

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

DOCKET NO. 9393

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION TO
ENFORCE THE DISCOVERY CUTOFF AND EXCLUDE THE DECLARATION OF

{ [REDACTED] }

Complaint Counsel respectfully asks the Court to deny Respondents' Altria, Inc. ("Altria") and JUUL Labs, Inc.'s (JLI") Motion to Enforce Discovery Cutoff and Exclude the Declaration of { [REDACTED] }. { [REDACTED] } – an executive at { [REDACTED] }, an e-cigarette competitor in the United States – has reliable information that is highly relevant for this proceeding and is willing to sit for a deposition. However, he now resides in Switzerland, and Swiss law prohibits even a remote deposition on Swiss soil without prior approval from the Swiss government.¹ { [REDACTED] } is willing to travel to another location for his deposition, but cannot currently travel due to temporary COVID-19 travel restrictions.

¹ See https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en#book_2/tit_13/lvl_1/lvl_d5241e797; Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, <https://assets.hcch.net/docs/dfed98c0-6749-42d2-a9be-3d41597734f1.pdf>. Both the United States and Switzerland are contracting states of the Hague Evidence Convention. See <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82>; <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Switzerland.html>.

Complaint Counsel and { [REDACTED] } counsel have been working diligently to reschedule the deposition as soon as it is legal and safe for { [REDACTED] } to travel or after prior approval from Swiss authorities is obtained, allowing { [REDACTED] } to be deposed remotely from Switzerland.

After Respondents filed this Motion, the Commission granted in part Respondents' request to postpone these proceedings. This 7-week delay gives more time for { [REDACTED] } to safely travel and/or obtain approval from the Swiss authorities, which means that a deposition could conclude without prejudice to Respondents. Indeed, on March 3, 2021, Respondents made a Supplemental Filing asking the Court for a different Order and agreeing to take a deposition through March 26, 2021. Supplemental memorandums that change the requested relief are not allowed under the Part 3 Rules or this Court's Scheduling Order. Notwithstanding Respondents' improper filing (which is actually a new motion), the 7-week delay in the hearing confirms that this issue is not ripe. There is still time for the deposition to go forward on or near the timeframe suggested by Respondents and therefore there may never be a dispute for this Court to resolve.

Should Complaint Counsel seek to include { [REDACTED] } declaration in its exhibit list (which has not yet been drafted) and should Respondents believe that they have been denied a fair opportunity to depose him, there may be a ripe dispute for this Court to resolve about its admissibility. The proper motion to bring that dispute before this Court would be a motion *in limine*. But there is no exhibit list, the witness is willing to be deposed, and Respondents are willing to depose him. There is no dispute for the Court to resolve today, and Respondents' motion should be denied.

FACTUAL BACKGROUND

Complaint Counsel produced { [REDACTED] } declaration to Respondents' Counsel on May 8, 2020, *nine months* before the close of discovery. Exhibits A, B. Respondents waited until January 11, 2021 – over five months after discovery commenced and just weeks before discovery was set to conclude – to issue a *Subpoena Ad Testificandum* to { [REDACTED] }. Exhibits A, E. A few days before the deposition could take place, however, { [REDACTED] } counsel notified the parties that the deposition would have to be rescheduled because the witness resides in Switzerland and could not travel due to COVID-19 travel restrictions. Exhibits A, F. A more detailed timeline of events is found in Exhibit A (declaration of Michael Lovinger).

ARGUMENT

In their revised motion, Respondents' agreed to take { [REDACTED] } deposition through March 26, 2021 despite their original Motion seeking an order from this Court to prevent that deposition in its entirety. The witness is willing to be deposed and Complaint Counsel and the witness have all agreed to proceed as quickly as possible with the deposition. Thus, there is no dispute for the Court to resolve today. That said, even the original motion was unpersuasive. Respondents have had { [REDACTED] } declaration for almost a year, and will not be prejudiced by a single deposition taken out of time. Respondents' premature motion is merely an attempt to preclude a relevant and reliable witness from testifying because of circumstances outside of anyone's control due to the global COVID-19 pandemic.

A. The Hearing Delay Requested by Respondents and Granted by the Commission Makes this Motion Premature

In their Motion, Respondents cited prejudice from having to serve exhibit lists and file motions *in limine* in March. However, following the Commission's Order Granting

Continuance, the Court issued a Second Revised Scheduling Order that moved the deadline for Complaint Counsel's exhibit list from March 1 to April 12; Respondents Counsel's exhibit lists from March 11 to April 22; objections to exhibit lists from March 26 to May 5; and motions *in limine* from March 25 to May 10. Motions *in limine* are the proper avenue to attempt to exclude evidence. Pursuant to the Second Revised Scheduling Order issued by the Court, motions *in limine* will be due over two months from now. Respondents cannot claim any prejudice in the interim since they preserved their rights to exclude the declaration at the appropriate time per the Second Revised Scheduling Order.

