 2017 to
4 September 2019. Burns is a resident and citizen of California. Burns actively and knowingly
5 engaged in the anticompetitive conduct alleged herein. Burns was instrumental in negotiating and
6 implementing the anticompetitive provisions of the Transaction. Burns attended meetings and
7 communicated with employees of Altria in order to enter and implement the anticompetitive
8 Transaction. Burns obtained substantial income from the proceeds of the anticompetitive
9 Transaction.

10 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
11 response on their part is required. Insofar as a response is required, this paragraph states legal
12 conclusions that require no response. Insofar as a response is required, each Non-Management
13 Director denies them, including the allegation that Kevin Burns engaged or participated in
14 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
15 admits that Kevin Burns was Chief Executive Officer of JLI beginning in or around December
16 2017 or January 2018, stepped down from that role in or around September 2019, and was
17 involved in the negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-
18 Management Director lacks sufficient knowledge and information to admit or deny the remaining
19 allegations in this paragraph, and denies those allegations on that basis.

20 23. Defendant James Monsees is a co-founder of JLI, was its Chief Product Officer at
21 all relevant times until March 2020, and was a member of the Board of Directors of JLI when it
22 authorized the anticompetitive Transaction. Monsees has been an officer and director of JLI at all
23 relevant times. Monsees is a resident and citizen of California. Monsees actively and knowingly
24 engaged in the anticompetitive conduct alleged herein. Monsees attended meetings and
25 communicated with employees of Altria in order to enter and implement the anticompetitive
26 Transaction. Monsees obtained substantial income from the proceeds of the anticompetitive
27 Transaction.

28 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
response on their part is required. Insofar as a response is required, this paragraph states legal
conclusions that require no response. Insofar as a response is required, each Non-Management
Director denies them, including the allegation that James Monsees engaged or participated in
“anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
admits that James Monsees co-founded JLI, was at one time JLI’s Chief Product Officer, and was

1 a member of JLI’s Board of Directors when it authorized Altria’s purchase of a non-voting interest
2 in JLI. Each Non-Management Director lacks sufficient knowledge and information to admit or
3 deny the remaining allegations in this paragraph, and denies those allegations on that basis.

4 24. Defendant Adam Bowen is the Chief Technology Officer, a co-founder at JLI, and
5 a member of the Board of JLI, including when it authorized the anticompetitive Transaction.
6 Bowen has been an officer and director of JLI at all relevant times. Bowen is a resident and citizen
7 of the State of California. Bowen actively and knowingly engaged in the anticompetitive conduct
8 alleged herein. Bowen attended meetings and communicated with employees of Altria in order to
9 enter and implement the anticompetitive Transaction. Bowen obtained substantial income from the
10 proceeds of the anticompetitive Transaction.

11 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
12 response on their part is required. Insofar as a response is required, this paragraph states legal
13 conclusions that require no response. Insofar as a response is required, each Non-Management
14 Director denies them, including the allegation that Adam Bowen engaged or participated in
15 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
16 admits that Adam Bowen co-founded JLI, was at one time JLI’s Chief Technology Officer, and
17 was a member of JLI’s Board of Directors when it authorized Altria’s purchase of a non-voting
18 interest in JLI. Each Non-Management Director lacks sufficient knowledge and information to
19 admit or deny the remaining allegations in this paragraph, and denies those allegations on that
20 basis.

21 25. Defendant Gerald Masoudi was the Chief Legal Officer at JLI from July 2018 until
22 October 2020. Masoudi is a resident and citizen of Virginia. Masoudi actively and knowingly
23 engaged in the anticompetitive conduct alleged herein. Masoudi was instrumental in negotiating
24 and implementing the anticompetitive provisions of the Transaction. Masoudi communicated with
25 employees of Altria in order to enter and implement the anticompetitive Transaction. Plaintiffs are
26 informed and believe, and on that basis allege, that Masoudi benefited personally from the
27 anticompetitive nature of the Transaction either through direct shareholding in the parties to the
28 Transaction or through other forms of compensation and financial benefits.

ANSWER: This paragraph is not directed at the Non-Management Directors, and therefore no
response on their part is required. Insofar as a response is required, this paragraph states legal
conclusions that require no response. Insofar as a response is required, each Non-Management
Director denies them, including the allegation that Gerald Masoudi engaged or participated in
“anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director

1 admits that Gerald Masoudi was at one time JLI’s Chief Legal Officer and was involved in the
2 negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-Management Director
3 lacks sufficient knowledge and information to admit or deny the remaining allegations in this
4 paragraph, and denies those allegations on that basis.

5 26. Defendant Timothy Danaher was the Chief Financial Officer at JLI from
6 approximately October 2014 to October 2019. Danaher is a resident and citizen of California.
7 Danaher actively and knowingly engaged in the anticompetitive conduct alleged herein. Danaher
8 was instrumental in negotiating and implementing the anticompetitive provisions of the
9 Transaction. Danaher attended meetings and communicated with employees of Altria in order to
10 enter and implement the anticompetitive Transaction. Plaintiffs are informed and believe, and on
11 that basis allege, that Danaher benefited personally from the anticompetitive nature of the
12 Transaction either through direct shareholding in the parties to the Transaction or through other
13 forms of compensation and financial benefits.

14 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
15 response on their part is required. Insofar as a response is required, this paragraph states legal
16 conclusions that require no response. Insofar as a response is required, each Non-Management
17 Director denies them, including the allegation that Timothy Danaher engaged or participated in
18 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
19 admits that Timothy Danaher was at one time JLI’s Chief Financial Officer and was involved in
20 the negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-Management
21 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
22 this paragraph, and denies those allegations on that basis.

23 27. Defendant Howard Willard was Chairman and CEO of Altria from May 2018 until
24 April 2020. Before that, Willard served in numerous leadership positions during his more than 25-
25 year career at Altria—including Chief Operating Officer, Chief Financial Officer and Executive
26 Vice President of Strategy and Business Development. Willard is a resident and citizen of
27 Virginia. Willard actively and knowingly engaged in the anticompetitive conduct alleged herein.
28 Willard was instrumental in negotiating and implementing the anticompetitive provisions of the
Transaction. Willard attended meetings and communicated with employees of JLI in order to enter
the anticompetitive Transaction. Plaintiffs are informed and believe, and on that basis allege, that
Willard benefited personally from the anticompetitive nature of the Transaction either through
direct shareholding in the parties to the Transaction or through other forms of compensation and
financial benefits.

ANSWER: This paragraph is not directed at the Non-Management Directors, and therefore no
response on their part is required. Insofar as a response is required, this paragraph states legal

1 conclusions that require no response. Insofar as a response is required, each Non-Management
2 Director denies them, including the allegation that Howard Willard engaged or participated in
3 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
4 admits that Howard Willard was at one time Altria’s Chief Executive Officer and Chairman, and
5 was involved in the negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-
6 Management Director lacks sufficient knowledge and information to admit or deny the remaining
7 allegations in this paragraph, and denies those allegations on that basis.

8 28. Defendant William (“Billy”) Gifford currently serves as CEO of Altria. Before that,
9 Gifford has served in numerous senior leadership roles during his more than 25-year career at
10 Altria, including most recently Vice Chairman and Chief Financial Officer. Gifford is a resident
11 and citizen of the Virginia. Gifford actively and knowingly engaged in the anticompetitive conduct
12 alleged herein. Gifford was instrumental in negotiating and implementing the anticompetitive
13 provisions of the Transaction. Gifford attended meetings and communicated with employees of
14 JLI in order to enter and implement the anticompetitive Transaction. Plaintiffs are informed and
15 believe, and on that basis allege, that Gifford benefited personally from the anticompetitive nature
16 of the Transaction either through direct shareholding in the parties to the Transaction or through
17 other forms of compensation and financial benefits.

14 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
15 response on their part is required. Insofar as a response is required, this paragraph states legal
16 conclusions that require no response. Insofar as a response is required, each Non-Management
17 Director denies them, including the allegation that William Gifford engaged or participated in
18 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
19 admits that William Gifford is Altria’s Chief Executive Officer, was at one time Altria’s Vice
20 Chairman and Chief Financial Officer, and was involved in the negotiation of Altria’s purchase of
21 a non-voting interest in JLI. Each Non-Management Director lacks sufficient knowledge and
22 information to admit or deny the remaining allegations in this paragraph, and denies those
23 allegations on that basis.

24 29. Defendant Murray Garnick is Executive Vice President and General Counsel at
25 Altria. Garnick is a resident and citizen of Virginia. Garnick actively and knowingly engaged in
26 the anticompetitive conduct alleged herein. Garnick was instrumental in negotiating and
27 implementing the anticompetitive provisions of the Transaction. For example, Garnick
28 communicated with employees of JLI in order to enter and implement the anticompetitive
Transaction. Plaintiffs are informed and believe, and on that basis allege, that Garnick benefited
personally from the anticompetitive nature of the Transaction either through direct shareholding in
the parties to the Transaction or through other forms of compensation and financial benefits.

1 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
2 response on their part is required. Insofar as a response is required, this paragraph states legal
3 conclusions that require no response. Insofar as a response is required, each Non-Management
4 Director denies them, including the allegation that Murray Garnick engaged or participated in
5 “anticompetitive conduct” or any “anticompetitive Transaction.” Each Non-Management Director
6 admits that Murray Garnick is Altria’s Executive Vice President and General Counsel, and was
7 involved in the negotiation of Altria’s purchase of a non-voting interest in JLI. Each Non-
8 Management Director lacks sufficient knowledge and information to admit or deny the remaining
9 allegations in this paragraph, and denies those allegations on that basis.

10 **AGENTS AND CO-CONSPIRATORS**

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

16 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
17 response is required, each Non-Management Director denies them.

18 31. The Corporate Defendants’ agents operated under the explicit and apparent
19 authority of their principals.

20 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
21 response is required, each Non-Management Director denies them.

22 32. Each Corporate Defendant, and its subsidiaries, affiliates and agents operated as a
23 single unified entity.

24 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
25 response is required, each Non-Management Director denies them.

26 33. Various persons and/or firms not named as Defendants herein may have
27 participated as co-conspirators in the violations alleged herein and may have performed acts and
28 made statements in furtherance thereof.

ANSWER: This paragraph states legal conclusions that require no response. Insofar as a
response is required, each Non-Management Director denies them. Each Non-Management

1 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
2 this paragraph, and denies those allegations on that basis.

3 34. Each Defendant acted as the principal, agent, or joint venture of, or for other
4 Defendants with respect to the acts, violations, and common course of conduct alleged herein.

5 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
6 response is required, each Non-Management Director denies them.

7 **CLASS ALLEGATIONS**

8 35. Plaintiffs bring this action for damages and injunctive relief on behalf of
9 themselves and all others similarly situated as a class action pursuant to Rules 23(a), (b)(2) and
10 (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following Class:

11 All persons or entities in the United States that purchased Closed-System E-Vapor
12 products, including devices and pods, directly from Juul from October 5, 2018
13 through and until the anticompetitive effects of Defendants' unlawful conduct
14 cease (the "Class Period").

15 This definition specifically excludes the following person or entities:

- 16 a. Any of the Defendants named herein;
- 17 b. Any of the Defendants' co-conspirators;
- 18 c. Any of Defendants' parent companies, subsidiaries, and affiliates;
- 19 d. Any of Defendants' officers, directors, management, employees, subsidiaries,
20 affiliates, or agents;
- 21 e. All governmental entities; and
- 22 f. The judges and chambers staff in this case, as well as any members of their
23 immediate families.

