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17
 18 **IN THE UNITED STATES DISTRICT COURT**
 19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 IN RE: JUUL LABS INC. ANTITRUST
 22 LITIGATION

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

23 **ANSWER OF DEFENDANT ALTRIA**
 24 **GROUP, INC. TO DIRECT PURCHASER**
 25 **PLAINTIFFS' THIRD AMENDED**
 26 **CONSOLIDATED CLASS ACTION**
 27 **COMPLAINT**

1 Defendant Altria Group, Inc. (“Altria”) hereby answers Direct Purchaser Plaintiffs’ Third
2 Amended Consolidated Complaint (“Complaint”), ECF No. 357, as follows:

3 **PRELIMINARY STATEMENT**

4 The Complaint improperly mixes factual averments with argumentative rhetoric so as to
5 make admissions or denials of such averments difficult or impossible. Further, much of the
6 Complaint consists of a selective recitation of historical facts and/or rumors, much of which is
7 inflammatory in tone and content. Finally, many of the allegations in the Complaint are overbroad,
8 vague, or conclusory and include terms that are undefined and are susceptible to different meanings.
9 Accordingly, by way of a general response, all allegations are denied unless specifically admitted,
10 and any factual averment admitted is admitted only as to the specific facts and not as to any
11 conclusions, characterizations, implications, or speculations that are contained in the averment or
12 in the Complaint as a whole.

13 The Complaint also contains many purported quotations from a number of sources, some
14 identified, some not. Plaintiffs do not provide copies of the documents from which quotations were
15 taken, which has impaired Altria’s ability to confirm or deny the accuracy of the quotations in the
16 Complaint as compared to the original text. Altria, therefore, does not admit the authenticity of
17 any documents from which the quotations were taken and reserves the right to challenge the
18 accuracy of the quotations (either as quoted or in the context of material not quoted). Furthermore,
19 with reference to all quotations, citations to documents, or any such averments that might be offered
20 into evidence, Altria specifically reserves the right to object to any use of such averments or the
21 Complaint as a whole in evidence for any purpose whatsoever.

22 To the extent these quotations originate in documents protected by the attorney-client
23 privilege, the work product doctrine, the joint defense privilege, and/or the common interest
24 privilege, Altria states that it is improper for Plaintiffs to have referred to and quoted from such
25 documents in the Complaint, and Altria reserves the right to assert such privileges and to move to
26 strike such references.

27 Altria does not interpret the table of contents, headings, subheadings, photographs, or charts
28 throughout the Complaint to be well-pleaded allegations of fact to which any response is required.

1 To the extent a response is required, Altria generally denies all allegations in the table of contents,
2 headings, subheadings, photographs, or charts of the Complaint. Use of certain terms or phrases
3 defined in the Complaint is not an admission of any characterization Plaintiffs may ascribe to the
4 defined terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms
5 defined in the Complaint, but any such use is not an acknowledgment or admission of any
6 characterization Plaintiffs may ascribe to the capitalized terms.

7 Altria does not concede the truthfulness of third-party articles and news sources quoted or
8 referenced in the Complaint. To the extent a response is required, Altria denies all allegations of
9 the third-party articles and news sources quoted in or referenced in the Complaint. To the extent
10 any allegations are directed toward any party other than Altria, Altria lacks knowledge or
11 information sufficient to form a belief regarding the truth of those allegations and, therefore, denies
12 them on that basis. Altria answers the allegations on behalf of itself only.

13 These comments and objections are incorporated, to the extent appropriate, into each
14 numbered paragraph of this Answer.

15 **ANSWER**

16 **INTRODUCTION**

17 1. Altria admits that Plaintiffs purport to bring a class action seeking damages and
18 injunctive relief, but denies that class treatment is appropriate and that Plaintiffs are entitled to such
19 relief. Altria denies the remaining allegations of Paragraph 1 to the extent they are directed toward
20 Altria. To the extent the allegations of Paragraph 1 are directed toward other Defendants, Altria is
21 without knowledge or information sufficient to form a belief as to the truth of the allegations of
22 Paragraph 1 and, therefore, denies the same.

23 2. The allegations of Paragraph 2 are not directed toward Altria, and, therefore, no
24 response is required. To the extent a response is required, Altria admits that e-vapor products are
25 electronic devices that deliver nicotine to a user by vaporizing a liquid nicotine solution. Altria
26 further admits that in a closed system, the liquid is contained in a pre-filled, sealed cartridge, pod,
27 or tank. Altria denies the remaining allegations of Paragraph 2 to the extent they are directed toward
28 Altria. To the extent the allegations of Paragraph 2 are directed toward other Defendants, Altria is

1 without knowledge or information sufficient to form a belief as to the truth of the allegations of
2 Paragraph 2 and, therefore, denies the same.

3 3. Paragraph 3 appears to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria admits that its subsidiary Nu Mark LLC
11 began selling the MarkTen electronic cigarette in 2013. Altria denies the remaining allegations of
12 Paragraph 3 to the extent they are directed toward Altria. To the extent the allegations of Paragraph
13 3 are directed toward other Defendants, Altria is without knowledge or information sufficient to
14 form a belief as to the truth of those allegations and, therefore, denies the same.

15 4. Paragraph 4 appears to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
17 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
18 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
19 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
20 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
21 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
22 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
23 Paragraph 4 to the extent they are directed toward Altria. To the extent the allegations of Paragraph
24 4 are directed toward other Defendants, Altria is without knowledge or information sufficient to
25 form a belief as to the truth of those allegations and, therefore, denies the same.

26 5. Altria denies the allegations of Paragraph 5 to the extent they are directed toward
27 Altria. To the extent the allegations of Paragraph 5 are directed toward other Defendants, Altria is
28

1 without knowledge or information sufficient to form a belief as to the truth of those allegations and,
2 therefore, denies the same.

3 6. Paragraph 6 appears to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria admits that it introduced the MarkTen
11 Elite, a pod-based product, in February 2018. Altria denies the remaining allegations of Paragraph
12 6 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 6 are
13 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
14 belief as to the truth of those allegations and, therefore, denies the same.

15 7. Paragraph 7 appears to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
17 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
18 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
19 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
20 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
21 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
22 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
23 Paragraph 7 to the extent they are directed toward Altria. To the extent the allegations of Paragraph
24 7 are directed toward other Defendants, Altria is without knowledge or information sufficient to
25 form a belief as to the truth of those allegations and, therefore, denies the same.

26 8. Paragraph 8 purports to selectively quote, reference, and/or paraphrase certain
27 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
28 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their

1 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
2 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
3 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
4 alleged documents, statements, and/or statistics. Altria admits that on December 20, 2018, JLI and
5 Altria executed a series of agreements, including a Purchase Agreement, Relationship Agreement,
6 Services Agreement, Intellectual Property License Agreement, and Voting Agreement
7 (collectively, the "Transaction"), but Altria denies that the Transaction remains in effect or that
8 Altria has any ownership interest in JLI. Altria denies the remaining allegations of Paragraph 8 to
9 the extent they are directed toward Altria. To the extent the allegations of Paragraph 8 are directed
10 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
11 to the truth of those allegations and, therefore, denies the same.

12 9. Paragraph 9 asserts legal conclusions to which no response is required. To the extent
13 a response is required and to the extent the allegations of Paragraph 9 are directed toward Altria,
14 Altria denies the allegations of Paragraph 9. To the extent the allegations of Paragraph 9 are
15 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
16 belief as to the truth of those allegations and, therefore, denies the same.

17 JURISDICTION AND VENUE

18 10. Altria admits that Plaintiffs purport to bring this action on behalf of themselves and
19 a would-be Class to recover damages, costs, attorneys' fees, and equitable relief, but denies that
20 Plaintiffs are entitled to the relief requested in this Complaint or any relief whatsoever. To the
21 extent the allegations of Paragraph 10 are directed toward other Defendants, Altria is without
22 knowledge or information sufficient to form a belief as to the truth of those allegations and,
23 therefore, denies the same.

24 11. Paragraph 11 asserts legal conclusions to which no response is required. To the
25 extent a response is required and to the extent the allegations of Paragraph 11 are directed toward
26 Altria, Altria denies the allegations of Paragraph 11. To the extent the allegations of Paragraph 11
27 are directed toward other Defendants, Altria is without knowledge or information sufficient to form
28 a belief as to the truth of those allegations and, therefore, denies the same.

INTRADISTRICT ASSIGNMENT

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2 12. Paragraph 12 asserts legal conclusions to which no response is required. To the
3 extent a response is required and to the extent the allegations of Paragraph 12 are directed toward
4 Altria, Altria denies the allegations of Paragraph 12. To the extent the allegations of Paragraph 12
5 are directed toward other Defendants, Altria is without knowledge or information sufficient to form
6 a belief as to the truth of those allegations and, therefore, denies the same.

PARTIES

A. Plaintiffs

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8 13. The allegations of Paragraph 13 are not directed toward Altria, and, therefore, no
9 response is required. To the extent a response is required and to the extent the allegations of
10 Paragraph 13 are directed toward Altria, Altria denies the allegations of Paragraph 13. To the extent
11 the allegations of Paragraph 13 are directed toward other Defendants, Altria is without knowledge
12 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
13 the same.

14 14. The allegations of Paragraph 14 are not directed toward Altria, and, therefore, no
15 response is required. To the extent a response is required and to the extent the allegations of
16 Paragraph 14 are directed toward Altria, Altria denies the allegations of Paragraph 14. To the extent
17 the allegations of Paragraph 14 are directed toward other Defendants, Altria is without knowledge
18 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
19 the same.

20 15. The allegations of Paragraph 15 are not directed toward Altria, and, therefore, no
21 response is required. To the extent a response is required and to the extent the allegations of
22 Paragraph 15 are directed toward Altria, Altria denies the allegations of Paragraph 15. To the extent
23 the allegations of Paragraph 15 are directed toward other Defendants, Altria is without knowledge
24 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
25 the same.
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28

B. Corporate Defendants

16. The allegations of Paragraph 16 are not directed toward Altria, and, therefore, no response is required. To the extent a response is required, Altria is informed and believes that JUUL Labs, Inc. (“JLI”) is a Delaware corporation. Altria denies that JLI’s principal place of business is in San Francisco, California. Altria denies the remaining allegations of Paragraph 16 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 16 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

17. Paragraph 17 asserts legal conclusions to which no response is required. To the extent a response is required, Altria admits that it is a Virginia corporation headquartered at 6601 West Broad Street, Richmond, Virginia. Altria admits that in a time period that predated the Transaction, its subsidiary Nu Mark sold and marketed e-vapor products under the brand names MarkTen, MarkTen Elite, and Green Smoke. Altria denies the remaining allegations of Paragraph 17 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 17 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

C. Individual Defendants

18. Kevin “KC” Crosthwaite has been dismissed from this action by joint stipulation between the parties. As such, no response is required.