B. {REDACTED} Is Willing to Be Deposed, and Plans to Testify As Soon As It Is Legal and Safe to Do So

{REDACTED} is willing to be deposed. Exhibit K. COVID-19 has made this difficult, but he is willing to travel to another country, or to follow the Swiss process to take a voluntary deposition in Switzerland. Exhibit K. In fact, {REDACTED} wanted the deposition to proceed as originally scheduled, but travel restrictions precipitated by the rapid worsening of the COVID-19 pandemic prevented {REDACTED} from traveling to testify in a deposition. Exhibit K. Counsel for {REDACTED} represented that "{REDACTED} remains willing to sit for a deposition" whether in Switzerland or abroad. Exhibit K.

Complaint Counsel have been working with {REDACTED} counsel to reschedule the deposition as soon as possible. Exhibits A, J, K. Complaint Counsel is dual-tracking two options to complete a deposition. One option is for {REDACTED} to travel to the U.S. or a third country to provide his testimony. Exhibit K. If not for the COVID-19 pandemic, and in particular the rapid deterioration of the global situation over the winter, {REDACTED} would have already traveled for the deposition and this issue would never have been presented to

the Court. Complaint Counsel is also concurrently working to seek prior approval from Swiss authorities to take a voluntary deposition of {REDACTED} in Switzerland. Exhibits J, K.

C. {REDACTED} Declaration Is Relevant, Reliable, and Consistent with Other E-Cigarette Competitors

On March 29, 2020, {REDACTED} submitted a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746, and swore that it was true and correct to the best of his knowledge. Exhibit B. {REDACTED} declaration has important information that is relevant to the disputed issues before the Court. Among other things, {REDACTED} declaration provides reliable information on the following:

- {REDACTED}
{REDACTED} Exhibit B ¶ 33.
 - {REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
{REDACTED}
- {REDACTED}
{REDACTED} Exhibit B ¶ 34.

- { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

- { [REDACTED]
[REDACTED] } Exhibit B ¶ 38.

- { [REDACTED]
[REDACTED]
[REDACTED] }

- { [REDACTED] } Exhibit B ¶¶ 12-14, 21-22.

- { [REDACTED]
[REDACTED] }
- { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

- { [REDACTED]
[REDACTED] } Exhibit B ¶ 18.

- { [REDACTED]
[REDACTED]
[REDACTED] }

[REDACTED]
 [REDACTED]
 [REDACTED] }

- [REDACTED]
 [REDACTED] }. Exhibit B ¶¶ 23-27.
- [REDACTED]
 [REDACTED]
 [REDACTED] }. Exhibit B ¶¶ 28-32.

Moreover, [REDACTED] declaration is consistent with the declarations that all other U.S. e-cigarette competitors submitted in this matter, and which Respondents did not challenge. This supports the reliability of [REDACTED] declaration, and excluding [REDACTED] [REDACTED] } would leave a gap in the record.

D. The Commission and Other Courts Have Been Flexible With Respect to Disruptions Caused by the COVID-19 Pandemic

The Commission has shown flexibility in scheduling, and has made safety a priority with respect to the COVID-19 pandemic. On three separate occasions, the Commission issued orders rescheduling this matter in light of the public health emergency.² On January 15, 2021, Respondents’ Counsel moved for a 90-day continuance of the evidentiary hearing, and cited a July 6, 2020 Order where the Commission “determined that it is in the public interest to mitigate

² See Order Regarding Scheduling In Light of Public Health Emergency, Docket No. 9393, April 3, 2020; Second Order Regarding Scheduling In Light of Public Health Emergency, Docket No. 9393, April 13, 2020; Third Order Regarding Scheduling In Light of Public Health Emergency, Docket No. 9393, June 3, 2020.

the transmission and impact of COVID-19.”³ Complaint Counsel believes that the same principle to mitigate the transmission and impact of COVID-19 should apply with respect to the scheduling of { [REDACTED] } deposition and admission of his declaration.

