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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 IN RE: JUUL LABS INC.
15 ANTITRUST LITIGATION

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

16 **JLI'S ANSWER TO DIRECT**
17 **PURCHASER PLAINTIFFS' THIRD**
18 **AMENDED CONSOLIDATED**
19 **CLASS ACTION COMPLAINT**

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JLI'S ANSWER TO DIRECT
PURCHASER PLAINTIFFS' THIRD
AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT

1 Pursuant to the Court’s Order for Extension of Time to Respond to Complaint (ECF
2 No. 385), Defendant Juul Labs, Inc. (“JLI”), by and through its undersigned counsel, submits
3 this Answer to Plaintiffs Jake Sieber, Devin Black, and Robert Thompson’s (“Plaintiffs”),
4 Third Amended Consolidated Class Action Complaint (the “Complaint”), (ECF No. 357).
5 While the Complaint asserts claims on behalf of all three “Plaintiffs,” and JLI accordingly
6 answers the Complaint by referring to “Plaintiffs” and “Plaintiffs” claims, the claims of all
7 Plaintiffs other than Devin Black were compelled to arbitration by the Court’s order of
8 February 13, 2024. (ECF No. 381). Accordingly, JLI’s Answer is intended to apply to the
9 claims of Mr. Black, and in light of the Court’s order compelling arbitration, JLI specifically
10 denies that any answer is required as to allegations by Mr. Sieber or Mr. Thompson. This
11 Answer shall apply to such claims by Mr. Sieber or Mr. Thompson only and exclusively to
12 the extent that it is found that an answer to their allegations is otherwise required. Otherwise,
13 JLI maintains that any and all claims by Mr. Sieber or Mr. Thompson against JLI,
14 respectively, are subject to arbitration and not properly brought in this court.

15 **PRELIMINARY STATEMENT**

16 All allegations not expressly admitted herein are denied and any factual averment
17 admitted is admitted only as to the specific facts and not as to any conclusions,
18 characterizations, implications, or speculations that are contained in the averment or in the
19 Complaint as a whole.

20 JLI does not interpret the table of contents, headings, sub-headings, photographs, or
21 charts throughout the Complaint as well-pleaded allegations of fact to which any response is
22 required. To the extent such a response is required, JLI denies all allegations in the table of
23 contents, headings, sub-headings, photographs, or charts of the Complaint.

24 Use of certain terms or phrases defined in the Complaint is not an acknowledgment or
25 admission of any characterization the Plaintiffs may ascribe to the defined terms. Unless
26 otherwise defined, capitalized terms shall refer to the capitalized terms defined in the
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1 Complaint, but any such use is not an acknowledgment or admission of any characterization
2 the Plaintiffs may ascribe to the capitalized terms.

3 The Complaint also contains many purported quotations from a number of sources,
4 some identified, some not. Plaintiffs do not provide copies of the documents from which
5 quotations were taken, which has impaired JLI's ability to confirm or deny the accuracy of
6 the quotations in the Complaint as compared to the original text. JLI, therefore, does not
7 admit the authenticity of any documents from which the quotations were taken and reserves
8 the right to challenge the accuracy of the quotations (either as quoted or in the context of
9 material not quoted). Furthermore, with reference to all quotations, citations to documents,
10 or any such averments that might be offered into evidence, JLI specifically reserves the right
11 to object to any use of such averments or the Complaint as a whole in evidence for any
12 purpose whatsoever.

13 JLI does not concede the truthfulness of third-party articles and news sources quoted
14 or referenced in the Complaint. To the extent that a response is required and unless
15 otherwise indicated, JLI denies all allegations of sources quoted in or referenced in the
16 Complaint. To the extent any allegations are directed toward any party other than JLI, JLI
17 lacks knowledge or information sufficient to form a belief regarding the truth of those
18 allegations and, therefore, denies them on that basis. JLI answers the allegations on behalf of
19 themselves only.

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

22 **GENERAL DENIAL**

23 JLI denies that it has engaged in illegal conduct and that any conduct that is alleged to
24 have engaged in has harmed Plaintiffs, competition, or consumers. JLI denies that Plaintiffs
25 are entitled to judgment in their favor or any relief whatsoever, including the relief requested
26 in Paragraphs 184 through 192 of Plaintiffs' demand for judgment.

RESPONSES TO NUMBERED PARAGRAPHS OF COMPLAINT

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1. JLI admits that Plaintiffs purport to bring a class action seeking damages and injunctive relief, but denies that this lawsuit is appropriate for class action treatment or is manageable as a class action and denies that Plaintiffs are entitled to such relief. JLI denies the existence of a single Closed-System E-Vapor market. To the extent the allegations of Paragraph 1 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies them on that basis. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 1.

2. With respect to the first sentence of Paragraph 2, and as a general matter, e-liquid is aerosolized as part of the operation of an e-vapor product. JLI admits the allegations in the second sentence of Paragraph 2. JLI denies the existence of a single Closed-System E-Vapor market and otherwise denies the allegations, implicit or direct, in the third sentence of Paragraph 2. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 2.

3. To the extent the allegations in Paragraph 3 are directed to other Defendants, no response is required. To the extent a response is otherwise required, JLI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 concerning other Defendants and, therefore, denies them on that basis. JLI denies the remaining allegations, implicit or direct, in Paragraph 3.

4. JLI admits that it first offered its pod-based e-vapor product, JUUL, for sale in 2015. JLI denies the existence of a single Closed-System E-Vapor market. To the extent the allegations in Paragraph 4 are directed to other Defendants, no response is required. To the extent a response is otherwise required, JLI lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 concerning other Defendants and, therefore, denies them on that basis. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 4.

1 5. To the extent the allegations in Paragraph 5 are directed to other Defendants,
2 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
3 or information sufficient to form a belief as to the truth of the allegations in Paragraph 5
4 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
5 remaining allegations, implicit or direct, in Paragraph 5.

6 6. To the extent the allegations in Paragraph 6 are directed to other Defendants,
7 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
8 or information sufficient to form a belief as to the truth of the allegations in Paragraph 6
9 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
10 remaining allegations, implicit or direct, in Paragraph 6.

11 7. To the extent the allegations in Paragraph 7 are directed to other Defendants,
12 no response is required. To the extent a response is otherwise required, JLI states on
13 information and belief that Altria announced on October 25, 2018 that it would be removing
14 certain of its e-vapor products, including MarkTen Elite and Apex, from the market. JLI
15 otherwise lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 7 concerning other Defendants and, therefore, denies them on that
17 basis. JLI denies the existence of a single Closed-System E-Vapor market and otherwise
18 denies the remaining allegations, implicit or direct, in Paragraph 7.

19 8. To the extent the allegations in Paragraph 8 are directed to other Defendants,
20 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
21 or information sufficient to form a belief as to the truth of the allegations in Paragraph 8
22 concerning other Defendants and, therefore, denies them on that basis. JLI admits that on
23 December 20, 2018, JLI and Altria executed a series of agreements, including a Purchase
24 Agreement, Relationship Agreement, Services Agreement, Intellectual Property Agreement,
25 and Voting Agreement (collectively, the “Transaction”), but JLI denies that the Transaction
26 remains in effect or that Altria has any ownership interest in JLI. Except as expressly
27 admitted, JLI denies the allegations, implicit or direct, in Paragraph 8.
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1 9. Paragraph 9 asserts legal conclusions to which no response is required. To the
2 extent a response is required, JLI denies the existence of a single Closed-System E-Vapor
3 market and otherwise denies the allegations, implicit or direct, in Paragraph 9.

4 10. Paragraph 10 asserts legal conclusions to which no response is required. To
5 the extent a response is required, JLI admits that Plaintiffs purport to seek damages, including
6 treble damages, costs of suit, and attorneys' fees, as well as equitable relief under federal laws,
7 but denies that Plaintiffs suffered any harm that comes within the scope of Section 1 of the
8 Sherman Act or Section 7 of the Clayton Act. Except as expressly admitted, JLI denies the
9 allegations, implicit or direct, in Paragraph 10.

10 11. Paragraph 11 asserts legal conclusions to which no response is required. To
11 the extent a response is required, JLI lacks knowledge or information sufficient to form a
12 belief as to the truth of the allegations in Paragraph 11 and, therefore, denies them on that
13 basis.

14 12. Paragraph 12 asserts legal conclusions to which no response is required. To
15 the extent a response is required, JLI lacks knowledge sufficient to form a belief as to the truth
16 of the allegations in Paragraph 12, and, therefore, denies them on that basis. JLI notes that JLI
17 moved its principal place of business and headquarters in November 2020 to Washington, DC.

18 13. JLI admits that Plaintiff Jake Sieber created a Juul.com account before August
19 8, 2018. JLI denies the allegation in Paragraph 13 that "Sieber did not agree to arbitrate his
20 claims against JLI." JLI denies the allegation in Paragraph 13 that "Sieber was injured in
21 connection with his purchases during the Class Period as a result of Defendants'
22 anticompetitive and unlawful agreements alleged herein." JLI otherwise lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and,
24 therefore, denies them on that basis. Except as expressly admitted, JLI denies the allegations,
25 implicit or direct, in Paragraph 13.

26 14. JLI admits that Plaintiff Devin Black created a Juul.com account before August
27 8, 2018. JLI denies the allegation in Paragraph 14 that "Black did not agree to arbitrate his
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1 claims against JLI.” JLI denies the allegation in Paragraph 14 that “Black was injured in
2 connection with his purchases during the Class Period as a result of Defendants’
3 anticompetitive and unlawful agreements alleged herein.” JLI otherwise lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and,
5 therefore, denies them on that basis. Except as expressly admitted, JLI denies the allegations,
6 implicit or direct, in Paragraph 14.

7 15. JLI admits that Plaintiff Robert Thompson created a Juul.com account before
8 August 8, 2018. JLI denies the allegation in Paragraph 15 that “Thompson did not agree to
9 arbitrate his claims against JLI.” JLI denies the allegation in Paragraph 15 that “Thompson
10 was injured in connection with his purchases during the Class Period as a result of
11 Defendants’ anticompetitive and unlawful agreements alleged herein.” JLI otherwise lacks
12 knowledge or information sufficient to form a belief as to the truth of the allegations in
13 Paragraph 15 and, therefore, denies them on that basis. Except as expressly admitted, JLI
14 denies the allegations, implicit or direct, in Paragraph 15.

15 16. JLI admits that it is a Delaware corporation. JLI’s principal place of business
16 and headquarters was in San Francisco; however, it was relocated to Washington, DC in
17 November 2020. JLI further admits that it generated over \$1 billion in sales in 2018, but
18 otherwise denies the allegations, implicit or direct, in the second sentence of Paragraph 16.
19 JLI further admits the allegations in the third sentence of Paragraph 16. The fourth sentence
20 of Paragraph 16 asserts a legal conclusion to which no response is required. To the extent a
21 response is required, denies the allegations, implicit or direct, in the last sentence of paragraph
22 16. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph
23 16.

24 17. To the extent the allegations in Paragraph 17 are directed to other Defendants,
25 no response is required. To the extent a response is required, JLI states, on information and
26 belief, that Altria Group, Inc. is a Virginia corporation. JLI otherwise lacks knowledge or
27 information sufficient to form a belief as to the truth of the allegations in Paragraph 17
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1 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
2 remaining allegations, implicit or direct, in Paragraph 17.

3 18. Kevin “KC” Crosthwaite has been dismissed from this action by joint
4 stipulation between the parties. As such, no response is required. To the extent a response is
5 required, JLI denies the allegations, implicit or direct, in Paragraph 18.

6 19. To the extent the allegations in Paragraph 19 are directed to other Defendants,
7 no response is required. To the extent a response is required, Paragraph 19 states legal
8 conclusions that require no response. To the extent a response is required to these legal
9 conclusions, JLI denies the allegations, implicit or direct, including that Nicholas J. Pritzker
10 engaged or participated in “anticompetitive conduct” or any “anticompetitive transaction.”
11 JLI admits that Mr. Pritzker resides in California and that he co-founded Tao Capital Partners.
12 JLI further admits that Mr. Pritzker is a member of the JLI Board of Directors, was a member
13 when the JLI Board of Directors authorized Altria’s purchase of a non-voting interest in JLI,
14 and was involved in the negotiation of that purchase. JLI denies that Mr. Pritzker joined the
15 JLI Board of Directors in December 2017. JLI otherwise lacks knowledge or information
16 sufficient to form a belief as to the truth of the allegations in Paragraph 19 concerning other
17 Defendants and, therefore, denies them on that basis. Except as expressly admitted, JLI
18 denies the allegations, implicit or direct, in Paragraph 19.