24 **ANSWER:** Each Non-Management Director admits that Plaintiffs purport to bring this action on
25 behalf of themselves and as a class representative. Each Non-Management Director further admits
26 that Plaintiffs seek various forms of relief, but deny that Plaintiffs are entitled to any such relief.
27 Each Non-Management Director admits that Plaintiffs purport to define a nationwide class as set
28 forth in this paragraph, but denies that such a class is appropriate or can be certified consistent
with Rule 23 of the Federal Rules of Civil Procedure. The remaining allegations states legal
conclusions that require no response. Insofar as a response is required, each Non-Management
Director denies them.

36. Plaintiffs do not know the exact number of Class members, because such
information is in the exclusive control of Defendants. Plaintiffs are informed and believe that, due

1 to the nature of the trade and commerce involved, there are thousands of Class members
2 geographically dispersed throughout the United States and elsewhere, such that joinder of all Class
members in the prosecution of this action is impracticable.

3 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
4 response is required, each Non-Management Director denies them. Each Non-Management
5 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
6 Rules of Civil Procedure. Each Non-Management Director lacks sufficient knowledge and
7 information to admit or deny the remaining allegations in this paragraph, and denies those
8 allegations on that basis.

9 37. Plaintiffs' claims are typical of the claims of their fellow Class members because
10 Plaintiffs directly purchased a Closed-System E-Vapor product, including devices and pods, from
11 JLI. Plaintiffs and all Class members were damaged by the same wrongful conduct of Defendants
as alleged herein, and the relief sought herein is common to all members of the Class.

12 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
13 response is required, each Non-Management Director denies them, including the allegation that
14 they engaged in "wrongful conduct." Each Non-Management Director denies that a class is
15 appropriate or can be certified consistent with Rule 23 of the Federal Rules of Civil Procedure, or
16 putative class members have been "damaged" by any conduct of the Non-Management Directors.
17 Each Non-Management Director lacks sufficient knowledge and information to admit or deny the
18 remaining allegations in this paragraph, and denies those allegations on that basis.

19 38. Numerous questions of law or fact common to the entire Class—including, but not
20 limited to those identified below—arise from Defendants' anticompetitive and unlawful conduct:

- 21 a. Whether Defendants combined or conspired with one another to not compete in the
22 market for Closed-System E-Vapor products, including devices and pods, sold at
any time during the Class Period to purchasers in the United States;
- 23 b. Whether Defendants combined or conspired with one another to fix, raise, maintain
24 and/or stabilize prices for Closed-System E-Vapor products, including devices and
25 pods, sold at any time during the Class Period to purchasers in the United States;
- 26 c. Whether Defendants combined or conspired with one another to divide or allocate
27 the market for Closed-System E-Vapor products, including devices and pods, sold
28 at any time during the Class Period to purchasers in the United States;
- d. Whether Defendants' conduct caused the prices of Closed-System E-Vapor
products, including devices and pods, sold at any time during the Class Period to
purchasers in the United States to be artificially fixed, raised, maintained or
stabilized at supracompetitive prices;

- 1 e. Whether Plaintiffs and the other members of the Class were injured by Defendants’
2 conduct and, if so, the appropriate Class-wide measure of damages;
- 3 f. Whether Plaintiffs and other members of the Class are entitled to, among other
4 things, injunctive relief, and, if so, the nature and extent of such relief.

4 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
5 response is required, each Non-Management Director denies them. Each Non-Management
6 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
7 Rules of Civil Procedure.

8 39. These and other questions of law and fact are common to the Class and
9 predominate over any questions affecting the Class members individually.

10 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
11 response is required, each Non-Management Director denies them. Each Non-Management
12 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
13 Rules of Civil Procedure.

14 40. Plaintiffs will fairly and adequately represent the interests of the Class because they
15 purchased Closed-System E-Vapor products, including devices and pods, directly from JLI and
16 have no conflicts with any other members of the Class. Furthermore, Plaintiffs have retained
sophisticated and competent counsel who is experienced in prosecuting antitrust class actions, as
well as other complex litigation.

17 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
18 response is required, each Non-Management Director denies them. Each Non-Management
19 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
20 Rules of Civil Procedure. Each Non-Management Director lacks sufficient knowledge and
21 information to admit or deny the remaining allegations in this paragraph, and denies those
22 allegations on that basis.

23 41. Defendants have acted on grounds generally applicable to the Class, thereby
24 making final injunctive relief appropriate with respect to the Class as a whole.

25 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
26 response is required, each Non-Management Director denies them. Each Non-Management
27 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
28

1 Rules of Civil Procedure. Each Non-Management Director further denies that injunctive relief is
2 appropriate or available.

3 42. This class action is superior to alternatives, if any, for the fair and efficient
4 adjudication of this controversy. Prosecuting the claims pleaded herein as a class action will
5 eliminate the possibility of repetitive litigation. There will be no material difficulty in the
6 management of this action as a class action.

7 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
8 response is required, each Non-Management Director denies them. Each Non-Management
9 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
10 Rules of Civil Procedure.

11 43. The prosecution of separate actions by individual Class members would create the
12 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
13 Defendants.

14 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
15 response is required, each Non-Management Director denies them. Each Non-Management
16 Director denies that a class is appropriate or can be certified consistent with Rule 23 of the Federal
17 Rules of Civil Procedure.

18 **FACTUAL ALLEGATIONS**

19 **A. Industry Background**

20 44. The discovery of the negative impacts of tobacco use in the 1990's and early
21 2000's changed American society. Laws were enacted banning cigarette smoking in public places
22 such as restaurants and bars. The prohibition sparked changes in Americans' smoking habits and
23 added to increasing social stigma. Dramatically increased taxes on cigarettes provided another
24 disincentive to smoke, and many Americans gave up smoking to live a healthier life. Rates of
25 traditional smoking among the younger generations decreased drastically.

26 **ANSWER:** Each Non-Management Director admits that many lawmaking authorities in the
27 United States have enacted bans on combustible cigarette use in public places and that rates of
28 combustible cigarette use by underage consumers have "decreased drastically" over the past three
29 decades. Each Non-Management Director lacks sufficient knowledge and information to admit or
30 deny the remaining allegations in this paragraph, and denies those allegations on that basis.

31 45. The first modern E-Vapor products appeared in the United States market by the
32 mid-2000s. Around 2010, traditional tobacco companies started either entering the market with
33 their own products or acquiring existing E-Vapor companies.

1 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
2 or deny the allegations in this paragraph, and denies those allegations on that basis.

3 46. In 2007, Pax Labs (“Pax”) was founded by James Monsees and Adam Bowen,
4 graduates of the design program at Stanford University. Initially, Pax was called Ploom. In 2017,
5 JLI was spun out of Pax. In this complaint, Pax is referred to as JLI.

6 **ANSWER:** This paragraph describes a court filing, which speaks for itself, and each Non-
7 Management Director denies any characterization of that court filing. Each Non-Management
8 Director denies that JLI was “spun out” of Pax in 2017. The Non-Management Directors admit
9 the remaining allegations in this paragraph.

10 47. Monsees has described the cigarette as “the most successful consumer product of
11 all time . . . an amazing product.” Because of “some problems” inherent in the cigarette, JLI’s
12 founders set out to “deliver[] solutions that refresh the magic and luxury of the tobacco category.”
13 Monsees saw “a huge opportunity for products that speak directly to those consumers who aren’t
14 perfectly aligned with traditional tobacco products.” With a focus on recreating the “ritual and
15 elegance that smoking once exemplified,” Monsees and Bowen founded JLI to “meet the needs of
16 people who want to enjoy tobacco but don’t self-identify with—or don’t necessarily want to be
17 associated with—cigarettes.”

18 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
19 speaks for itself, and each Non-Management Director denies any characterization of that
20 document.

21 48. In 2013, Altria entered the Closed-System E-Vapor market through its subsidiary
22 Nu Mark with the brand MarkTen. The MarkTen was a cig-a-like product that was designed to
23 look and feel like a traditional cigarette.

24 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
25 response on their part is required. Insofar as a response is required, each Non-Management
26 Director lacks sufficient knowledge and information to admit or deny the allegations in this
27 paragraph, and denies those allegations on that basis.

28 49. Over the next several years, Altria spent well over \$100 million acquiring other
existing Closed-System E-Vapor products in order to augment its portfolio.

ANSWER: This paragraph is not directed at the Non-Management Directors, and therefore no
response on their part is required. Insofar as a response is required, each Non-Management
Director lacks sufficient knowledge and information to admit or deny the allegations in this
paragraph, and denies those allegations on that basis.

1 50. In 2015, JLI launched the JUUL, a Closed-System E-Vapor product in a discreet
2 “pod-based” format. JLI’s Closed-System E-Vapor product is comprised of three products: (1) the
3 device (“JUUL”), which looks and feels like a small USB drive, (2) pods containing E-Liquid
4 (“JUULpods”), and (3) a charger. These products are shown below.



8 **ANSWER:** Each Non-Management Director admits that JLI (then known PAX Labs, Inc.) first
9 offered a closed-system e-cigarette product, known as JUUL, for sale to the general public in
10 2015. Each Non-Management Director further admits that JLI sells an e-cigarette device, pods
11 containing a liquid solution, and a USB charger. This paragraph purports to illustrate JUUL
12 products and JUUL product packaging, which speak for themselves, and each Non-Management
13 Director denies any characterization of them. Each Non-Management Director lacks sufficient
14 knowledge and information to admit or deny the remaining allegations in this paragraph, and
15 denies those allegations on that basis.

16 51. The JUUL deployed a chemical breakthrough in the speed of its nicotine delivery.
17 Since the 1960s, tobacco companies have manufactured cigarettes that freebase nicotine using
18 ammonia, which liberates the nicotine so that it can be quickly absorbed into the lungs and the
19 brain. As one addiction expert has said, “[t]he modern cigarette does to nicotine what crack does
20 to cocaine.” JLI discovered that by adding benzoic acid to nicotine salts, which occur naturally in
21 tobacco, they could mimic a cigarette’s rapid nicotine delivery. E-Liquid (also known as E-juice,
22 vape juice, and vapor liquid) is the fluid used in vaporizers and electronic cigarettes that creates
23 the actual vapor. JUUL uses a proprietary blend of E-Liquid. According to Bowen, because it
24 contains ten times as much nicotine as other e-cigarettes, JUUL packs a “bigger punch” as
25 compared to other, similar products in the market. Bowen also stated that the idea behind the
26 blend was to eliminate the need for smokers to go back to cigarettes after an unsatisfying
27 experience with vaping.

23 **ANSWER:** This paragraph purports to quote or characterize comments from an “addiction
24 expert” and Adam Bowen, which speak for themselves, and each Non-Management Director
25 denies any characterization of those comments. Each Non-Management Director lacks sufficient
26 knowledge and information to admit or deny the remaining allegations in this paragraph, and
27 denies those allegations on that basis.

1 52. Another novel aspect of the JUUL was its easy-to-use pod-based design, which
2 allowed consumers to quickly replace the E-Liquid to continue smoking. Each JUULpod is a
3 plastic enclosure containing 0.7 milliliters of JLI’s patented E-Liquid and a coil heater. When a
4 sensor in the JUUL detects the movement of air caused by suction on the JUULpod, the battery in
5 the JUUL activates the heating element, which in turn converts the nicotine solution in the
6 JUULpod into a vapor consisting principally of nicotine, benzoic acid, glycerin, and propylene
7 glycol. JUULpods are disposable and must be replaced after the E-Liquid is exhausted. JUULpods
8 come in a variety of flavors and are available in both 5.0% and 3.0% nicotine strengths.

