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11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14
 15 DENISE REDFIELD and ALBERT
 16 RICCELLI, Individually and On Behalf of All
 Others Similarly Situated,

17 Plaintiffs,

18 v.

19 ALTRIA GROUP, INC., and JUUL LABS,
 20 INC.,

21 Defendants.

Case No.

**ANTITRUST CLASS ACTION
 COMPLAINT FOR (1) UNLAWFUL
 RESTRAINT OF TRADE, 15 U.S.C. § 1; (2)
 UNLAWFUL MERGER AND
 ACQUISITION, 15 U.S.C. § 7; AND (3)
 INJUNCTIVE RELIEF, 15 U.S.C. § 26**

DEMAND FOR JURY TRIAL

1 Plaintiffs Denise Redfield and Albert Riccelli (collectively “Plaintiffs”) on behalf of
2 themselves and all others similarly situated, bring this Class Action Complaint against Defendants
3 Altria Group, Inc. and Juul Labs, Inc., for violations of Section 1 of the Sherman Act, 15 U.S.C. §
4 1 and Section 7 of the Clayton Act, 15 U.S.C. § 18, as follows:

5 **INTRODUCTION**

6 1. This is an antitrust class action against Defendants Altria Group, Inc. (“Altria”) and Juul Labs, Inc. (“Juul”), concerning anticompetitive agreements between them in which
7 Altria agreed to refrain from competing against Juul in the United States market for closed-system
8 electronic cigarettes (“e-cigarettes”) in return for a substantial ownership interest in Juul. By
9 these agreements, Altria and Juul agreed to divide and allocate the market for e-cigarettes. By this
10 lawsuit, Plaintiffs seek damages and injunctive relief for the collusive and concerted restraint in
11 trade orchestrated by Defendants.
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13 2. E-cigarettes are electronic devices that deliver nicotine to a user by vaporizing a
14 liquid nicotine solution. In a closed system, the liquid is contained in a pre-filled, sealed cartridge
15 or pod. Juul was and is the dominant player in the sale of closed-system e-cigarettes in the United
16 States.

17 3. In light of declining sales in the market for traditional cigarettes and a shift by
18 consumers to alternative nicotine delivery devices, Altria viewed participation in the e-cigarette
19 market as essential to its long-term survival. In 2013, Altria entered the market through its
20 subsidiary Nu Mark LLC. Its flagship product was the MarkTen e-cigarette.

21 4. In 2015, Juul entered the market and quickly captured substantial market share. By
22 2018, Juul had obtained market share of over 70 percent, stunning Altria and other competitors.
23 Juul’s swift rise posed a grave competitive threat to Altria in both the e-cigarette and traditional
24 cigarette markets. To eliminate that threat, Altria began a two-prong strategy of acquiring Juul,
25 while continuing to compete against it. Its efforts to acquire Juul were unsuccessful initially.

26 5. With respect to competition, Altria introduced a new product known as the
27 MarkTen Elite, which closely resembled Juul’s product. With respect to acquisition, Altria
28 entered into negotiations to acquire an ownership interest in Juul. Initially, Juul refused to

1 negotiate. But in the fall of 2018, Juul agreed to negotiate with Altria, under the condition that
2 Altria stop competing with Juul in the market for e-cigarettes. In particular, Juul refused to
3 proceed with negotiations unless and until Altria had withdrawn its products. At first, Altria
4 refused. In October 2018, however, Altria agreed and began to withdraw its e-cigarette products
5 from the market.

6 6. Two months later in December of 2018, Altria announced its intention to cease
7 competing entirely in the relevant market. Approximately two weeks after making this
8 announcement, Altria disclosed that, on October 20, 2018, it had entered into certain agreements
9 with Juul. Among other things, the agreements provided that Altria would acquire certain
10 ownership interests in Juul and other rights, in exchange for over \$12 billion in cash and
11 agreement by Altria to withdraw from and exit the e-cigarette market.

12 7. The agreements between Altria and Juul whereby Altria and Juul agreed to allocate
13 the market for e-cigarettes were anticompetitive. Defendants' conduct has illegally restrained
14 competition in the relevant market in violation of the Sherman and Clayton Acts. As a direct and
15 proximate result of Defendants' anticompetitive conduct, prices for e-cigarettes were raised, fixed
16 and stabilized at supracompetitive levels. Altria's investment in Juul and its exit from the market
17 eliminated its existing e-cigarette product and halted its ongoing innovation efforts toward
18 developing new and improved products. Thus, consumers lost the benefit of current and future
19 head-to-head competition between Altria and Juul, and between Altria and other competitors.