19 20. To the extent the allegations in Paragraph 20 are directed to other Defendants,
20 no response is required. To the extent a response is required, Paragraph 20 states legal
21 conclusions that require no response. To the extent a response is required to these legal
22 conclusions, JLI denies them, including the allegation that Riaz Valani engaged in
23 “anticompetitive conduct” or any “anticompetitive transaction.” JLI admits that Riaz Valani
24 is a member of the JLI Board of Directors, that he was a member of the JLI Board of Directors
25 when the Board authorized Altria’s purchase of a non-voting interest in JLI, and was involved
26 in the negotiation of that purchase. To the extent the allegations in Paragraph 20 purport to
27 quote or characterize particular documents, those documents speak for themselves. JLI
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1 otherwise lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 20 concerning other Defendants and, therefore, denies them on that
3 basis. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph
4 20.

5 21. Dinyar Devitre has been dismissed from this action by joint stipulation between
6 the parties. As such, no response is required. To the extent a response is required, JLI denies
7 the allegations, implicit or direct, in Paragraph 21.

8 22. Kevin Burns has been dismissed from this action by joint stipulation between
9 the parties. As such, no response is required. To the extent a response is required, JLI denies
10 the allegations, implicit or direct, in Paragraph 22.

11 23. James Monsees has been dismissed from this action by joint stipulation
12 between the parties. As such, no response is required. To the extent a response is required,
13 JLI denies the allegations, implicit or direct, in Paragraph 23.

14 24. Adam Bowen has been dismissed from this action by joint stipulation between
15 the parties. As such, no response is required. To the extent a response is required, JLI denies
16 the allegations, implicit or direct, in Paragraph 24.

17 25. Gerald Masoudi has been dismissed from this action by joint stipulation
18 between the parties. As such, no response is required. To the extent a response is required,
19 JLI denies the allegations, implicit or direct, in Paragraph 25.

20 26. Timothy Danaher has been dismissed from this action by joint stipulation
21 between the parties. As such, no response is required. To the extent a response is required,
22 JLI denies the allegations, implicit or direct, in Paragraph 26.

23 27. Howard Willard has been dismissed from this action by joint stipulation
24 between the parties. As such, no response is required. To the extent a response is required,
25 JLI denies the allegations, implicit or direct, in Paragraph 27.
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1 28. William (“Billy”) Gifford has been dismissed from this action by joint
2 stipulation between the parties. As such, no response is required. To the extent a response is
3 required, JLI denies the allegations, implicit or direct, in Paragraph 28.

4 29. Murray Garnick has been dismissed from this action by joint stipulation
5 between the parties. As such, no response is required. To the extent a response is required,
6 JLI denies the allegations, implicit or direct, in Paragraph 29.

7 30. To the extent the allegations in Paragraph 30 are directed to other Defendants,
8 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
9 or information sufficient to form a belief as to the truth of the allegations in Paragraph 30
10 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
11 remaining allegations, implicit or direct, in Paragraph 30.

12 31. To the extent the allegations in Paragraph 31 are directed to other Defendants,
13 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
14 or information sufficient to form a belief as to the truth of the allegations in Paragraph 31
15 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
16 remaining allegations, implicit or direct, in Paragraph 31.

17 32. To the extent the allegations in Paragraph 32 are directed to other Defendants,
18 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
19 or information sufficient to form a belief as to the truth of the allegations in Paragraph 32
20 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
21 remaining allegations, implicit or direct, in Paragraph 32.

22 33. The allegations in Paragraph 33 are not directed to JLI, and, therefore, no
23 response is required. To the extent a response is otherwise required, JLI lacks knowledge or
24 information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and,
25 therefore, denies them on that basis.

26 34. To the extent the allegations in Paragraph 34 are directed to other Defendants,
27 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
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1 or information sufficient to form a belief as to the truth of the allegations in Paragraph 34
2 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
3 remaining allegations, implicit or direct, in Paragraph 34.

4 35. Paragraph 35 asserts legal conclusions to which no response is required. To
5 the extent a response is required, JLI admits that Plaintiffs purport to bring this suit as a class
6 action on behalf of themselves and others, but denies that Plaintiffs are entitled to the relief
7 requested in this Complaint or any relief whatsoever. JLI denies that this lawsuit is
8 appropriate for class action treatment or is manageable as a class action. Except as otherwise
9 admitted, JLI denies the allegations, implicit or direct, in Paragraph 35.

10 36. Paragraph 36 asserts legal conclusions to which no response is required. To
11 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
12 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
13 direct, in Paragraph 36.

14 37. Paragraph 37 asserts legal conclusions to which no response is required. To
15 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
16 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
17 direct, in Paragraph 37.

18 38. Paragraph 38 asserts legal conclusions to which no response is required. To
19 the extent a response is required, JLI denies the existence of a single Closed-System E-Vapor
20 market and otherwise denies the allegations, implicit or direct, in Paragraph 38.

21 39. Paragraph 39 asserts legal conclusions to which no response is required. To
22 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
23 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
24 direct, in Paragraph 39.

25 40. The first sentence of Paragraph 40 asserts legal conclusions to which no
26 response is required. To the extent a response is required, JLI denies that this lawsuit is
27 appropriate for class action treatment or is manageable as a class action and otherwise denies
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1 the allegations, implicit or direct, in the first sentence of Paragraph 40. JLI lacks knowledge
2 or information sufficient to form a belief as to the truth of the allegations, implicit or direct, in
3 the second sentence of Paragraph 40 and, therefore, denies them on that basis. JLI denies the
4 remaining allegations, implicit or direct, in Paragraph 40.

5 41. Paragraph 41 asserts legal conclusions to which no response is required. To
6 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
7 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
8 direct, in Paragraph 41.

9 42. Paragraph 42 asserts legal conclusions to which no response is required. To
10 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
11 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
12 direct, in Paragraph 42.

13 43. Paragraph 43 asserts legal conclusions to which no response is required. To
14 the extent a response is required, JLI denies that this lawsuit is appropriate for class action
15 treatment or is manageable as a class action and otherwise denies the allegations, implicit or
16 direct, in Paragraph 43.

17 44. The allegations of Paragraph 44 are not directed toward JLI, and, therefore, no
18 response is required. Paragraph 44 appears to selectively quote, reference, and/or paraphrase
19 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
20 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
21 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
22 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
23 meaning of the alleged documents, statements, and/or statistics, and does not concede the
24 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
25 the alleged documents, statements, and/or statistics speak for themselves. To the extent a
26 further response is required, JLI lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations of Paragraph 44, and, therefore, denies the same.
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1 45. The allegations of Paragraph 45 are not directed toward JLI, and, therefore, no
2 response is required. To the extent a response is required, JLI lacks knowledge or information
3 sufficient to form a belief as to the truth of the allegations of Paragraph 45 and, therefore,
4 denies the same.

5 46. JLI admits that Ploom, Inc. was founded in 2007 by James Monsees and Adam
6 Bowen, graduate students at the design program at Stanford University. The company was
7 renamed Pax Labs, Inc. in 2015. In 2017, Pax Labs, Inc. renamed itself Juul Labs, Inc. and
8 spun off certain assets and employees and other non-nicotine vaporizer products into a new
9 company, PAX Labs, Inc. The allegation in the fourth sentence is not directed toward JLI,
10 and, therefore, no response is required. To the extent a response is required, JLI lacks
11 knowledge or information sufficient to form a belief as to the truth of the allegations of the
12 fourth sentence of Paragraph 46 and, therefore, denies the same. Except as expressly
13 admitted, JLI denies the allegations, implicit or direct, in Paragraph 46.

14 47. Paragraph 47 appears to selectively quote, reference, and/or paraphrase certain
15 alleged documents and/or statements. JLI denies that the alleged documents and/or statements
16 are quoted, referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs'
17 characterization of the alleged documents, statements, and/or statistics, denies Plaintiffs'
18 insinuation and implication regarding the content or meaning of the alleged documents, and/or
19 statements, and does not concede the truthfulness or accuracy of the alleged documents,
20 and/or statements. JLI states that the alleged documents, statements, and/or statistics speak for
21 themselves. Except as expressly admitted, JLI denies the allegations, implicit or direct, in
22 Paragraph 47.

23 48. To the extent the allegations in Paragraph 48 are directed to other Defendants,
24 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
25 or information sufficient to form a belief as to the truth of the allegations in Paragraph 48
26 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
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1 existence of a single Closed-System E-Vapor market and otherwise denies the remaining
2 allegations, implicit or direct, in Paragraph 48.

3 49. To the extent the allegations in Paragraph 49 are directed to other Defendants,
4 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
5 or information sufficient to form a belief as to the truth of the allegations in Paragraph 49
6 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
7 remaining allegations, implicit or direct, in Paragraph 49.

8 50. JLI denies that the photograph included in Paragraph 50 consists of well-
9 pleaded allegations of fact to which any response is required. JLI admits that it launched the
10 JUUL e-vapor product in 2015. JLI further admits that the JUUL system consists of the JUUL
11 device, JUULpods, and a charger. Except as expressly admitted, JLI denies the allegations,
12 implicit or direct, in Paragraph 50.

13 51. Paragraph 51 appears to selectively quote, reference, and/or paraphrase certain
14 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
15 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
16 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
17 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
18 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
19 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
20 documents, statements, and/or statistics speak for themselves. JLI otherwise lacks knowledge
21 or information sufficient to form a belief as to the truth of the allegations, implicit or direct, in
22 Paragraph 51, and, therefore, denies them on that basis.

23 52. JLI admits that the JUUL device is composed of at least a rechargeable battery,
24 electronic circuitry, an enclosure, a magnet, an LED, and pressure sensors. JLI further admits
25 that the JUUL system operates by heating an e-liquid to create an inhalable aerosol and that
26 one JUULpod contains approximately 0.7 milliliters of e-liquid, which contains nicotine,
27 benzoic acid, glycerin, and propylene glycol. JLI further admits that the JUULpods can be
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1 replaced following exhaustion of the e-liquid. JLI further admits that JUULpods are offered
2 in the U.S. in Virginia Tobacco and Menthol flavors and are available in both 5.0% and 3.0%
3 nicotine strength. JLI denies that JUULpods are currently offered or sold “in a variety of
4 flavors.” Except as expressly admitted, JLI denies the allegations, implicit or direct, in
5 Paragraph 52.

6 53. JLI admits that the JUUL device includes a battery level indicator light.
7 Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 53.

8 54. JLI admits that, as a general matter, e-liquid is aerosolized as part of the
9 operation of an e-vapor system, and that the JUUL device operates in such a fashion. Except
10 as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 54.

11 55. JLI denies the allegations of Paragraph 55 to the extent they are directed
12 toward JLI. To the extent the allegations of Paragraph 55 are directed toward other
13 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
14 those allegations and, therefore, denies the same.

15 56. Paragraph 56 appears to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. JLI 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
19 statistics, denies Plaintiffs’ insinuation and implication regarding the content or meaning of
20 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
21 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
22 documents, statements, and/or statistics speak for themselves. JLI otherwise lacks knowledge
23 or information sufficient to form a belief as to the truth of the allegations, implicit or direct, in
24 Paragraph 56 regarding market share or a Wells Fargo report, and, therefore, denies them on
25 that basis. JLI denies the remaining allegations, implicit or direct, in Paragraph 56.

26 57. JLI admits that on June 30, 2017, Pax Labs, Inc. renamed itself Juul Labs, Inc.
27 and spun off certain assets and employees and other non-nicotine vaporizer products into a
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1 new company, PAX Labs, Inc. JLI further admits that Tyler Goldman served as CEO of JLI
2 from approximately June 2016 until December 2017. JLI further admits that Kevin Burns was
3 CEO of JLI from approximately December 2017 to October 2019. JLI further admits that, as
4 of June 30, 2017, James Monsees was Chief Product Officer of JLI and served as a member of
5 the Board of Directors of JLI and that Adam Bowen was the Chief Technology officer of JLI
6 and served as a member of the Board of Directors of JLI. JLI denies the remaining
7 allegations, implicit or direct, in Paragraph 57.