19. The allegations of Paragraph 19 are not directed toward Altria, and, therefore, no response is required. To the extent a response is required and to the extent the allegations of Paragraph 19 are directed toward Altria, Altria denies the allegations of Paragraph 19. To the extent the allegations of Paragraph 19 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

20. The allegations of Paragraph 20 are not directed toward Altria, and, therefore, no response is required. To the extent a response is required and to the extent the allegations of Paragraph 20 are directed toward Altria, Altria denies the allegations of Paragraph 20. To the extent

1 the allegations of Paragraph 20 are directed toward other Defendants, Altria is without knowledge
2 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
3 the same.

4 21. Dinyar Devitre has been dismissed from this action by joint stipulation between the
5 parties. As such, no response is required.

6 22. Kevin Burns has been dismissed from this action by joint stipulation between the
7 parties. As such, no response is required.

8 23. James Monsees has been dismissed from this action by joint stipulation between the
9 parties. As such, no response is required.

10 24. Adam Bowen has been dismissed from this action by joint stipulation between the
11 parties. As such, no response is required.

12 25. Gerald Masoudi has been dismissed from this action by joint stipulation between the
13 parties. As such, no response is required.

14 26. Timothy Danaher has been dismissed from this action by joint stipulation between
15 the parties. As such, no response is required.

16 27. Howard Willard has been dismissed from this action by joint stipulation between the
17 parties. As such, no response is required.

18 28. William (“Billy”) Gifford has been dismissed from this action by joint stipulation
19 between the parties. As such, no response is required.

20 29. Murray Garnick has been dismissed from this action by joint stipulation between the
21 parties. As such, no response is required.

22 **AGENTS AND CO-CONSPIRATORS**

23 30. Altria denies the allegations of Paragraph 30 to the extent they are directed toward
24 Altria. To the extent the allegations of Paragraph 30 are directed toward other Defendants, Altria
25 is without knowledge or information sufficient to form a belief as to the truth of those allegations
26 and, therefore, denies the same.

27 31. Altria denies the allegations of Paragraph 31 to the extent they are directed toward
28 Altria. To the extent the allegations of Paragraph 31 are directed toward other Defendants, Altria

1 is without knowledge or information sufficient to form a belief as to the truth of those allegations
2 and, therefore, denies the same.

3 32. Altria denies the allegations of Paragraph 32 to the extent they are directed toward
4 Altria. To the extent the allegations of Paragraph 32 are directed toward other Defendants, Altria
5 is without knowledge or information sufficient to form a belief as to the truth of those allegations
6 and, therefore, denies the same.

7 33. Altria denies the allegations of Paragraph 33 to the extent they are directed toward
8 Altria. To the extent the allegations of Paragraph 33 are directed toward other Defendants, Altria
9 is without knowledge or information sufficient to form a belief as to the truth of those allegations
10 and, therefore, denies the same.

11 34. Altria denies the allegations of Paragraph 34 to the extent they are directed toward
12 Altria. To the extent the allegations of Paragraph 34 are directed toward other Defendants, Altria
13 is without knowledge or information sufficient to form a belief as to the truth of those allegations
14 and, therefore, denies the same.

15 **CLASS ALLEGATIONS**

16 35. Altria admits that Plaintiffs purport to bring this lawsuit on their own behalf and as
17 a class action. Altria denies that this lawsuit is appropriate for class action treatment or is
18 manageable as a class action and denies that Paragraph 35 states a proper class or class period.
19 Altria denies the remaining allegations of Paragraph 35.

20 36. Altria denies that this lawsuit is appropriate for class action treatment or is
21 manageable as a class action and denies the remaining allegations of Paragraph 36.

22 37. Paragraph 37 asserts legal conclusions to which no response is required. Altria
23 denies that this lawsuit is appropriate for class action treatment or is manageable as a class action
24 and denies the remaining allegations of Paragraph 37.

25 38. Paragraph 38 asserts legal conclusions to which no response is required. To the
26 extent a response is required, Altria denies that this lawsuit is appropriate for class action treatment
27 or is manageable as a class action and denies the remaining allegations of Paragraph 38.

1 further response is required, Altria is without knowledge or information sufficient to form a belief
2 as to the truth of the allegations of Paragraph 44, and, therefore, denies the same.

3 45. The allegations of Paragraph 45 are not directed toward Altria, and, therefore, no
4 response is required. To the extent a response is required, Altria is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations of Paragraph 45 and,
6 therefore, denies the same.

7 46. The allegations of Paragraph 46 are not directed toward Altria, and, therefore, no
8 response is required. To the extent a response is required, Altria is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations of Paragraph 46 and,
10 therefore, denies the same.

11 47. The allegations of Paragraph 47 are not directed toward Altria, and, therefore, no
12 response is required. To the extent a response is required, Paragraph 47 appears to selectively
13 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
14 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
15 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
16 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
17 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
18 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
19 that the alleged documents, statements, and/or statistics speak for themselves. To the extent a
20 further response is required, Altria is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations of Paragraph 47, and, therefore, denies the same.

22 48. To the extent the allegations of Paragraph 48 are directed toward Altria, Altria
23 admits that its wholly owned subsidiary Nu Mark LLC launched the MarkTen electronic cigarette
24 product in 2013. Altria admits that the MarkTen was a cig-a-like product designed to look and feel
25 like a traditional cigarette, but denies that the MarkTen was part of a single "Closed-System E-
26 Vapor market." Altria denies the remaining allegations of Paragraph 48 to the extent they are
27 directed toward Altria. To the extent the allegations of Paragraph 48 are directed toward other
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1 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
2 those allegations and, therefore, denies the same.

3 49. To the extent the allegations of Paragraph 49 are directed toward Altria, Paragraph
4 49 appears to selectively quote, reference, and/or paraphrase certain alleged documents, statements,
5 and/or statistics. Altria denies that the alleged documents, statements, and/or statistics are quoted,
6 referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs' characterization of
7 the alleged documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication
8 regarding the content or meaning of the alleged documents, statements, and/or statistics, and does
9 not concede the truthfulness or accuracy of the alleged documents, statements, and/or statistics.
10 Altria states that the alleged documents, statements, and/or statistics speak for themselves. Altria
11 denies the remaining allegations of Paragraph 49 to the extent they are directed toward Altria. To
12 the extent the allegations of Paragraph 49 are directed toward other Defendants, Altria is without
13 knowledge or information sufficient to form a belief as to the truth of those allegations and,
14 therefore, denies the same.

15 50. Altria denies that the photograph included in Paragraph 50 consists of well-pleaded
16 allegations of fact to which any response is required. The allegations of Paragraph 50 are not
17 directed toward Altria, and, therefore, no response is required. To the extent a response is required,
18 Altria is without knowledge or information sufficient to form a belief as to the truth of the
19 allegations of Paragraph 50 and, therefore, denies the same.

20 51. The allegations of Paragraph 51 are not directed toward Altria, and, therefore, no
21 response is required. To the extent a response is required, Paragraph 51 appears to selectively
22 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
23 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
24 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
25 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
26 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
27 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
28 that the alleged documents, statements, and/or statistics speak for themselves. Altria denies the

1 remaining allegations of Paragraph 51 to the extent they are directed toward Altria. To the extent
2 the allegations of Paragraph 51 are directed toward other Defendants, Altria is without knowledge
3 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
4 the same.

5 52. The allegations of Paragraph 52 are not directed toward Altria, and, therefore, no
6 response is required. To the extent a response is required, Altria is without knowledge or
7 information sufficient to form a belief as to the truth of the allegations of Paragraph 52 and,
8 therefore, denies the same.

9 53. The allegations of Paragraph 53 are not directed toward Altria, and, therefore, no
10 response is required. To the extent a response is required, Altria is without knowledge or
11 information sufficient to form a belief as to the truth of the allegations of Paragraph 53 and,
12 therefore, denies the same.

13 54. The allegations of Paragraph 54 are not directed toward Altria, and, therefore, no
14 response is required. To the extent a response is required, Altria is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations of Paragraph 54 and,
16 therefore, denies the same.

17 55. The allegations of Paragraph 55 are not directed toward Altria, and, therefore, no
18 response is required. To the extent a response is required, Paragraph 55 appears to selectively
19 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
20 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
21 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
22 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
23 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
24 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
25 that the alleged documents, statements, and/or statistics speak for themselves. Altria denies the
26 remaining allegations of Paragraph 55 to the extent they are directed toward Altria. To the extent
27 the allegations of Paragraph 55 are directed toward other Defendants, Altria is without knowledge
28

1 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
2 the same.

3 56. The allegations of Paragraph 56 are not directed toward Altria, and, therefore, no
4 response is required. To the extent a response is required, Paragraph 56 purports to selectively
5 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
6 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
7 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
8 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
9 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
10 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
11 that the alleged documents, statements, and/or statistics speak for themselves. Altria denies the
12 remaining allegations of Paragraph 56 to the extent they are directed toward Altria. To the extent
13 the allegations of Paragraph 56 are directed toward other Defendants, Altria is without knowledge
14 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
15 the same.

16 57. The allegations of Paragraph 57 are not directed toward Altria, and, therefore, no
17 response is required. To the extent a response is required, Altria is without knowledge or
18 information sufficient to form a belief as to the truth of the allegations of Paragraph 57 and,
19 therefore, denies the same.

20 58. Altria admits that its subsidiary Nu Mark LLC acquired the rights to a pod-based
21 product with a closed system in late 2017, which Nu Mark began marketing as the MarkTen Elite
22 in February 2018. Altria denies the remaining allegations of Paragraph 58 to the extent they are
23 directed toward Altria. To the extent the allegations of Paragraph 58 are directed toward other
24 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
25 those allegations and, therefore, denies the same.

26 59. Altria denies that the photograph included in Paragraph 59 consists of well-pleaded
27 allegations of fact to which any response is required. To the extent the allegations of Paragraph 59
28 are directed toward Altria, Altria admits that the MarkTen Elite offered different pod flavors in

1 disposable capsules, and that each pod contained 1.5ml of liquid nicotine. To the extent the
2 allegations of Paragraph 59 are directed toward other Defendants, Altria is without knowledge or
3 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
4 same.

5 60. Paragraph 60 purports to selectively quote, reference, and/or paraphrase certain
6 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
7 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
8 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
9 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
10 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
11 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
12 statements, and/or statistics speak for themselves. Altria admits that it gave a presentation to
13 investors in November 2017, but denies the remaining allegations of Paragraph 60 to the extent
14 they are directed toward Altria. To the extent the allegations of Paragraph 60 are directed toward
15 other Defendants, Altria is without knowledge or information sufficient to form a belief as to the
16 truth of those allegations and, therefore, denies the same.

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

19 61. Altria denies the existence of a single Closed-System E-Vapor market, and denies
20 the allegations of Paragraph 61 to the extent they are directed toward Altria. To the extent the
21 allegations of Paragraph 61 are directed toward other Defendants, Altria is without knowledge or
22 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
23 same.

24 62. Altria denies the allegations of Paragraph 62 to the extent they are directed toward
25 Altria. To the extent the allegations of Paragraph 62 are directed toward other Defendants, Altria
26 is without knowledge or information sufficient to form a belief as to the truth of those allegations
27 and, therefore, denies the same.