20 JURISDICTION AND VENUE

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

26 9. Jurisdiction and venue are proper in this judicial district pursuant to Section 12 of
27 the Clayton Act (15 U.S.C. § 22), and 28 U.S.C. § 1391(b), (c) and (d), because a substantial part
28 of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the

1 affected interstate trade and commerce was carried out in this District, and one of more of the
2 Defendants reside in this District or is licensed to do business in this District. Each Defendant has
3 transacted business, maintained substantial contacts, and/or committed overt acts in furtherance
4 of the illegal scheme and conspiracy throughout the United States, including in this district. The
5 scheme and conspiracy have been directed at, and have had the intended effect of, causing injury
6 to persons residing in, located in, or doing business throughout the United States, including in this
7 District.

8 **INTRADISTRICT ASSIGNMENT**

9 10. Pursuant to Civil Local Rule 3.2(c) and (e), assignment of this case to the San
10 Francisco Division of the United States District Court for the Northern District of California is
11 proper because the interstate trade and commerce involved and affected by Defendants’
12 violations of the antitrust laws action was substantially conducted with, directed to, or impacted
13 Plaintiffs and members of the Class in counties located within the Division.

14 **PARTIES**

15 11. Plaintiff Denise Redfield is a resident of the State of Pennsylvania. Ms. Redfield
16 purchased Juul products directly from Juul during the relevant period. Plaintiff Redfield was
17 injured in connection with her purchases during the Class Period as a result of Defendants’
18 anticompetitive and unlawful agreements alleged herein.

19 12. Plaintiff Albert Riccelli is a resident of the Commonwealth of Pennsylvania. Mr.
20 Riccelli purchased Juul products directly from Juul during the relevant period. Plaintiff Riccelli
21 was injured in conjunction with his purchases during the Class Period as a result of Defendants’
22 anticompetitive and unlawful agreements alleged herein.

23 13. Defendant Juul Labs, Inc. (“Juul”), is a Delaware corporation with its principal
24 place of business located at 560 20th Street, San Francisco, California. Juul is the leading
25 manufacturer of closed-system e-cigarettes, generating over \$1 billion in sales in 2018. During the
26 Class Period, Juul sold e-cigarettes directly or through its subsidiaries, agents and affiliates to
27 purchasers throughout the United States. Juul is a party to the anticompetitive and unlawful
28 agreements alleged herein.

CLASS ALLEGATIONS

20. Plaintiffs bring this action for damages and injunctive relief on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure, 23(a), (b)(2) and (b)(3), on behalf of a similarly situated Class, which is defined, as follows:

All persons or entities in the United States that purchased e-cigarettes directly from Juul from December 7, 2018 through and until the anticompetitive effects of Defendants’ unlawful conduct cease (the “Class Period”).

This definition specifically excludes the following persons or entities:

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

21. Plaintiffs do not know the exact number of Class members, because such information is in the exclusive control of Defendants. Plaintiffs are informed and believe that, due to the nature of the trade and commerce involved, there are thousands of Class members geographically dispersed throughout the United States and elsewhere, such that joinder of all Class members in the prosecution of this action is impracticable.

22. Plaintiffs’ claims are typical of the claims of their fellow Class members because Plaintiffs directly purchased a JUUL device from Juul, Plaintiffs and all Class members were damaged by the same wrongful conduct of Defendants as alleged herein, and the relief sought herein is common to all members of the Class.

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

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- a. Whether Defendants combined or conspired with one another to fix, raise, maintain or stabilize prices for e-cigarettes sold at any time during the Class Period to purchasers in the United States;
- b. Whether Defendants combined or conspired with one another to divide or allocate the market for e-cigarettes sold at any time during the Class Period to purchasers in the United States;
- c. Whether Defendants had market power with respect to the relevant market;
- d. The definition of the relevant product market;
- e. The definition of the relevant geographic market;
- f. Whether Defendants' conduct caused the prices of e-cigarettes sold at any time during the Class Period to purchasers in the United States to be artificially fixed, raised, maintained or stabilized at supracompetitive prices or price levels;
- g. Whether Plaintiffs and the other members of the Class were injured by Defendants' conduct and, if so, the appropriate Class-wide measure of damages;
- h. Whether Plaintiffs and other members of the Class are entitled to, among other things, injunctive relief, and, if so, the nature and extent of such relief.