8 58. To the extent the allegations in Paragraph 58 are directed to other Defendants,
9 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
10 or information sufficient to form a belief as to the truth of the allegations in Paragraph 58
11 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
12 remaining allegations, implicit or direct, in Paragraph 58.

13 59. To the extent the allegations in Paragraph 59 are directed to other Defendants,
14 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
15 or information sufficient to form a belief as to the truth of the allegations in Paragraph 59
16 concerning other Defendants and, therefore, denies them on that basis. JLI denies that the
17 photograph included in Paragraph 59 consists of well-pleaded allegations of fact to which any
18 response is required. JLI denies the remaining allegations, implicit or direct, in Paragraph 59.

19 60. To the extent the allegations in Paragraph 60 are directed to other Defendants,
20 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
21 or information sufficient to form a belief as to the truth of the allegations in Paragraph 60
22 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
23 remaining allegations, implicit or direct, in Paragraph 60.

24 61. To the extent the allegations in Paragraph 61 are directed to other Defendants,
25 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
26 or information sufficient to form a belief as to the truth of the allegations in Paragraph 61
27 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
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1 existence of a single Closed-System E-Vapor market and denies the remaining allegations,
2 implicit or direct, in Paragraph 61.

3 62. To the extent the allegations in Paragraph 62 are directed to other Defendants,
4 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
5 or information sufficient to form a belief as to the truth of the allegations in Paragraph 62
6 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
7 remaining allegations, implicit or direct, in Paragraph 62.

8 63. JLI admits that outreach from Altria to JLI occurred in 2017. JLI denies the
9 existence of a single Closed-System E-Vapor market. To the extent the allegations of
10 Paragraph 63 are directed to other Defendants, no response is required. To the extent a
11 response is otherwise required, JLI lacks knowledge or information sufficient to form a belief
12 as to the truth of the allegations of Paragraph 63 concerning other Defendants and, therefore,
13 denies them on that basis. Except as expressly admitted, JLI denies the allegations, implicit or
14 direct, in Paragraph 63.

15 64. To the extent the allegations in Paragraph 64 are directed to other Defendants,
16 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
17 or information sufficient to form a belief as to the truth of the allegations in Paragraph 64
18 concerning other Defendants and, therefore, denies them on that basis. To the extent the
19 allegations in Paragraph 64 purport to quote or characterize particular documents or articles,
20 those documents and articles speak for themselves. JLI notes that by November 9, 2017, JLI
21 was doing business as JLI, not Pax. Except as expressly admitted, JLI denies the allegations,
22 implicit or direct, in Paragraph 64.

23 65. JLI admits that it engaged Goldman Sachs as a financial advisor in connection
24 with a potential transaction with Altria, but notes that by November 21, 2017, JLI was doing
25 business as JLI, not Pax. JLI otherwise lacks knowledge or information sufficient to form a
26 belief as to the truth of the allegations in Paragraph 65 and, therefore, denies them on that
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1 basis. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph
2 65.

3 66. JLI admits that it engaged Goldman Sachs as a financial advisor in connection
4 with a potential transaction with Altria. JLI otherwise lacks knowledge or information
5 sufficient to form a belief as to the truth of the allegations in Paragraph 66 and, therefore,
6 denies them on that basis. Except as expressly admitted, JLI denies the allegations, implicit or
7 direct, in Paragraph 66.

8 67. JLI admits that JLI and Altria had confidential discussions beginning in spring
9 2018. JLI otherwise denies the allegations, implicit or direct, in Paragraph 67.

10 68. Paragraph 68 purports to selectively quote, reference, and/or paraphrase certain
11 alleged documents, statements, and/or statistics. JLI 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
14 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
15 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
16 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
17 documents, statements, and/or statistics speak for themselves. JLI admits that on April 13,
18 2018, Willard sent Burns, Pritzker, and Valani an email, but otherwise denies the allegations,
19 implicit or direct, in Paragraph 68.

20 69. Paragraph 69 purports to selectively quote, reference, and/or paraphrase certain
21 alleged documents, statements, and/or statistics. JLI 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
24 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
25 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
26 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
27 documents, statements, and/or statistics speak for themselves. JLI admits that Burns sent
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1 Willard a letter on April 20, 2018, but otherwise denies the remaining allegations, implicit or
2 direct, in Paragraph 69.

3 70. Paragraph 70 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. JLI 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
7 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
8 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
9 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
10 documents, statements, and/or statistics speak for themselves. JLI otherwise denies the
11 allegations, implicit or direct, in Paragraph 70.

12 71. Paragraph 71 purports to selectively quote, reference, and/or paraphrase certain
13 alleged documents, statements, and/or statistics. JLI 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
16 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
17 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
18 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
19 documents, statements, and/or statistics speak for themselves. JLI otherwise denies the
20 allegations, implicit or direct, in Paragraph 71.

21 72. Paragraph 72 purports to selectively quote, reference, and/or paraphrase certain
22 alleged documents, statements, and/or statistics. JLI 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
25 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
26 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
27 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
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1 documents, statements, and/or statistics speak for themselves. JLI admits that Pritzker sent
2 Willard a draft term sheet on July 30, 2018, but otherwise denies the remaining allegations,
3 implicit or direct, in Paragraph 72.

4 73. Paragraph 73 purports to selectively quote, reference, and/or paraphrase certain
5 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
6 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
7 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
8 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
9 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
10 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
11 documents, statements, and/or statistics speak for themselves. JLI otherwise denies the
12 allegations, implicit or direct, in Paragraph 73.

13 74. To the extent the allegations in Paragraph 74 are directed to other Defendants,
14 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
15 or information sufficient to form a belief as to the truth of the allegations in Paragraph 74
16 concerning other Defendants and, therefore, denies them on that basis. JLI admits that
17 Pritzker, Valani, Burns, Willard, and Gifford, met on August 1, 2018, at the Park Hyatt Hotel
18 in Washington, D.C. Except as expressly admitted, JLI denies the allegations, implicit or
19 direct, in Paragraph 74.

20 75. To the extent the allegations in Paragraph 75 are directed to other Defendants,
21 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
22 or information sufficient to form a belief as to the truth of the allegations in Paragraph 75
23 concerning other Defendants and, therefore, denies them on that basis. Paragraph 75 purports
24 to selectively quote, reference, and/or paraphrase certain alleged documents, statements,
25 and/or statistics. JLI denies that the alleged documents, statements, and/or statistics are
26 quoted, referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs'
27 characterization of the alleged documents, statements, and/or statistics, denies Plaintiffs'
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1 insinuation and implication regarding the content or meaning of the alleged documents,
2 statements, and/or statistics, and does not concede the truthfulness or accuracy of the alleged
3 documents, statements, and/or statistics. JLI states that the alleged documents, statements,
4 and/or statistics speak for themselves. JLI otherwise denies the allegations, implicit or direct,
5 in Paragraph 75.

6 76. To the extent the allegations in Paragraph 76 are directed to other Defendants,
7 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
8 or information sufficient to form a belief as to the truth of the allegations in Paragraph 76
9 concerning other Defendants and, therefore, denies them on that basis. Paragraph 76 purports
10 to selectively quote, reference, and/or paraphrase certain alleged documents, statements,
11 and/or statistics. JLI denies that the alleged documents, statements, and/or statistics are
12 quoted, referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs'
13 characterization of the alleged documents, statements, and/or statistics, denies Plaintiffs'
14 insinuation and implication regarding the content or meaning of the alleged documents,
15 statements, and/or statistics, and does not concede the truthfulness or accuracy of the alleged
16 documents, statements, and/or statistics. JLI states that the alleged documents, statements,
17 and/or statistics speak for themselves. JLI otherwise denies the allegations, implicit or direct,
18 in Paragraph 76.

19 77. To the extent the allegations in Paragraph 77 are directed to other Defendants,
20 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
21 or information sufficient to form a belief as to the truth of the allegations in Paragraph 77
22 concerning other Defendants and, therefore, denies them on that basis. Paragraph 77 purports
23 to selectively quote, reference, and/or paraphrase certain alleged documents, statements,
24 and/or statistics. JLI denies that the alleged documents, statements, and/or statistics are
25 quoted, referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs'
26 characterization of the alleged documents, statements, and/or statistics, denies Plaintiffs'
27 insinuation and implication regarding the content or meaning of the alleged documents,
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1 statements, and/or statistics, and does not concede the truthfulness or accuracy of the alleged
2 documents, statements, and/or statistics. JLI states that the alleged documents, statements,
3 and/or statistics speak for themselves. JLI admits that on August 9, 2018, Gifford sent a
4 markup of the term sheet to Pritzker, Valani, and Burns, but otherwise denies the allegations,
5 implicit or direct, in Paragraph 77.

6 78. Paragraph 78 purports to selectively quote, reference, and/or paraphrase certain
7 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
8 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
9 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
10 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
11 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
12 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
13 documents, statements, and/or statistics speak for themselves. JLI otherwise denies the
14 allegations, implicit or direct, in Paragraph 78.

15 79. Paragraph 79 purports to selectively quote, reference, and/or paraphrase certain
16 alleged documents, statements, and/or statistics. JLI 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
19 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
20 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
21 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
22 documents, statements, and/or statistics speak for themselves. JLI admits that Valani and
23 Devitre met on August 15, 2018 but otherwise denies the allegations, implicit or direct, in
24 Paragraph 79.

25 80. To the extent the allegations in Paragraph 80 are directed to other Defendants,
26 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
27 or information sufficient to form a belief as to the truth of the allegations in Paragraph 80
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1 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
2 remaining allegations, implicit or direct, in Paragraph 80.

3 81. Paragraph 81 purports to selectively quote, reference, and/or paraphrase certain
4 alleged documents, statements, and/or statistics. JLI 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
7 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
8 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
9 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
10 documents, statements, and/or statistics speak for themselves. JLI admits that on October 5,
11 2018, Willard sent a letter to Pritzker, Valani, and Burns, but otherwise denies the remaining
12 allegations, implicit or direct, in Paragraph 81.

13 82. Paragraph 82 purports to selectively quote, reference, and/or paraphrase certain
14 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
15 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
16 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
17 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
18 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
19 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
20 documents, statements, and/or statistics speak for themselves. To the extent the allegations in
21 Paragraph 82 are directed to other Defendants, no response is required. To the extent a
22 response is otherwise required, JLI lacks knowledge or information sufficient to form a belief
23 as to the truth of the allegations in Paragraph 82 concerning other Defendants and, therefore,
24 denies them on that basis. JLI admits that Burns forwarded the October 5 letter with a note to
25 JLI's Chief Legal Officer, but otherwise denies the remaining allegations, implicit or direct, in
26 Paragraph 82.

1 83. To the extent the allegations in Paragraph 83 are directed to other Defendants,
2 no response is required. To the extent a response is otherwise required, JLI states on
3 information and belief that Altria announced on October 25, 2018 that it would be removing
4 certain of its e-vapor products, including MarkTen Elite and Apex, from the market. JLI
5 denies the existence of a single Closed-System E-Vapor market. JLI otherwise lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations in
7 Paragraph 83 and, therefore, denies them on that basis. Except as expressly admitted, JLI
8 denies the allegations, implicit or direct, in Paragraph 83.

9 84. To the extent the allegations in Paragraph 84 are directed to other Defendants,
10 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
11 or information sufficient to form a belief as to the truth of the allegations in Paragraph 84
12 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
13 remaining allegations, implicit or direct, in Paragraph 84.

14 85. To the extent the allegations in Paragraph 85 are directed to other Defendants,
15 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
16 or information sufficient to form a belief as to the truth of the allegations in Paragraph 85
17 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
18 remaining allegations, implicit or direct, in Paragraph 85.