Other courts have also concluded that the COVID-19 pandemic presents “good cause” that warrants extensions of time to complete discovery. *See, e.g., Son Gon Kang v. Credit Bureau Connection, Inc.*, No. 1:18-cv-01359-AWI-SKO, 2020 U.S. Dist. LEXIS 61229, 2020 WL 1689708, at *8 (E.D. Cal. Apr. 7, 2020); *Wilkins v. ValueHealth, LLC*, No. 19-1193-EFM-KGG, 2020 U.S. Dist. LEXIS 84913, 2020 WL 2496001, at *2 (D. Kan. May 14, 2020); *Macias v. KDF Foxdale, L.P.*, No. 5:18-cv-07712-EJD, 2020 U.S. Dist. LEXIS 77392, 2020 WL 2097607, at *2 (N.D. Cal. May 1, 2020); *Hope Med. Enters. v. Fagron Compounding Serv., LLC*, 2020 U.S. Dist. LEXIS 230904, *4-5 (C.D. Cal. May 22, 2020).

E. Respondents Arguments Are Not Persuasive

Respondents cite just one case⁴ – that is easily distinguishable – in their attempt to prevent the Court from reviewing relevant and reliable information. In their original Motion, Respondents argue that they “will be denied a fair hearing if { [REDACTED] } declaration is admitted into the record.” But the declarations at issue in *Soto* were from plaintiffs seeking to represent a class who had been ordered by the court to appear for depositions on three separate occasions, but refused to do so. *See Soto* at *40-41 (E.D. Cal., 2013). In this instance, { [REDACTED] } is absolutely willing to sit for a deposition, but has been legally prohibited

³ Commission Order on Public Access to the Evidentiary Hearing in Light of the Public Health Emergency, Docket No. 9393, July 6, 2020

⁴ *Soto v. Castlerock Farming & Transp., Inc.*, No. 1:09-cv-00701-AWI-JLT, 2013 U.S. Dist. LEXIS 179899, at *43 (E.D. Cal. December 23, 2013).

from doing so under Swiss law, and as a non-U.S. citizen, cannot come to the U.S. or safely travel elsewhere due to temporary COVID-19 travel restrictions.⁵ Exhibits J, K.

Respondents have agreed to take other depositions after the close of discovery, including from representatives of {REDACTED}. Exhibits L, M, N. Notably, Respondents agreed to take the deposition of {REDACTED} witness in mid-March even at a time when the parties expected the hearing in this matter to begin less than 5 weeks later, on April 13, 2021. Exhibits L, M. In their Supplemental Filing, Respondents have now agreed to take {REDACTED} deposition through March 26, 2021, but that date is unreasonable and arbitrary given that the hearing is now slated to begin about 10 weeks after Respondents' proposed deposition deadline.

F. Respondents Will Not Be Prejudiced if the Court Admits {REDACTED} Declaration

Respondents received {REDACTED} declaration on May 8, 2020 – 9 months before the end of discovery. Exhibits A, C. Respondents cannot claim that they were blindsided by a last minute declaration. Indeed, on September 16, 2020, Respondents served an extraordinarily detailed 28-specification *Subpoena Duces Tecum* to {REDACTED} that allowed Respondents to verify and assess each claim made in {REDACTED} declaration. Exhibit D. {REDACTED} complied with the *Subpoena Duces Tecum* and produced over 32,000 responsive documents.

⁵ See U.S. Centers for Disease Control, *Travelers Prohibited from Entry to the United States*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/from-other-countries.html> (prohibiting travel into the United States by non-citizens from a many countries, including Switzerland) (last updated February 19, 2021); The White House, *Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease*, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/> (January 25, 2021).

CONCLUSION

For the foregoing reasons, Respondents' motion should be denied.

Dated: March 5, 2021

Respectfully Submitted,

s/ Michael Lovinger
Michael Lovinger
Jennifer Milici
Dominic E. Vote
Peggy Bayer Femenella
James Abell
Erik Herron
Joonsuk Lee
Meredith Levert
Kristian Rogers
David Morris
Michael Blevins
Frances Anne Johnson
Stephen Rodger

Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Telephone: (202) 326-2539
Email: mlovinger@ftc.gov