9 **ANSWER:** Each Non-Management Director admits that JUULpods contain nicotine and are
10 disposable. Each Non-Management Director admits that JUULpods are sold in tobacco and
11 menthol flavors and are available in different nicotine strengths. Each Non-Management Director
12 lacks sufficient knowledge and information to admit or deny the remaining allegations in this
13 paragraph, and denies those allegations on that basis.

14 53. A light embedded in the JUUL serves as a battery level indicator and lights up in a
15 “party mode” display of a rainbow of colors when the device is waved around. The party mode is
16 particularly appealing to younger consumers and contributed to JLI’s success in the market.

17 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
18 or deny the allegations in this paragraph, and denies those allegations on that basis.

19 54. The physical design of the JUUL, including its circuit board, and JUULpod
20 determines the amount of aerosolized nicotine the JUUL emits. By altering the temperature,
21 maximum puff duration, or airflow, among other things, JLI can finely tune the amount of nicotine
22 vapor the JUUL delivers.

23 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
24 or deny the allegations in this paragraph, and denies those allegations on that basis.

25 55. JLI’s Closed-System E-Vapor product quickly gained traction among consumers,
26 rapidly surpassing Altria and securing the largest share of the Closed-System E-Vapor market.
27 JUUL was attractive to a new generation of smokers that valued its sleek design, easy-to-use pods
28 in flavors like cucumber, mango, and mint, and discrete, scentless smoke.

ANSWER: Each Non-Management Director admits that JLI at one time sold JUULpods in mint,
cucumber, and mango flavors. Each Non-Management Director lacks sufficient knowledge and
information to admit or deny the remaining allegations in this paragraph, and denies those
allegations on that basis.

56. Since its launch in 2015, JLI has become the dominant Closed-System E-Vapor
manufacturer in the United States. Its revenues grew by 700% in 2017. According to a Wells

1 Fargo report, as of August 2018, JLI had the largest market share in the e-cigarette category with
2 53% share of volumes and 72% share of revenue over the previous 52-week period.

3 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
4 speaks for itself, and each Non-Management Director denies any characterization of that
5 document. Each Non-Management Director lacks sufficient knowledge and information to admit
6 or deny the remaining allegations in this paragraph, and denies those allegations on that basis.

7 57. In July 2017, JLI was spun out of Pax as an independent company, with Tyler
8 Goldman, former CEO of Pax, named as CEO of JLI. In December 2017, Goldman was replaced
9 by Kevin Burns. Monsees worked as Chief Product Officer and served as a member of the Board
of Directors at JLI. Bowen worked as Chief Technology Officer and served as a member of the
Board of Directors at JLI.

10 **ANSWER:** Each Non-Management Director denies that “JLI was spun out of Pax” in July 2017.
11 Each Non-Management Director admits that Kevin Burns replaced Tyler Goldman as Chief
12 Executive Officer of JLI in or around December 2017 or January 2018. Each Non-Management
13 Director admits the remaining allegations in this paragraph.

14 58. In late-2017, Altria acquired the rights to a pod-based product. In February 2018,
15 Altria began marketing a closed-system pod-based product as the MarkTen Elite. Using the
MarkTen Elite, Altria sought to compete directly with JLI’s sleek, pod-based e-vapor product.

16 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
17 response on their part is required. Insofar as a response is required, each Non-Management
18 Director lacks sufficient knowledge and information to admit or deny the allegations in this
19 paragraph, and denies those allegations on that basis.

20 59. Like the JUUL, the MarkTen Elite offered a variety of pod flavors in disposable
21 capsules. Each pod contained 1.5ml of liquid nicotine. The MarkTen Elite is shown below:



27 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
28 response on their part is required. Insofar as a response is required, this paragraph purports to

1 illustrate MarkTen Elite products and MarkTen Elite product packaging, which speak for
2 themselves, and each Non-Management Director denies any characterization of them. Each Non-
3 Management Director lacks sufficient knowledge and information to admit or deny the remaining
4 allegations in this paragraph, and denies those allegations on that basis.

5 60. Altria management emphasized the importance of the Closed-System E-Vapor
6 market in its investor presentations and through internal incentive compensation plans. For
7 example, in a November 2017 presentation to investors, Altria detailed the “substantial amount of
8 work” it has already undertaken to prepare numerous regulatory applications for submission to the
9 FDA for e-vapor products. Altria explained that its “significant investments in regulatory science
10 have laid the groundwork for these submissions, and much of the foundational research is already
underway.” In February 2018, Altria’s then-COO Howard Willard explained, “Nu Mark’s goal is
to lead the U.S. e-vapor category with a portfolio of superior, potentially reduced-risk products
that . . . generate cigarette-like margins at scale.”

11 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
12 response on their part is required. Insofar as a response is required, this paragraph purports to
13 quote or characterize comments from an Altria presentation and Howard Willard, which speak for
14 themselves, and each Non-Management Director denies any characterization of those comments.
15 Each Non-Management Director lacks sufficient knowledge and information to admit or deny the
16 remaining allegations in this paragraph, and denies those allegations on that basis.

17 **B. JLI and Altria Agree to Divide and Allocate Markets and Not to Compete in the
Closed-System E-Vapor Market**

18 61. Beginning in 2017, Altria pursued a two-pronged strategy of attempting to acquire
19 a competitor in the Closed-System E-Vapor space while simultaneously competing aggressively
20 within it.

21 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
22 response on their part is required. Insofar as a response is required, each Non-Management
23 Director lacks sufficient knowledge and information to admit or deny the allegations in this
24 paragraph, and denies those allegations on that basis.

25 62. Early on, JLI was identified as the most promising target because of its rapidly
increasing market share and popularity with consumers.

26 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
27 response on their part is required. Insofar as a response is required, each Non-Management
28

1 Director lacks sufficient knowledge and information to admit or deny the allegations in this
2 paragraph, and denies those allegations on that basis.

3 63. In 2017, JLI entertained but rebuffed Altria’s initial overtures of acquisition, and
4 instead chose to compete with Altria in the Closed-System E-Vapor market, particularly with
5 respect to price. However, despite having recently become the market leader, JLI was concerned
6 that Altria would use its reputation, experience in the tobacco business, and abundant human and
capital resources to compete with respect to product innovation and price. In short, Altria was also
a competitive threat to JLI.

7 **ANSWER:** Each Non-Management Director admits that Altria’s proposed deal structure as of
8 December 2017 was not attractive to JLI. Each Non-Management Director denies the remaining
9 allegations in this paragraph.

10 64. On November 9, 2017, Howard Willard and Billy Gifford—Altria’s then-CFO—
11 held a meeting with “key Pax investors.” Altria’s goal was to “[c]omplete an investment /
acquisition that provides access to Juul product and Pax capabilities.”

12 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
13 speaks for itself, and each Non-Management Director denies any characterization of that
14 document.

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

17 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
18 or deny the allegations in this paragraph, and denies those allegations on that basis.

19 66. In the ensuing months, Perella Weinberg Partners (Altria’s financial advisor)
20 engaged with Goldman Sachs regarding the potential deal and facilitated further discussions
21 between Altria and JLI.

22 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
23 or deny the allegations in this paragraph, and denies those allegations on that basis.

24 67. In early 2018, Altria again approached JLI to acquire an ownership interest in JLI,
25 including potentially acquiring or merging with the company. As before, JLI initially resisted
26 Altria’s efforts, seeking to impose onerous anticompetitive preconditions on the discussions.
Among other things, JLI sought to obtain Altria’s agreement, in exchange for valuable
consideration, to control or allocate the market for Closed-System E-Vapor products.

27 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.
28

1 68. On April 13, 2018, Willard sent Kevin Burns, JLI’s then Chief Executive Officer,
2 and JLI Board members Nick Pritzker and Riaz Valani, an email, copying Gifford, recommending
3 a “Follow Up Discussion” early the following week during which he and Gifford would be
4 prepared to share various proposals, including a proposal that “proposes a way for us to
5 collaborate on . . . Sharing market and financial projections to gain agreement on the standalone
6 and partnership value for the enterprise; ii) An efficient and appropriate due diligence process; and
7 iii) A process to ensure that the strategy alignment and chemistry between our respective operating
8 teams is supportive of a productive partnership that can create substantial value above what is
9 achievable under a standalone scenario in a dynamic tobacco category environment.”

10 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
11 speaks for itself, and each Non-Management Director denies any characterization of that
12 document.

13 69. On April 20, 2018, Burns sent Willard a letter reflecting JLI’s “current thinking on
14 price, payment and related terms.” Among the key terms outlined was that “JUUL’s and Altria’s
15 respective anti-trust counsel would discuss and develop a plan with respect to seeking and
16 obtaining regulatory approval for the majority investment, including the treatment of any
17 competitive products owned by Altria.”

18 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
19 speaks for itself, and each Non-Management Director denies any characterization of that
20 document.

21 70. As part of these discussions, JLI had made clear to Altria that a condition of any
22 investment would be that Altria stop competing with JLI in the market for Closed-System E-
23 Vapor products. For example:

- 24 • Timothy Danaher, JLI’s former CFO, stated: “So we had always -- we had always
25 contemplated that Altria would be subject to a noncompete in the e-vapor category
26 as part of any transaction with us.”
- 27 • Burns, the former CEO of JLI, explained: “I don’t think it’s practical in terms of
28 Altria wanting to have a significant stake in the company, have transparency on all
the major strategic and operational priorities . . . and in parallel at the same time be
competing with us against that product roadmap and those products.”
- Valani, who was an early investor in JLI and a JLI Board Director, as well as a key
negotiator of the Transaction, stated: “I think that Altria, you know, we felt that it
was a risk we shouldn’t take, you know, being, you know, in bed with them in any
way and having the ability for them to have something that they have a greater
incentive to sell that directly”

ANSWER: This paragraph purports to quote or characterize comments from Timothy Danaher,
Kevin Burns, and Riaz Valani, which speak for themselves, and each Non-Management Director
denies any characterization of those comments. Each Non-Management Director admits that

1 Timothy Danaher was at one time JLI’s Chief Financial Officer; that Kevin Burns was at one time
2 JLI’s Chief Executive Officer; and that Riaz Valani is a member of the JLI Board of Directors, an
3 investor in the company, and was involved in the negotiation of Altria’s purchase of a non-voting
4 interest in JLI. Each Non-Management Director denies the remaining allegations in this
5 paragraph.

6 71. According to filings with the Securities and Exchange Commission, on or about
7 July 10, 2018, Pritzker and Valani further invested hundreds of millions of dollars into JLI.

8 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
9 speaks for itself, and each Non-Management Director denies any characterization of that
10 document.

11 72. On July 30, 2018, in advance of a meeting between JLI’s lead negotiators, Pritzker
12 emailed Willard an opening term sheet for discussions. The term sheet included the following non-
13 compete term:

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

20 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
21 speaks for itself, and each Non-Management Director denies any characterization of that
22 document. The Non-Management Director admit that they were involved in the negotiation of
23 Altria’s purchase of a non-voting interest in JLI, but denies the characterization of them as “lead
24 negotiators.”

25 73. JLI presented Altria with three options for meeting its demand for getting out of the
26 e-cigarette business: (1) divest its e-cigarette assets; (2) contribute those assets to JLI; or (3) cease
27 operating those assets entirely. Continued competition from Altria’s Closed-System E-Vapor
28 products was the only option clearly off the table. Danaher, JLI’s former CFO, confirmed that
“what [JLI was] more concerned with is we want a non-compete. How it’s going to be
accomplished, right, needs to be determined, and, frankly, we were putting the onus on [Altria] to
figure it out.”