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

25. Plaintiffs will fairly and adequately represent the interests of the Class because they directly purchased e-cigarettes from one or more Defendants and they have no conflicts with any other members of the Class. Furthermore, Plaintiffs have retained sophisticated and competent counsel who are experienced in prosecuting antitrust class actions, as well as other complex litigation.

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

1 category.” Monsees saw “a huge opportunity for products that speak directly to those consumers
2 who aren’t perfectly aligned with traditional tobacco products.” With a focus on recreating the
3 “ritual and elegance that smoking once exemplified,” Monsees and Bowen founded Pax to “meet
4 the needs of people who want to enjoy tobacco but don’t self-identify with – or don’t necessarily
5 want to be associated with – cigarettes.”

6 34. In 2015, Pax launched the Juul e-cigarette, a closed-system in a discreet “pod-
7 based” format. The device deployed a chemical breakthrough in the speed of its nicotine delivery.
8 Since the 1960s, tobacco companies have manufactured cigarettes that freebase nicotine using
9 ammonia, which liberates the nicotine so that it can be quickly absorbed into the lungs and the
10 brain. As one addiction expert has said, “[t]he modern cigarette does to nicotine what crack does
11 to cocaine.” Pax discovered that by adding benzoic acid to nicotine salts, which occur naturally in
12 tobacco, they could mimic a cigarette’s rapid nicotine delivery.

13 35. JUUL, the product, was introduced in 2015. JUUL uses a proprietary blend of
14 nicotine developed by Juul. According to Bowen, because it contains ten times as much nicotine
15 as other e-cigarettes, JUUL packs a “bigger punch” as compared to other, similar products in the
16 market. Bowen also stated that the idea behind the blend was to eliminate the need for smokers to
17 go back to cigarettes after an unsatisfying experience with vaping.

18 36. Each JUUL pod is a plastic enclosure containing 0.7 milliliters of Juul’s patented
19 nicotine liquid and a coil heater. When a sensor in the JUUL device detects the movement of air
20 caused by suction on the JUUL pod, the battery in the JUUL device activates the heating element,
21 which in turn converts the nicotine solution in the JUUL pod into a vapor consisting principally of
22 nicotine, benzoic acid, glycerin, and propylene glycol. A light embedded in the JUUL device
23 serves as a battery level indicator and lights up in a “party mode” display of a rainbow of colors
24 when the device is waved around.

25 37. The physical design of the JUUL device (including its circuit board) and JUUL
26 pod determines the amount of aerosolized nicotine the JUUL device emits. By altering the
27 temperature, maximum puff duration, or airflow, among other things, Juul can finely tune the
28 amount of nicotine vapor the JUUL device delivers.

1 38. Juul's product quickly gained traction among consumers, rapidly surpassing Altria
2 and securing the largest share of the closed-system e-cigarette market.

3 39. Since its launch in 2015, Juul has become the dominant e-cigarette manufacturer in
4 the United States. Its revenues grew by 700% in 2017. According to a recent Wells Fargo report,
5 Juul controlled 75% of the U.S. market for e-cigarettes by the end of 2018.

6 40. In July 2017, Juul labs was spun out of PAX Labs as an independent company, with
7 Tyler Goldman, former CEO of PAX Labs, named as CEO of Juul. In December 2017, Goldman
8 was replaced by Kevin Burns. Monsees worked as Chief Product Officer and board member at
9 Juul. Bowen worked as Chief Technology Officer and board member at Juul.

10 **Defendants Entered into Illegal and Anticompetitive Agreements to Divide and**
11 **Allocate Markets and not to Compete**

12 41. Despite becoming the dominant market leader, Juul was concerned that its
13 competitor, Altria, would use its company's success, rich history, and experience in the tobacco
14 business and abundant human and capital resources to compete with respect to product
15 innovation and price.

16 42. Consistent with these concerns, Altria began a strategy of attempting to acquire
17 Juul while simultaneously competing aggressively against it. Initially, Juul rebuffed these efforts
18 and sought to compete with respect to its e-cigarettes, particularly with respect to price.