Counsel Supporting the Complaint

INDEX OF EXHIBITS

Exhibit	Date	Description
A	March 4, 2021	Declaration from Michael Lovinger, Complaint Counsel
B	March 29, 2020	Declaration from { [REDACTED] }
C	May 8, 2020	Production Letter from Erik Herron, Complaint Counsel
D	Sept. 14, 2020	<i>Subpoena Duces Tecum</i> Issued by Respondents' Counsel to { [REDACTED] }
E	January 11, 2021	<i>Subpoena Ad Testificandum</i> Issued by Respondents' Counsel to { [REDACTED] } to testify on January 28, 2021
F	January 25, 2021	Email from David Kully, counsel for { [REDACTED] }
G	January 26, 2021	Letter from David Gelfand, Respondents' Counsel
H	January 27, 2021	Email from Michael Lovinger
I	January 29, 2021	Email from David Gelfand
J	February 8, 2021	Emails from David Kully, David Gelfand, and Michael Lovinger
K	February 26, 2021	Declaration from David Kully
L	February 18, 2021	Emails from { [REDACTED] }; J.J. Snidow, Respondents Counsel; and Michael Lovinger
M	February 22, 2021	<i>Subpoena Ad Testificandum</i> Issued by Respondents' Counsel to { [REDACTED] } to testify on March 10, 2021
N	January 29, 2021	<i>Subpoena Ad Testificandum</i> Issued by Respondents' Counsel to { [REDACTED] } to testify on February 9, 2021

EXHIBIT A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Altria Group, Inc.
a corporation;**

and

**JUUL Labs, Inc.
a corporation.**

DOCKET NO. 9393

**DECLARATION IN SUPPORT OF COMPLAINT COUNSEL'S
MOTION FOR AN ORDER THAT RESPONDENT HAS WAIVED PRIVILEGE**

1. I have personal knowledge of the facts set forth in this declaration.
2. My name is Michael Lovinger, and I am an attorney admitted to practice law in the District of Columbia. I am employed by the Federal Trade Commission and am Complaint Counsel in this proceeding.
3. On March 29, 2020, { [REDACTED] } submitted a declaration in his capacity as { [REDACTED] } Exhibit B. { [REDACTED] } sells e-cigarette products in the United States, and is a subsidiary of { [REDACTED] }, which sells combustible cigarettes and other tobacco products in the United States.
4. On May 8, 2020, Complaint Counsel provided { [REDACTED] } declaration to Respondents' Counsel pursuant to the requirements of 16 C.F.R. § 3.31(b). Exhibit C.
5. On August 4, 2020, discovery commenced. At the time, the close of discovery was scheduled for Feb. 1, 2021, but was later extended to February 8, 2021. Order Granting

Joint Motion to Revise Scheduling Order and First Revised Scheduling Order, January 13, 2021.

6. On September 14, 2020, Respondents issued a *Subpoena Duces Tecum* to { } that requested a substantial amount of documents related to the issues discussed in { } declaration. Exhibit D. { } produced over 32,000 responsive documents to Respondents.
7. On January 11, 2021 – over 5 months after discovery commenced – counsel for JLI issued a *Subpoena Ad Testificandum* to { } with a scheduled deposition date of January 28, 2021. Exhibit E.
8. On January 25, 2021, Respondents’ Counsel and Complaint Counsel were notified that { } cannot sit for a deposition while in Switzerland. Exhibit F. { } Counsel stated that { } was willing to travel, but COVID-19 created temporary complications.
9. On January 26, 2021, Respondents’ Counsel sent a letter to Complaint Counsel asking Complaint Counsel to agree not to introduce { } declaration if { } could not be deposed before the close of fact discovery on February 8, 2021. Exhibit G.
10. On January 27, 2021, Complaint Counsel emailed Respondents’ Counsel that Complaint Counsel still intends to rely on the sworn declaration of { }. Exhibit H. Complaint Counsel requested flexibility as counsel for { } worked to reschedule the deposition due to the travel difficulties imposed by the COVID-19 pandemic. Exhibit H.

11. On January 29, 2021, Respondents' Counsel reiterated the same demands from their January 26, 2021 letter that if {REDACTED} cannot be deposed before the close of discovery, that Complaint Counsel not attempt to introduce {REDACTED} declaration. Exhibit I.
12. On February 8, 2021, counsel for {REDACTED} emailed Respondents' Counsel that {REDACTED} is cooperating with Complaint Counsel in efforts to take {REDACTED} deposition. Exhibit J. On the same date, Complaint Counsel also emailed Respondents' Counsel requesting additional time to take {REDACTED} deposition. Exhibit J. Complaint Counsel informed Respondents' Counsel that Complaint Counsel retained Swiss counsel and was working to obtain the necessary approvals for {REDACTED} {REDACTED} to be deposed in Switzerland. Exhibit J. Respondents' Counsel reiterated their demand that Complaint Counsel not seek to introduce {REDACTED} declaration, and requested a meet-and-confer. Exhibit J.
13. On February 10, 2021 and February 16, 2021, Complaint Counsel and Respondents Counsel met and conferred regarding this issue. Complaint Counsel noted that {REDACTED} {REDACTED} remains willing to be deposed, and discussed the efforts that Complaint Counsel and counsel for {REDACTED} were taking to schedule the deposition. In particular, Complaint Counsel discussed the likelihood that changes to COVID-19 travel restrictions would allow {REDACTED} to travel for a deposition at some point in the near future. At the same time, Complaint Counsel noted that it is also working with Swiss counsel to obtain formal approval from a Swiss court to take a remote deposition of {REDACTED} in Switzerland. Respondents' Counsel stated that they would

only agree to a deposition of { [REDACTED] } if it could be completed by February 26, 2021.