ANSWER: This paragraph purports to quote from or characterize a written document, which
speaks for itself, and each Non-Management Director denies any characterization of that
document. This paragraph further purports to quote or characterize a comment from Timothy

1 Danaher, which speaks for itself, and each Non-Management Director denies any characterization
2 of that comment.

3 74. On August 1, 2018, the lead negotiators from each side met at the Park Hyatt Hotel
4 in Washington, DC to discuss terms. JLI was represented by Pritzker, Valani, and Burns. Altria
5 was represented by Willard, and Gifford, Altria’s then-Chief Financial Officer (and current CEO).
6 No attorneys were present at this meeting. The participants discussed various business terms,
7 including anticompetitive agreements not to compete.

8 **ANSWER:** Each Non-Management Director admits that he met with Kevin Burns, Howard
9 Willard, and William Gifford at the Park Hyatt Hotel in Washington, D.C. on August 1, 2018, to
10 discuss a potential transaction between Altria and JLI. Each Non-Management Director further
11 admits that William Gifford was at one time Altria’s Chief Financial Officer and is now Altria’s
12 Chief Executive Officer. Each Non-Management Director further admits that no one else was
13 present at the meeting. The Non-Management Director admit that they were involved in the
14 negotiation of Altria’s purchase of a non-voting interest in JLI, but denies the characterization of
15 them as “lead negotiators.” Each Non-Management Director denies the remaining allegations in
16 this paragraph.

17 75. After this meeting, Altria’s top executives understood that ceasing to compete in
18 the Closed-System E-Vapor business was a condition for reaching a deal with JLI. Altria’s draft
19 talking points dated August 5, 2018, for Mr. Willard to use on a call with JLI, noted that “[i]f we
20 establish this partnership, then we expect that Altria will . . . potentially exit our own vapor
21 business,” and that “Altria has come a long way to accommodate you in this process, including . . .
22 [[d]emonstrating flexibility with our existing vapor business, if necessary in order to form the
23 partnership].”

24 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
25 response on their part is required. Insofar as a response is required, this paragraph purports to
26 quote from or characterize a written document, which speaks for itself, and each Non-
27 Management Director denies any characterization of that document. Each Non-Management
28 Director denies that allegations regarding JLI’s “condition[s] for reaching a deal” in the first
sentence in this paragraph. Each Non-Management Director lacks sufficient knowledge and
information to admit or deny the remaining allegations in this paragraph, and denies those
allegations on that basis.

1 76. In another version of its draft talking points, also dated August 5, 2018, Altria
2 stated more broadly that, if an agreement could not be reached, Altria was prepared to “break off
these discussions, shake hands, and agree to be competitors.”

3 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
4 response on their part is required. Insofar as a response is required, this paragraph purports to
5 quote from or characterize a written document, which speaks for itself, and each Non-
6 Management Director denies any characterization of that document.

7 77. On August 9, 2018, Altria’s Gifford sent over a markup of the term sheet to JLI’s
8 Pritzker, 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 business,
contribute it to JLI, or cease to operate it.

10 **ANSWER:** This paragraph purports to quote from or characterize written documents, which
11 speak for themselves, and each Non-Management Director denies any characterization of those
12 documents.

13 78. During the August 9, 2018 meeting of the JLI Board of Directors, the Board
14 “generally expressed disappointment at many of the terms contained in the [Altria] summary of
terms.”

15 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
16 speaks for itself, and each Non-Management Director denies any characterization of that
17 document.

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

23 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
24 speaks for itself, and each Non-Management Director denies any characterization of that
25 document. Each Non-Management Director admits the allegations in the first two sentences in
26 this paragraph. Each Non-Management Directors denies the remaining allegations in this
27 paragraph.

28

1 80. After negotiations between Defendants were suspended temporarily, Altria's
2 executives knew that they had to reaffirm their commitment to meeting JLI's demands if they
3 were to restart talks successfully and reach an agreement.

4 **ANSWER:** Each Non-Management Director admits that negotiations between JLI and Altria
5 were suspended for a period of time in fall 2018. Each Non-Management Director lacks sufficient
6 knowledge and information to admit or deny the remaining allegations in this paragraph, and
7 denies those allegations on that basis.

8 81. On October 5, 2018, Altria's Willard sent JLI's Pritzker, Valani, and Burns a letter:
9 Altria would agree that it, and its current and future subsidiaries, will not compete
10 in a manner consistent with our previous discussions in the U.S. e-vapor market
11 for any period exclusive of the aforementioned transition period during which it
12 provides support services.

13 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
14 speaks for itself, and each Non-Management Director denies any characterization of that
15 document.

16 82. Upon receiving this letter, Burns forwarded it to JLI's Chief Legal Officer with a
17 simple note: "Game on Again." The concessions contained in this letter were indispensable in
18 restarting the stalled negotiations. Soon after, Altria began to take key steps that would facilitate a
19 possible wind down of its Closed-System E-Vapor business and implement the anticompetitive
20 agreement.

21 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
22 speaks for itself, and each Non-Management Director denies any characterization of that
23 document. Each Non-Management Director admits that JLI re-engaged in negotiations with Altria
24 after receiving the October 5, 2018 letter from Altria. Each Non-Management Director denies the
25 existence of an "anticompetitive agreement." Each Non-Management Director lacks sufficient
26 knowledge and information to admit or deny the remaining allegations in this paragraph, and
27 denies those allegations on that basis.

28 83. On October 25, 2018, in a letter to the FDA, Altria announced that it was
temporarily halting its MarkTen Elite business, ostensibly out of concern that pod-based systems
and nontraditional flavors could be contributing to youth usage. Almost immediately, under this
pretext, Altria began to remove its MarkTen Elite products from the market. A few days later,
Altria and JLI agreed to basic deal terms, which included Altria refraining from competing in the
Closed-System E-Vapor market.

1 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
2 response on their part is required. Insofar as a response is required, this paragraph purports to
3 quote from or characterize written documents, which speak for themselves, and each Non-
4 Management Director denies any characterization of those documents. Each Non-Management
5 Director lacks sufficient knowledge and information to admit or deny the allegations in the second
6 sentence in this paragraph, and denies those allegations on that basis. Each Non-Management
7 Directors denies any remaining allegations in this paragraph.

8 84. As a hedge against this agreement, however, Altria sought to put MarkTen Elite “to
9 bed in such a way that it can be easily revised [sic] later if the agile team wants to pursue it.”

10 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
11 response on their part is required. Insofar as a response is required, this paragraph purports to
12 quote from or characterize a written document, which speaks for itself, and each Non-
13 Management Director denies any characterization of that document. Each Non-Management
14 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
15 this paragraph, and denies those allegations on that basis.

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

18 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
19 response on their part is required. Insofar as a response is required, this paragraph purports to
20 quote from or characterize a written document, which speaks for itself, and each Non-
21 Management Director denies any characterization of that document. Each Non-Management
22 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
23 this paragraph, and denies those allegations on that basis.

24 86. On November 12, 2018, JLI’s Pritzker, Valani, Burns, Chief Legal Officer Jerry
25 Masoudi, and Chief Financial Officer Timothy Danaher, and Altria’s Willard, Crosthwaite, and
Garnick participated in a conference call to “touch base.”

26 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

27 87. During the week of November 12, 2018, members of the Altria due diligence team
28 flew to San Francisco for a “Diligence Trip.” Diligence meetings were held throughout the week.
Among the attendees were Burns, Danaher, JLI Americas President Bob Robbins, Chief Product

1 Officer James Monsees, Chief Technology Officers Adam Bowen, Chief Legal Officer Jerry
2 Masoudi; and Altria’s Kevin Crosthwaite, Anthony Reale, TJ Edlich, David Wise, Brian Blaylock,
3 Louanna Heuhsen, Mark Bradby, Mark Cruise, Rob Buell, Jason Flora, Matt Romyak, and Nicole
4 Bielawski.

4 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
5 or deny the allegations in this paragraph, and denies those allegations on that basis.

6 88. On November 15, 2018, Garnick emailed Willard, Gifford, and Crosthwaite, stating
7 that “if [JLI] goes forward, we need to consider canceling MarkTen now (and saving money by
8 not doing the HPHC analysis).”

8 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
9 speaks for itself, and each Non-Management Director denies any characterization of that
10 document.

11 89. On December 7, 2018, after five years of continuous participation in the Closed-
12 System E-Vapor market, Altria announced its decision to wind down its remaining Closed-System
13 E-Vapor business, including its MarkTen cig-a-like.

13 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
14 response on their part is required. Insofar as a response is required, each Non-Management
15 Director lacks sufficient knowledge and information to admit or deny the allegations in this
16 paragraph, and denies those allegations on that basis.

17 90. On December 9, 2018, Garrick, Altria’s General Counsel, emailed Masoudi, Chief
18 Legal Officer at JLI, to discuss the deal. In response to Masoudi’s inquiry about whether
19 Defendants could sign a non-compete that would go into effect prior to antitrust clearance,
20 Garnick reassured him that “[t]his is of course a nonissue, since we are not in the market
21 anymore.”

21 **ANSWER:** This paragraph purports to quote from or characterize written documents, which
22 speak for themselves, and each Non-Management Director denies any characterization of those
23 documents. Each Non-Management Director admits that, in December 2018, Murray Garnick was
24 Altria’s General Counsel and Jerry Masoudi was JLI’s Chief Legal Officer.

25 91. On December 11, 2018, Altria held a board of directors meeting to “review the
26 proposed [JLI] transaction and the anticipated impact on [Altria].” Board members John T.
27 Casteen III, Dinyar S. Devitre, Thomas F. Farrell II, Debra J. Kelly-Ennis, W. Leo Kiely II,
28 Kathryn B. McQuade, Mark E. Newman, Nabil Y. Sakkab, Virginia E. Shanks, and Howard
Willard attended. Murray Garnick, William Gifford, and Kevin Crosthwaite were also present.
Crosthwaite reminded the Board of the Closed-System E-Vapor investment thesis and the history
of discussions with [JLI].”

1 **ANSWER:** This paragraph purports to quote from or characterize one or more written
2 documents, which speak for themselves, and each Non-Management Director denies any
3 characterization of those documents. Each Non-Management Director lacks sufficient knowledge
4 and information to admit or deny the remaining allegations in this paragraph, and denies those
5 allegations on that basis.

6 92. On December 20, 2018, less than two weeks after Altria announced its decision to
7 discontinue its Closed-System E-Vapor operations, JLI and Altria executed a series of agreements,
8 including a Purchase Agreement, Relationship Agreement, Services Agreement, Intellectual
Property License Agreement, and Voting Agreement (collectively, the “Transaction”).

9 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
10 or deny the allegations relating to Altria’s discontinuation of a product line, and denies those
11 allegations on that basis. Each Non-Management Director admits the remaining allegations in this
12 paragraph.

13 93. Pursuant to the Purchase Agreement, Altria purchased a 35% non-voting stake in
14 JLI for \$12.8 billion in cash.

15 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
16 speaks for itself, and each Non-Management Director denies any characterization of that
17 document.

18 94. By its terms, the Purchase Agreement incorporates the Relationship Agreement; the
19 Services Agreement; the Intellectual Property License Agreement; and the Voting Agreement.

20 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
21 speaks for itself, and each Non-Management Director denies any characterization of that
22 document.