19 43. In the Summer of 2018, Juul sought to reach illegal and anticompetitive
20 agreements to divide and allocate the market for e-cigarettes and not to compete.

21 44. Among other things, Juul sought to obtain Altria's agreement, in exchange for
22 valuable consideration, to control or allocate the market for e-cigarettes. In particular, Juul sought
23 Altria's agreement that Altria withdraw its products from the e-cigarette market.

24 45. On July 30, 2018, in advance of a meeting between Juul's lead negotiators, Nick
25 Pritzker, a Juul Board member, emailed Howard Willard, Altria's CEO, an opening term sheet for
26 discussions. The term sheet included a non-compete term which provided that Altria withdraw
27 from the e-cigarette market.

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1 46. On August 1, 2018, the negotiators met at the Park Hyatt Hotel in Washington, DC
2 to discuss terms. The attendees of this meeting consisted of the lead negotiators for each side:
3 Nick Pritzker and Riaz Valani, two members of Juul’s Board of Directors, Kevin Burns, Juul’s
4 then Chief Executive Officer, Howard Willard, Altria’s Chief Executive Officer, and Billy
5 Gifford, Altria’s Chief Financial Officer. The participants discussed various business terms,
6 including anticompetitive agreements not to compete. After this meeting, Altria’s top executives
7 understood that ceasing to compete in the e-cigarette business would be a condition for reaching a
8 deal with Juul.

9 47. When Altria sought to modify Juul’s proposed non-compete term, Juul responded
10 negatively and reiterated its demands. On August 9, 2018, Billy Gifford sent over a markup of the
11 term sheet to Nick Pritzker, Riaz Valani, and Kevin Burns.

12 48. On October 5, 2018, Altria’s Howard Willard sent Nick Pritzker, Riaz Valani, and
13 Kevin Burns a letter assuring them that Altria would accede to the non-compete terms and that
14 Altria was prepare to agree to exit the market. The concessions contained in this letter helped to
15 restart the stalled negotiations. Soon after, Altria began to take key steps that would facilitate a
16 possible wind down of the Nu Mark business and exit from competition in the e-cigarette market.

17 49. On October 25, 2018, Altria announced that it was temporarily halting its
18 MarkTen Elite business, ostensibly out of concern that pod-based systems and nontraditional
19 flavors could be contributing to youth usage. Pursuant to such agreement, in October 2018, Altria
20 began removing its e-cigarettes from the market.

21 50. A few days later, Altria and Juul, which was the largest seller of a pod-based system
22 using non-traditional flavors, agreed to basic deal terms, which included Altria not competing in
23 the e-cigarette market.

24 51. On December 7, 2018, after five years of continuous participation in the e-cigarette
25 market, Altria announced its decision to wind down its remaining e-cigarette business, including
26 its MarkTen cig-a-like.

27 52. On December 9, 2018, Murray Garrick, Altria’s General Counsel, emailed Jerry
28 Masoudi, Chief Legal Officer at Juul, to discuss the deal.

1 53. On December 20, 2018, less than two weeks after Altria announced its decision to
2 discontinue its e-cigarette operations, Juul and Altria subsequently executed certain agreements
3 providing that Altria pay 12.8 billion in cash in exchange for newly issued Juul stock amounting to
4 a 35% ownership interest in Juul.

5 54. On December 20, 2018, Juul and Altria executed a series of agreements. Pursuant
6 to the Purchase Agreement, Altria purchased for \$12.8 billion in cash, a 35% non-voting stake in
7 Juul. The agreement was not submitted to the Department of Justice or the Federal Trade
8 Commission on the grounds that the Hart-Scott-Rodino Act did not require notification. The
9 agreement valued Juul at roughly \$38 billion, more than double Juul's reported value less than
10 seven months earlier, demonstrating Juul's competitive success.

11 55. By its terms, the Purchase Agreement incorporates various ancillary agreements,
12 including: (a) a Relationship Agreement; (b) a Services Agreement; (c) a Voting Agreement; and
13 (d) an Intellectual Property License Agreement.