14. On February 22, 2021, Respondents filed a Motion to Enforce the Discovery Cutoff and Exclude the Declaration of { [REDACTED] }.
15. On March 3, 2021, Respondents made a Supplemental Filing in Support of Motion to Enforce the Discovery Cutoff and Exclude a Declaration. In their Supplemental Filing, Respondents asked for a different remedy and Proposed Order than their original Motion.
16. On March 4, 2021, the Court issued a Second Revised Scheduling Order that set the deadline for filing motions *in limine* to May 10, 2021, among other timing extensions.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of March in Arlington, VA.

/s/ Michael Lovinger
Michael Lovinger

EXHIBIT B

CONFIDENTIAL - REDACTED IN ENTIRETY

EXHIBIT C



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

Erik M. Herron
Bureau of Competition
Phone: 202-326-3535
Email: eherron@ftc.gov

May 8, 2020

VIA ELECTRONIC MAIL

Adam L. Goodman
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
(212) 403-1179
ALGoodman@wlrk.com

Re: In the Matter of Altria Group, Inc. and JUUL Labs, Inc., FTC Docket No. 9393

Dear Adam:

Complaint Counsel hereby submit the enclosed documents to Respondents pursuant to § 3.31(b) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings. 16 C.F.R. § 3.31(b). Where the materials were encrypted by the original producing party, the encryption codes were copied as provided by the third party and will be sent under separate email cover for security purposes. Complaint Counsel will make a corresponding filing in Docket No. 9393 after the stay in this matter expires.

All materials submitted are designated "Confidential—FTC Docket No. 9393" pursuant to the Protective Order governing this matter and should be disclosed only to the authorized individuals listed in Paragraph 7 of the Protective Order. The following third parties have submitted confidential information and have requested that their identities be treated as confidential pursuant to Paragraph 2 of the Protective Order: [REDACTED]

If you have any questions or concerns, please contact me at (202) 326-3535.

Regards,

/s/
Erik M. Herron

CC: Francesca M. Pisano, francesca.pisano@arnoldporter.com;
Amy N. Roth, anroth@cgsh.com; Iasha Brown, ibrown@cgsh.com.

EXHIBIT D



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO [REDACTED]	2. FROM <p style="text-align: center; margin-top: 20px;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION Wachtell, Lipton, Rosen & Katz 51 West 52nd St New York, NY 10019	4. MATERIAL WILL BE PRODUCED TO Andrew J.H. Cheung
	5. DATE AND TIME OF PRODUCTION October 9, 2020 at 9 a.m., or as such other date as may be agreed

6. SUBJECT OF PROCEEDING

In the Matter of Altria Group, Inc. and JUUL Labs, Inc., Docket No. 9393

7. MATERIAL TO BE PRODUCED

Documents and materials responsive to the attached subpoena

8. ADMINISTRATIVE LAW JUDGE The Honorable Judge D. Michael Chappell <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	9. COUNSEL AND PARTY ISSUING SUBPOENA Jeremy Calsyn Cleary Gottlieb Steen & Hamilton LLP 2112 Pennsylvania Avenue NW, Washington, DC 20037 Counsel for Respondent Juul Labs, Inc.
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DATE SIGNED 9/14/2020	SIGNATURE OF COUNSEL ISSUING SUBPOENA
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

September 16, 2020

(Month, day, and year)

Jessica Hollis

(Name of person making service)

Attorney

(Official title)

CONFIDENTIAL – FTC Docket No. 9393

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
In the Matter of:)	
)	
Altria Group, Inc.)	
a corporation,)	Docket No. 9393
)	
and)	
)	
JUUL Labs, Inc.)	
a corporation,)	
_____)	

ATTACHMENT A:

REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO 16 C.F.R. § 3.34

Pursuant to Rule 3.34 of the FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.34, Respondent Juul Labs, Inc. (“JLI”) requests that [REDACTED] (the “Company”) produce the following documents and things in accordance with the Definitions and Instructions below, on the date and at the place indicated in the accompanying *Subpoena Duces Tecum* or such other date and place as you and counsel for Respondent JLI may mutually agree.