19 86. Paragraph 86 purports to selectively quote, reference, and/or paraphrase certain
20 alleged documents, statements, and/or statistics. JLI 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
23 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
24 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
25 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
26 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
27 allegations, implicit or direct, in Paragraph 86.
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1 87. To the extent the allegations in Paragraph 87 are directed to other Defendants,
2 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
3 or information sufficient to form a belief as to the truth of the allegations in Paragraph 87
4 concerning other Defendants and, therefore, denies them on that basis. Paragraph 87 purports
5 to selectively quote, reference, and/or paraphrase certain alleged documents, statements,
6 and/or statistics. JLI denies that the alleged documents, statements, and/or statistics are
7 quoted, referenced, and/or paraphrased in context or in their entirety, denies Plaintiffs'
8 characterization of the alleged documents, statements, and/or statistics, denies Plaintiffs'
9 insinuation and implication regarding the content or meaning of the alleged documents,
10 statements, and/or statistics, and does not concede the truthfulness or accuracy of the alleged
11 documents, statements, and/or statistics. JLI states that the alleged documents, statements,
12 and/or statistics speak for themselves. JLI admits that JLI and Altria engaged in confidential
13 discussions in November 2018. Except as expressly admitted, JLI denies the allegations,
14 implicit or direct, in Paragraph 87.

15 88. To the extent the allegations in Paragraph 88 are directed to other Defendants,
16 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
17 or information sufficient to form a belief as to the truth of the allegations in Paragraph 88
18 concerning other Defendants and, therefore, denies them on that basis. To the extent the
19 allegations in Paragraph 88 purport to quote or characterize particular documents, those
20 documents speak for themselves. JLI denies the remaining allegations, implicit or direct, in
21 Paragraph 88.

22 89. To the extent the allegations in Paragraph 89 are directed to other Defendants,
23 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
24 or information sufficient to form a belief as to the truth of the allegations in Paragraph 89
25 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
26 remaining allegations, implicit or direct, in Paragraph 89.
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1 90. Paragraph 90 purports to selectively quote, reference, and/or paraphrase certain
2 alleged documents, statements, and/or statistics. JLI 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
5 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
6 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
7 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
8 documents, statements, and/or statistics speak for themselves. To the extent the allegations in
9 Paragraph 90 are directed to other Defendants, JLI lacks knowledge or information sufficient
10 to form a belief as to the truth of those allegations and, therefore, denies them on that basis.
11 JLI admits that on December 9, 2018, Garnick emailed Masoudi. JLI denies the existence of a
12 single Closed-System E-Vapor market and denies the remaining allegations, implicit or direct,
13 in Paragraph 90.

14 91. Paragraph 91 appears to selectively quote, reference, and/or paraphrase certain
15 alleged documents, statements, and/or statistics. JLI 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
18 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
19 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
20 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
21 documents, statements, and/or statistics speak for themselves. To the extent the allegations in
22 Paragraph 91 are directed to other Defendants, no response is required. To the extent a
23 response is otherwise required, JLI lacks knowledge or information sufficient to form a belief
24 as to the truth of the allegations in Paragraph 91 concerning other Defendants and, therefore,
25 denies them on that basis. JLI denies the remaining allegations, implicit or direct, in
26 Paragraph 91.

1 92. JLI admits that on December 20, 2018, JLI and Altria executed a series of
2 agreements, including a Purchase Agreement, Relationship Agreement, Services Agreement,
3 Intellectual Property License Agreement, and Voting Agreement (collectively, the
4 “Transaction”), but JLI denies that the Transaction remains in effect or that Altria has any
5 ownership interest in JLI. JLI denies the remaining allegations of Paragraph 92 to the extent
6 they are directed toward JLI. To the extent the allegations of Paragraph 92 are directed
7 toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to
8 the truth of those allegations and, therefore, denies the same. Except as expressly admitted,
9 JLI denies the remaining allegations, implicit or direct, in Paragraph 91.

10 93. Paragraph 93 purports to selectively quote, reference, and/or paraphrase certain
11 alleged documents, statements, and/or statistics. JLI 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
14 statistics, denies Plaintiffs’ insinuation and implication regarding the content or meaning of
15 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
16 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
17 documents, statements, and/or statistics speak for themselves. To the extent the allegations of
18 Paragraph 93 are directed toward JLI, JLI admits that, on December 20, 2018, Altria Altria
19 closed a \$12.8 billion investment in JLI’s business, but JLI denies that Altria maintains any
20 ownership interest in JLI or that there is any existing business relationship between Altria and
21 JLI. To the extent the allegations of Paragraph 93 are directed toward other Defendants, JLI
22 lacks knowledge or information sufficient to form a belief as to the truth of those allegations
23 and, therefore, denies the same. Except as expressly admitted, JLI denies the allegations,
24 implicit or direct, in Paragraph 93.

25 94. Paragraph 94 purports to selectively quote, reference, and/or paraphrase certain
26 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
27 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
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1 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
2 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
3 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
4 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
5 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
6 allegations of Paragraph 94 to the extent they are directed toward JLI. To the extent the
7 allegations of Paragraph 94 are directed toward other Defendants, JLI lacks knowledge or
8 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
9 the same.

10 95. Paragraph 95 purports to selectively quote, reference, and/or paraphrase certain
11 alleged documents, statements, and/or statistics. JLI 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
14 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
15 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
16 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
17 documents, statements, and/or statistics speak for themselves. JLI refers to the Relationship
18 Agreement for a more complete and accurate statement of its contents. To the extent that the
19 allegations in Paragraph 95 are inconsistent with the Relationship Agreement, JLI denies such
20 allegations. To the extent the allegations of Paragraph 95 are directed toward other
21 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
22 those allegations and, therefore, denies the same. Except as expressly admitted, JLI denies the
23 allegations, implicit or direct, in Paragraph 95.

24 96. Paragraph 96 purports to selectively quote, reference, and/or paraphrase certain
25 alleged documents, statements, and/or statistics. JLI 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
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1 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
2 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
3 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
4 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
5 allegations of Paragraph 96 to the extent they are directed toward JLI. To the extent the
6 allegations of Paragraph 96 are directed toward other Defendants, JLI lacks knowledge or
7 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
8 the same.

9 97. Paragraph 97 purports to selectively quote, reference, and/or paraphrase certain
10 alleged documents, statements, and/or statistics. JLI 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
13 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
14 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
15 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
16 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
17 allegations of Paragraph 97 to the extent they are directed toward JLI. To the extent the
18 allegations of Paragraph 97 are directed toward other Defendants, JLI lacks knowledge or
19 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
20 the same.

21 98. Paragraph 98 purports to selectively quote, reference, and/or paraphrase certain
22 alleged documents, statements, and/or statistics. JLI 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
25 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
26 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
27 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
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1 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
2 allegations of Paragraph 98 to the extent they are directed toward JLI. To the extent the
3 allegations of Paragraph 98 are directed toward other Defendants, JLI lacks knowledge or
4 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
5 the same.

6 99. Paragraph 99 purports to selectively quote, reference, and/or paraphrase certain
7 alleged documents, statements, and/or statistics. JLI denies that the alleged documents,
8 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
9 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
10 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
11 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
12 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
13 documents, statements, and/or statistics speak for themselves. JLI denies the remaining
14 allegations of Paragraph 99 to the extent they are directed toward JLI. To the extent the
15 allegations of Paragraph 99 are directed toward other Defendants, JLI lacks knowledge or
16 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
17 the same.

18 100. Paragraph 100 purports to selectively quote, reference, and/or paraphrase
19 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
20 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
21 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
22 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
23 meaning of the alleged documents, statements, and/or statistics, and does not concede the
24 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
25 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
26 remaining allegations of Paragraph 100 to the extent they are directed toward JLI. To the
27 extent the allegations of Paragraph 100 are directed toward other Defendants, JLI lacks
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1 knowledge or information sufficient to form a belief as to the truth of those allegations and,
2 therefore, denies the same.

3 101. Paragraph 101 purports to selectively quote, reference, and/or paraphrase
4 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
5 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
6 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
7 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
8 meaning of the alleged documents, statements, and/or statistics, and does not concede the
9 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
10 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
11 remaining allegations of Paragraph 101 to the extent they are directed toward JLI. To the
12 extent the allegations of Paragraph 101 are directed toward other Defendants, JLI lacks
13 knowledge or information sufficient to form a belief as to the truth of those allegations and,
14 therefore, denies the same.

15 102. Paragraph 102 purports to selectively quote, reference, and/or paraphrase
16 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
17 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
18 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
19 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
20 meaning of the alleged documents, statements, and/or statistics, and does not concede the
21 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
22 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
23 remaining allegations of Paragraph 102 to the extent they are directed toward JLI. To the
24 extent the allegations of Paragraph 102 are directed toward other Defendants, JLI lacks
25 knowledge or information sufficient to form a belief as to the truth of those allegations and,
26 therefore, denies the same.

1 103. Paragraph 103 purports to selectively quote, reference, and/or paraphrase
2 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
3 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
4 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
5 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
6 meaning of the alleged documents, statements, and/or statistics, and does not concede the
7 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
8 the alleged documents, statements, and/or statistics speak for themselves. JLI admits that in
9 the first quarter of 2019, JLI filed for Hart-Scott-Rodino clearance related to Altria's then-
10 existing minority investment in JLI, but denies the remaining allegations of Paragraph 103 to
11 the extent they are directed toward JLI, including any allegation that Altria maintains an
12 ownership interest in JLI or that there is any existing business relationship between Altria and
13 JLI. To the extent the allegations of Paragraph 103 are directed toward other Defendants, JLI
14 lacks knowledge or information sufficient to form a belief as to the truth of those allegations
15 and, therefore, denies the same.

16 104. Paragraph 104 purports to selectively quote, reference, and/or paraphrase
17 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
18 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
19 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
20 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
21 meaning of the alleged documents, statements, and/or statistics, and does not concede the
22 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
23 the alleged documents, statements, and/or statistics speak for themselves. JLI states, on
24 information and belief, that Altria announced amendments to several of the Transaction
25 agreements on January 30, 2020, including the Amended Relationship Agreement, Amended
26 Relationship Agreement, Amended Services Agreement, and a Revised Voting Agreement,
27 but JLI denies that any such agreements remain in effect or that there is any existing business
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1 relationship between JLI and Altria. Except as expressly admitted, JLI denies the allegations,
2 implicit or direct, in Paragraph 104.

3 105. Paragraph 105 purports to selectively quote, reference, and/or paraphrase
4 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
5 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
6 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
7 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
8 meaning of the alleged documents, statements, and/or statistics, and does not concede the
9 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
10 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
11 remaining allegations of Paragraph 105 to the extent they are directed toward JLI. To the
12 extent the allegations of Paragraph 105 are directed toward other Defendants, JLI lacks
13 knowledge or information sufficient to form a belief as to the truth of those allegations and,
14 therefore, denies the same.

15 106. Paragraph 106 purports to selectively quote, reference, and/or paraphrase
16 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
17 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
18 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
19 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
20 meaning of the alleged documents, statements, and/or statistics, and does not concede the
21 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
22 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
23 remaining allegations of Paragraph 106 to the extent they are directed toward JLI. To the
24 extent the allegations of Paragraph 106 are directed toward other Defendants, JLI lacks
25 knowledge or information sufficient to form a belief as to the truth of those allegations and,
26 therefore, denies the same.

1 107. Paragraph 107 purports to selectively quote, reference, and/or paraphrase
2 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
3 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
4 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
5 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
6 meaning of the alleged documents, statements, and/or statistics, and does not concede the
7 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
8 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
9 remaining allegations of Paragraph 107 to the extent they are directed toward JLI. To the
10 extent the allegations of Paragraph 107 are directed toward other Defendants, JLI lacks
11 knowledge or information sufficient to form a belief as to the truth of those allegations and,
12 therefore, denies the same.

13 108. To the extent the allegations of Paragraph 108 are directed toward JLI, JLI
14 denies the allegations of Paragraph 108. To the extent the allegations of Paragraph 108 are
15 directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
16 belief as to the truth of those allegations and, therefore, denies the same.

17 109. JLI admits that on April 1, 2020, the Federal Trade Commission filed an
18 administrative complaint alleging that JLI and Altria entered a series of agreements that
19 eliminated competition in violation of federal antitrust laws listed in Paragraph 109. JLI
20 denies that the FTC's complaint had merit, and denies the remaining allegations of Paragraph
21 109 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 109
22 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
23 belief as to the truth of those allegations and, therefore, denies the same.