14 56. The Relationship Agreement provides, among other things, that Altria and Juul
15 would not compete with one another. In particular, the Relationship Agreement contains a "Non-
16 Compete" provision, which provides, in pertinent part that:

17 [Altria] shall not . . . directly or indirectly (1) own, manage, operate, control, engage
18 in or assist other in engaging in, the e-Vapor business; (2) take actions with the
19 purpose of preparing to engage in the e-Vapor business, including through engaging
20 in or sponsoring research and development activities; or (3) Beneficially Own any
21 equity interest in any Person, other than an aggregate of not more than four and
22 nine-tenths percent (4.9%) of the equity interests of any Person which is publicly
23 listed on a national stock exchange, that engages directly or indirectly in the e-Vapor
24 Business (other than (x) as a result of [Altria's] Beneficial Ownership of Shares or
25 (y) engagement in, or sponsorship of, research and development activities not
26 directed toward the e-Vapor Business and not undertaken with the purpose of
27 developing or commercializing technology or products in the e-Vapor Business) . .
28 . . . Notwithstanding the foregoing, (x) the [Altria] and its Subsidiaries and
29 controlled Affiliates may engage in the business relating to (I) its Green Smoke,
30 MarkTen (or Solaris, which is the non-U.S. equivalent brand of MarkTen) and
31 MarkTen Elite brands, in each case, as such business is presently conducted,
32 subject to Section 4.1 of the Purchase Agreement, and (II) for a period of sixty (60)
33 days commencing on the date of this Agreement, certain research and development
34 activities pursuant to existing agreements with third parties that are in the process
35 of being discontinued

36 In so doing, Altria agreed to withdraw from the e-cigarette market, allocating it exclusively to Juul.

1 57. The Services Agreement provided, among other things, that Altria would provide
2 certain services to Juul. In particular, Altria agreed to lease convenience store shelf space to Juul.
3 Altria also agreed to provide certain regulatory consulting, and distribution support. Altria also
4 agreed to provide direct marketing support and sales services.

5 58. Under the terms of the Relationship Agreement, the Non-Compete went into
6 effect early in 2019. The Services Agreement had an initial six-year term, subject to early
7 termination by mutual consent or in case of material breach, bankruptcy, or insolvency. If the
8 Services Agreement were to expire, Altria could discontinue the Non-Compete agreement,
9 described above, at which point it would lose its right to appoint members to Juul’s Board of
10 Directors and its pre-emptive right to maintain its 35% stake in the company, but would regain its
11 ability to compete in the market against Juul. As described below, the Services Agreement was
12 subsequently amended.

13 59. Under the Intellectual Property License Agreement, Altria granted Juul a non-
14 exclusive irrevocable license to Altria’s e-cigarette intellectual property.

15 60. The Voting Agreement provided, among other things that Altria would obtain
16 seats on Juul’s Board of Directors following conversion of its shares.

17 61. On February 14, 2019, Respondents filed for Hart-Scott-Rodino clearance to
18 convert Altria’s interest into voting securities (the “Antitrust Conversion”) and to grant Altria
19 permission to appoint three (of nine) members of Juul’s Board of Directors, as provided by the
20 Voting Agreement.

21 62. On January 30, 2020, Juul and Altria announced amendments to their agreement,
22 including an Amended Purchase Agreement, an Amended Relationship Agreement, an Amended
23 Services Agreement, and a Revised Voting Agreement.

24 63. Under the Revised Voting Agreement, after the Antitrust Conversion, Altria will
25 instead have the right to: (i) appoint two (of nine) Juul directors; (ii) nominate one (of three) Juul
26 independent directors; (iii) appoint one (of four) members of a Nominating Committee (who
27 would have the right to veto independent director nominations); (iv) appoint two (of five)
28 members and the chair of a new Litigation Oversight Committee (which would have responsibility

1 for managing litigation involving both Altria and Juul, i.e., “Joint Litigation Matters”); and (v)
2 appoint one (of three) members of a Litigation Subcommittee (which would have authority, by
3 unanimous vote, to change Juul’s senior outside counsel responsible for Joint Litigation Matters).
4 The Revised Voting Agreement also granted Juul’s CEO: (i) a board seat; (ii) a seat on the
5 Litigation Oversight Committee; and (iii) a seat on the Litigation Subcommittee.

6 64. The Amended Relationship Agreement gives Altria the option to be released from
7 the Non-Compete if Juul is prohibited by federal law from selling vaping products in the United
8 States for at least a year or if Altria’s internal valuation of the carrying value of its investment falls
9 below 10% of its initial value of \$12.8 billion.