23 95. The Relationship Agreement provides, among other things, that Altria and JLI
24 would not compete with one another. In particular, the Relationship Agreement contains a “Non-
25 Compete” provision, which provides, in pertinent part that:

26 [Altria] shall not . . . directly or indirectly (1) own, manage, operate, control,
27 engage in or assist others in engaging in, the e-Vapor business; (2) take actions
28 with the purpose of preparing to engage in the e-Vapor Business, including
through engaging in or sponsoring research and development activities; or (3)
Beneficially Own any equity interest in any Person, other than an aggregate of not
more than four and nine-tenths percent (4.9%) of the equity interests of any
Person which is publicly listed on a national stock exchange, that engages directly
or indirectly in the e-Vapor Business (other than (x) as a result of [Altria’s]

1 Beneficial Ownership of Shares or (y) engagement in, or sponsorship of, research
2 and development activities not directed toward the e-Vapor Business and not
3 undertaken with the purpose of developing or commercializing technology or
4 products in the e-Vapor Business) Notwithstanding the foregoing, (x)
5 [Altria] and its Subsidiaries and controlled Affiliates may engage in the business
6 relating to (I) its Green Smoke, MarkTen (or Solaris, which is the non-U.S.
7 equivalent brand of MarkTen) and MarkTen Elite brands, in each case, as such
8 business is presently conducted, subject to Section 4.1 of the Purchase
9 Agreement, and (II) for a period of sixty (60) days commencing on the date of this
10 Agreement, certain research and development activities pursuant to existing
11 agreements with third parties that are in the process of being discontinued

12 In so doing, Altria agreed to withdraw from the Closed-System E-Vapor market,
13 allocating it to JLI.

14 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
15 speaks for itself, and each Non-Management Director denies any characterization of that
16 document.

17 96. Under the terms of the Relationship Agreement, this Non-Compete went into effect
18 early in 2019.

19 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
20 speaks for itself, and each Non-Management Director denies any characterization of that
21 document.

22 97. The Services Agreement provided, among other things, that Altria would provide
23 certain services to JLI. In particular, Altria agreed to lease retail store shelf space to JLI. Altria
24 also agreed to provide certain regulatory consulting, distribution support, as well as direct
25 marketing support and sales services.

26 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
27 speaks for itself, and each Non-Management Director denies any characterization of that
28 document.

98. The Services Agreement had an initial six-year term, subject to early termination
by mutual consent or in case of material breach, bankruptcy, or insolvency. If the Services
Agreement were to expire, Altria could discontinue the Non-Compete agreement, at which point it
would lose its right to appoint members to JLI's Board of Directors and its pre-emptive right to
maintain its 35% stake in the company, but would regain its ability to compete in the market. As
described below, the Services Agreement was subsequently amended.

ANSWER: This paragraph purports to quote from or characterize a written document, which
speaks for itself, and each Non-Management Director denies any characterization of that

1 document. Each Non-Management Director admits that JLI and Altria entered into an Amended
2 Services Agreement in January 2020.

3 99. Under the Intellectual Property License Agreement, Altria granted JLI a non-
4 exclusive irrevocable license to Altria’s e-vapor intellectual property.

5 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
6 speaks for itself, and each Non-Management Director denies any characterization of that
7 document.

8 100. The Voting Agreement provided, among other things, that Altria would obtain seats
9 on JLI’s Board of Directors following conversion of its shares.

10 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
11 speaks for itself, and each Non-Management Director denies any characterization of that
12 document.

13 101. The Transaction was not submitted to the Department of Justice or the Federal
14 Trade Commission on the grounds that the Hart-Scott-Rodino Act did not require notification. The
15 Transaction valued JLI at roughly \$38 billion, more than double JLI’s reported value less than
16 seven months earlier, demonstrating JLI’s competitive success.

17 **ANSWER:** The Non-Management Directors admit that Altria’s purchase of a non-voting interest
18 in JLI valued JLI at about \$38 billion. Each Non-Management Director lacks sufficient
19 knowledge and information to admit or deny the allegations in this paragraph, and denies those
20 allegations on that basis.

21 102. As a direct consequence of the Transaction, Altria discontinued its efforts related to
22 the organic development of e-vapor products, including e-vapor research and development,
23 innovation, and PMTA preparation efforts. The Transaction also closed routes to other potential
24 acquisitions or partnerships through which Altria might have participated in the relevant market.
25 As JLI summarized in a set of draft talking points announcing the Transaction: “\$12 billion dollars
26 that could have been spent competing with JUUL and our mission will now be used to help JUUL
27 and our mission.”

28 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
speaks for itself, and each Non-Management Director denies any characterization of that
document. Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the remaining allegations in this paragraph, and denies those allegations on that basis.

103. On February 4, 2019, Defendants filed for Hart-Scott-Rodino clearance to convert
Altria’s interest into voting securities (the “Antitrust Conversion”) and to grant Altria permission

1 to appoint three (of nine) members of JLI’s Board of Directors, as provided by the Voting
2 Agreement.

3 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
4 or deny the allegations in this paragraph, and denies those allegations on that basis.

5 104. On January 30, 2020, JLI and Altria announced amendments to their agreement,
6 including an Amended Purchase Agreement, an Amended Relationship Agreement, an Amended
7 Services Agreement, and a Revised Voting Agreement.

8 **ANSWER:** This paragraph purports to quote from or characterize written documents, which
9 speak for themselves, and each Non-Management Director denies any characterization of those
10 documents.

11 105. Under the Revised Voting Agreement, after the Antitrust Conversion, Altria had
12 the right to: (i) appoint two (of nine) JLI directors; (ii) nominate one (of three) JLI independent
13 directors; (iii) appoint one (of four) members of a Nominating Committee (who would have the
14 right to veto independent director nominations); (iv) appoint two (of five) members and the chair
15 of a new Litigation Oversight Committee (which would have responsibility for managing
16 litigation involving both Altria and JLI, i.e., “Joint Litigation Matters”); and (v) appoint one (of
17 three) members of a Litigation Subcommittee (which would have authority, by unanimous vote, to
18 change JLI’s senior outside counsel responsible for Joint Litigation Matters). The Revised Voting
19 Agreement also granted JLI’s CEO: (i) a seat on the JLI Board of Directors; (ii) a seat on the
20 Litigation Oversight Committee; and (iii) a seat on the Litigation Subcommittee.

21 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
22 speaks for itself, and each Non-Management Director denies any characterization of that
23 document.

24 106. The Amended Relationship Agreement gave Altria the option to be released from
25 the Non-Compete if JLI were to be prohibited by federal law from selling vaping products in the
26 United States for at least a year or if Altria’s internal valuation of the carrying value of its
27 investment falls below 10% of its initial valuation of \$12.8 billion.

28 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
speaks for itself, and each Non-Management Director denies any characterization of that
document.

107. The Amended Services Agreement eliminates all services except for regulatory
support services. The amendment was effective at signing except with regard to Altria’s provision
of retail shelf space to JLI, which service was set to expire after March 31, 2020.

1 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
2 speaks for itself, and each Non-Management Director denies any characterization of that
3 document.

4 108. The Transaction eliminated a competitive threat to JLI’s market dominance and
5 required Altria to dedicate its vast resources, including distribution and shelf space, to ensure JLI’s
6 market dominance.

6 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

7 **THE FTC ACTION**

8 109. On April 1, 2020, the Federal Trade Commission (“FTC”) filed a complaint against
9 Altria and JLI under Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a),
10 Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. §
11 21(b), alleging the Transaction violated Section 1 of the Sherman Act, 15 U.S.C. § 1, Section 5 of
12 the FTC Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18.

12 **ANSWER:** This paragraph describes an FTC complaint, which speaks for itself, and each Non-
13 Management Director denies any characterization of that complaint.

14 110. The FTC alleged that the Defendants’ conduct unreasonably restrained
15 competition, and that the Transaction substantially lessened competition in the United States
16 market for Closed-System E-Cigarettes by eliminating competition between Altria and JLI on
17 price, innovation, promotional activity, and shelf space. The FTC uses the term “Closed-System
18 E-Cigarettes,” which is synonymous with the term “Closed-System E-Vapor” that the Plaintiffs
19 use to define the relevant market. The term “Closed-System E-Vapor” is consistent with
20 Defendants’ usage in internal documents.

18 **ANSWER:** This paragraph describes an FTC complaint, which speaks for itself, and each Non-
19 Management Director denies any characterization of that complaint. This paragraph further
20 purports to quote from or characterize other written documents, which speak for themselves, and
21 each Non-Management Director denies any characterization of those documents.

22 **MARKET STRUCTURE**

23 **A. Relevant Market**

24 111. The relevant product market for the purposes of this action is the Closed-System E-
25 Vapor market.

26 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
27 response is required, each Non-Management Director denies them. Each Non-Management
28

1 Director lacks sufficient knowledge and information to admit or deny the existence of a “Closed-
2 System E-Vapor market,” and denies those allegations on that basis.

3 112. Closed-System E-Vapor products are battery-powered devices that vaporize a
4 liquid solution containing E-Liquid. Closed-System E-Vapor products consist of a device housing
5 a battery and a heating mechanism, and sealed cartridges, pods, or tanks that are filled with E-
6 Liquid. When engaged by pressing the power button on the device, or in some cases simply by
7 inhaling, the battery heats an element in the device called the cartomizer. This is a small
8 component that contains a heating coil wrapped in polyfill. The polyfill wrapping soaks up the E-
9 Liquid, which is then heated until it turns into vapor for inhalation. Closed-System E-Vapor
10 products include three primary types of products: e-cigarettes (also known as “cig-a-likes”), closed
11 system tanks, and closed system pods.

12 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
13 or deny the allegations in this paragraph, and denies those allegations on that basis.

14 113. Cig-a-likes are also known as e-cigarettes. They imitate the look and feel of a
15 traditional (combustible) cigarette. They use a rechargeable or disposable battery, combined with
16 disposable E-Liquid cartridges.



17 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
18 or deny the allegations in this paragraph, and denies those allegations on that basis.

19 114. Closed-system tanks work in much the same way as cig-a-likes, but don’t imitate
20 the look and feel of a traditional (combustible) cigarette. They are generally a little larger than cig-
21 a-likes and tend to offer longer battery life.

22 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
23 or deny the allegations in this paragraph, and denies those allegations on that basis.

24 115. Closed-system pods look like USB drives, and are particularly appealing to
25 younger consumers. They use a rechargeable or disposable battery, combined with disposable E-
26 Liquid cartridges.

27 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
28 or deny the allegations in this paragraph, and denies those allegations on that basis.

116. Altria sold cig-a-likes under the brand name MarkTen and Green Smoke. Altria
sold

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closed-system pods under the brand name MarkTen Elite.

ANSWER: Each Non-Management Director lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and denies those allegations on that basis.

117. JLI sold closed-system pods under the brand name JUUL.

ANSWER: Each Non-Management Director admits the allegations in this paragraph.

118. Closed-System E-Vapor products often use disposable cartridges, pods, or tanks that contain E-Liquid in traditional tobacco and menthol flavors, and prior to an FDA flavor ban that went into effect February 2020, other non-traditional flavors like Mango, Cucumber, Crème, Fruit, Winter Mint, Crème, Vineyard Blend, Strawberry Brûlée, Glacier Mint, and Apple. These cartridges, pods, and



tanks are configured specifically to the particular device model. Consumers purchase the primary Closed-System E-Vapor device and are thereafter constrained to use of compatible cartridges, pods or tanks or must purchase a new device. These disposable components are sold in aftermarkets to the primary devices' foremarket.

ANSWER: Each Non-Management Director admits that JLI sold a closed-system E-Vapor product with disposable cartridges, that the cartridges come in tobacco and menthol flavors, and that, at one point, JLI sold products in flavors such as mango, cucumber, crème brulee, mint, and fruit. Each Non-Management Director lacks sufficient knowledge and information to admit or deny the remaining allegations in this paragraph, and denies those allegations on that basis.