24 110. Paragraph 110 purports to selectively quote, reference, and/or paraphrase
25 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
26 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
27 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
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1 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
2 meaning of the alleged documents, statements, and/or statistics, and does not concede the
3 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
4 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
5 remaining allegations of Paragraph 110 to the extent they are directed toward JLI. To the
6 extent the allegations of Paragraph 110 are directed toward other Defendants, JLI lacks
7 knowledge or information sufficient to form a belief as to the truth of those allegations and,
8 therefore, denies the same.

9 111. Paragraph 111 asserts a legal conclusion to which no response is required. To
10 the extent a response is required and to the extent the allegations of Paragraph 111 are directed
11 toward JLI, JLI denies that the relevant product market for purposes of this action is "the
12 Closed-System E-Vapor market" and denies the existence of a single Closed System E-Vapor
13 market. To the extent the allegations of Paragraph 111 are directed toward other Defendants,
14 JLI lacks knowledge or information sufficient to form a belief as to the truth of those
15 allegations and, therefore, denies the same.

16 112. To the extent the allegations of Paragraph 112 are directed toward JLI, JLI
17 admits that closed-system e-vapor products are generally battery-powered devices that consist
18 of a device housing a battery and a heating mechanism, and sealed cartridges, pods, or tanks
19 that are filled with e-liquid. JLI further admits that closed-system e-vapor products may
20 include various types of products, such as "cig-a-likes" and pod-based systems. JLI denies the
21 existence of a single Closed-System E-Vapor market. To the extent the allegations of
22 Paragraph 112 are directed toward other Defendants, JLI lacks knowledge or information
23 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.
24 Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 112.

25 113. The allegations of Paragraph 113 are not directed toward JLI, and, therefore, no
26 response is required. JLI denies that the photograph included in Paragraph 113 consists of
27 well-pleaded allegations of fact to which any response is required. To the extent a response is
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1 required, JLI admits that cig-a-likes may imitate the look and feel of a combustible cigarette
2 and may use a rechargeable or disposable battery. To the extent the allegations of Paragraph
3 113 are directed toward other Defendants, JLI lacks knowledge or information sufficient to
4 form a belief as to the truth of those allegations and, therefore, denies the same. Except as
5 expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 113.

6 114. The allegations of Paragraph 114 are not directed toward JLI, and, therefore, no
7 response is required. To the extent a response is required, JLI admits that closed-system tanks
8 do not look like combustible cigarettes. To the extent the allegations of Paragraph JLI are
9 directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
10 belief as to the truth of those allegations and, therefore, denies the same. Except as expressly
11 admitted, JLI denies the allegations, implicit or direct, in Paragraph 114.

12 115. The allegations of Paragraph 115 are not directed toward JLI, and, therefore, no
13 response is required. To the extent a response is required, JLI admits that closed-system pods
14 use rechargeable or disposable batteries and disposable e-liquid cartridges. JLI denies the
15 remaining allegations of Paragraph 115 to the extent they are directed toward JLI. To the
16 extent the allegations of Paragraph 115 are directed toward other Defendants, JLI lacks
17 knowledge or information sufficient to form a belief as to the truth of those allegations and,
18 therefore, denies the same.

19 116. JLI denies that the photograph included in Paragraph 116 consists of well-
20 pleaded allegations of fact to which any response is required. To the extent the allegations of
21 Paragraph 116 are directed toward other Defendants, no response is required. To the extent a
22 response is otherwise required, JLI lacks knowledge or information sufficient to form a belief
23 as to the truth of those allegations and, therefore, denies the same.

24 117. JLI admits the allegations of Paragraph 117.

25 118. The allegations of Paragraph 118 are not directed toward JLI, and, therefore, no
26 response is required. JLI denies that the photograph included in Paragraph 118 consists of
27 well-pleaded allegations of fact to which any response is required. To the extent a response is
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1 required, JLI admits that on January 2, 2020, the FDA adopted a revised enforcement
2 prioritization policy with respect to flavored e-vapor products, and that this policy took effect
3 in February 2020. JLI denies the remaining allegations of Paragraph 118 to the extent they are
4 directed toward JLI. To the extent the allegations of Paragraph 118 are directed toward other
5 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
6 those allegations and, therefore, denies the same.

7 119. The allegations of Paragraph 119 are not directed toward JLI, and, therefore, no
8 response is required. To the extent a response is required, JLI denies the existence of a single
9 Closed-System E-Vapor market. JLI lacks knowledge or information sufficient to form a
10 belief as to the truth of the allegations of Paragraph 119 and, therefore, denies the same.

11 120. Paragraph 120 asserts legal conclusions to which no response is required. To
12 the extent a response is required, JLI denies the existence of a single Closed-System E-Vapor
13 market. JLI lacks knowledge or information sufficient to form a belief as to the truth of the
14 remaining allegations of Paragraph 120 and, therefore, denies the same.

15 121. JLI admits that Closed-System E-Vapor products are sold directly to
16 consumers and entities. JLI admits that Closed-System E-Vapor products are sold through
17 multi-outlet channels, as well as other outlets. JLI admits that open-tank e-vapor products are
18 generally sold through retail outlets known as vape shops, as well as other outlets. JLI
19 otherwise lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations, implicit or direct, of Paragraph 121 and, therefore, denies them on that basis.
21 Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph 121.

22 122. JLI admits that open-tank e-vapor products generally incorporate refillable
23 tanks that customers manually fill with e-liquid and that they may permit alterations to the
24 product, such as manual replacement of batteries and other components. Except as expressly
25 admitted, JLI denies the allegations, implicit or direct, in Paragraph 122.

26 123. JLI denies the allegations, implicit or direct, in Paragraph 123.
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1 124. Paragraph 124 purports to selectively quote, reference, and/or paraphrase
2 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
3 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
4 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
5 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
6 meaning of the alleged documents, statements, and/or statistics, and does not concede the
7 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
8 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
9 existence of a single Closed-System E-Vapor market, and denies the remaining allegations of
10 Paragraph 124 to the extent they are directed toward JLI. To the extent the allegations of
11 Paragraph 124 are directed toward other Defendants, JLI lacks knowledge or information
12 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

13 125. To the extent the allegations in Paragraph 125 are directed other Defendants,
14 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
15 or information sufficient to form a belief as to the truth of the allegations in Paragraph 125
16 concerning other Defendants and, therefore, denies them on that basis. JLI denies the
17 remaining allegations, implicit or direct, in Paragraph 125.

18 126. To the extent the allegations of Paragraph 126 are directed toward JLI, JLI
19 denies the existence of a single Closed-System E-Vapor market and denies the remaining
20 allegations of Paragraph 126. To the extent the allegations of Paragraph 126 are directed
21 toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to
22 the truth of those allegations and, therefore, denies the same.

23 127. Paragraph 127 asserts legal conclusions to which no response is required. To
24 the extent a response is required, JLI lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in Paragraph 127 and, therefore, denies them on that
26 basis.

1 128. Paragraph 128 purports to selectively quote, reference, and/or paraphrase
2 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
3 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
4 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
5 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
6 meaning of the alleged documents, statements, and/or statistics, and does not concede the
7 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
8 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
9 remaining allegations of Paragraph 128 to the extent they are directed toward JLI. To the
10 extent the allegations of Paragraph 128 are directed toward other Defendants, JLI lacks
11 knowledge or information sufficient to form a belief as to the truth of those allegations and,
12 therefore, denies the same.

13 129. JLI denies the allegations, implicit or direct, in Paragraph 129.

14 130. Paragraph 130 provides a misleading and incomplete description of the Merger
15 Guidelines. Among other things, the Merger Guidelines do not presume market power is
16 necessarily enhanced when the merger increases HHI by more than 200 points in a highly
17 concentrated market. Because the Merger Guidelines speak for themselves and Paragraph
18 130's description of the Guidelines is incomplete and misleading, JLI denies the allegations,
19 implicit or direct, in Paragraph 130.

20 131. JLI denies the existence of a single Closed-System E-Vapor market and denies
21 the remaining allegations, implicit or direct, in Paragraph 131.

22 132. JLI refers to the statutes, regulations, guidance, and other materials governing
23 the FDA's premarket authorization regime for a more complete and accurate statement of the
24 regulatory framework. To the extent that the allegations of Paragraph 132 are inconsistent
25 with that regulatory framework, JLI denies such allegations.
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1 133. JLI admits that preparing a PMTA requires a significant amount of resources—
2 time, personnel, and money—and notes that the FDA has processes in place to assist small
3 companies in preparing PMTAs and has committed to a streamlined PMTA approval process
4 for small companies. Except as expressly admitted, JLI denies the allegations, implicit or
5 direct, in Paragraph 133.

6 134. JLI refers to the FDA’s January 2, 2020 announcement for a more complete
7 and accurate statement of its contents. To the extent that the allegations of Paragraph 134 are
8 inconsistent with that announcement, JLI denies such allegations.

9 135. JLI denies the allegations, implicit or direct, in Paragraph 135.

10 136. Paragraph 136 appears to selectively quote, reference, and/or paraphrase
11 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
12 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
13 or in their entirety, denies Plaintiffs’ characterization of the alleged documents, statements,
14 and/or statistics, denies Plaintiffs’ insinuation and implication regarding the content or
15 meaning of the alleged documents, statements, and/or statistics, and does not concede the
16 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
17 the alleged documents, statements, and/or statistics speak for themselves. JLI otherwise lacks
18 knowledge or information sufficient to form a belief as to the truth of the allegations, implicit
19 or direct, in Paragraph 136 regarding Altria, market share, or a Wells Fargo report, and,
20 therefore, denies them on that basis. JLI denies the remaining allegations, implicit or direct, in
21 Paragraph 136.

22 137. Paragraph 137 appears to selectively quote, reference, and/or paraphrase
23 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
24 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
25 or in their entirety, denies Plaintiffs’ characterization of the alleged documents, statements,
26 and/or statistics, denies Plaintiffs’ insinuation and implication regarding the content or
27 meaning of the alleged documents, statements, and/or statistics, and does not concede the
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1 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
2 the alleged documents, statements, and/or statistics speak for themselves. JLI otherwise lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations, implicit
4 or direct, in Paragraph 137 regarding Altria, market share, or a Wells Fargo report, and,
5 therefore, denies them on that basis. JLI denies the remaining allegations, implicit or direct, in
6 Paragraph 137.

7 138. JLI denies the allegations, implicit or direct, in Paragraph 138.

8 139. Paragraph 139 asserts legal conclusions to which no response is required. To
9 the extent a response is required, JLI denies the allegations of Paragraph 139 to the extent they
10 are directed toward JLI. To the extent the allegations of Paragraph 139 are directed toward
11 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
12 of those allegations and, therefore, denies the same.

13 140. JLI denies the allegations of Paragraph 140 to the extent they are directed
14 toward JLI. To the extent the allegations of Paragraph 140 are directed toward other
15 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
16 those allegations and, therefore, denies the same.

17 141. JLI denies the allegations of Paragraph 141 to the extent they are directed
18 toward JLI. To the extent the allegations of Paragraph 141 are directed toward other
19 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
20 those allegations and, therefore, denies the same.

21 142. JLI denies the existence of a single Closed-System E-Vapor market and denies
22 the remaining allegations, implicit or direct, in Paragraph 142.

23 143. To the extent the allegations in Paragraph 143 are directed to other Defendants,
24 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
25 or information sufficient to form a belief as to the truth of the allegations in Paragraph 143
26 concerning other Defendants, and, therefore, denies them on that basis. JLI denies the
27 remaining allegations, implicit or direct, in Paragraph 143.

1 144. JLI denies the allegations, implicit or direct, in the first sentence of Paragraph
2 144. To the extent the allegations in the second sentence of Paragraph 144 are directed to
3 other Defendants, no response is required. To the extent a response is otherwise required, JLI
4 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
5 the second sentence of Paragraph 144 concerning other Defendants and, therefore, denies
6 them on that basis. JLI denies the remaining allegations, implicit or direct, in Paragraph 144.

7 145. Paragraph 145 appears to selectively quote, reference, and/or paraphrase
8 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
9 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
10 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
11 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
12 meaning of the alleged documents, statements, and/or statistics, and does not concede the
13 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
14 the alleged documents, statements, and/or statistics speak for themselves. To the extent the
15 allegations in Paragraph 145 are directed to other Defendants, no response is required. To the
16 extent a response is otherwise required, JLI lacks knowledge or information sufficient to form
17 a belief as to the truth of the allegations in Paragraph 145 concerning other Defendants and,
18 therefore, denies them on that basis. JLI denies the remaining allegations, implicit or direct, in
19 Paragraph 145.