10 65. The Amended Services Agreement eliminates all services except for regulator
11 support services. The amendment was effective at signing except with regard to Altria’s provision
12 of retail shelf space to Juul, which service was set to expire after March 31, 2020. The transaction
13 eliminated a threat to Juul’s market dominance and required Altria to dedicate its vast resources,
14 including distribution and shelf-space, to ensure Juul’s continued market dominance.

15 66. After executing the transaction, Altria appointed its Chief Growth Officer as its
16 observer on the Juul Board of Directors. Following the executive’s departure from Altria to
17 become Chief Executive Officer of Juul, Altria appointed its Chief Financial Officer and Vice
18 Chairman to fill the observer position.

19 67. The Transaction’s anticompetitive effects were particularly clear in the market for
20 closed-system e-cigarettes given high barriers to entry, such as U.S. Food & Drug Administration
21 (“FDA”) approval. Repositioning new products in the market was also unavailing to counter the
22 anticompetitive impact of the Transaction. Defendants cannot show the transaction restricting
23 competition resulted in cognizable efficiencies sufficient to outweigh the competitive harm caused
24 by Altria’s agreement to exit the relevant market. Nor can Defendants point to pro-competitive
25 benefits that could not have been achieved through less restrictive means. In fact, much of the
26 Defendants’ collaboration was restructured in January 2020 to eliminate its marketing aspects,
27 further reducing the scope of theoretical benefits from their agreements.

28

1 74. E-cigarettes are battery-powered devices that vaporize a liquid solution containing
2 nicotine (an “e-liquid”). There are two broad categories of e-cigarettes; closed-system and open-
3 tank. Closed-system e-cigarettes consist of a device housing a battery and a heating mechanism,
4 and sealed cartridges or pods that are pre-filled with e-liquid. Examples of closed-system devices
5 include cigalikes, which are similar to traditional cigarettes in size and shape, and pod-based
6 products, such as Juul or MarkTen Elite, which look like USB drives. Subsequent to an FDA
7 flavor ban that went into effect February 2020, closed-system pods and cartridges are available
8 only in tobacco and menthol flavors.

9 75. By contrast, open-tank e-cigarettes incorporate refillable tanks that customers
10 manually fill with e-liquid. Because customers can select from (and mix together) a wide
11 assortment of e-liquids, open-tank e-cigarettes allow a more customizable experience whereby
12 users can experiment with different flavors and nicotine strengths. In addition, unlike with closed
13 systems, users can customize the individual components of an open-tank system, such as the
14 battery, heating coil, and atomizer (which houses the heating coil).

15 76. Closed-system e-cigarettes are largely sold in different channels than open-tank
16 products. Most closed-system e-cigarettes are sold through a multi-outlet channel, which consists
17 primarily of convenience stores. Convenience stores offer a limited range of e-cigarette products,
18 focusing on the highest-volume brands. In contrast, open-tank e-cigarettes are sold almost
19 exclusively at dedicated vape shops, retail outlets that typically carry an extensive selection of e-
20 liquids and parts for open-tank products and offer a high level of customer service.

21 77. Defendants considered their respective Juul and MarkTen product lines to be
22 direct competitors with each other and with other closed-system e-cigarette products and set
23 prices based on competition with each other and with other closed-system products. Defendants
24 further acknowledged that their closed-system e-cigarette products did not compete as closely
25 with open-tank products.

26 78. There are no reasonable substitutes for closed-system e-cigarettes. Closed-system
27 e-cigarettes appeal to consumers because they are discreet due to their small size, and convenient
28 due to their self-contained, ready-to-use format. Open-tank e-cigarettes are not an adequate

1 substitute for closed-system e-cigarettes because they are larger, more complex, and require more
2 manual operation by the user. Open-tank e-cigarettes generally appeal to a different user type, one
3 that appreciates their complexity and customizable nature.

4 79. A hypothetical monopolist in the closed-system e-cigarette market would find it
5 profitable to impose at least a small but significant and non-transitory increase in price.

6 80. The relevant geographic market is no broader than the United States. Because of
7 the FDA’s requirements (described below), foreign firms cannot import e-cigarettes into the
8 United States without prior FDA approval.