1. All documents discussing the Transaction.
2. All documents constituting or relating to communications between the Company (including its counsel) and the FTC (including FTC staff) relating to the Transaction, the FTC’s investigation of the Transaction, or this proceeding.
3. All draft or final declarations, affidavits, or statements, including any comments on or markup of the foregoing, relating to the Transaction, including without limitation all drafts or revisions of the Declaration of [REDACTED] dated March 29, 2020.

CONFIDENTIAL – FTC Docket No. 9393

4. All documents discussing the competitive significance, strengths, and weaknesses of Altria/Nu Mark's former E-Vapor Products, including MarkTen, MarkTen Bold, MarkTen Elite, Apex by MarkTen, or Green Smoke, including, but not limited to, documents discussing those E-Vapor Products' impact on the Company's marketing efforts, pricing, sales, and profitability of E-Vapor Products and documents discussing competition between Altria/Nu Mark's former E-Vapor Products and JLI's E-Vapor Products.

5. All documents discussing any of the Altria actions referenced below:

- a. Altria's introduction of its E-Vapor Products into stores;
- b. Altria's announcement on October 25, 2018 that it would remove from the market its MarkTen Elite and Apex by MarkTen products, and its MarkTen and Green Smoke cig-a-like products other than tobacco, menthol and mint flavors, until receipt of a market order from FDA or the youth issue was otherwise addressed; or
- c. Altria's announcement on December 7, 2018 that it would remove from the market its remaining MarkTen and Green Smoke products and wind down its Nu Mark subsidiary.

6. All documents discussing the competitive significance, strengths, and weaknesses of JLI's E-Vapor Product, JUUL, including but not limited to, documents discussing JUUL's impact on the Company's marketing efforts, pricing, sales, and profitability of E-Vapor Products and documents discussing competition between JLI's E-Vapor Products and Altria/Nu Mark's former E-Vapor Products.

7. All documents discussing any of the JLI actions referenced below:

- a. JLI's announcement on September 25, 2019 that it would suspend all broadcast, print and digital product advertising in the U.S.;
- b. JLI's announcement on October 17, 2019 that it would suspend the sale of non-tobacco, non-menthol-based flavors in the U.S.; or
- c. JLI's announcement on November 7, 2019 that it would stop the sale of mint JUUL pods in the U.S.

8. All submissions that the Company has made to the FTC in response to [REDACTED]

9. Documents sufficient to show how the Company sets and adjusts the prices of the Company's E-Vapor Products.

10. Documents sufficient to show the price and other promotions offered by the Company and any estimates of the impact of those promotions on its sales.

11. Documents related to the Company's E-Vapor Product marketing efforts, including, but not limited to, training materials, marketing policies, and advertisement spending.

CONFIDENTIAL – FTC Docket No. 9393

12. All documents constituting assessments and analyses, whether conducted by the Company or a third party, with respect to:

- a. The competitive landscape of E-Vapor Products;
- b. Business and/or strategic plans for the Company's E-Vapor Products, including discussions of short- and long-term sales and growth initiatives;
- c. Individual competitors and competing brands of E-Vapor Products;
- d. Brand positioning and consumer perceptions of brands of E-Vapor Products, including the Company's brands;
- e. Any tracking by the Company of competitors' retail pricing or promotions for E-Vapor Products, such as in-store or online price checks;
- f. Actual or estimated market shares, or forecasts of future market shares, of E-Vapor Products from 2015 to date;
- g. Competition between closed systems, open systems, and disposable E-Vapor Products;
- h. Consumer preferences and sales trends of cig-a-likes and pod-based E-Vapor Products; or
- i. Competition for retail distribution and shelf-space that the Company has used or could use for E-Vapor Products, including incentives provided to retailers to secure favorable retail placement.

13. Documents sufficient to show any financial resources related to E-Vapor Products (including but not limited to trade programs, discounts, allowances, incentives, incentive payments, merchandising payments and incentives, performance-based promotions or program incentives, loyalty program incentives, and retail and wholesale promotional payments) that the Company provided to E-Vapor Product retailers, from 2015 to date.

14. All documents constituting consumer surveys or other analyses and studies relating to the following parameters for E-Vapor Products, including without limitation questionnaires, individual response data, and tabulations, summaries, findings, or analyses of results:

- a. Nicotine delivery efficiency or rate of absorption; nicotine pharmacokinetics or pharmacodynamics; or nicotine satisfaction offered by different products;
- b. Consumer demand for nicotine salts;
- c. Switching behavior among brands;
- d. Brand recognition;
- e. Brand perception;
- f. Brand loyalty;

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- g. Brands used/purchased most often vs. all brands used/purchased;
- h. Brands used/purchased previously vs. brands currently using/purchasing;
- i. Demographics of E-Vapor Product users by brand;
- j. Location/retail channel for purchase by brand;
- k. Combustible cigarette usage by E-Vapor Product consumers;
- l. The number of pods/cartridges consumed per week of the Company's and competitors' E-Vapor Products;
- m. The number of devices purchased per year of the Company's and competitors' E-Vapor Products;
- n. Consumer preferences for cig-a-likes vs. pod-based vaporizers; or
- o. Consumer preferences for open vs. closed system vaporizers.