20 146. To the extent the allegations in Paragraph 146 are directed to other Defendants,
21 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
22 or information sufficient to form a belief as to the truth of the allegations in Paragraph 146
23 concerning other Defendants and, therefore, denies them on that basis. JLI admits that it
24 monitors the prices of other e-cigarette products, but denies the allegations in Paragraph 160
25 to the extent they suggest the price of Altria's e-cigarette products impacted JLI's e-cigarette
26 product pricing strategy. Except as expressly admitted, JLI denies the allegations, implicit or
27 direct, in Paragraph 146.

1 147. To the extent the allegations in Paragraph 147 are directed to other Defendants,
2 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
3 or information sufficient to form a belief as to the truth of the allegations in Paragraph 147
4 concerning other Defendants and, therefore, denies them on that basis. JLI admits that it
5 sought to attract existing smokers of combustible cigarettes through product innovation, but
6 denies that there was meaningful competition between it and Altria's pod-based products over
7 innovative features. Except as expressly admitted, JLI denies the allegations, implicit or
8 direct, in Paragraph 147.

9 148. Paragraph 148 purports to selectively quote, reference, and/or paraphrase
10 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
11 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
12 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
13 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
14 meaning of the alleged documents, statements, and/or statistics, and does not concede the
15 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
16 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
17 remaining allegations of Paragraph 148 to the extent they are directed toward JLI. To the
18 extent the allegations of Paragraph 148 are directed toward other Defendants, JLI lacks
19 knowledge or information sufficient to form a belief as to the truth of those allegations and,
20 therefore, denies the same.

21 149. To the extent the allegations in Paragraph 149 are directed to other Defendants,
22 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
23 or information sufficient to form a belief as to the truth of the allegations in Paragraph 164
24 concerning other Defendants and, therefore, denies them on that basis. To the extent that
25 Paragraph 149 purports to quote or characterize isolated portions of recorded public
26 statements and investigational hearing testimony, those statements and testimony speak for
27 themselves. JLI refers to those statements and testimony for a more complete and accurate
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1 statement of their contents. JLI denies the remaining allegations, implicit or direct, in
2 Paragraph 149.

3 150. Paragraph 150 appears to selectively quote, reference, and/or paraphrase
4 certain alleged documents, statements, and/or statistics. JLI denies that the alleged
5 documents, statements, and/or statistics are quoted, referenced, and/or paraphrased in context
6 or in their entirety, denies Plaintiffs' characterization of the alleged documents, statements,
7 and/or statistics, denies Plaintiffs' insinuation and implication regarding the content or
8 meaning of the alleged documents, statements, and/or statistics, and does not concede the
9 truthfulness or accuracy of the alleged documents, statements, and/or statistics. JLI states that
10 the alleged documents, statements, and/or statistics speak for themselves. JLI denies the
11 remaining allegations of Paragraph 150 to the extent they are directed toward JLI. To the
12 extent the allegations of Paragraph 150 are directed toward other Defendants, JLI lacks
13 knowledge or information sufficient to form a belief as to the truth of those allegations and,
14 therefore, denies the same.

15 151. To the extent the allegations in Paragraph 151 are directed to other Defendants,
16 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
17 or information sufficient to form a belief as to the truth of the allegations in Paragraph 151
18 concerning other Defendants and, therefore, denies them on that basis. JLI further denies any
19 alleged lessening of competition. JLI denies the remaining allegations, implicit or direct, in
20 Paragraph 151.

21 152. JLI denies the allegations, implicit or direct, in Paragraph 152.

22 153. JLI denies the allegations, implicit or direct, in Paragraph 153.

23 154. JLI denies the allegations, implicit or direct, in Paragraph 154.

24 155. To the extent the allegations in Paragraph 155 are directed other Defendants,
25 no response is required. To the extent a response is otherwise required, JLI lacks knowledge
26 or information sufficient to form a belief as to the truth of the allegations in Paragraph 155
27 concerning other Defendants and, therefore, denies them on that basis. JLI admits that the
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1 regulatory approval process for e-vapor products can be time-consuming, but notes that the
2 FDA has processes in place to assist small companies in preparing PMTAs and has committed
3 to a streamlined PMTA approval process for small companies. Additionally, to the extent that
4 the allegations Paragraph 155 appear to selectively quote, reference, and/or paraphrase certain
5 alleged documents, statements, and/or statistics, JLI denies that the alleged documents,
6 statements, and/or statistics are quoted, referenced, and/or paraphrased in context or in their
7 entirety, denies Plaintiffs' characterization of the alleged documents, statements, and/or
8 statistics, denies Plaintiffs' insinuation and implication regarding the content or meaning of
9 the alleged documents, statements, and/or statistics, and does not concede the truthfulness or
10 accuracy of the alleged documents, statements, and/or statistics. JLI states that the alleged
11 documents, statements, and/or statistics speak for themselves. Except as expressly admitted,
12 JLI denies the allegations, implicit or direct, in Paragraph 155.

13 156. The allegations of Paragraph 156 are not directed toward JLI, and, therefore, no
14 response is required. To the extent a response is required, JLI lacks knowledge or information
15 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

16 157. The allegations of Paragraph 157 are not directed toward JLI, and, therefore, no
17 response is required. To the extent a response is required, JLI denies the existence of a single
18 Closed-System E-Vapor market. JLI lacks knowledge or information sufficient to form a
19 belief as to the truth of the remaining allegations of Paragraph 157 and, therefore, denies the
20 same.

21 158. The allegations of Paragraph 158 are not directed toward JLI, and, therefore, no
22 response is required. To the extent a response is required, JLI admits that open-tank e-vapor
23 products are generally sold through retail outlets known as vape shops, as well as other
24 outlets. JLI otherwise lacks knowledge or information sufficient to form a belief as to the truth
25 of the allegations, implicit or direct, of Paragraph 158 and, therefore, denies them on that
26 basis. Except as expressly admitted, JLI denies the allegations, implicit or direct, in Paragraph
27 158.
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159. JLI denies the allegations, implicit or direct, in Paragraph 159.

160. JLI denies the existence of a single Closed-System E-Vapor market and denies the remaining allegations, implicit or direct, in Paragraph 160.

161. JLI incorporates by reference its above responses to all preceding Paragraphs of the Complaint.

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 JLI, JLI denies the allegations, implicit or direct, in Paragraph 162. To the extent the allegations of Paragraph 162 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

163. JLI denies the existence of a single Closed-System E-Vapor market. To the extent the allegations of Paragraph 163 are directed toward JLI, JLI otherwise denies the allegations, implicit or direct, in Paragraph 163. To the extent the allegations of Paragraph 163 are directed toward other Defendants, JLI lacks 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 JLI, JLI denies the allegations, implicit or direct, in Paragraph 164. To the extent the allegations of Paragraph 164 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

165. To the extent the allegations of Paragraph 165 are directed toward JLI, JLI denies the allegations, implicit or direct, in Paragraph 165. To the extent the allegations of Paragraph 165 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, therefore, denies the same.

1 166. Paragraph 166 asserts legal conclusions to which no response is required. To
2 the extent a response is required and to the extent the allegations of Paragraph 166 are directed
3 toward JLI, JLI denies the allegations, implicit or direct, in Paragraph 166. To the extent the
4 allegations of Paragraph 166 are directed toward other Defendants, JLI lacks knowledge or
5 information sufficient to form a belief as to the truth of those allegations and, therefore, denies
6 the same.

7 167. JLI admits that the Transaction in which Altria purchased a minority stake in
8 JLI was effected in December 2018, but JLI denies that the Transaction remains in effect or
9 that there is any existing business relationship between Altria and JLI. JLI denies the
10 remaining allegations, implicit or direct, in Paragraph 167 to the extent they are directed
11 toward JLI. To the extent the allegations of Paragraph 167 are directed toward other
12 Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth of
13 those allegations and, therefore, denies the same.

14 168. JLI incorporates by reference its above responses to all preceding Paragraphs
15 of the Complaint.

16 169. Paragraph 169 asserts legal conclusions to which no response is required. To
17 the extent a response is required and to the extent the allegations of Paragraph 169 are directed
18 toward JLI, JLI denies the existence of a single Closed-System E-Vapor market and otherwise
19 denies the allegations, implicit or direct, in Paragraph 169. To the extent the allegations of
20 Paragraph 169 are directed toward other Defendants, JLI lacks knowledge or information
21 sufficient to form a belief as to the truth of those allegations and, therefore, denies the same

22 170. Paragraph 170 asserts legal conclusions to which no response is required. To
23 the extent a response is required and to the extent the allegations of Paragraph 170 are directed
24 toward JLI, JLI denies the allegations, implicit or direct, in Paragraph 170. To the extent the
25 allegations of Paragraph 170 are directed to other Defendants, JLI lacks knowledge or
26 information sufficient to form a belief as to the truth of allegations concerning other
27 Defendants and, therefore, denies them on that basis..
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1 171. To the extent the allegations of Paragraph 171 are directed to other Defendants,
2 JLI lacks knowledge or information sufficient to form a belief as to the truth of allegations
3 concerning other Defendants and, therefore, denies them on that basis. JLI otherwise denies
4 the allegations, implicit or direct, in Paragraph 171.

5 172. Paragraph 172 asserts legal conclusions to which no response is required. To
6 the extent a response is required and to the extent the allegations of Paragraph 172 are directed
7 toward JLI, JLI denies the allegations, implicit or direct, in Paragraph 172. To the extent the
8 allegations of Paragraph 172 are directed to other Defendants, JLI lacks knowledge or
9 information sufficient to form a belief as to the truth of allegations concerning other
10 Defendants and, therefore, denies them on that basis.

11 173. JLI incorporates by reference its above responses to all preceding Paragraphs
12 of the Complaint.

13 174. JLI admits that Plaintiffs purport to seek declaratory and injunctive relief under
14 the federal antitrust laws, but denies that Plaintiffs are entitled to the relief requested in this
15 Complaint or any relief whatsoever.

16 175. Paragraph 175 asserts legal conclusions to which no response is required. To
17 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
18 175 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 175
19 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
20 belief as to the truth of those allegations and, therefore, denies the same.

21 176. Paragraph 176 asserts legal conclusions to which no response is required. To
22 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
23 176 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 176
24 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
25 belief as to the truth of those allegations and, therefore, denies the same.

26 177. Paragraph 177 asserts legal conclusions to which no response is required. To
27 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
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1 177 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 177
2 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
3 belief as to the truth of those allegations and, therefore, denies them on that basis..

4 178. Paragraph 178 asserts legal conclusions to which no response is required. To
5 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
6 178 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 178
7 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
8 belief as to the truth of allegations concerning other Defendants and, therefore, denies them on
9 that basis.

10 179. JLI denies the allegations, implicit or direct, in Paragraph 179 to the extent they
11 are directed toward JLI. To the extent the allegations of Paragraph 179 are directed toward
12 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
13 of allegations concerning other Defendants and, therefore, denies them on that basis.

14 180. Paragraph 180 asserts legal conclusions to which no response is required. To
15 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
16 180, to the extent they are directed towards JLI. To the extent the allegations of Paragraph
17 180 are directed toward other Defendants, JLI lacks knowledge or information sufficient to
18 form a belief as to the truth of those allegations and, therefore, denies the same.

19 181. Paragraph 181 asserts legal conclusions to which no response is required. To
20 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
21 181 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 181
22 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
23 belief as to the truth of allegations concerning other Defendants and, therefore, denies them on
24 that basis.

25 182. JLI admits that Plaintiffs, and the Class they purport to certify, seek a
26 Declaratory Judgment pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §
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1 2201(a), but denies that Plaintiffs are entitled to the relief requested in this Complaint or any
2 relief whatsoever. JLI denies the remaining allegations, implicit or direct, in Paragraph 182.

3 183. JLI admits that Plaintiffs, and the Class they purport to certify, seek equitable
4 and injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, and other law
5 it alleges is applicable, but denies that Plaintiffs are entitled to the relief requested in this
6 Complaint or any relief whatsoever. JLI denies the remaining allegations, implicit or direct, in
7 Paragraph 183.