1 119. Closed-System E-Vapor products—cig-a-likes, closed-system tanks and closed-
2 system pods—offer a simple, convenient, discrete, and relatively inexpensive alternative to
3 traditional (combustible) cigarettes. Closed-System E-Vapor products use scentless smoke that
4 quickly disperses. Closed-System E-Vapor products are easy to store in your pocket, difficult to
5 break, and have sufficient battery life to last through the day.

6 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
7 or deny the allegations in this paragraph, and denies those allegations on that basis.

8 120. The Closed-System E-Vapor market does not include open-tank e-vapor products.
9 Closed-System E-Vapor products are largely sold in different channels than open-tank e-vapor
10 products, and open-tank customers tend to seek a different experience than closed-system
11 customers.

12 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
13 or deny the allegations in this paragraph, and denies those allegations on that basis.

14 121. Manufacturers sell their Closed-System E-Vapor products directly to consumers
15 and entities. The vast majority of Closed-System E-Vapor products are sold through a multi-outlet
16 channel, which consists primarily of convenience stores. Convenience stores offer a limited range
17 of Closed-System E-Vapor products, focusing on the highest velocity brands. In contrast, open-
18 tank e-vapor products are sold almost exclusively at dedicated vape shops, retail outlets that
19 typically carry an extensive selection of E-Liquids and parts for open-tank products and offer a
20 high level of customer service.

21 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
22 or deny the allegations in this paragraph, and denies those allegations on that basis.

23 122. Open-tank products also offer a different experience to customers than Closed-
24 System E-Vapor products. Unlike Closed-System E-Vapor, open tank products offer a
25 customizable and engaging experience because customers can select from (and mix together) a
26 wide assortment of E-Liquids and customize the individual components of an open-tank system,
27 such as the battery, heating coil, and atomizer (which houses the heating coil).

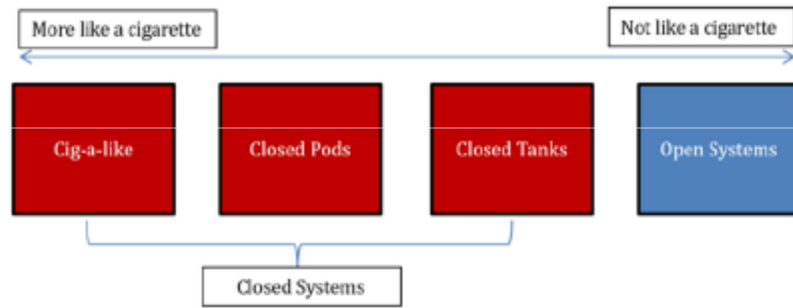
28 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the allegations in this paragraph, and denies those allegations on that basis.

123. Due to their customizable and complex design, open-tank e-vapor products are
more expensive than Closed-System E-Vapor and require more technical know-how.

ANSWER: Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the allegations in this paragraph, and denies those allegations on that basis.

124. Defendants understood and defined the Closed-System E-Vapor market to exclude
open-tank e-vapor products. In a March 2018 Presentation, Altria included the following slide:

E-Vapor product landscape



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7 **ANSWER:** This paragraph purports to characterize a slide from an Altria presentation, which
8 speaks for itself, and each Non-Management Director denies any characterization of that slide.

9 Each Non-Management Director lacks sufficient knowledge and information to admit or deny the
10 allegations relating to other Defendants, and denies those allegations on that basis. Each Non-
11 Management Director denies the remaining allegations in this paragraph.

12 125. Defendants also viewed their JUUL and MarkTen Elite products as direct
13 competitors, and set prices based on competition with each other and with other closed-system
14 products. Defendants further acknowledged that their Closed-System E-Vapor products did not
15 compete as closely with open-tank products.

16 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
17 or deny the allegations relating to other Defendants, and denies those allegations on that basis.

18 Each Non-Management Director denies the remaining allegations in this paragraph.

19 126. Closed-System E-Vapor products differ from open-tank products in their appeal to
20 consumers because they are discreet due to their small size, convenient due to their self-contained,
21 ready-to-use format, and trendy due to their sleek design. Open-tank products are not an adequate
22 substitute for Closed-System E-Vapor products. Open-tank products are larger, more complex,
23 require more manual operation by the user and are more expensive. Open-tank products generally
24 appeal to a different customer type, one that appreciates their complexity and customizable nature.

25 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
26 or deny the allegations in this paragraph, and denies those allegations on that basis.

27 127. The relevant geographic market is no broader than the United States. Because of
28 FDA’s requirements (described below), foreign firms cannot import e-vapor products into the
United States without prior FDA approval.

ANSWER: This paragraph states legal conclusions that require no response. Insofar as a
response is required, each Non-Management Director denies the allegations in the first sentence.

1 Each Non-Management Director lacks sufficient knowledge and information to admit or deny the
2 allegations in the second sentence of this paragraph, and denies those allegations on that basis.

3 128. According to Nielson data, retail sales of e-vapor products in the United States in
4 2018 constituted approximately \$2.8 billion.

5 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
6 or deny the allegations in this paragraph, and denies those allegations on that basis.

7 **B. Market Concentration**

8 129. At the time of Altria’s exit, the relevant market was already highly concentrated.
9 Following Altria’s exit, it became even more concentrated.

10 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
11 response is required, each Non-Management Director denies them. Each Non-Management
12 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
13 this paragraph, and denies those allegations on that basis.

14 130. The Department of Justice and Federal Trade Commission, consistent with the
15 Horizontal Merger Guidelines and federal court decisions, measure market concentration using the
16 Herfindahl-Hirschman Index (“HHI”). The HHI is calculated by totaling the squares of the market
17 shares of each firm in the relevant market. Under the Horizontal Merger Guidelines, a merger is
18 presumed to enhance market power when the merger increases the HHI by more than 200 points in
19 a highly concentrated market, i.e., in a market where the HHI is above 2500.

20 **ANSWER:** This paragraph purports to quote from or characterize “the Horizontal Merger
21 Guidelines and federal court decisions,” which speak for themselves, and each Non-Management
22 Director denies any characterization of them. Each Non-Management Director lacks sufficient
23 knowledge and information to admit or deny the remaining allegations in this paragraph, and
24 denies those allegations on that basis.

25 131. In the United States market for Closed-System E-Vapor products, the Transaction
26 resulted in a post-Transaction HHI exceeding 2,500, with an increase in HHI of more than 200.
27 Thus, the Transaction resulted in concentration that establishes a presumption of competitive harm
28 in the relevant market.

ANSWER: This paragraph states legal conclusions that require no response. Insofar as a
response is required, each Non-Management Director denies them. Each Non-Management
Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
this paragraph, and denies those allegations on that basis.

1 **C. The Closed-System E-Vapor Market Has High Barriers to Entry**

2 132. Under the FDA regulatory framework, a manufacturer of a new tobacco product,
3 including an e-cigarette, must submit to the FDA a Premarket Tobacco Product Application
4 (“PMTA”) and receive the FDA’s approval before marketing that product. An e-cigarette that was
5 on the market prior to August 8, 2016 may remain on the market, but the manufacturer of that
6 product was required to have filed a PMTA by May 12, 2020 to continue marketing it. The
7 manufacturer must remove the product in the event the PMTA is denied. An e-cigarette that was
8 not on the market prior to August 8, 2016 cannot be marketed until it receives PMTA approval. At
9 the time Defendants executed the Transaction, the deadline for an in-market applicant to file its
10 PMTA had been extended to August 8, 2022.

11 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
12 response is required, each Non-Management Director denies them. Each Non-Management
13 Director admits that manufacturers of a new tobacco product must submit a Premarket Tobacco
14 Product Application (“PMTA”) to the FDA and receive FDA approval before marketing the
15 product, and that certain products that were already on the market could continue to be marketed
16 while the FDA reviewed a PMTA. Each Non-Management Director lacks sufficient knowledge
17 and information to admit or deny the remaining allegations in this paragraph, and denies those
18 allegations on that basis.

19 133. Preparing a PMTA requires a significant amount of resources—time, personnel,
20 and money—which can range from several hundreds of thousands to multiple millions of dollars
21 per product.

22 **ANSWER:** Each Non-Management Director admits that JLI expended significant resources to
23 prepare JLI’s PMTA. Each Non-Management Director lacks sufficient knowledge and
24 information to admit or deny the remaining allegations in this paragraph, and denies those
25 allegations on that basis.

26 134. The FDA announced on January 2, 2020 that it had finalized a new enforcement
27 policy prohibiting all non-tobacco/non-menthol flavors for cartridge-based e-cigarettes until a
28 PMTA authorization, which went into effect on February 6, 2020.

ANSWER: This paragraph purports to quote from or characterize an FDA announcement, which
speaks for itself, and each Non-Management Director denies any characterization of that
announcement.

1 **D. Market Power**

2 135. Throughout the Class Period, JLI dominated the relevant market and maintained
3 power to control prices and exclude competition in that market.

4 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
5 response is required, each Non-Management Director denies them. Each Non-Management
6 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
7 this paragraph, and denies those allegations on that basis.

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

10 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
11 speaks for itself, and each Non-Management Director denies any characterization of that
12 document.

13 137. According to the same Wells Fargo report, Altria began withdrawing its products
14 from the market in October 2018. By November, Altria's market share had fallen to 4 percent, and
15 JLI's had grown to over 75 percent. By December 2018, Altria had removed its products from the
market entirely. The Transaction not only eliminated one of JLI's most successful competitors, it
gave JLI access to Altria's vast resources and capital.

16 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
17 speaks for itself, and each Non-Management Director denies any characterization of that
18 document. Each Non-Management Director lacks sufficient knowledge and information to admit
19 or deny the remaining allegations in this paragraph, and denies those allegations on that basis.

20 138. The Transaction was intended to, and did, significantly increase JLI's market share
21 and market power in the relevant market.

22 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
23 response is required, each Non-Management Director denies them. Each Non-Management
24 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
25 this paragraph, and denies those allegations on that basis.

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1 **ANTICOMPETITIVE EFFECTS OUTWEIGH PROCOMPETITIVE BENEFITS, IF ANY**

2 **A. Anticompetitive Effects**

3 139. Defendants' illegal agreements had the purpose and effect of raising fixing,
4 maintaining and/or stabilizing prices, reducing output, reducing innovation and eliminating
5 consumer choice.

6 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

7 140. The purpose and effect of the Transaction was for Altria to withdraw from current
8 and future competition in exchange for a share of the monopoly prices JLI was able to charge, and
9 would be able to charge in the future due to its dominant position.

10 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

11 141. The Transaction also closed routes to other potential acquisitions or partnerships
12 through which Altria might have continued to participate in the relevant market.

13 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
14 response is required, each Non-Management Director denies them. Each Non-Management
15 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
16 this paragraph, and denies those allegations on that basis.

17 142. JLI's conduct as alleged herein had the purpose, capacity, tendency, and effect of
18 restraining competition unreasonably, and the transaction substantially lessened competition, in
19 the United States market for Closed-System E-Vapor products, in the following ways, among
20 others:

- 21 a. Eliminating Altria's competing products from the relevant market, including
22 promotional activity to create awareness and drive sales, thereby eliminating
23 current and future price competition between JLI and Altria;
- 24 b. Eliminating current and future technological innovation competition between JLI
25 and Altria to create higher quality products;
- 26 c. Eliminating current and future competition between JLI and Altria for shelf space
27 at retailers through rebates and other incentives; and
- 28 d. Eliminating strategic and independent decision making by JLI, affecting JLI's
competitive strategies, through acquisition of membership by Altria on several
governing boards, including the Board of Directors, of JLI.