1 63. The allegations of Paragraph 63 are not directed toward Altria, and, therefore, no
2 response is required. To the extent a response is required, Altria denies the existence of a single
3 Closed-System E-Vapor market. Altria is without knowledge or information sufficient to form a
4 belief as to the truth of the remaining allegations of Paragraph 63 and, therefore, denies the same.

5 64. Paragraph 64 appears to selectively quote, reference, and/or paraphrase certain
6 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
7 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
8 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
9 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
10 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
11 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
12 statements, and/or statistics speak for themselves. Altria admits that Gifford is a former CFO of
13 Altria Group, and that Willard and Gifford met with Pax investors on November 9, 2017. Altria
14 denies the remaining allegations of Paragraph 64 to the extent they are directed toward Altria. To
15 the extent the allegations of Paragraph 64 are directed toward other Defendants, Altria is without
16 knowledge or information sufficient to form a belief as to the truth of those allegations and,
17 therefore, denies the same.

18 65. Altria admits that on November 21, 2017, Willard and Jon Moore, then Nu Mark's
19 Director of Marketing, had a call with Goldman Sachs, Pax's financial advisor. Altria denies the
20 remaining allegations of Paragraph 65 to the extent they are directed toward Altria. To the extent
21 the allegations of Paragraph 65 are directed toward other Defendants, Altria is without knowledge
22 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
23 the same.

24 66. To the extent the allegations of Paragraph 66 are directed toward Altria, Altria
25 admits that Perella Weinberg Partners served as Altria's financial advisor, but denies the remaining
26 allegations of Paragraph 66. To the extent the allegations of Paragraph 66 are directed toward other
27 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
28 those allegations and, therefore, denies the same.

1 67. Paragraph 67 appears to selectively quote, reference, and/or paraphrase certain
2 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
3 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
4 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
5 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
6 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
7 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
8 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
9 Paragraph 67 to the extent they are directed toward Altria. To the extent the allegations of
10 Paragraph 67 are directed toward other Defendants, Altria is without knowledge or information
11 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

12 68. Paragraph 68 purports to selectively quote, reference, and/or paraphrase certain
13 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
14 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
15 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
16 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
17 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
18 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
19 statements, and/or statistics speak for themselves. Altria admits that on April 13, 2018, Willard
20 sent Burns, Pritzker, and Valani an email, but denies the remaining allegations of Paragraph 68 to
21 the extent they are directed toward Altria. To the extent the allegations of Paragraph 68 are directed
22 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
23 to the truth of those allegations and, therefore, denies the same.

24 69. Paragraph 69 purports to selectively quote, reference, and/or paraphrase certain
25 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
26 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
27 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
28 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged

1 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
2 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
3 statements, and/or statistics speak for themselves. Altria admits that on April 20, 2018, Burns sent
4 Willard a letter, but denies the remaining allegations of Paragraph 69 to the extent they are directed
5 toward Altria. To the extent the allegations of Paragraph 69 are directed toward other Defendants,
6 Altria is without knowledge or information sufficient to form a belief as to the truth of those
7 allegations and, therefore, denies the same.

8 70. Paragraph 70 purports to selectively quote, reference, and/or paraphrase certain
9 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
10 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
11 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
12 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
13 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
14 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
15 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
16 Paragraph 70 to the extent they are directed toward Altria. To the extent the allegations of
17 Paragraph 70 are directed toward other Defendants, Altria is without knowledge or information
18 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

19 71. Paragraph 71 purports to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
27 Paragraph 71 to the extent they are directed toward Altria. To the extent the allegations of
28

1 Paragraph 71 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 72. Paragraph 72 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria admits that on July 30, 2018, Pritzker
11 emailed Willard a draft term sheet, but denies the remaining allegations of Paragraph 72 to the
12 extent they are directed toward Altria. To the extent the allegations of Paragraph 72 are directed
13 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
14 to the truth of those allegations and, therefore, denies the same.

15 73. Paragraph 73 appears to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
17 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
18 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
19 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
20 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
21 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
22 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
23 Paragraph 73 to the extent they are directed toward Altria. To the extent the allegations of
24 Paragraph 73 are directed toward other Defendants, Altria is without knowledge or information
25 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

26 74. To the extent the allegations of Paragraph 74 are directed toward Altria, Altria
27 admits that Willard and Gifford met with Pritzker, Valani, and Burns on August 1, 2018, but denies
28 the remaining allegations of Paragraph 74. To the extent the allegations of Paragraph 74 are

1 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
2 belief as to the truth of those allegations and, therefore, denies the same.

3 75. Paragraph 75 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
11 Paragraph 75 to the extent they are directed toward Altria. To the extent the allegations of
12 Paragraph 75 are directed toward other Defendants, Altria is without knowledge or information
13 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

14 76. Paragraph 76 purports to selectively quote, reference, and/or paraphrase certain
15 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
16 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
17 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
18 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
19 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
20 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
21 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
22 Paragraph 76 to the extent they are directed toward Altria. To the extent the allegations of
23 Paragraph 76 are directed toward other Defendants, Altria is without knowledge or information
24 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

25 77. Paragraph 77 purports to selectively quote, reference, and/or paraphrase certain
26 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
27 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
28 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,

1 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
2 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
3 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
4 statements, and/or statistics speak for themselves. Altria admits that on August 9, 2018, Gifford
5 sent a markup of a term sheet to Pritzker, Valani, and Burns, but denies the remaining allegations
6 of Paragraph 77 to the extent they are directed toward Altria. To the extent the allegations of
7 Paragraph 77 are directed toward other Defendants, Altria is without knowledge or information
8 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

9 78. The allegations of Paragraph 78 are not directed toward Altria, and, therefore, no
10 response is required. To the extent a response is required, Paragraph 78 appears to selectively
11 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
12 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
13 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
14 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
15 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
16 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
17 that the alleged documents, statements, and/or statistics speak for themselves. Altria denies the
18 remaining allegations of Paragraph 78 to the extent they are directed toward Altria. To the extent
19 the allegations of Paragraph 78 are directed toward other Defendants, Altria is without knowledge
20 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
21 the same.

22 79. Paragraph 79 purports to selectively quote, reference, and/or paraphrase certain
23 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
24 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
25 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
26 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
27 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
28 alleged documents, statements, and/or statistics. Altria states that the alleged documents,

1 statements, and/or statistics speak for themselves. Altria admits that Devitre met with Valani on
2 August 15, 2018, but denies the remaining allegations of Paragraph 79 to the extent they are directed
3 toward Altria. To the extent the allegations of Paragraph 79 are directed toward other Defendants,
4 Altria is without knowledge or information sufficient to form a belief as to the truth of those
5 allegations and, therefore, denies the same.

6 80. Altria denies the allegations of Paragraph 80 to the extent they are directed toward
7 Altria. To the extent the allegations of Paragraph 80 are directed toward other Defendants, Altria
8 is without knowledge or information sufficient to form a belief as to the truth of those allegations
9 and, therefore, denies the same.

10 81. Paragraph 81 purports to selectively quote, reference, and/or paraphrase certain
11 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
12 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
13 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
14 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
15 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
16 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
17 statements, and/or statistics speak for themselves. Altria admits that on October 5, 2018, Willard
18 sent a letter to Pritzker, Valani, and Burns, but denies the remaining allegations of Paragraph 81 to
19 the extent they are directed toward Altria. To the extent the allegations of Paragraph 81 are directed
20 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
21 to the truth of those allegations and, therefore, denies the same.

22 82. Paragraph 82 purports to selectively quote, reference, and/or paraphrase certain
23 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
24 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
25 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
26 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
27 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
28 alleged documents, statements, and/or statistics. Altria states that the alleged documents,

1 statements, and/or statistics speak for themselves. Altria admits upon information and belief that
2 Burns forwarded the October 5 letter with a note to JLI's Chief Legal Officer, but denies the
3 remaining allegations of Paragraph 82 to the extent they are directed toward Altria. To the extent
4 the allegations of Paragraph 82 are directed toward other Defendants, Altria is without knowledge
5 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
6 the same.

7 83. Paragraph 83 purports to selectively quote, reference, and/or paraphrase certain
8 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
9 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
10 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
11 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
12 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
13 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
14 statements, and/or statistics speak for themselves. Altria admits that it sent a letter to FDA on
15 October 25, 2018, but denies the remaining allegations of Paragraph 83 to the extent they are
16 directed toward Altria. To the extent the allegations of Paragraph 83 are directed toward other
17 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
18 those allegations and, therefore, denies the same.

19 84. Paragraph 84 purports to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
27 Paragraph 84 to the extent they are directed toward Altria. To the extent the allegations of
28

1 Paragraph 84 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 85. Paragraph 85 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria admits that Garnick sent an email to
11 Carmine Reale on October 29, 2018, but Altria denies the remaining allegations of Paragraph 85 to
12 the extent they are directed toward Altria. To the extent the allegations of Paragraph 85 are directed
13 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
14 to the truth of those allegations and, therefore, denies the same.

15 86. Paragraph 86 appears to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
17 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
18 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
19 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
20 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
21 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
22 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
23 Paragraph 86 to the extent they are directed toward Altria. To the extent the allegations of
24 Paragraph 86 are directed toward other Defendants, Altria is without knowledge or information
25 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

26 87. Paragraph 87 appears to selectively quote, reference, and/or paraphrase certain
27 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
28 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their

1 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
2 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
3 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
4 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
5 statements, and/or statistics speak for themselves. Altria admits that it engaged in due diligence
6 during November 2018, but denies the remaining allegations of Paragraph 87 to the extent they are
7 directed toward Altria. To the extent the allegations of Paragraph 87 are directed toward other
8 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
9 those allegations and, therefore, denies the same.

10 88. Paragraph 88 purports to selectively quote, reference, and/or paraphrase certain
11 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
12 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
13 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
14 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
15 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
16 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
17 statements, and/or statistics speak for themselves. Altria admits that Garnick emailed Willard,
18 Gifford, and Crosthwaite on November 15, 2018, but denies the remaining allegations of Paragraph
19 88 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 88 are
20 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
21 belief as to the truth of those allegations and, therefore, denies the same.

22 89. Paragraph 89 appears to selectively quote, reference, and/or paraphrase certain
23 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
24 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
25 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
26 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
27 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
28 alleged documents, statements, and/or statistics. Altria states that the alleged documents,

1 statements, and/or statistics speak for themselves. Altria admits that on December 7, 2018, it
2 announced the decision to discontinue Nu Mark's remaining e-vapor products (as well as Verve,
3 Nu Mark's oral nicotine product), but denies the remaining allegations of Paragraph 89 to the extent
4 they are directed toward Altria. To the extent the allegations of Paragraph 89 are directed toward
5 other Defendants, Altria is without knowledge or information sufficient to form a belief as to the
6 truth of those allegations and, therefore, denies the same.

7 90. Paragraph 90 purports to selectively quote, reference, and/or paraphrase certain
8 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
9 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
10 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
11 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
12 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
13 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
14 statements, and/or statistics speak for themselves. Altria admits that Garnick emailed Masoudi on
15 December 9, 2018, but denies the remaining allegations of Paragraph 90 to the extent they are
16 directed toward Altria. To the extent the allegations of Paragraph 90 are directed toward other
17 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
18 those allegations and, therefore, denies the same.