8 184. JLI denies that this lawsuit is appropriate for class action treatment or is
9 manageable as a class action and denies the remaining allegations of Paragraph 184.

10 185. Paragraph 185 asserts legal conclusions to which no response is required. To
11 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
12 185 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 185
13 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
14 belief as to the truth of those allegations and, therefore, denies the same.

15 186. Paragraph 186 asserts legal conclusions to which no response is required. To
16 the extent a response is required, JLI denies the allegations, implicit or direct, in Paragraph
17 186 to the extent they are directed toward JLI. To the extent the allegations of Paragraph 186
18 are directed toward other Defendants, JLI lacks knowledge or information sufficient to form a
19 belief as to the truth of those allegations and, therefore, denies the same.

20 187. Paragraph 187 asserts legal conclusions to which no response is required. To
21 the extent a response is required and to the extent the allegations of Paragraph 187 are directed
22 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
23 any relief whatsoever. To the extent the allegations of Paragraph 187 are directed toward
24 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
25 of those allegations and, therefore, denies the same.

26 188. Paragraph 188 asserts legal conclusions to which no response is required. To
27 the extent a response is required and to the extent the allegations of Paragraph 188 are directed
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1 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
2 any relief whatsoever. To the extent the allegations of Paragraph 188 are directed toward
3 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
4 of those allegations and, therefore, denies the same.

5 189. Paragraph 189 asserts legal conclusions to which no response is required. To
6 the extent a response is required and to the extent the allegations of Paragraph 189 are directed
7 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
8 any relief whatsoever. To the extent the allegations of Paragraph 189 are directed toward
9 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
10 of those allegations and, therefore, denies the same.

11 190. Paragraph 190 asserts legal conclusions to which no response is required. To
12 the extent a response is required and to the extent the allegations of Paragraph 190 are directed
13 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
14 any relief whatsoever. To the extent the allegations of Paragraph 190 are directed toward
15 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
16 of those allegations and, therefore, denies the same.

17 191. Paragraph 191 asserts legal conclusions to which no response is required. To
18 the extent a response is required and to the extent the allegations of Paragraph 191 are directed
19 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
20 any relief whatsoever. To the extent the allegations of Paragraph 191 are directed toward
21 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
22 of those allegations and, therefore, denies the same.

23 192. Paragraph 192 asserts legal conclusions to which no response is required. To
24 the extent a response is required and to the extent the allegations of Paragraph 192 are directed
25 toward JLI, JLI denies that Plaintiffs are entitled to the relief requested in this Complaint or
26 any relief whatsoever. To the extent the allegations of Paragraph 192 are directed toward
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1 other Defendants, JLI lacks knowledge or information sufficient to form a belief as to the truth
2 of those allegations and, therefore, denies the same.

3 AFFIRMATIVE AND OTHER DEFENSES

4 JLI asserts the following defenses with respect to the causes of action alleged in the
5 Complaint, without assuming the burden of proof or persuasion where such burden rests on
6 the Plaintiffs. Each defense herein is asserted against all named Plaintiffs and the members
7 of the putative class. JLI asserts these solely to the extent necessary to preserve their rights
8 and states that the factual applicability of some or all of these will depend on how Plaintiffs’
9 case develops and how the other facts develop. JLI has not yet obtained adequate discovery
10 from Plaintiffs or third parties in connection with this action, and JLI therefore reserves the
11 right to rely on any affirmative or other defense or claim that may subsequently come to
12 light, and expressly reserves the right to amend or supplement this pleading to assert such
13 additional defenses or claims.

14 FIRST DEFENSE

15 The Complaint and the damages relief sought therein are barred, in whole or in part,
16 to the extent that Plaintiffs were not injured by the alleged conduct. Plaintiffs cannot
17 demonstrate an injury of the sort that the antitrust laws were designed to prevent—namely,
18 injury to competition. “The injury should reflect the anticompetitive effect either of the
19 violation or of anticompetitive acts made possible by the violation. . . . It is inimical to the
20 purposes of [the federal antitrust] laws to award damages” when competition has not been
21 reduced. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488-89 (1977).
22 Because Plaintiffs cannot show that JLI’s conduct reduced competition, Plaintiffs have not
23 suffered an injury cognizable under the federal antitrust laws or the state antitrust laws that
24 punish similar conduct.

25 SECOND DEFENSE

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

THIRD DEFENSE

10 The Complaint and the injunctive relief sought therein are barred, in whole in part,
 11 because JLI’s alleged conduct did not harm competition. Obtaining injunctive relief under
 12 “Section 7 of the Clayton Act requires [c]onsumers to ‘first establish a prima facie case that a
 13 merger is anticompetitive.’” *DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 763
 14 (9th Cir. 2018) (quoting *Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke’s Health Sys.,*
 15 *Ltd.*, 778 F.3d 775, 783 (9th Cir. 2015)). Plaintiffs cannot show that Altria’s acquisition of a
 16 minority interest in JLI had anticompetitive effects, and thus are not entitled to injunctive
 17 relief.

FOURTH DEFENSE

19 The Complaint and the injunctive relief sought therein are barred, because Plaintiffs
 20 cannot satisfy the equitable balancing test for injunctive relief. “[W]ell-established principles
 21 of equity” require a plaintiff seeking injunctive relief to “demonstrate: (1) that it has suffered
 22 an irreparable injury; (2) that remedies available at law, such as monetary damages, are
 23 inadequate to compensate for that injury; (3) that, considering the balance of hardships
 24 between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public
 25 interest would not be disserved by a permanent injunction .” *eBay Inc. v. MercExchange,*
 26 *L.L.C.*, 547 U.S. 388, 391 (2006). None of these considerations tip in favor of Plaintiffs:
 27 First, Plaintiffs cannot show any injury, let alone an injury that is “irreparable.” Second,
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1 assuming that Plaintiffs were able to prove one or more of their alleged claims for relief,
2 Plaintiffs have an adequate remedy at law. “[S]everal courts in this district have barred
3 claims for equitable relief . . . where plaintiffs have alleged other claims presenting an
4 adequate remedy at law.” *Munning v. Gap, Inc.*, 238 F. Supp. 3d 1195, 1203 (N.D. Cal.
5 2017). Plaintiffs have stated claims for compensatory damages for the alleged injuries they
6 sustained in this matter, and, therefore, Plaintiffs cannot additionally seek equitable relief.
7 Finally, neither the balance of hardships nor the public interest favors unwinding a
8 transaction that has already occurred, and that facilitates Altria’s provision of critical
9 regulatory services that support JLI’s regulatory filings and thus enhance JLI’s ability to
10 remain on the market.

11 **FIFTH DEFENSE**

12 The alleged conduct was not per se unlawful and must be assessed by the rule of
13 reason under *Texaco Inc. v. Dagher*, 547 U.S. 1, 5 (2006). The non-compete agreement is
14 facially valid under the rule of reason because it was ancillary to the main business purpose
15 of a lawful contract, and it was necessary to protect JLI’s legitimate property interests. See
16 *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981).

17 **SIXTH DEFENSE**

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

25 **SEVENTH DEFENSE**

26 The whole of the alleged conduct survives the rule of reason because it had and
27 continues to have substantial pro-competitive justifications. Plaintiffs bear the burden of
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1 demonstrating that Altria’s alleged conduct “ha[d] a substantial anticompetitive effect.” *Am.*
2 *Express Co.*, 138 S. Ct. at 2284. But the alleged conduct benefited and continues to benefit
3 consumers and the public interest. These pro-competitive justifications outweigh any alleged
4 anticompetitive effects of the alleged conduct.

5 EIGHTH DEFENSE

6 To the extent that Plaintiffs’ Section 1 and Section 3 claims rely on Altria’s
7 discontinuation of any e-vapor product, this is not a cognizable effect of any later agreement
8 reached by Altria and JLI. As such, Plaintiffs’ Section 1 and Section 3 claims and the relief
9 sought for their alleged violation are barred, because “Section 1 of the Sherman Act . . .
10 does not reach conduct that is ‘wholly unilateral.’” *Copperweld Corp. v. Indep. Tube Corp.*,
11 467 U.S. 752, 768 (1984).

12 NINTH DEFENSE

13 Plaintiffs’ Section 2 conspiracy to monopolize claim against JLI is barred, because
14 there can be no conspiracy to monopolize in the absence of a § 1 violation. *Zenith Radio*
15 *Corp. v. Matsushita Elec. Indus. Co.*, 513 F. Supp. 1100, 1320 (E.D. Pa. 1981) (citing
16 Phillip E. Areeda & Herbert Hovencamp, *Antitrust Law: An Analysis of Antitrust Principles*
17 *and Their Application* ¶ 809 (4th & 5th eds. 2013-2010) (hereinafter “Areeda”)); see also
18 *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 139 (1998) (“We do not see, on the basis of the
19 facts alleged, how [plaintiff] could succeed on [its conspiracy-to-monopolize] claim without
20 prevailing on its § 1 claim.” (citing Areeda ¶ 651e)); *H.L. Hayden Co. of N.Y. v. Siemens*
21 *Med. Sys., Inc.*, 672 F. Supp. 724, 741 n.21 (S.D.N.Y. 1987) (“Any section 2 conspiracy to
22 monopolize must be covered under the broader umbrella of a section 1 conspiracy in restraint
23 of trade.”); Areeda ¶ 809 (“Any arrangement that could be considered a ‘conspiracy’ to
24 monopolize must necessarily also be an unreasonable ‘contract,’ combination,’ or
25 ‘conspiracy’ in restraint of trade offending § 1.”).

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TENTH DEFENSE

Plaintiffs' Section 2 monopolization claim against JLI is barred, because JLI did not and does not possess monopoly power in a relevant market. "The offense of [monopolization] under § 2 of the Sherman Act [requires] (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966).

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ELEVENTH DEFENSE

Plaintiffs' Section 2 attempted monopolization claim against JLI is barred, because there is no dangerous probability that JLI will achieve monopoly power in a relevant market as a result of the challenged conduct. Attempted monopolization under Section 2 of the Sherman Act requires proof "(1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power." *Spectrum Sports v. McQuillan*, 506 U.S. 447, 456 (1993).

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TWELTH DEFENSE

Plaintiffs' Section 2 conspiracy to monopolize claim against JLI is barred, because Altria's decision to withdraw any of their operating companies' products was not part of an agreement with JLI. "To prove a conspiracy to monopolize in violation of § 2, [Plaintiffs] must show four elements: (1) the existence of a combination or conspiracy to monopolize; (2) an overt act in furtherance of the conspiracy; (3) the specific intent to monopolize; and (4) causal antitrust injury ." *Paladin Assocs., Inc. v. Montana Power Co.*, 328 F.3d 1145, 1158 (9th Cir. 2003) (citing *United States v. Yellow Cab Co.*, 332 U.S. 218, 224-25 (1947), overruled in unrelated part, *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984)). JLI did not engage in a combination or conspiracy to monopolize; did not engage in any overt act in furtherance of the conspiracy; did not possess the specific intent to monopolize;

1 and, as elaborated in JLI’s First and Third Defenses, did not engage in conduct that caused
2 antitrust injuries.

3 THIRTEENTH DEFENSE

4 Plaintiffs’ Section 7 claim and the relief sought for its alleged violation are barred,
5 because Altria was neither an actual nor a potential competitor to JLI at the time of the
6 Transaction. A transaction is actionable under § 7 only if the firms are involved are
7 competitors or “potential” competitors. Phillip E. Areeda & Herbert Hovencamp, *Antitrust*
8 *Law: An Analysis of Antitrust Principles and Their Application* ¶ 1100a (4th & 5th eds.
9 2013–2020) (hereinafter “Areeda”). Federal courts have discussed two variations of the
10 potential competition doctrine—the actual potential competition theory and the perceived
11 potential competition theory—neither of which is availing for Plaintiffs. *Id.* The actual
12 potential competition theory is not a viable theory; it has not been adopted by the U.S.
13 Supreme Court and “[o]nly one circuit” has expressly endorsed it over four decades ago.
14 *Fraser v. Major League Soccer, L.L.C.*, 284 F.3d 47, 70-71 (1st Cir. 2002) (citing *Yamaha*
15 *Motor Co. v. Fed. Trade Comm’n*, 657 F.2d 971, 978-80 (8th Cir. 1981)). Even if this Court
16 were to recognize the actual potential competition theory of § 7 liability, Plaintiffs must show
17 that Altria “would, but for the acquisition, have entered the market as a competitor in the near
18 future.” *United States v. Siemens Corp.*, 621 F.2d 499, 505 (2d Cir. 1980). Plaintiffs can
19 make no such showing. Alternatively, to fulfill a § 7 claim under the perceived potential
20 competitor theory, Plaintiffs must show that the mere threat of “new entry by the acquiring
21 firm induced competitors in the acquired firm’s market to perform more competitively,” even
22 if the acquiring firm would not actually have entered the market. *Ginsburg v. InBen NV/SA*,
23 623 F.3d 1229, 1234 (8th Cir. 2010) (citing Areeda ¶ 1121a). Plaintiffs cannot make this
24 showing either.