ANSWER: Each Non-Management Director denies the allegations in this paragraph.

143. Before Altria's agreement to exit the market, Altria and Juul competed vigorously
with each other in the Closed-System E-Vapor market.

ANSWER: Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the allegations in this paragraph, and denies those allegations on that basis.

1 144. Altria’s agreement to exit the relevant market eliminated one of JLI’s most potent
2 rivals. As a large, well-established, and well-funded company with longstanding relationships and
3 significant shelf space with retailers nationwide, Altria had the resources and infrastructure to
4 drive sales and compete aggressively with JLI. The Transaction removed that actual and potential
5 competition.

6 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
7 response is required, each Non-Management Director denies them. Each Non-Management
8 Director lacks sufficient knowledge and information to admit or deny the remaining allegations in
9 this paragraph, and denies those allegations on that basis.

10 145. Altria leveraged its ownership of leading brands across multiple tobacco categories
11 in order to secure substantial and favorable shelf space at retailers throughout the United States. In
12 2018, for example, to JLI’s alarm, Altria launched a major campaign to secure shelf space for its
13 innovative tobacco products (including Closed-System E-Vapor products), offering retailers
14 product discounts, slotting fees, and fixture payments. Altria used its extensive distribution
15 network to expand its distribution of MarkTen Elite from zero to 25,000 retail doors in just the
16 nine months from February to October 2018. After the Transaction, instead of competing for shelf
17 space, Altria leased its shelf space to JLI, effectively replacing its own MarkTen products with
18 JLI’s product.

19 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
20 or deny the allegations in this paragraph, and denies those allegations on that basis.

21 146. Before the shut-down of Nu Mark, JLI and Altria relied on price competition
22 through promotions to drive sales of their respective e-cigarette products. In addition, each
23 monitored the other’s pricing in setting its own strategy. Altria’s decision to withdraw its MarkTen
24 products brought this price competition to an end.

25 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
26 or deny the allegations in this paragraph, and denies those allegations on that basis.

27 147. In addition to price competition, JLI and Altria competed through product
28 innovation, including device features and E-Liquid formulations. For example, it was JLI’s
success that prompted Altria to acquire and further develop various pod-based products (including
the MarkTen Elite), and to commit significant resources toward developing E-Liquid formulations
with nicotine salts and higher nicotine concentrations.

ANSWER: Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the allegations in this paragraph, and denies those allegations on that basis.

148. According to a September 4, 2020 Wall Street Journal Article, Juul began piloting a
usage monitor in 2019. “The feature allowed consumers to track the number of puffs they took on
a Juul vaporizer” through a connection to a phone application and “gave users the option to create
a daily alert when they reached a certain number of puffs.” According to current and former

1 employees, “the puff-tracking feature could have provided support to users who wanted to quit by
2 helping them gradually taper down their consumption.” Instead, under Crosthwaite’s leadership,
3 JLI’s “top product-development priority now is technology aimed at restricting access by those
under 21.”

4 **ANSWER:** This paragraph purports to quote from or characterize a written document, which
5 speaks for itself, and each Non-Management Director denies any characterization of that
6 document.

7 149. Based upon documents submitted to the FTC from Defendants, it appears that
8 before committing to the Transaction, Altria intended to compete over the long term. Altria’s
9 documents and executive statements repeatedly evince their recognition that e-cigarettes were the
future of the tobacco industry and their absolute commitment to participate in that future. For
example:

- 10 • Joseph Murillo, Altria’s former SVP of Regulatory Affairs, admitted: “And so we
11 knew that the e-vapor category was a super important reduced risk opportunity for
the company, and we were, you know, doing everything we could to advance that.”
- 12 • Martin Barrington, Altria’s former CEO, stated to investors: “So we’ll be clear: We
13 aspire to be the U.S. leader in authorized, non-combustible, reduced-risk products.”
- 14 • Defendant Howard Willard, Altria’s former CEO, in an interview with the Wall
15 Street Journal, stated: “At a time when e-vapor is going to grow rapidly and likely
16 cannibalize the consumers we have in our core business, if you don’t invest in the
new areas you potentially put your ability to deliver that financial result at risk.”

17 **ANSWER:** This paragraph purports to quote from or characterize “Altria’s documents and
18 executive statements,” which speak for themselves, and each Non-Management Director denies
19 any characterization of them. Each Non-Management Director admits that Joseph Murillo was at
20 one time Altria’s Senior Vice President of Regulatory Affairs, that Martin Barrington was at one
21 time Altria’s Chief Executive Officer, and that Howard Willard was at one time Altria’s Chief
22 Executive Officer. Each Non-Management Director lacks sufficient knowledge and information
23 to admit or deny the remaining allegations in this paragraph, and denies those allegations on that
24 basis.

25 150. In the fall of 2018, as a hedge against the risk that a deal with JLI might fall
26 through, Altria began implementing a “Plan B” that included the formation of “Growth Teams”
27 that were charged with developing next-generation e-cigarette products. At the time, Altria
executives were willing to commit millions of dollars to these efforts, but they ended once the
Transaction was executed.

1 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
2 response on their part is required. Insofar as a response is required, each Non-Management
3 Director lacks sufficient knowledge and information to admit or deny the allegations in this
4 paragraph, and denies those allegations on that basis.

5 151. Instead of continuing to pursue its ambitions in the relevant market through
6 competition, including aggressive price promotions, product development, and incentives for shelf
7 space, Altria sought a short cut to market leadership and monopoly profit by investing in its
8 competitor. Altria agreed to abandon its long-standing and significant efforts at current and future
9 competition in exchange for a significant share of JLI's profits, in part being derived from a
10 significantly less competitive marketplace. As a result, Juul and Altria's transaction led to undue
11 concentration in the Closed-System E-Vapor market.

12 **ANSWER:** This paragraph is not directed at the Non-Management Directors, and therefore no
13 response on their part is required. Insofar as a response is required, each Non-Management
14 Director lacks sufficient knowledge and information to admit or deny the allegations in this
15 paragraph, and denies those allegations on that basis.

16 **B. Absence of Procompetitive Benefits**

17 152. Defendants cannot demonstrate cognizable efficiencies that would be sufficient to
18 rebut the presumption that the conduct alleged substantially lessened competition in the relevant
19 market.

20 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
21 response is required, each Non-Management Director denies them. Each Non-Management
22 Director denies the remaining allegations in this paragraph.

23 153. Defendants cannot demonstrate pro-competitive benefits of the conduct alleged that
24 could not have been achieved through alternative means that would have been less restrictive on
25 competition than the conduct alleged.

26 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

27 154. Defendants cannot demonstrate that entry into the relevant market by new
28 competitors or expansion by existing competitors would be timely, likely, or sufficient to offset
the anticompetitive effects of the conduct alleged.

ANSWER: This paragraph states legal conclusions that require no response. Insofar as a
response is required, each Non-Management Director denies them. Each Non-Management
Director denies the remaining allegations in this paragraph.

1 155. The entry of new competitors into the relevant market is unlikely because the
2 regulatory approval process is exceptionally time-consuming and expensive. Defendants
3 themselves estimate that preparing a PMTA for an e-vapor product would require approximately
4 two and a half years after finalizing the product design. No manufacturer has achieved PMTA
5 approval for an e-cigarette product, but Philip Morris International, a multi-national tobacco
6 manufacturer, submitted a PMTA application for its iQOS heat-not-burn (“HNB”) device (which
7 is comparable to an e-cigarette in technical complexity) in May 2017 and received approval two
8 years later in April 2019. Altria estimated “that a PMTA for an [e-cigarette] would cost
9 approximately \$6 million per [] SKU” and JLI estimated between \$5 and \$10 million per SKU.
10 Defendants’ internal documents suggest that these figures may significantly underestimate the
11 costs of the PMTA process.

12 **ANSWER:** This paragraph purports to quote from or characterize written documents, which
13 speak for themselves, and each Non-Management Director denies any characterization of those
14 documents. Each Non-Management Director denies that “[n]o manufacturer has achieved PMTA
15 approval for an e-cigarette product.” Each Non-Management Director lacks sufficient knowledge
16 and information to admit or deny the remaining allegations in this paragraph, and denies those
17 allegations on that basis.

18 156. In addition to achieving regulatory approval, a new entrant would need to: (i)
19 develop or acquire a product; (ii) manufacture the product at quality and scale; (iii) sell the
20 product; (iv) develop a distribution system; and (v) develop a marketing plan, including a plan to
21 secure shelf space in retail outlets.

22 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
23 or deny the allegations in this paragraph, and denies those allegations on that basis.

24 157. Existing Closed-System E-Vapor competitors cannot effectively replace the lost
25 competition because: (i) they lack Altria’s brand strength to secure favorable shelf space at
26 retailers; (ii) they lack the substantial resources Altria had at its disposal to commit to e-vapor
27 research and development as well as to pursuing regulatory approval; or (iii) the FDA’s
28 enforcement of restrictions on E-Liquid flavors has negatively impacted the competitive presence
of Closed-System E-Vapor competitors other than JLI, who had voluntarily discontinued its
flavors earlier.

ANSWER: Each Non-Management Director lacks sufficient knowledge and information to admit
or deny the allegations in this paragraph, and denies those allegations on that basis.

 158. Open-tank products manufacturers are not likely to replace the lost competition, in
part because the impending PMTA deadline will likely cause many of them to shut down, and
because they are largely sold in the separate “vape shop” sales channel and would not likely be
able to expand rapidly into convenience stores, where Closed-System E-Vapor are typically sold.

1 **ANSWER:** Each Non-Management Director lacks sufficient knowledge and information to admit
2 or deny the allegations in this paragraph, and denies those allegations on that basis.

3 159. Defendants' unlawful conduct eliminated competition in the relevant market and
4 deprived Plaintiff and the Class of the benefits of free and unrestrained competition that the
antitrust laws were designed to ensure.

5 **ANSWER:** This paragraph states legal conclusions that require no response. Insofar as a
6 response is required, each Non-Management Director denies them. Each Non-Management
7 Director denies the remaining allegations in this paragraph.

8 **HARM TO COMPETITION AND ANTITRUST INJURY**

9 160. Defendants' contract, combination and conspiracy as set forth herein has had the
10 following effects, among others:

- 11 a. Price competition among Defendants in the sale, marketing and distribution of Closed-
12 System E-Vapor products during the Class Period to purchasers in the United States has
been restrained;
- 13 b. Prices for Closed-System E-Vapor products sold by Defendants during the Class Period to
14 purchasers in the United States have been raised, fixed, maintained, and/or stabilized at
artificial and non-competitive levels; and
- 15 c. The supplies of Defendants' Closed-System E-Vapor products available for sale during the
16 Class Period to purchasers in the United States has been artificially and unjustifiably
restrained.
- 17 d. Innovation in the Closed-System E-Vapor market in the United States has been
unreasonably restrained, with regard to device and E-Liquid products.

18 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.
19

20 **CLAIMS FOR RELIEF**

21 **COUNT ONE**

22 **RESTRAINT OF TRADE IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT,**
23 **15 U.S.C. § 1**
(Against all Defendants)

24 161. Plaintiffs hereby repeat and incorporate by reference each preceding and
25 succeeding paragraph as though fully set forth herein.

26 **ANSWER:** The Non-Management Directors incorporate by reference their responses to all
27 paragraphs set forth above.