9 81. According to Nielson data, retail sales of closed-system e-cigarettes in the United
10 States in 2018 constituted approximately \$2.8 billion.

11 **The E-Cigarette Market Has High Barriers to Entry**

12 82. Under the FDA regulatory framework, a manufacturer of a new tobacco product,
13 including an e-cigarette, must submit to the FDA a Premarket Tobacco Product Application
14 (“PMTA”) and receive the FDA’s approval before marketing that product. An e-cigarette that
15 was on the market prior to August 8, 2016 may remain on the market, but the manufacturer of that
16 product must file a PMTA by May 12, 2020 to continue marketing it and must remove the
17 product in the event the PMTA is denied. An e-cigarette that was not on the market prior to
18 August 8, 2016 cannot be marketed until it receives PMTA approval. At the time Defendants
19 executed the Transaction, the deadline for an in-market applicant to file its PMTA was August 8,
20 2022.

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

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

27 85. Throughout the Class Period, Juul dominated the relevant market and maintained
28 power to control prices and exclude competition in that market.

1 c. Eliminating current and future competition between Juul and Altria for shelf
2 space at retailers through rebates and other incentives.

3 94. Altria's agreement to exit the relevant market eliminated one of Juul's most
4 dangerous rivals. As a large, well-established, and well-funded company with longstanding
5 relationships and significant shelf space with retailers nationwide, Altria had the resources and
6 infrastructure to drive sales and compete aggressively.

7 95. Altria leveraged its ownership of leading brands across multiple tobacco categories
8 in order to secure substantial and favorable shelf space at retailers throughout the United States.
9 In 2018, for example, to Juul's alarm, Altria launched a major campaign to secure shelf space for
10 its innovative tobacco products (including e-cigarettes), offering retailers product discounts,
11 slotting fees, and fixture payments. After the Transaction, instead of competing for shelf space,
12 Altria leased its shelf space to Juul, effectively replacing its own MarkTen products with Juul's
13 product.

14 96. Before the shut-down of Nu Mark, Juul and Altria relied on price promotions to
15 drive sales of their respective e-cigarette products. In addition, each monitored the other's pricing
16 in setting its own strategy. Altria's decision to pull its MarkTen products brought this price
17 competition to an end.

18 97. In addition to price competition, Juul and Altria competed through product
19 innovation, including device features and e-liquid formulations. For example, it was Juul's success
20 that prompted Altria to acquire and further develop various pod-based e-cigarettes (including
21 Elite), and to commit significant resources toward developing e-liquid formulations with nicotine
22 slats and higher nicotine concentrations.

23 98. Based upon documents submitted to the Federal Trade Commission from
24 Defendants, it appears that before committing to the transaction, Altria intended to compete over
25 the long term. Altria's documents and executive statements repeatedly evince their recognition
26 that e-cigarettes were the future of the tobacco industry and their absolute commitment to
27 participate in that future. For example:

28

1 a. Mr. Martin Barrington, Altria’s former CEO, stated to investors: “So we’ll be
2 clear: We aspire to be the U.S. leader in authorized, non-combustible,
3 reduced-risk products.”¹

4 b. Mr. Howard Willard, Altria’s current CEO, in an interview with the Wall
5 Street Journal, stated: “At a time when e-vapor is going to grow rapidly and
6 likely cannibalize the consumers we have in our core business, if you don’t
7 invest in the new areas you potentially put your ability to deliver that financial
8 result at risk.”²

9 99. Instead of continuing to pursue its ambitions in the relevant market through
10 competition, including aggressive price promotions, product development, and incentives for
11 shelf space, Altria sought a short cut to market leadership by investing in its competitor. Altria
12 agreed to abandon its long-standing and significant efforts at current and future competition in
13 exchange for a significant share of Juul’s profits resulting from a significantly less competitive
14 marketplace.

15 **Lack of Procompetitive Benefits**

16 100. Defendants cannot demonstrate cognizable efficiencies that would be sufficient to
17 rebut the presumption that the conduct alleged substantially lessened competition in the relevant
18 market. Defendants cannot demonstrate pro-competitive benefits of the conduct alleged that
19 could not have been achieved through alternative means that would have been less restrictive on
20 competition than the conduct alleged.

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

24
25 ¹ Martin Barrington, CEO, Altria Group, Inc., Address at the Consumer Analyst Group of New
26 York Conference (Feb. 21, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000076418017000131/exhibit991-2017investorday.htm>.