25 FOURTEENTH DEFENSE

26 Plaintiffs’ Section 7 claim against JLI and the relief sought for its alleged violation
27 are barred, because JLI did not “acquire” any stock. In relevant part, Section 7 provides that
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1 “[n]o person shall *acquire* . . . the stock . . . of one or more persons engaged in commerce . . .
 2 . . . where . . . the effect of such acquisition . . . may be substantially to lessen competition, or
 3 tend to create a monopoly.” 15 U.S.C. § 18 (emphasis added). JLI, as the party whose stock
 4 was acquired by another, cannot be liable under Section 7 because it did not “acquire” stock
 5 in another company. *See, e.g., United States v. Coca-Cola Bottling Co. of Los Angeles*, 575
 6 F.2d 222, 227 (9th Cir. 1978) (“By its express terms § 7 proscribes only the act of acquiring,
 7 not selling, when the forbidden effects may occur.”).

FIFTEENTH DEFENSE

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 9 Plaintiffs’ state antitrust law claims are barred because they are derivative of the
 10 unavailing federal antitrust claims. The state courts have made clear that the analysis under
 11 their antitrust laws is identical to that under federal law. *See Name.Space, Inc. v. Internet*
 12 *Corp. for Assigned Names & Numbers*, 795 F.3d 1124, 1131 n.5 (9th Cir.2015) (California)
 13 (“[T]he analysis under the Cartwright Act . . . is identical to that under the Sherman Act.”);
 14 *Robert’s Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.*, 982 P.2d 853, 876
 15 (Haw. 1999) (“[W]hen the state legislature undertook the task of fashioning Hawaii’s
 16 antitrust law, it logically followed the federal paradigm.” (quotation omitted)); *Biocad JSC*
 17 *v. F. Hoffmann-La Roche*, 942 F.3d 88, 101 (2d Cir. 2019) (New York) (the “Donnelly Act .
 18 . . . is modeled after the Sherman Act and ‘should generally be construed in light of Federal
 19 precedent.’” (internal citations omitted)); *Steward Health Care Sys., LLC v. Blue Cross &*
 20 *Blue Shield of Rhode Island*, 997 F. Supp. 2d 142, 1552 (D.R.I. 2014) (Rhode Island)
 21 (“Court[s] appl[y] the same substantive law to the state and federal antitrust claims as the
 22 Rhode Island Antitrust Act mirrors the Sherman Act.”).

SIXTEENTH DEFENSE

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 24 Plaintiffs’ consumer-protection claims are barred for the same reason Plaintiffs’
 25 antitrust claims fail because both claims challenge the same underlying conduct. *See*
 26 *LiveUniverse, Inc. v. MySpace, Inc.*, 304 F. App’x 554, 557-58 (9th Cir. 2008) (“Where . . .
 27 the same conduct is alleged to support both a plaintiff’s federal antitrust claims and state-law
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1 unfair competition claim, a finding that the conduct is not an antitrust violation precludes a
2 finding of unfair competition.”).

3 SEVENTEENTH DEFENSE

4 Insofar as any applicable “consumer fraud laws” and “consumer protection laws”
5 require exhaustion of administrative or other remedies, the claims asserted in the Complaint
6 under the applicable “consumer protection laws” should be stayed or dismissed because, on
7 information and belief, Plaintiffs have not exhausted those administrative or other remedies.
8 The Supreme Court has “recognized in more than a few decisions” “that orderly procedure and
9 good administration require that objections to the proceedings of an administrative agency be
10 made while it has opportunity for correction in order to raise issues reviewable by the courts.”
11 *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 36-37 (1952). As a consequence,
12 “[s]imple fairness to those who are engaged in the tasks of administration, and to litigants,
13 requires as a general rule that courts should not topple over administrative decisions unless the
14 administrative body not only has erred but has erred against objection made at the time
15 appropriate under its practice.” *Id.* “Particularly, judicial review may be hindered by the
16 failure of the litigant to allow the agency to make a factual record, or to exercise its discretion
17 or apply its expertise.” *McKart v. United States*, 395 U.S. 185, 194-95 (1969). “A complaining
18 party may be successful in vindicating his rights in the administrative process. If he is required
19 to pursue his administrative remedies, the courts may never have to intervene.” *Id.* “And
20 notions of administrative autonomy require that the agency be given a chance to discover and
21 correct its own errors.” *Id.* Plaintiff’s claims are barred, in whole or in part, by the doctrine
22 of exhaustion in so far as various state laws have vested state agencies with jurisdiction to
23 regulate the advertising and marketing of e-cigarettes and other products. Plaintiff has failed
24 to exhaust all administrative options available to it through these processes.

25 EIGHTEENTH DEFENSE

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

6 **NINETEENTH DEFENSE**

7 Plaintiff’s state-law claims and the associated relief are barred by the presumption
8 against extraterritoriality. In the absence of clear statutory text that indicates otherwise, a
9 state’s statutes are presumed to be limited in application to the confines of the state’s borders.
10 *See, e.g., Global Reinsurance Corp.-U.S. Branch v. Equitas Ltd.*, 969 N.E.2d 187, 195 (N.Y.
11 2012) (noting, in applying a state antitrust statute, that “[t]he established presumption is, of
12 course, against the extraterritorial operation of New York law”); *J.P. Morgan & Co. v.*
13 *Superior Court*, 113 Cal. App. 4th 195, 221 (2003) (“[A] court should not ordinarily construe
14 a statute as regulating occurrences outside the state unless a contrary intention is clearly
15 expressed or reasonably can be inferred from the language or purpose of the statute.”). Should
16 JLI be held liable under any of Plaintiffs’ state-law claims, Plaintiffs may not obtain damages
17 or other relief on a given cause of action for conduct that occurred outside the state giving rise
18 to that claim.

19 **TWENTIETH DEFENSE**

20 Plaintiffs’ California-law claims against JLI are constitutionally barred to the extent
21 that Plaintiffs seek relief for a nationwide class under the laws of a single state. The Due
22 Process Clause requires that “[f]or a nationwide class to invoke the law of a particular state,
23 the chosen state’s law must both (1) not conflict with the law of another jurisdiction that has
24 an interest in the case, and (2) have a significant contact or significant aggregation of
25 contacts to claims asserted by each member of the plaintiff class to insure that the choice of
26 the forum state’s law is not arbitrary or unfair.” *In re Graphics Processing Units Antitrust*
27 *Litig.*, 527 F. Supp. 2d 1011, 1027 (N.D. Cal. 2007) (citing *Phillips Petroleum Co. v. Shutts*,

1 472 U.S. 797, 821-22 (1985)). Because there is no significant contact or even “aggregation
2 of contacts” between California and out-of-state Plaintiffs’ claims against JLI, applying
3 California law to claims brought by out-of-state class members would be “arbitrary [and]
4 unfair,” *id.*; it cannot “be applied without offending [JLI’s] due process rights .” *AT&T*
5 *Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106, 1113 (9th Cir. 2013).

6 **TWENTY-FIRST DEFENSE**

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

21 **TWENTY-SECOND DEFENSE**

22 Any claim by Plaintiffs for pre-judgment interest should be dismissed because the
23 amount of damages (if any) was not readily ascertainable at the time Plaintiffs’ lawsuit was
24 commenced and JLI is not responsible for any delay in the presentation or prosecution of this
25 action.

26 “Prejudgment interest is only allowed where the damage award is known or
27 ascertainable at a time prior to entry of judgment.” *Crockett & Myers, Ltd. v. Napier*,

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

8 **TWENTY-THIRD DEFENSE**

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

16 **TWENTY-FOURTH DEFENSE**

17 The proposed class action is barred by Plaintiffs’ failure to identify an ascertainable
18 class. Plaintiffs’ proposed class requires that claimants prove they purchased JUUL devices
19 and pods directly from JLI to establish that they are class members. There are no objective
20 records that sufficiently establish class membership for the class as a whole. In addition, class
21 members are unlikely to have retained objective proof of their purchases such as receipts. As
22 a result, individual inquiries would be needed to determine whether each claimant purchased
23 JUUL directly.

24 **TWENTY-FIFTH DEFENSE**

25 The proposed class action does not meet the predominance requirement of Fed. R. Civ.
26 P. 23(b)(3). Predominance requires that “that the questions of law or fact common to class
27

1 members predominate over any questions affecting only individual members.” Fed. R. Civ. P.
2 23(b)(3).

3 Each class member must demonstrate that he or she purchased JUUL directly, and
4 account for the number of JUUL products purchased the price he or she paid each time. These
5 requirements raise numerous individual issues, including, among other things, when a class
6 member began purchasing JUUL, how a class member obtained JUUL, whether a class
7 member was subject to an arbitration agreement, and whether a class member continues to
8 purchase JUUL directly. Given the variability among class members with respect to these and
9 other issues, individual issues would predominate over any possible common issues.

10 **TWENTY-SIXTH DEFENSE**

11 The proposed class action fails because trying Plaintiffs’ claims on a class-wide basis
12 would violate the Rules Enabling Act, 28 U.S.C. § 2072. “The Rules Enabling Act forbids
13 interpreting Rule 23 to ‘abridge, enlarge or modify any substantive right.’” *Wal-Mart Stores,*
14 *Inc. v. Dukes*, 564 U.S. 338, 367 (2011) (quoting 28 U.S.C. § 2072).

15 Each class member must demonstrate that he or she purchased JUUL directly, and
16 account for the number of JUUL products purchased and the price he or she paid each time.
17 These requirements raise numerous individual issues, including, among other things, when a
18 class member began purchasing JUUL, how a class member obtained JUUL, and whether a
19 class member continues to purchase JUUL directly. Given the variability among class
20 members with respect to these and other issues, there is no way to resolve these claims on a
21 class-wide basis without altering or eliminating JLI’s substantive rights. Doing so would
22 violate the Rules Enabling Act.

23 **TWENTY-SEVENTH DEFENSE**

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

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

15 **TWENTY-EIGHTH DEFENSE**

16 Devin Black is not a suitable representative of the class that he purports to represent
17 because he is not an adequate class representative and his claims are not typical of those of
18 the class. In particular, Mr. Black is a retail customer who, on information and belief,
19 purchased a limited volume of JLI products directly from JLI’s website most recently in
20 2019. The class he purports to represent includes not only retail customers similar to him,
21 but also large commercial customers including wholesalers who negotiate prices directly
22 with JLI in bilateral contracts that include bespoke terms, including terms related to pricing
23 and dispute resolution (including, in some cases, waivers of the right to participate in a class
24 action or agreements to arbitrate claims). The nature of the claims, if any, held by members
25 of the putative class accordingly differ materially from those of Mr. Black, and many of
26 those putative class members are subject to a variety of unique defenses that may not apply to
27 Mr. Black.
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TWENTY-NINTH DEFENSE

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

THIRTIETH DEFENSE

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

DEMAND FOR JUDGMENT

WHEREFORE, JLI denies that Plaintiffs are entitled to the relief enumerated in Plaintiffs’ “Demand for Judgment,” or to any other relief from JLI and, therefore, requests that the Court:

1. Dismiss the action with prejudice;
2. Enter judgment in favor of the Defendants against Plaintiffs with respect to all causes of action in the Complaint;
3. Award JLI their attorneys’ fees and all other costs reasonably incurred in defense of this action; and
4. Award JLI any other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

JLI demands a jury trial on all issues so triable.

1 DATED: March 22, 2024

**CLEARY GOTTlieb STEEN &
HAMILTON LLP**

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