19 91. Paragraph 91 appears to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria admits that it held a board of directors
27 meeting on December 11, 2018, but denies the remaining allegations of Paragraph 91 to the extent
28 they are directed toward Altria. To the extent the allegations of Paragraph 91 are directed toward

1 other Defendants, Altria is without knowledge or information sufficient to form a belief as to the
2 truth of those allegations and, therefore, denies the same.

3 92. Altria admits that on December 20, 2018, JLI and Altria executed a series of
4 agreements, including a Purchase Agreement, Relationship Agreement, Services Agreement,
5 Intellectual Property License Agreement, and Voting Agreement (collectively, the “Transaction”),
6 but Altria denies that the Transaction remains in effect or that Altria has any ownership interest in
7 JLI. Altria denies the remaining allegations of Paragraph 92 to the extent they are directed toward
8 Altria. To the extent the allegations of Paragraph 92 are directed toward other Defendants, Altria
9 is without knowledge or information sufficient to form a belief as to the truth of those allegations
10 and, therefore, denies the same.

11 93. Paragraph 93 purports to selectively quote, reference, and/or paraphrase certain
12 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
13 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
14 entirety, denies Plaintiffs’ characterization of the alleged documents, statements, and/or statistics,
15 denies Plaintiffs’ insinuation and implication regarding the content or meaning of the alleged
16 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
17 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
18 statements, and/or statistics speak for themselves. To the extent the allegations of Paragraph 93 are
19 directed toward Altria, Altria admits that, on December 20, 2018, Altria purchased, through a
20 wholly owned subsidiary, a 35% minority non-voting interest in JUUL Labs, Inc. for \$12.8 billion,
21 but Altria denies that it maintains any ownership interest in JLI or that there is any existing business
22 relationship between Altria and JLI. To the extent the allegations of Paragraph 93 are directed
23 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
24 to the truth of those allegations and, therefore, denies the same.

25 94. Paragraph 94 purports to selectively quote, reference, and/or paraphrase certain
26 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
27 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
28 entirety, denies Plaintiffs’ characterization of the alleged documents, statements, and/or statistics,

1 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
2 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
3 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
4 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
5 Paragraph 94 to the extent they are directed toward Altria. To the extent the allegations of
6 Paragraph 94 are directed toward other Defendants, Altria is without knowledge or information
7 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

8 95. Paragraph 95 purports to selectively quote, reference, and/or paraphrase certain
9 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
10 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
11 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
12 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
13 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
14 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
15 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
16 Paragraph 95 to the extent they are directed toward Altria. To the extent the allegations of
17 Paragraph 95 are directed toward other Defendants, Altria is without knowledge or information
18 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

19 96. Paragraph 96 purports to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
27 Paragraph 96 to the extent they are directed toward Altria. To the extent the allegations of
28

1 Paragraph 96 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 97. Paragraph 97 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
11 Paragraph 97 to the extent they are directed toward Altria. To the extent the allegations of
12 Paragraph 97 are directed toward other Defendants, Altria is without knowledge or information
13 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

14 98. Paragraph 98 purports to selectively quote, reference, and/or paraphrase certain
15 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
16 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
17 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
18 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
19 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
20 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
21 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
22 Paragraph 98 to the extent they are directed toward Altria. To the extent the allegations of
23 Paragraph 98 are directed toward other Defendants, Altria is without knowledge or information
24 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

25 99. Paragraph 99 purports to selectively quote, reference, and/or paraphrase certain
26 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
27 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
28 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,

1 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
2 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
3 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
4 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
5 Paragraph 99 to the extent they are directed toward Altria. To the extent the allegations of
6 Paragraph 99 are directed toward other Defendants, Altria is without knowledge or information
7 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

8 100. Paragraph 100 purports to selectively quote, reference, and/or paraphrase certain
9 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
10 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
11 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
12 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
13 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
14 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
15 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
16 Paragraph 100 to the extent they are directed toward Altria. To the extent the allegations of
17 Paragraph 100 are directed toward other Defendants, Altria is without knowledge or information
18 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

19 101. Paragraph 101 appears to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
27 Paragraph 101 to the extent they are directed toward Altria. To the extent the allegations of
28

1 Paragraph 101 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 102. Paragraph 102 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
11 Paragraph 102 to the extent they are directed toward Altria. To the extent the allegations of
12 Paragraph 102 are directed toward other Defendants, Altria is without knowledge or information
13 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

14 103. Paragraph 103 appears to selectively quote, reference, and/or paraphrase certain
15 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
16 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
17 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
18 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
19 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
20 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
21 statements, and/or statistics speak for themselves. Altria admits that in the first quarter of 2019,
22 Altria filed for Hart-Scott-Rodino clearance related to its then-existing minority investment in
23 JUUL Labs, Inc., but denies the remaining allegations of Paragraph 103 to the extent they are
24 directed toward Altria, including any allegation that Altria maintains an ownership interest in JLI
25 or that there is any existing business relationship between Altria and JLI. To the extent the
26 allegations of Paragraph 103 are directed toward other Defendants, Altria is without knowledge or
27 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
28 same.

1 104. Paragraph 104 purports to selectively quote, reference, and/or paraphrase certain
2 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
3 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
4 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
5 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
6 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
7 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
8 statements, and/or statistics speak for themselves. Altria admits that on January 30, 2020, Altria
9 announced amendments to its December 2018 agreements with JUUL Labs, Inc., including an
10 Amended Purchase Agreement, Amended Relationship Agreement, Amended Services Agreement,
11 and a Revised Voting Agreement, but Altria denies that any such agreements remain in effect or
12 that there is any existing business relationship between Altria and JLI. Altria denies the remaining
13 allegations of Paragraph 104 to the extent they are directed toward Altria. To the extent the
14 allegations of Paragraph 104 are directed toward other Defendants, Altria is without knowledge or
15 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
16 same.

17 105. Paragraph 105 purports to selectively quote, reference, and/or paraphrase certain
18 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
19 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
20 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
21 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
22 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
23 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
24 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
25 Paragraph 105 to the extent they are directed toward Altria. To the extent the allegations of
26 Paragraph 105 are directed toward other Defendants, Altria is without knowledge or information
27 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.
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1 106. Paragraph 106 purports to selectively quote, reference, and/or paraphrase certain
2 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
3 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
4 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
5 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
6 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
7 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
8 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
9 Paragraph 106 to the extent they are directed toward Altria. To the extent the allegations of
10 Paragraph 106 are directed toward other Defendants, Altria is without knowledge or information
11 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

12 107. Paragraph 107 purports to selectively quote, reference, and/or paraphrase certain
13 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
14 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
15 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
16 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
17 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
18 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
19 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
20 Paragraph 107 to the extent they are directed toward Altria. To the extent the allegations of
21 Paragraph 107 are directed toward other Defendants, Altria is without knowledge or information
22 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

23 108. To the extent the allegations of Paragraph 108 are directed toward Altria, Altria
24 denies the allegations of Paragraph 108. To the extent the allegations of Paragraph 108 are directed
25 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
26 to the truth of those allegations and, therefore, denies the same.

THE FTC ACTION

1
2 109. Altria admits that on April 1, 2020, the Federal Trade Commission filed an
3 administrative complaint alleging that JUUL Labs, Inc. and Altria entered a series of agreements
4 that eliminated competition in violation of federal antitrust laws listed in Paragraph 109. Altria
5 denies that the FTC's complaint had merit, and denies the remaining allegations of Paragraph 109
6 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 109 are
7 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
8 belief as to the truth of those allegations and, therefore, denies the same.

9 110. Paragraph 110 purports to selectively quote, reference, and/or paraphrase certain
10 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
11 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
12 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
13 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
14 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
15 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
16 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
17 Paragraph 110 to the extent they are directed toward Altria. To the extent the allegations of
18 Paragraph 110 are directed toward other Defendants, Altria is without knowledge or information
19 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

MARKET STRUCTURE

A. Relevant Market

20
21 111. Paragraph 111 asserts legal conclusions to which no response is required. To the
22 extent a response is required and to the extent the allegations of Paragraph 111 are directed toward
23 Altria, Altria denies that the relevant product market for the purposes of this action is "the Closed-
24 System E-Vapor market." To the extent the allegations of Paragraph 111 are directed toward other
25 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
26 those allegations and, therefore, denies the same.
27
28

1 112. To the extent the allegations of Paragraph 112 are directed toward Altria, Altria
2 admits that closed-system e-vapor products are generally battery-powered devices that consist of a
3 device housing a battery and a heating mechanism, and sealed cartridges, pods, or tanks that are
4 filled with e-liquid. Altria further admits that when a closed-system e-vapor product is engaged by
5 pressing the device's power button, or in some cases by inhaling, the battery heats an element in
6 the device called the cartomizer. Altria further admits that the cartomizer is a small component that
7 contains a heating coil wrapped in polyfill, and that the polyfill soaks up the e-liquid, which is then
8 heated until it turns into vapor for inhalation. Altria further admits that closed-system e-vapor
9 products primarily include three types of products: e-cigarettes (also known as "cig-a-likes"), closed
10 system tanks, and closed system pods. Altria denies the existence of a single Closed-System E-
11 Vapor market. To the extent the allegations of Paragraph 112 are directed toward other Defendants,
12 Altria is without knowledge or information sufficient to form a belief as to the truth of those
13 allegations and, therefore, denies the same.

14 113. The allegations of Paragraph 113 are not directed toward Altria, and, therefore, no
15 response is required. Altria denies that the photograph included in Paragraph 113 consists of well-
16 pleaded allegations of fact to which any response is required. To the extent a response is required,
17 Altria admits that cig-a-likes imitate the look and feel of a combustible cigarette and use a
18 rechargeable or disposable battery. Altria denies the remaining allegations of Paragraph 113 to the
19 extent they are directed toward Altria. To the extent the allegations of Paragraph 113 are directed
20 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
21 to the truth of those allegations and, therefore, denies the same.

22 114. The allegations of Paragraph 114 are not directed toward Altria, and, therefore, no
23 response is required. To the extent a response is required, Altria admits that closed-system tanks
24 do not look like combustible cigarettes. Altria denies the remaining allegations of Paragraph 114
25 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 114 are
26 directed toward other Defendants, Altria is without knowledge or information sufficient to form a
27 belief as to the truth of those allegations and, therefore, denies the same.

1 115. The allegations of Paragraph 115 are not directed toward Altria, and, therefore, no
2 response is required. Altria admits that closed-system pods use rechargeable or disposable batteries
3 and disposable e-liquid cartridges. Altria denies the remaining allegations of Paragraph 115 to the
4 extent they are directed toward Altria. To the extent the allegations of Paragraph 115 are directed
5 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
6 to the truth of those allegations and, therefore, denies the same.

7 116. Altria denies that the photograph included in Paragraph 116 consists of well-pleaded
8 allegations of fact to which any response is required. To the extent a response is required, Altria
9 admits that its subsidiary Nu Mark LLC sold cig-a-like electronic cigarettes under the brand names
10 MarkTen and Green Smoke, and that Nu Mark LLC sold closed-system pods under the brand name
11 MarkTen Elite. Altria denies the remaining allegations of Paragraph 116 to the extent they are
12 directed toward Altria. To the extent the allegations of Paragraph 116 are directed toward other
13 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
14 those allegations and, therefore, denies the same.