27 ² Jennifer Maloney and Dana Mattioli, *Why Marlboro Maker Bet on Juul, the Vaping Upstart*
28 *Aiming to Kill Cigarettes*, Wall St. J. (Mar. 23, 2019), <https://www.wsj.com/articles/why-marlboro-maker-bet-on-juul-the-vaping-upstart-aiming-to-kill-cigarettes-11553313678>.

1 102. The entry of new competitors into the relevant market is unlikely because the
2 regulatory approval process is exceptionally time-consuming and expensive. Defendants
3 themselves estimate that preparing a PMTA for an e-cigarette would require substantial time and
4 investment.

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

9 104. Existing closed-system e-cigarette competitors cannot effectively replace the lost
10 competition because: (i) they lack Altria’s brand strength to secure favorable shelf space at
11 retailers; (ii) they lack the substantial resources Altria had at its disposal to commit to e-cigarette
12 research and development as well as to pursuing regulatory approval; and/or (iii) the FDA’s
13 enforcement of restrictions on e-liquid flavors has negatively impacted the competitive presence
14 of closed-system competitors other than Juul, who had voluntarily discontinued its flavors earlier.

15 105. Open-tank e-cigarette manufacturers are not likely to replace the lost competition,
16 in part because the impending PMTA deadline will likely cause many of them to shut down, and
17 because they are largely sold in the separate “vape shop” sales channel and would not likely be
18 able to expand rapidly into convenience stores, where closed-system e-cigarettes are typically
19 sold.

20 106. Defendants cannot demonstrate cognizable efficiencies that would be sufficient to
21 rebut the presumption that the transaction substantially lessened competition in the relevant
22 market. Defendants cannot demonstrate pro-competitive benefits of the conduct alleged that
23 could not have been achieved through alternative, less restrictive means.

24 107. Defendants’ unlawful conduct eliminated competition in the relevant market and
25 deprived Plaintiffs and the Class of the benefits of free and unrestrained competition that the
26 antitrust laws were designed to ensure.

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1 from the market and halted its innovation on future products, substantially lessened competition
2 in the market for closed system e-cigarettes in the United States.

3 119. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
4 class members were injured in their business or property.

5 **COUNT THREE**

6 **DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATIONS OF SECTION 1 OF**
7 **THE SHERMAN ACT AND SECTION 7 OF THE CLAYTON ACT, 15 U.S.C. § 26**

8 **(Against all Defendants)**

9 120. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

10 121. Plaintiffs seeks declaratory and injunctive relief under the federal antitrust laws.

11 122. Plaintiffs' allegations described herein constitute violations of Section 1 of the
12 Sherman Act.

13 123. Defendants effectuated a scheme to restrain trade and substantially lessen
14 competition in the U.S. market for closed system e-cigarettes.

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

17 125. As a direct and proximate result of Defendants' anticompetitive scheme, as alleged
18 herein, Plaintiffs and the Class were harmed as aforesaid.

19 126. The goal, purpose and/or effect of the scheme was to prevent and/or delay
20 competition to continue charging supracompetitive prices for e-cigarettes without a substantial
21 loss of sales.

22 127. The anticompetitive agreements alleged herein should be declared invalid and
23 unenforceable.

24 128. Plaintiffs and the Class have been injured in their business or property by reason of
25 Defendants' antitrust violations alleged in this Count. Their injury consists of paying higher
26 prices for e-cigarettes than they would have paid in the absence of those violations. These injuries
27 will continue unless halted.

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- a. A judicial determination declaring the rights of Plaintiffs and the Class, and the corresponding responsibilities of Defendants;
- b. Issuance of a permanent injunction against Defendants and their parents, subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf from continuing and maintaining the conspiracy or agreements alleged herein; and
- c. Divestiture of Altria's equity stake in Juul and rescission of Altria's purchase of that stake.

7. Defendants are to be jointly and severally responsible financially for the costs and expenses of a Court-approved notice program through post and media designed to give immediate notification to the Class;

8. Plaintiffs and the Class recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

9. Plaintiffs and the Class receive such other or further relief as may be just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all claims asserted in this Complaint so triable.

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Dated: May 14, 2020

JOSEPH SAVERI LAW FIRM, INC.

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