28 162. Defendants entered into and engaged in a continuing contract, combination, or
conspiracy to unreasonably restrain trade or commerce in violation of Section 1 of the Sherman

1 Act, 15 U.S.C. § 1, by artificially reducing or eliminating competition with respect to the sale,
2 marketing and distribution of Closed-System E-Vapor products sold to purchasers in the United
States.

3 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

4 163. In particular, Defendants have contracted, combined and conspired to divide and
5 allocate the market for Closed-System E-Vapor products to raise, fix, maintain and/or stabilize the
6 prices of Closed-System E-Vapor products sold to purchasers in the United States.

7 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

8 164. The aforesaid violations of Section 1 consisted of an unlawful agreement in Altria
9 agreed to withdraw from the relevant market and in exchange JLI gave Altria an interest in JLI's
10 continuing business in the relevant market. The purpose of this agreement was to fix, raise,
maintain and/or stabilize prices of Closed-System E-Vapor products as well as stifle innovation.

11 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

12 165. For the purposes of formulating and effectuating their combination or conspiracy,
13 Defendants did those things they combined or conspired to do, including (1) participating in
meetings and conversations to eliminate competition from the market and (2) agreeing to not
14 compete and allocate or divide the market for Closed-System E-Vapor products between them.

15 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

16 166. Defendants' anticompetitive and unlawful conduct is per se illegal.

17 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

18 167. The Transaction was effected and, as a direct and proximate result of Defendants'
unlawful conduct, Plaintiffs and class members were injured in their business or property.

19 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

20 **COUNT TWO**

21 **RESTRAINT OF TRADE IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT,**
22 **15 U.S.C. § 18**
(Against Defendants Altria and JLI)

23 168. Plaintiffs hereby repeat and incorporate by reference each preceding and
24 succeeding paragraph as though fully set forth herein.

25 **ANSWER:** The Non-Management Directors incorporate by reference their responses to all
26 paragraphs set forth above.

27 169. The Transaction, as described above, in which Altria received a substantial
28 ownership stake in JLI on the condition that Altria withdraw its existing Closed-System E-Vapor

1 products from the market and halt its innovation on future products, substantially lessened
2 competition in the market for Closed-System E-Vapor products in the United States.

3 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
4 Director. No response is therefore required.

5 170. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
6 class members were injured in their business or property.

7 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
8 Director. No response is therefore required.

9 171. This offense is likely to continue unless injunctive relief is granted.

10 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
11 Director. No response is therefore required.

12 172. Plaintiffs and members of the Class are entitled to treble damages and an injunction
13 against Defendants, preventing and restraining the violations alleged in this complaint.

14 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
15 Director. No response is therefore required.

16 **COUNT THREE**

17 **DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF SECTION 1 OF** 18 **THE SHERMAN ACT AND SECTION 7 OF THE CLAYTON ACT,** 19 **15 U.S.C. § 26** 20 **(Against Defendants Altria and JLI)**

21 173. Plaintiffs hereby repeat and incorporate by reference each preceding and
22 succeeding paragraph as though fully set forth herein.

23 **ANSWER:** The Non-Management Directors incorporate by reference their responses to all
24 paragraphs set forth above.

25 174. Plaintiffs seek declaratory and injunctive relief under the federal antitrust laws.

26 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
27 Director. No response is therefore required.

28 175. Plaintiffs' allegations described herein constitute a violation of Sections 1 of the
Sherman Act.

ANSWER: This claim is asserted against JLI and Altria, and not against any Non-Management
Director. No response is therefore required.

1 176. Defendants effectuated a scheme to restrain trade and substantially lessen
2 competition in the United States market for Closed-System E-Vapor products.

3 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
4 Director. No response is therefore required.

5 177. There is and was no legitimate, non-pretextual, pro-competitive business
6 justification for Defendants' conduct that outweighs its harmful effect.

7 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
8 Director. No response is therefore required.

9 178. As a direct and proximate result of Defendants' anticompetitive scheme, as alleged
10 herein, Plaintiffs and the Class were harmed as aforesaid.

11 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
12 Director. No response is therefore required.

13 179. The goal, purpose and/or effect of the scheme was to prevent and/or delay
14 competition in order to charge supracompetitive prices for Closed-System E-Vapor products
15 without a substantial loss of sales.

16 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
17 Director. No response is therefore required.

18 180. The anticompetitive agreements alleged herein should be declared invalid and
19 unenforceable.

20 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
21 Director. No response is therefore required.

22 181. Plaintiffs and the Class have been injured in their business or property by reason of
23 Defendants' antitrust violations alleged in this Count. Their injury includes paying higher prices
24 for Closed-System E-Vapor products than they would have paid in the absence of those violations.
25 These injuries will continue unless halted.

26 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
27 Director. No response is therefore required.

28 182. Plaintiffs and the Class, pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201(a),
hereby seek a Declaratory Judgment that Defendants' conduct constitutes a violation of § 1 of the
Sherman Act.

ANSWER: This claim is asserted against JLI and Altria, and not against any Non-Management
Director. No response is therefore required.

1 183. Plaintiffs and the Class further seek equitable and injunctive relief pursuant to
2 Section 16 of the Clayton Act, 15 U.S.C. § 26, and other applicable law, to correct the
anticompetitive effects caused by Defendants' unlawful conduct.

3 **ANSWER:** This claim is asserted against JLI and Altria, and not against any Non-Management
4 Director. No response is therefore required.

5 **DEMAND FOR JUDGMENT**

6 **WHEREFORE,** Plaintiffs request that the Court enter judgment on their behalf and on
7 behalf of the Class defined herein, by adjudging and decreeing that:

8 184. This action may proceed as a class action, with Plaintiffs serving as Class
9 Representatives, and with Plaintiffs' counsel as Class Counsel;

10 **ANSWER:** Each Non-Management Director denies that a class is appropriate or can be certified
11 consistent with Rule 23 of the Federal Rules of Civil Procedure.

12 185. Defendants have contracted, combined, and conspired in violation of Section 1 of
13 the Sherman Act, 15 U.S.C. § 1, and that Plaintiffs and the Class have been injured in their
business and property as a result of Defendants' violations;

14 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

15 186. Defendants have combined in a way that substantially lessened competition or
16 tended to create a monopoly in the market for Closed-System E-Vapor products in the United
17 States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and that Plaintiffs and the
Class have been injured in their business and property as a result of Defendants' violations;

18 **ANSWER:** Each Non-Management Director denies the allegations in this paragraph.

19 187. Plaintiffs and the Class are entitled to recover damages sustained by them, as
20 provided by the federal antitrust laws under which relief is sought herein, and that a joint and
several judgment in favor of Plaintiffs and the Class be entered against Defendants in an amount
21 subject to proof at trial, which is to be trebled in accordance with Section 4 of the Clayton Act, 15
U.S.C. § 15 and Section 7 of the Clayton Act, 15 U.S.C. § 18;

22 **ANSWER:** Each Non-Management Director denies that Plaintiffs are entitled to any relief.

23 188. Plaintiffs and the Class are entitled to pre-judgment and post-judgment interest on
24 the damages awarded them, and that such interest be awarded at the highest legal rate from and
after the date this class action complaint is first served on Defendants;

25 **ANSWER:** Each Non-Management Director denies that Plaintiffs are entitled to any relief.

26 189. Plaintiffs and the Class are entitled to equitable relief appropriate to remedy
27 Defendants' past and ongoing restraint of trade, including:

- 28 a. A judicial determination declaring the rights of Plaintiffs and the Class, and the
corresponding responsibilities of Defendants; and

1 1. Failure to State a Claim. Plaintiffs fail to state a claim for which relief can be
2 granted. Plaintiffs lack facts supporting all necessary elements of the claims under the Sherman
3 Act.

4 2. Failure to Mitigate. Plaintiffs and putative class members have failed to take
5 appropriate and necessary steps to mitigate any damages. For example, Plaintiffs and putative
6 class members chose to continue to purchase JUUL products after Altria's purchase of a non-
7 voting interest in JLI.

8 3. Unclean Hands/In Pari Delicto. Plaintiffs' claims are barred, in whole or in part,
9 by the doctrine of unclean hands, because on information and belief Plaintiffs and/or putative class
10 members have engaged in criminal, fraudulent, and other improper conduct in purchasing or
11 otherwise procuring, and in using, JUUL products. On information and belief, Plaintiffs and/or
12 putative class members knew that they were below the legal age for acquiring or using JUUL
13 product, but in order to purchase, procure, and use JUUL products, they lied about their true ages,
14 used fake identification, used other people's identification or identities, used other people to buy
15 JUUL products for them, or shopped at retail stores or on websites that they knew would not
16 verify their ages or whose age-verification systems they knew how to bypass. Additionally, and
17 on information and belief, Plaintiffs and/or putative class members provided JUUL products to, or
18 procured JUUL products for, individuals who were not old enough to purchase those products,
19 with knowledge that they were providing JUUL products to or procuring JUUL products for
20 underage individuals.

21 4. Release. Plaintiffs and putative class members who visited JLI's website on or
22 after at least June 29, 2017, if not earlier, agreed to indemnify and hold harmless the Non-
23 Management Directors from and against any and all claims, liabilities, damages, losses,
24 obligations, costs or debt, expenses (including reasonable attorney's fees), regulatory penalties and
25 enforcement actions arising out of or in connection with the use of and access to JUUL products
26 by Plaintiffs and putative class members; or with violations of JLI's Terms & Conditions by
27 Plaintiffs and putative class members; or any applicable law, rule or regulation; or with content
28 submitted by Plaintiffs and putative class members, including without limitation misleading, false,

1 or inaccurate information.

2 5. Arbitration. Plaintiffs and putative class members who visited JLI’s website on or
3 after at least June 29, 2017, if not earlier, agreed to resolve any claim, dispute, or controversy
4 arising out of or in connection with their purchase or use of JUUL products by binding arbitration.

5 6. Class Action Waiver. Plaintiffs and putative class members who visited JLI’s
6 website on or after at least June 29, 2017, if not earlier, waived the right to participate in a class
7 action.

8 7. Reduced or No Loss. Any verdict or judgment that might be recovered by
9 Plaintiffs and putative class members must be reduced to account for any discount that Plaintiffs
10 and putative class members received at the time of any purchase of JUUL products, and must be
11 reduced to account for any full or partial reimbursement that Plaintiffs and putative class members
12 received, either through resale or otherwise, that compensated them for their initial purchase of
13 JUUL products.

14 8. Proximate Cause. It was not foreseeable to any Non-Management Director that any
15 alleged conduct by them in their role as JLI directors would result in economic harm to Plaintiffs
16 and putative class members. Therefore, their conduct was not the legal or proximate cause of the
17 alleged damages incurred by Plaintiffs and putative class members.

18 9. Set-off. The Non-Management Directors are entitled to a credit, set-off, or offset
19 for all sums of money received or available from or on behalf of any other alleged wrongdoer(s)
20 for the same injuries alleged in the Complaint, including but not limited to any and all settlements
21 Plaintiffs and putative class members may reach with any other alleged wrongdoer(s).

22 10. Conformed with Law. The Non-Management Directors’ conduct alleged in the
23 Complaint conformed to all relevant statutes and regulations at the relevant time(s) alleged in the
24 Complaint.

25 11. Duplicative Recovery. Plaintiffs and/or putative class members seek duplicate or
26 double recovery via their claims, contrary to federal law.

27 12. Procompetitive Justifications. There are procompetitive justifications and
28 legitimate justifications for the alleged conduct.

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Respectfully Submitted,

By: /s/ Michael J. Guzman

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