15 117. The allegations of Paragraph 117 are not directed toward Altria, and, therefore, no
16 response is required. To the extent a response is required, Altria admits upon information and belief
17 that JLI sold a pod-based product with a closed system under the brand name JUUL.

18 118. The allegations of Paragraph 118 are not directed toward Altria, and, therefore, no
19 response is required. Altria denies that the photograph included in Paragraph 118 consists of well-
20 pleaded allegations of fact to which any response is required. To the extent a response is required,
21 Altria admits that on January 2, 2020, FDA adopted a revised enforcement prioritization policy
22 with respect to flavored e-cigarettes, and that this policy took effect in February 2020. Altria denies
23 the remaining allegations of Paragraph 118 to the extent they are directed toward Altria. To the
24 extent the allegations of Paragraph 118 are directed toward other Defendants, Altria is without
25 knowledge or information sufficient to form a belief as to the truth of those allegations and,
26 therefore, denies the same.

27 119. The allegations of Paragraph 119 are not directed toward Altria, and, therefore, no
28 response is required. To the extent a response is required, Altria denies the existence of a single

1 Closed-System E-Vapor market. Altria is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations of Paragraph 119 and, therefore, denies the same.

3 120. Paragraph 120 asserts legal conclusions to which no response is required. To the
4 extent a response is required, Altria denies the existence of a single Closed-System E-Vapor market.
5 Altria is without knowledge or information sufficient to form a belief as to the truth of the remaining
6 allegations of Paragraph 120 and, therefore, denies the same.

7 121. The allegations of Paragraph 121 are not directed toward Altria, and, therefore, no
8 response is required. To the extent a response is required, Altria is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations of Paragraph 121 and,
10 therefore, denies the same.

11 122. The allegations of Paragraph 122 are not directed toward Altria, and, therefore, no
12 response is required. To the extent a response is required, Altria is without knowledge or
13 information sufficient to form a belief as to the truth of the allegations of Paragraph 122 and,
14 therefore, denies the same.

15 123. The allegations of Paragraph 123 are not directed toward Altria, and, therefore, no
16 response is required. To the extent a response is required, Altria is without knowledge or
17 information sufficient to form a belief as to the truth of the allegations of Paragraph 123 and,
18 therefore, denies the same.

19 124. Paragraph 124 purports to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the existence of a single Closed-
27 System E-Vapor market, and denies the remaining allegations of Paragraph 124 to the extent they
28 are directed toward Altria. To the extent the allegations of Paragraph 124 are directed toward other

1 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
2 those allegations and, therefore, denies the same.

3 125. To the extent the allegations of Paragraph 125 are directed toward Altria, Altria
4 denies the existence of a single Closed-System E-Vapor market and denies the remaining
5 allegations of Paragraph 125. To the extent the allegations of Paragraph 125 are directed toward
6 other Defendants, Altria is without knowledge or information sufficient to form a belief as to the
7 truth of those allegations and, therefore, denies the same.

8 126. To the extent the allegations of Paragraph 126 are directed toward Altria, Altria
9 denies the existence of a single Closed-System E-Vapor market and denies the remaining
10 allegations of Paragraph 126. To the extent the allegations of Paragraph 126 are directed toward
11 other Defendants, Altria is without knowledge or information sufficient to form a belief as to the
12 truth of those allegations and, therefore, denies the same.

13 127. Paragraph 127 asserts legal conclusions to which no response is required. The
14 allegations of Paragraph 127 are not directed toward Altria, and, therefore, no response is required.
15 To the extent a response is required, Altria admits that the relevant geographic market is no broader
16 than the United States and that foreign firms cannot import e-vapor products into the United States
17 without prior FDA approval unless those e-vapor products were on the United States market prior
18 to August 8, 2016. To the extent the allegations of Paragraph 127 are directed toward other
19 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations of Paragraph 127 and, therefore, denies the same.

21 128. Paragraph 128 purports to selectively quote, reference, and/or paraphrase certain
22 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
23 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
24 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
25 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
26 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
27 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
28 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of

1 Paragraph 128 to the extent they are directed toward Altria. To the extent the allegations of
2 Paragraph 128 are directed toward other Defendants, Altria is without knowledge or information
3 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

4 **B. Market Concentration**

5 129. To the extent the allegations of Paragraph 129 are directed toward Altria, Altria
6 denies the allegations of Paragraph 129. To the extent the allegations of Paragraph 129 are directed
7 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
8 to the truth of those allegations and, therefore, denies the same.

9 130. Paragraph 130 asserts legal conclusions to which no response is required. To the
10 extent a response is required, Paragraph 130 purports to selectively quote, reference, and/or
11 paraphrase certain alleged documents, statements, and/or statistics. Altria denies that the alleged
12 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in
13 their entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
14 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of the
15 alleged documents, statements, and/or statistics, and does not concede the truthfulness or accuracy
16 of the alleged documents, statements, and/or statistics. Altria states that the alleged documents,
17 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
18 Paragraph 130 to the extent they are directed toward Altria. To the extent the allegations of
19 Paragraph 130 are directed toward other Defendants, Altria is without knowledge or information
20 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

21 131. Altria denies the allegations of Paragraph 131 to the extent they are directed toward
22 Altria. To the extent the allegations of Paragraph 131 are directed toward other Defendants, Altria
23 is without knowledge or information sufficient to form a belief as to the truth of those allegations
24 and, therefore, denies the same.

25 **C. The Closed System E-Vapor Market Has High Barriers To Entry**

26 132. The allegations of Paragraph 132 are not directed toward Altria, and, therefore, no
27 response is required. To the extent a response is required, Altria admits the allegations of Paragraph
28 132.

1 133. The allegations of Paragraph 133 are not directed toward Altria, and, therefore, no
2 response is required. To the extent a response is required, Altria admits that preparing a PMTA
3 requires a significant amount of resources. Altria is without knowledge or information sufficient
4 to form a belief as to the truth of the remaining allegations of Paragraph 133 and, therefore, denies
5 the same.

6 134. The allegations of Paragraph 134 are not directed toward Altria, and, therefore, no
7 response is required. To the extent a response is required, Paragraph 134 purports to selectively
8 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
9 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
10 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
11 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
12 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
13 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
14 that the alleged documents, statements, and/or statistics speak for themselves. Altria admits that on
15 January 2, 2020, FDA adopted a revised enforcement prioritization policy with respect to flavored
16 e-cigarettes, but denies the remaining allegations of Paragraph 134 to the extent they are directed
17 toward Altria. To the extent the allegations of Paragraph 134 are directed toward other Defendants,
18 Altria is without knowledge or information sufficient to form a belief as to the truth of those
19 allegations and, therefore, denies the same.

20 **D. Market Power**

21 135. Paragraph 135 asserts legal conclusions to which no response is required. To the
22 extent a response is required, Altria denies the allegations of Paragraph 135. To the extent the
23 allegations of Paragraph 135 are directed toward other Defendants, Altria is without knowledge or
24 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
25 same.

26 136. Paragraph 136 purports to selectively quote, reference, and/or paraphrase certain
27 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
28 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their

1 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
2 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
3 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
4 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
5 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
6 Paragraph 136 to the extent they are directed toward Altria. To the extent the allegations of
7 Paragraph 136 are directed toward other Defendants, Altria is without knowledge or information
8 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

9 137. The allegations of Paragraph 137 are not directed toward Altria, and, therefore, no
10 response is required. To the extent a response is required, Paragraph 137 purports to selectively
11 quote, reference, and/or paraphrase certain alleged documents, statements, and/or statistics. Altria
12 denies that the alleged documents, statements, and/or statistics are quoted, referenced, and/or
13 paraphrased in context or in their entirety, denies Plaintiffs' characterization of the alleged
14 documents, statements, and/or statistics, denies Plaintiffs' insinuation and implication regarding the
15 content or meaning of the alleged documents, statements, and/or statistics, and does not concede
16 the truthfulness or accuracy of the alleged documents, statements, and/or statistics. Altria states
17 that the alleged documents, statements, and/or statistics speak for themselves. Altria denies the
18 remaining allegations of Paragraph 137 to the extent they are directed toward Altria. To the extent
19 the allegations of Paragraph 137 are directed toward other Defendants, Altria is without knowledge
20 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
21 the same.

22 138. Altria denies the allegations of Paragraph 138 to the extent they are directed toward
23 Altria. To the extent the allegations of Paragraph 138 are directed toward other Defendants, Altria
24 is without knowledge or information sufficient to form a belief as to the truth of those allegations
25 and, therefore, denies the same.
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1 **ANTICOMPETITIVE EFFECTS OUTWEIGH PROCOMPETITIVE BENEFITS, IF ANY**

2 **A. Anticompetitive Effects**

3 139. Paragraph 139 asserts legal conclusions to which no response is required. To the
4 extent a response is required, Altria denies the allegations of Paragraph 139 to the extent they are
5 directed toward Altria. To the extent the allegations of Paragraph 139 are directed toward other
6 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
7 those allegations and, therefore, denies the same.

8 140. Altria denies the allegations of Paragraph 140 to the extent they are directed toward
9 Altria. To the extent the allegations of Paragraph 140 are directed toward other Defendants, Altria
10 is without knowledge or information sufficient to form a belief as to the truth of those allegations
11 and, therefore, denies the same.

12 141. Altria denies the allegations of Paragraph 141 to the extent they are directed toward
13 Altria. To the extent the allegations of Paragraph 141 are directed toward other Defendants, Altria
14 is without knowledge or information sufficient to form a belief as to the truth of those allegations
15 and, therefore, denies the same.

16 142. Altria denies the allegations of Paragraph 142 to the extent they are directed toward
17 Altria. To the extent the allegations of Paragraph 142 are directed toward other Defendants, Altria
18 is without knowledge or information sufficient to form a belief as to the truth of those allegations
19 and, therefore, denies the same.

20 143. Altria denies the allegations of Paragraph 143 to the extent they are directed toward
21 Altria. To the extent the allegations of Paragraph 143 are directed toward other Defendants, Altria
22 is without knowledge or information sufficient to form a belief as to the truth of those allegations
23 and, therefore, denies the same.

24 144. Altria denies the allegations of Paragraph 144 to the extent they are directed toward
25 Altria. To the extent the allegations of Paragraph 144 are directed toward other Defendants, Altria
26 is without knowledge or information sufficient to form a belief as to the truth of those allegations
27 and, therefore, denies the same.

1 145. Paragraph 145 appears to selectively quote, reference, and/or paraphrase certain
2 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
3 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
4 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
5 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
6 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
7 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
8 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
9 Paragraph 145 to the extent they are directed toward Altria. To the extent the allegations of
10 Paragraph 145 are directed toward other Defendants, Altria is without knowledge or information
11 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

12 146. Altria denies the allegations of Paragraph 146 to the extent they are directed toward
13 Altria. To the extent the allegations of Paragraph 146 are directed toward other Defendants, Altria
14 is without knowledge or information sufficient to form a belief as to the truth of those allegations
15 and, therefore, denies the same.

16 147. To the extent the allegations of Paragraph 147 are directed toward Altria, Altria
17 denies the allegations of Paragraph 147. To the extent the allegations of Paragraph 147 are directed
18 toward other Defendants, Altria is without knowledge or information sufficient to form a belief as
19 to the truth of those allegations and, therefore, denies the same.

20 148. Paragraph 148 purports to selectively quote, reference, and/or paraphrase certain
21 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
22 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
23 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
24 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
25 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
26 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
27 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
28 Paragraph 148 to the extent they are directed toward Altria. To the extent the allegations of

1 Paragraph 148 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 149. Paragraph 149 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
5 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
6 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
7 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
8 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
9 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
10 statements, and/or statistics speak for themselves. Altria admits that Joseph Murillo is a former
11 SVP of Regulatory Affairs at Altria Client Services, and that both Martin Barrington and Howard
12 Willard are former CEOs of Altria Group. Altria denies the remaining allegations of Paragraph
13 149 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 149
14 are directed toward other Defendants, Altria is without knowledge or information sufficient to form
15 a belief as to the truth of those allegations and, therefore, denies the same.

16 150. Paragraph 150 appears to selectively quote, reference, and/or paraphrase certain
17 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
18 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
19 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
20 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
21 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
22 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
23 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
24 Paragraph 150 to the extent they are directed toward Altria. To the extent the allegations of
25 Paragraph 150 are directed toward other Defendants, Altria is without knowledge or information
26 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

27 151. Altria denies the allegations of Paragraph 151 to the extent they are directed toward
28 Altria. To the extent the allegations of Paragraph 151 are directed toward other Defendants, Altria

1 is without knowledge or information sufficient to form a belief as to the truth of those allegations
2 and, therefore, denies the same.

3 **B. Absence of Procompetitive Benefits**

4 152. Paragraph 152 asserts legal conclusions to which no response is required. To the
5 extent a response is required, Altria denies the allegations of Paragraph 152 to the extent they are
6 directed toward Altria. To the extent the allegations of Paragraph 152 are directed toward other
7 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
8 those allegations and, therefore, denies the same.

9 153. Paragraph 153 asserts legal conclusions to which no response is required. To the
10 extent a response is required, Altria denies the allegations of Paragraph 153 to the extent they are
11 directed toward Altria. To the extent the allegations of Paragraph 153 are directed toward other
12 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
13 those allegations and, therefore, denies the same.

14 154. Paragraph 154 asserts legal conclusions to which no response is required. To the
15 extent a response is required, Altria denies the allegations of Paragraph 154 to the extent they are
16 directed toward Altria. To the extent the allegations of Paragraph 154 are directed toward other
17 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
18 those allegations and, therefore, denies the same.

19 155. Paragraph 155 appears to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. Altria denies that the alleged documents,
21 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
22 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or statistics,
23 denies Plaintiffs' insinuation and implication regarding the content or meaning of the alleged
24 documents, statements, and/or statistics, and does not concede the truthfulness or accuracy of the
25 alleged documents, statements, and/or statistics. Altria states that the alleged documents,
26 statements, and/or statistics speak for themselves. Altria denies the remaining allegations of
27 Paragraph 155 to the extent they are directed toward Altria. To the extent the allegations of
28

1 Paragraph 155 are directed toward other Defendants, Altria is without knowledge or information
2 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

3 156. The allegations of Paragraph 156 are not directed toward Altria, and, therefore, no
4 response is required. To the extent a response is required, Altria is without knowledge or
5 information sufficient to form a belief as to the truth of those allegations and, therefore, denies the
6 same.

7 157. The allegations of Paragraph 157 are not directed toward Altria, and, therefore, no
8 response is required. To the extent a response is required, Altria denies the existence of a single
9 Closed-System E-Vapor market. Altria is without knowledge or information sufficient to form a
10 belief as to the truth of the remaining allegations of Paragraph 157 and, therefore, denies the same.

11 158. The allegations of Paragraph 158 are not directed toward Altria, and, therefore, no
12 response is required. To the extent a response is required, Altria denies the existence of a single
13 Closed-System E-Vapor market. Altria is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations of Paragraph 158 and, therefore, denies the same.

15 159. Paragraph 159 asserts legal conclusions to which no response is required. To the
16 extent a response is required, Altria denies the allegations of Paragraph 159 to the extent they are
17 directed toward Altria. To the extent the allegations of Paragraph 159 are directed toward other
18 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
19 those allegations and, therefore, denies the same.

20 **HARM TO COMPETITION AND ANTITRUST INJURY**

21 160. Altria denies the allegations of Paragraph 160 to the extent they are directed toward
22 Altria. To the extent the allegations of Paragraph 160 are directed toward other Defendants, Altria
23 is without knowledge or information sufficient to form a belief as to the truth of those allegations
24 and, therefore, denies the same.

CLAIMS FOR RELIEF

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

161. No response is required to Paragraph 161 because it does not contain any allegations.

162. Paragraph 162 asserts legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations of Paragraph 162 are directed toward Altria, Altria denies the allegations of Paragraph 162. To the extent the allegations of Paragraph 162 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

163. Paragraph 163 asserts legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations of Paragraph 163 are directed toward Altria, Altria denies the allegations of Paragraph 163. To the extent the allegations of Paragraph 163 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

164. Paragraph 164 asserts legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations of Paragraph 164 are directed toward Altria, Altria denies the allegations of Paragraph 164. To the extent the allegations of Paragraph 164 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

165. Altria denies the allegations of Paragraph 165 to the extent they are directed toward Altria. To the extent the allegations of Paragraph 165 are directed toward other Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

166. Paragraph 166 asserts legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations of Paragraph 166 are directed toward Altria, Altria denies the allegations of Paragraph 166. To the extent the allegations of Paragraph

1 166 are directed toward other Defendants, Altria is without knowledge or information sufficient to
2 form a belief as to the truth of those allegations and, therefore, denies the same.

3 167. Altria admits that the Transaction in which it purchased a minority stake in JUUL
4 Labs, Inc. was effected in December 2018, but Altria denies that the Transaction remains in effect
5 or that there is any existing business relationship between Altria and JLI. Altria denies the
6 remaining allegations of Paragraph 167 to the extent they are directed toward Altria. To the extent
7 the allegations of Paragraph 167 are directed toward other Defendants, Altria is without knowledge
8 or information sufficient to form a belief as to the truth of those allegations and, therefore, denies
9 the same.

10 **COUNT TWO**

11 **RESTRAINT OF TRADE IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT,**
12 **15 U.S.C. § 18**
(Against all Defendants)

13 168. No response is required to Paragraph 168 because it does not contain any allegations.

14 169. Altria denies the allegations of Paragraph 169 to the extent they are directed toward
15 Altria. To the extent the allegations of Paragraph 169 are directed toward other Defendants, Altria
16 is without knowledge or information sufficient to form a belief as to the truth of those allegations
17 and, therefore, denies the same.

18 170. Paragraph 170 asserts legal conclusions to which no response is required. To the
19 extent a response is required, Altria denies the allegations of Paragraph 170 to the extent they are
20 directed toward Altria. To the extent the allegations of Paragraph 170 are directed toward other
21 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
22 those allegations and, therefore, denies the same.

23 171. Altria denies the allegations of Paragraph 171 to the extent they are directed toward
24 Altria. To the extent the allegations of Paragraph 171 are directed toward other Defendants, Altria
25 is without knowledge or information sufficient to form a belief as to the truth of those allegations
26 and, therefore, denies the same.

27 172. Paragraph 172 asserts legal conclusions to which no response is required. To the
28 extent a response is required and to the extent the allegations of Paragraph 172 are directed toward

1 Altria, Altria denies the allegations of Paragraph 172. To the extent the allegations of Paragraph
2 172 are directed toward other Defendants, Altria is without knowledge or information sufficient to
3 form a belief as to the truth of those allegations and, therefore, denies the same.

4 **COUNT THREE**

5 **DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF SECTION 1 OF**
6 **THE SHERMAN ACT AND SECTION 7 OF THE CLAYTON ACT,**
7 **15 U.S.C. § 26**
8 **(Against all Defendants)**

9 173. No response is required to Paragraph 173 because it does not contain any allegations.

10 174. Altria admits that Plaintiffs purport to seek declaratory and injunctive relief under
11 the federal antitrust laws, but denies that Plaintiffs are entitled to the relief requested in this
12 Complaint or any relief whatsoever.

13 175. Paragraph 175 asserts legal conclusions to which no response is required. To the
14 extent a response is required and to the extent the allegations of Paragraph 175 are directed toward
15 Altria, Altria denies the allegations of Paragraph 175. To the extent the allegations of Paragraph
16 175 are directed toward other Defendants, Altria is without knowledge or information sufficient to
17 form a belief as to the truth of those allegations and, therefore, denies the same.

18 176. Paragraph 176 asserts legal conclusions to which no response is required. To the
19 extent a response is required, Altria denies the allegations of Paragraph 176 to the extent they are
20 directed toward Altria. To the extent the allegations of Paragraph 176 are directed toward other
21 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
22 those allegations and, therefore, denies the same.

23 177. Paragraph 177 asserts legal conclusions to which no response is required. To the
24 extent a response is required, Altria denies the allegations of Paragraph 177 to the extent they are
25 directed toward Altria. To the extent the allegations of Paragraph 177 are directed toward other
26 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
27 those allegations and, therefore, denies the same.

28 178. Paragraph 178 asserts legal conclusions to which no response is required. To the
extent a response is required, Altria denies the allegations of Paragraph 178 to the extent they are

1 directed toward Altria. To the extent the allegations of Paragraph 178 are directed toward other
2 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
3 those allegations and, therefore, denies the same.

4 179. Altria denies the allegations of Paragraph 179 to the extent they are directed toward
5 Altria. To the extent the allegations of Paragraph 179 are directed toward other Defendants, Altria
6 is without knowledge or information sufficient to form a belief as to the truth of those allegations
7 and, therefore, denies the same.

8 180. Paragraph 180 asserts legal conclusions to which no response is required. To the
9 extent a response is required and to the extent the allegations of Paragraph 180 are directed toward
10 Altria, Altria denies the allegations of Paragraph 180. To the extent the allegations of Paragraph
11 180 are directed toward other Defendants, Altria is without knowledge or information sufficient to
12 form a belief as to the truth of those allegations and, therefore, denies the same.

13 181. Paragraph 181 asserts legal conclusions to which no response is required. To the
14 extent a response is required, Altria denies the allegations of Paragraph 181 to the extent they are
15 directed toward Altria. To the extent the allegations of Paragraph 181 are directed toward other
16 Defendants, Altria is without knowledge or information sufficient to form a belief as to the truth of
17 those allegations and, therefore, denies the same.

18 182. Altria admits that Plaintiffs, and the Class they purport to certify, seek a Declaratory
19 Judgment pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201(a), but denies that
20 Plaintiffs are entitled to the relief requested in this Complaint or any relief whatsoever. Altria denies
21 the remaining allegations of Paragraph 182.

22 183. Altria admits that Plaintiffs, and the Class they purport to certify, seek equitable and
23 injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, and other law it alleges
24 is applicable, but denies that Plaintiffs are entitled to the relief requested in this Complaint or any
25 relief whatsoever. Altria denies the remaining allegations of Paragraph 183.

26 **DEMAND FOR JUDGMENT**

27 184. Altria denies that this lawsuit is appropriate for class action treatment or is
28 manageable as a class action and denies the remaining allegations of Paragraph 184.

1 185. Paragraph 185 asserts legal conclusions to which no response is required. To the
2 extent a response is required and to the extent the allegations of Paragraph 185 are directed toward
3 Altria, Altria denies the allegations of Paragraph 185. To the extent the allegations of Paragraph
4 185 are directed toward other Defendants, Altria is without knowledge or information sufficient to
5 form a belief as to the truth of those allegations and, therefore, denies the same.

6 186. Paragraph 186 asserts legal conclusions to which no response is required. To the
7 extent a response is required and to the extent the allegations of Paragraph 186 are directed toward
8 Altria, Altria denies the allegations of Paragraph 186. To the extent the allegations of Paragraph
9 186 are directed toward other Defendants, Altria is without knowledge or information sufficient to
10 form a belief as to the truth of those allegations and, therefore, denies the same.

11 187. Paragraph 187 asserts legal conclusions to which no response is required. To the
12 extent a response is required and to the extent the allegations of Paragraph 187 are directed toward
13 Altria, Altria denies that Plaintiffs are entitled to the relief requested in this Complaint or any relief
14 whatsoever. To the extent the allegations of Paragraph 187 are directed toward other Defendants,
15 Altria is without knowledge or information sufficient to form a belief as to the truth of those
16 allegations and, therefore, denies the same.

17 188. Paragraph 188 asserts legal conclusions to which no response is required. To the
18 extent a response is required and to the extent the allegations of Paragraph 188 are directed toward
19 Altria, Altria denies that Plaintiffs are entitled to the relief requested in this Complaint or any relief
20 whatsoever. To the extent the allegations of Paragraph 188 are directed toward other Defendants,
21 Altria is without knowledge or information sufficient to form a belief as to the truth of those
22 allegations and, therefore, denies the same.

23 189. Paragraph 189 asserts legal conclusions to which no response is required. To the
24 extent a response is required and to the extent the allegations of Paragraph 189 are directed toward
25 Altria, Altria denies that Plaintiffs are entitled to the relief requested in this Complaint or any relief
26 whatsoever. To the extent the allegations of Paragraph 189 are directed toward other Defendants,
27 Altria is without knowledge or information sufficient to form a belief as to the truth of those
28 allegations and, therefore, denies the same.

1 **FIRST DEFENSE**

2 The Complaint and the damages relief sought therein are barred, in whole or in part, to the
3 extent that Plaintiffs were not injured by the alleged conduct. Plaintiffs cannot demonstrate an
4 injury of the sort that the antitrust laws were designed to prevent—namely, injury to competition.
5 “The injury should reflect the anticompetitive effect either of the violation or of anticompetitive
6 acts made possible by the violation. . . . It is inimical to the purposes of [the federal antitrust]
7 laws to award damages” when competition has not been reduced. *Brunswick Corp. v. Pueblo Bowl-*
8 *O-Mat, Inc.*, 429 U.S. 477, 488-89 (1977). Because Plaintiffs cannot show that Altria’s conduct
9 reduced competition, Plaintiffs have not suffered an injury cognizable under Section 1 of the
10 Sherman Act.

11 **SECOND DEFENSE**

12 Plaintiffs’ claims are barred, in whole or in part, because the alleged damages, if any, are
13 speculative and impossible to ascertain. Damages cannot be recovered where the extent of the
14 damage attributable to the wrong is uncertain and cannot be ascertained. *Story Parchment Co. v.*
15 *Paterson Parchment Paper Co.*, 282 U.S. 555, 562 (1931). “[T]he jury may not render a verdict
16 based on speculation or guesswork.” *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264 (1946).
17 Here, there is no way to determine the amount of injury and damages, if any, suffered by the class
18 without engaging in rank speculation. Most class members did not suffer an “injury in fact” at all,
19 let alone an injury that was likely caused by Altria. In addition, many class members purchased
20 JUUL products but then re-sold those products. These class members did not suffer injury in fact
21 if they recovered the amount they had spent on purchasing JUUL, as most if not all such individuals
22 would have done. Moreover, it is likely that most class members have few, if any, objective records
23 of their JUUL purchases, how often they purchased JUUL, the amount they spent on JUUL, or
24 where they purchased JUUL.

25 **THIRD DEFENSE**

26 The alleged injuries asserted by Plaintiffs are too speculative, derivative, and/or remote
27 from the alleged wrongful conduct to be a basis for liability as a matter of law and due process.
28 There must be “some direct relation between the injury asserted and the injurious conduct alleged.”

1 *Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011) (citation omitted). Even if Plaintiffs are able to
2 demonstrate a cognizable antitrust injury, recovery is barred because Plaintiffs cannot demonstrate
3 that this injury was caused by Altria’s conduct.

4 **FOURTH DEFENSE**

5 Plaintiffs lack standing to assert some or all of Plaintiffs’ claims. “[T]o establish standing,
6 a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual
7 or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would
8 likely be redressed by judicial relief.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 2208
9 (2021) (“Every class member must have Article III standing in order to recover individual
10 damages.”). Plaintiffs must establish an “actual or imminent invasion of a concrete and legally
11 protected interest” that is traceable to Altria’s conduct and able to be redressed. *Lujan v. Defenders*
12 *of Wildlife*, 504 U.S. 555, 559-61 (1992). Plaintiffs lack standing because they did not suffer any
13 damages, injury or harm, individually or on a class-wide basis, let alone any damages, injury or
14 harm caused by Altria.

15 **FIFTH DEFENSE**

16 The Complaint and the injunctive relief sought therein are barred, in whole in part, because
17 Altria’s alleged conduct did not harm competition. Obtaining injunctive relief under “Section 7 of
18 the Clayton Act requires [c]onsumers to ‘first establish a prima facie case that a merger is
19 anticompetitive.’” *DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 763 (9th Cir. 2018)
20 (quoting *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke’s Health Sys., Ltd.*, 778 F.3d 775, 783
21 (9th Cir. 2015)). Plaintiffs cannot show that Altria’s now-abandoned acquisition of a minority
22 interest in JUUL Labs, Inc. had anticompetitive effects, and thus are not entitled to injunctive relief.

23 **SIXTH DEFENSE**

24 The Complaint and the injunctive relief sought therein are barred because Plaintiffs cannot
25 satisfy the equitable balancing test for injunctive relief. “[W]ell-established principles of equity”
26 require a plaintiff seeking injunctive relief to “demonstrate: (1) that it has suffered an irreparable
27 injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate
28 for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a

1 remedy in equity is warranted; and (4) that the public interest would not be disserved by a
2 permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). None of
3 these considerations tips in favor of Plaintiffs: *First*, Plaintiffs cannot show *any* injury, let alone
4 an injury that is “irreparable.” *Second*, assuming that Plaintiffs were able to prove one or more of
5 their alleged claims for relief, Plaintiffs have an adequate remedy at law. “[S]everal courts in this
6 district have barred claims for equitable relief . . . where plaintiffs have alleged other claims
7 presenting an adequate remedy at law.” *Munning v. Gap, Inc.*, 238 F. Supp. 3d 1195, 1203 (N.D.
8 Cal. 2017). Plaintiffs have stated claims for compensatory damages for the alleged injuries they
9 sustained in this matter, and therefore Plaintiffs cannot additionally seek equitable relief. *Finally*,
10 neither the balance of hardships nor the public interest favors granting equitable relief, nor could
11 any such relief be granted—the Transaction has already been abandoned, there is no existing
12 business relationship between Altria and JLI, and there is nothing left of the Transaction to unwind.

13 **SEVENTH DEFENSE**

14 The alleged conduct was not per se unlawful and must be assessed by the rule of reason
15 under *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006). The non-compete agreement, which no longer
16 exists, was facially valid under the rule of reason because it was ancillary to the main business
17 purpose of a lawful contract, and it was necessary to protect JLI’s legitimate property interests. *See*
18 *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981).

19 **EIGHTH DEFENSE**

20 The Complaint and the relief sought therein are barred, in whole in part, because Plaintiffs
21 do not properly define an appropriate relevant market. To succeed under the rule of reason,
22 Plaintiffs must show “that the challenged restraint has a substantial anticompetitive effect that
23 harms consumers in the relevant market.” *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018).
24 Doing so necessarily requires establishing the relevant market. The Complaint alleges effects in
25 “the Closed-System E-Vapor market,” which is not one single, relevant market with a customer
26 base that is interchangeable for cig-a-likes and pod-based products.

27 **NINTH DEFENSE**

28 The whole of the alleged conduct survives the rule of reason because it had substantial pro-

1 competitive justifications. Plaintiffs bear the burden of demonstrating that Altria’s alleged conduct
2 “ha[d] a substantial anticompetitive effect.” *Am. Express Co.*, 138 S. Ct. at 2284. But the alleged
3 conduct benefited consumers and the public interest. These pro-competitive justifications outweigh
4 any alleged anticompetitive effects of the alleged conduct.

5 **TENTH DEFENSE**

6 To the extent that Plaintiffs’ Section 1 claim relies on Altria’s discontinuation of any e-
7 vapor product, this is not a cognizable effect of any later agreement reached by Altria and JLI. As
8 such, Plaintiffs’ Section 1 claim and the relief sought for its alleged violation are barred, because
9 “Section 1 of the Sherman Act . . . does not reach conduct that is ‘wholly unilateral.’” *Copperweld*
10 *Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768 (1984).

11 **ELEVENTH DEFENSE**

12 Plaintiffs’ Section 7 claim and the relief sought for its alleged violation are barred because
13 Altria was neither an actual nor perceived potential competitor to JLI at the time of the Transaction.
14 A transaction is actionable under Section 7 only if the firms involved are competitors or “potential”
15 competitors. Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust*
16 *Principles and Their Application* ¶ 1100a (4th & 5th eds. 2013–2020) (hereinafter “Areeda”).
17 Federal courts have discussed two variations of the potential competition doctrine—the actual
18 potential competition theory and the perceived potential competition theory—neither of which is
19 availing for Plaintiffs. *Id.* The actual potential competition theory is not a viable theory; it has not
20 been adopted by the U.S. Supreme Court and “[o]nly one circuit” has expressly endorsed it over
21 four decades ago. *Fraser v. Major League Soccer, L.L.C.*, 284 F.3d 47, 70-71 (1st Cir. 2002) (citing
22 *Yamaha Motor Co. v. Fed. Trade Comm’n*, 657 F.2d 971, 978-80 (8th Cir. 1981)). Even if this
23 Court were to recognize the actual potential competition theory of Section 7 liability, Plaintiffs
24 must show that Altria “would, but for the acquisition, have entered the market as a competitor in
25 the near future.” *United States v. Siemens Corp.*, 621 F.2d 499, 505 (2d Cir. 1980). Plaintiffs can
26 make no such showing. Alternatively, to fulfill a Section 7 claim under the perceived potential
27 competitor theory, Plaintiffs must show that the mere threat of “new entry by the acquiring firm
28 induced competitors in the acquired firm’s market to perform more competitively,” even if the

1 acquiring firm would not actually have entered the market. *Ginsburg v. InBen NV/SA*, 623 F.3d
2 1229, 1234 (8th Cir. 2010) (citing *Areeda* ¶ 1121a). Plaintiffs cannot make this showing either.

3 TWELFTH DEFENSE

4 Altria’s discontinuation of Nu Mark’s pre-existing e-vapor products did not unreasonably
5 restrain trade or substantially lessen competition to the extent those products would not have
6 received authorization from FDA to remain on the market. To show the need for relief under the
7 federal antitrust laws related to Altria’s discontinuation of Nu Mark’s e-vapor products, Plaintiffs
8 must show that in a “but for” world, Nu Mark’s products would have received FDA approval and
9 would have remained on the market. Because “there is an inescapable amount of uncertainty” in
10 such an analysis, *Areeda* ¶ 392a, Plaintiffs must show harm from restrained trade or reduced
11 competition “as a matter of just and reasonable inference.” *Story Parchment Co. v. Paterson*
12 *Parchment Paper Co.*, 282 U.S. 555, 562 (1931). “But there is a difference between inference,
13 which is permitted, and *speculation*, which is not permitted.” *Areeda* ¶ 392a (emphasis in original).
14 It would be pure speculation—contrary to the weight of the evidence—for Plaintiffs to contend that
15 Nu Mark’s e-vapor products would have received FDA approval or otherwise have remained on
16 the market.

17 THIRTEENTH DEFENSE

18 Altria’s discontinuation of Nu Mark’s development of new e-vapor products did not
19 unreasonably restrain trade or substantially lessen competition because any claimed harm is
20 improperly speculative. While it is speculative, as articulated in Altria’s Tenth Defense above, to
21 assert that Nu Mark’s e-vapor products existing in December 2018 would have received FDA
22 approval, it is doubly so to insist that Nu Mark’s yet-to-be-developed and not-even-conceived e-
23 vapor products would have received FDA approval *and* would have been commercially
24 competitive. Plaintiffs could not prove such a turn of events and would necessarily resort to “pure
25 speculation and guesswork.” *Home Placement Serv., Inc. v. Providence Journal Co.*, 819 F.2d
26 1199, 1205 (1st Cir. 1987).

27 FOURTEENTH DEFENSE

28 The Complaint and the relief sought therein is barred by equitable considerations to the

1 extent they purchased JUUL products for the purpose of reselling to underage consumers. The
2 Ninth Circuit has held that “[t]he equitable consideration of preventing a windfall gain from the
3 plaintiff’s own wrongdoing” may justify a defense to damages and injunctive relief in private
4 antitrust actions. *THI-Hawaii, Inc. v. First Commerce Fin. Corp.*, 627 F.2d 991, 996 (9th Cir.
5 1980). Plaintiffs’ proposed class would wrongfully reward the misconduct of those who resold
6 JUUL products to minors who could not otherwise legally purchase or use those products.

7 **FIFTEENTH DEFENSE**

8 Altria is entitled to setoff, should any damages be awarded against it, in the amount of
9 damages or settlement amounts recovered by Plaintiffs. Altria is also entitled to have any damages
10 that may be awarded to Plaintiffs reduced by the value of any benefit or payment to Plaintiffs from
11 any collateral source. A plaintiff’s award is offset from other avenues of recovery such as a
12 settlement or a separate judgment. *See Harrison v. Adams*, 20 Cal.2d 646, 648 (1942) (“[I]t is well
13 settled that a court of equity will compel a set-off when mutual demands are held under such
14 circumstances that one of them should be applied against the other and only the balance
15 recovered.”); *see also Citizens Bank v. Strumpf*, 516 U.S. 16, 18 (1995) (“The right of setoff (also
16 called ‘offset’) allows entities that owe each other money to apply their mutual debts against each
17 other, thereby avoiding ‘the absurdity of making A pay B when B owes A.’”). Plaintiffs’ recovery,
18 should Altria be found liable, is barred by the right of setoff to the extent Plaintiffs have already
19 recovered for an alleged overpayment related to their purchases of JUUL in other antitrust litigation
20 or any other litigation asserting an overpayment claim.

21 **SIXTEENTH DEFENSE**

22 Venue is improper in the Northern District of California. Under the Clayton Act’s venue
23 provision, venue is proper only in a district where the defendant is an “inhabitant,” “transacts
24 business,” or may be “found.” 15 U.S.C. § 22. Altria is incorporated and headquartered in Virginia
25 and does not transact business in California.

26 **SEVENTEENTH DEFENSE**

27 Plaintiffs’ claims are barred, in whole or in part, because the Court lacks personal
28 jurisdiction over Altria. In the Second, Seventh, and D.C. Circuits, Plaintiffs could not rely on the

1 Clayton Act’s worldwide service-of-process provision, because Altria is not an “inhabitant” of
2 California, does not “transact[] business” in California, and may not be “found” there. *See KM*
3 *Enterprises, Inc. v. Glob. Traffic Techs., Inc.*, 725 F.3d 718, 728 (7th Cir. 2013); *Daniel v. Am. Bd.*
4 *of Emergency*, 428 F.3d 408, 424 (2d Cir. 2005); *GTE New Media Servs. Inc. v. BellSouth Corp.*,
5 199 F.3d 1343, 1351 (D.C. Cir. 2000); *Areeda* ¶ 271d. Plaintiffs would need to establish personal
6 jurisdiction over Altria based on ordinary personal jurisdiction principles, which they cannot do for
7 the reasons given above.

8 **EIGHTEENTH DEFENSE**

9 Plaintiffs’ claim for pre-judgment interest should be dismissed because the amount of
10 damages (if any) was not readily ascertainable at the time Plaintiffs’ lawsuit was commenced and
11 Altria is not responsible for any delay in the presentation or prosecution of this action.

12 “Prejudgment interest is only allowed where the damage award is known or ascertainable
13 at a time prior to entry of judgment.” *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*,
14 567 F. App’x 527, 528 (9th Cir. 2014) (alterations omitted); *see also, e.g., Web Analytics*
15 *Demystified, Inc. v. Keystone Solutions, LLC*, 2015 WL 13858604, at *1 (D. Or. Oct. 13, 2015)
16 (“[A] trial court may award prejudgment interest on damages only when both the amount of
17 damages and the time from which interest should run are ascertained or easily ascertainable.”);
18 *Zargarian v. BMW of N. Am., LLC*, 442 F. Supp. 3d 1216, 1225 (C.D. Cal. 2020) (similar).
19 Plaintiffs cannot show a known or ascertainable damages figure prior to entry of judgment in this
20 action.

21 **NINETEENTH DEFENSE**

22 Plaintiffs’ claims are barred, in whole or in part, because their proposed class is not capable
23 of being certified under the Federal Rules of Civil Procedure. To obtain certification, Plaintiffs
24 must satisfy the requirements of Federal Rule of Civil Procedure 23(a): numerosity, commonality,
25 typicality, and adequacy. Fed. R. Civ. P. 23(a). In addition, because Plaintiffs seek to certify a
26 class seeking monetary damages, they must satisfy Rule 23(b)(3)’s predominance and superiority
27 requirements. Fed. R. Civ. P. 23(b)(3). Plaintiffs cannot satisfy these prerequisites.
28

1 these and other issues, there is no way to resolve these claims on a class-wide basis without altering
2 or eliminating Altria's substantive rights. Doing so would violate the Rules Enabling Act.

3 TWENTY-THIRD DEFENSE

4 The proposed class action fails because trying Plaintiffs' claims on a class-wide basis would
5 violate due process. Altria has a due process right to demonstrate that each plaintiff could not
6 satisfy all of the elements of his or her claims or that the claims would otherwise be barred by
7 defenses. *See, e.g., Lindsey v. Normet*, 405 U.S. 56, 66 (1972) ("Due process requires that there be
8 an opportunity to present every available defense.") (citation omitted); *Sandwich Chef of Texas,*
9 *Inc. v. Reliance Nat'l Indem. Ins. Co.*, 319 F.3d 205, 220 (5th Cir. 2003) (reversing certification
10 where procedures denied defendants opportunity to dispute individual issues). "[A] class action
11 cannot be certified in a way that eviscerates this right or masks individual issues." *Carrera v. Bayer*
12 *Corp.*, 727 F.3d 300, 307 (3d Cir. 2013); *see also Sacred Heart Health Sys. v. Humana Military*
13 *Healthcare Servs.*, 601 F.3d 1159, 1176 (11th Cir. 2010) (similar).

14 Each class member must demonstrate that he or she purchased JUUL, and account for the
15 number of JUUL products purchased and the price he or she paid each time. These requirements
16 raise numerous individual issues, including, among other things, when a class member began
17 purchasing JUUL, how a class member obtained JUUL, and whether a class member continues to
18 purchase JUUL directly. Given the variability among class members with respect to these and other
19 issues, there is no way to resolve these claims on a class-wide basis without violating Altria's due
20 process rights.

21 TWENTY-FOURTH DEFENSE

22 Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs seek to recover
23 damages as members of multiple purported classes in this action. Courts have described the "one
24 satisfaction rule" as being an "equitable doctrine [which] operates to . . . prevent the plaintiff from
25 recovering twice from the same assessment of liability." *Contreras v. Kohl's Dep't Stores, Inc.*,
26 2017 WL 6372646, at *3 (C.D. Cal. Dec. 12, 2017) (quoting *Sloane v. Equifax Info. Servs., LLC*,
27 510 F.3d 495, 501 (4th Cir. 2007)). The doctrine bars recovery here to the extent Plaintiffs seek
28 relief as members of more than one purported class.

1 **TWENTY-FIFTH DEFENSE**

2 Altria adopts by reference any applicable defense pled by any other Defendant not expressly
3 set forth herein to the extent they do not conflict with Altria’s affirmative and other defenses.

4 **TWENTY-SIXTH DEFENSE**

5 Altria hereby gives notice that it intends to rely upon any other defense that may become
6 available or appear during the discovery proceedings in this case and hereby reserves its right to
7 amend its Answers to assert any such defenses.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Altria prays that this Court denies the relief requested by Plaintiffs,
10 dismisses this action with prejudice, enters judgment that Plaintiffs recover no relief, awards costs
11 and attorneys’ fees to Altria, and affords Altria such other and further relief as may be just and
12 proper.

13 **DEMAND FOR JURY TRIAL**

14 Altria hereby demands a jury trial on all issues upon which trial by a jury may be had.

15
16 Dated: October 27, 2023

WILKINSON STEKLOFF LLP

17 /s/ Beth A. Wilkinson

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CERTIFICATE OF SERVICE

I, Beth A. Wilkinson, hereby certify that on October 27, 2023, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notifications to all counsel of record.

/s/ Beth A. Wilkinson

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