15. Documents sufficient to show the E-Vapor Products manufactured, sold, owned, or licensed for sale by the Company which qualify as E-Vapor Products on the commercial market in the United States as of August 8, 2016, under the meaning of 81 Fed. Reg. 28,974 (May 10, 2016).

16. Documents sufficient to show the incidence and rate of product returns or complaints by retailers or consumers relating to the Company's E-Vapor Products.

17. Documents sufficient to show the Company's plans or efforts to develop new E-Vapor Products that are not currently on the market.

18. All documents discussing the Company's decision to remove any E-Vapor Products from the market.

19. All documents supporting, evidencing, or otherwise relating to the allegations in paragraphs 8 through 11, 13, 17, 18, 20 through 22, 28 through 36, and 38 of the Declaration of [REDACTED] dated March 29, 2020.

20. All documents supporting, evidencing, or otherwise relating to the following statement in paragraph 34 of the Declaration of [REDACTED] dated March 29, 2020: [REDACTED]

21. Documents or data sufficient to show for the period from 2015 to date, by sales channel, monthly (a) gross and net sales in dollars and units, (b) average selling price, (c) list price, (d) the value of discounts and rebates, (e) average gross margin for each of the Company's E-Vapor Products by individual item (SKU), including a description of each SKU and identification of each SKU's brand.

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22. Quarterly profit and loss statements for the Company's E-Vapor Product business for the period from 2015 to date, and forecasted profit and loss statements for the Company's E-Vapor business made since 2015 covering 2018 and any years beyond, containing at least the following line items or their equivalents:

- a. Gross revenues;
- b. Deductions from gross revenues (returns, discounts, rebates, etc.);
- c. Net revenues;
- d. Cost of goods sold (COGS) including any variable costs accounted for by the Company (such as material and conversion costs, variable selling and marketing expenses, any discounts or rebates not accounted for in deductions from gross revenues);
- e. Gross (or contribution) margin dollars;
- f. Operating expenses including separate line items for major costs (sales expenses, R&D costs, G&A);
- g. Operating margin.

23. Documents sufficient to identify any costs or expenses incurred in the manufacture and sale of the Company's E-Vapor Products that are not accounted for in the Company's profit and loss statements for E-Vapor Products produced pursuant to Request No. 22 above (e.g., costs shared across business units that are not allocated to E-Vapor Products).

24. Any store-level sales data or point-of-sale data related to the retail sale of E-Vapor Products, whether provided by a retailer, customer, or any other third party.

25. Documents sufficient to identify the Company's adult consumer loyalty or rewards programs for E-Vapor Products.

26. Data sufficient to show the impact of any adult consumer loyalty or rewards programs for E-Vapor Products on the Company's sales of E-Vapor Products.

27. Documents sufficient to show the pH levels, nicotine delivery efficiency or rate of absorption, or nicotine pharmacokinetic or pharmacodynamics profiles of the Company's E-Vapor Products.

28. Documents sufficient to identify for each of the Company's E-Vapor Products whether the e-liquid uses nicotine salts and the type, quantity, or concentration of nicotine, including any changes regarding the use or composition of nicotine salts or the type, quantity, or concentration of nicotine of each such product.

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INSTRUCTIONS AND DEFINITIONS**A. DEFINITIONS**

The foregoing requests incorporate the following definitions, regardless of whether upper or lower case letters are used:

1. The “Company” means [REDACTED] and its subsidiaries, divisions, affiliates, directors, officers, employees, agents, and representatives.
2. “FTC” means the U.S. Federal Trade Commission and its Commissioners, officers, employees, bureaus, attorneys, accountants, economists, staff, consultants, experts, agents, and representatives.
3. “Altria” means Altria Group, Inc. and its current or former subsidiaries or affiliates, including Nu Mark LLC.
4. “JLI” means JUUL Labs, Inc. and its current or former subsidiaries or affiliates.
5. The “Transaction” means Altria’s acquisition of a minority interest in JLI consummated in December 2018.
6. “E-Vapor Products” means any electronic nicotine delivery systems, sometimes known as ENDS, including, but not limited to, any current or past product lines or products in development, owned, or licensed by the Company, regardless of whether the system is an open or closed or disposable system.
7. “FDA” means the U.S. Food and Drug Administration, including its Administrator, its Center for Tobacco Products (“CTP”), and FDA’s and CTP’s respective officers, employees, attorneys, accountants, economists, staff, consultants, experts, agents, and representatives.
8. “This proceeding” means the administrative proceeding styled *In the Matter of Altria Group, Inc, et al.*, Docket No. 9393, before the Honorable D. Michael Chappell, Chief Administrative Law Judge, at the Federal Trade Commission.
9. “Relating to” or “related to” means relating to, reflecting, concerning, referring to, constituting, embodying, connected to, in connection with, comprising, regarding, evidencing, describing, identifying, stating, analyzing, containing information concerning, and/or in any way pertaining to the specified topic.
10. “Communication” includes all means of conveying information, whether written or oral and however transmitted or stored, including without limitation emails, letters, faxes, telephone calls, conversations, meetings, or discussions.
11. “Document” includes any and all tangible and intangible form of information stored in any medium, whether hard copy or electronic, including writings, emails, letters, slides or slide decks, reports, studies, notes, correspondence, memoranda, handwriting, text messages, fax messages, publications, logs, drawings, graphs, charts, photographs, spreadsheets, audio recordings, images, and data.
12. For purposes of construing the scope of these Requests:

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- a. The use of the singular form of any word includes the plural and vice versa.
- b. The word “including” shall be construed to introduce a non-exhaustive list, and to mean “including, but not limited to.”
- c. The term “all,” “any,” and “each” shall each be construed as addressing any and all.
- d. The connectives “and” or “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
- e. Any reference to communications “between” two parties shall include any and all communications involving both parties whether or not additional parties are involved and whether or not both parties are recipients of the communication.
- f. The masculine form of a word should be read to include the feminine, and the feminine form of a word should be read to include the masculine. And any pronouns shall be construed to refer to the masculine, feminine, or gender neutral as is most appropriate in each case.

B. INSTRUCTIONS

In preparing your response to these Requests, please follow the instructions below:

1. Unless otherwise stated, the relevant time period for these Requests is January 1, 2017 through the date of the Company’s production in response to these Requests.
2. The Administrative Law Judge has entered a Protective Order Governing Confidential Material in this proceeding, which is attached hereto for your reference. As a third party producing documents in this proceeding, you may designate the Company’s information as confidential in accordance with the standards and procedures in the Protective Order.
3. Please produce all documents responsive to these requests for production that are in your possession, custody, or control or in the possession, custody, or control of your representatives or agents.
4. Please produce all documents in complete form, with each page marked with consecutive document control numbers, and with no redactions unless necessary to avoid producing privileged information (in which case the redaction should be reflected on a privilege log as set forth in Instruction No. 11 below).
5. Please produce the entirety of any requested document, including all attachments, enclosures, cover letters or emails, memoranda, exhibits, or appendices. Copies that differ in any respect from an original (because, by way of example only, handwritten or printed notations were added) should be treated as separate documents and produced separately. Each draft of a document should be treated as a separate document and produced separately.

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6. Please produce documents as they are kept in the usual course of business, or organize and label them to correspond to the categories in the request, in accordance with 16 C.F.R. § 3.37(c)(i).

7. Please produce all documents in electronic form.

- a. De-duplication. Electronically stored documents (ESI) will be de-duplicated within and across custodians following industry standard de-duplication algorithms. De-duplication must be performed on a family level— e.g. no document which is not part of a family group shall be de-duplicated against a member of a family group and documents with the same duplicate hash that are attached to different cover emails must not be removed through de-duplication. Emails that contain unique content in the Blind Carbon Copy (BCC) field of an email must not be de-duplicated against emails with no BCC values. A list of identified custodians having a copy of a de-duplicated family of documents will be populated in the ALL CUSTODIANS field for any produced family of documents.
- b. Format of Production. All documents including both ESI and hard copy documents shall be produced in single page Tagged Image File Format (TIFF), with natives (where applicable), document level text files, a metadata file, and an image load file.
 - i. TIFF Images. TIFF images shall be provided as single-page black and white Group IV, 300 DPI TIFF image with the image named as the Bates number stamped on the image. Page level Bates numbers will be branded in the lower right corner of the image, and appropriate confidentiality designations shall be provided on the lower left hand side of the image. Microsoft Excel files, comparable spreadsheet files, technical filetypes that present imaging issues, or other filetypes that cannot be imaged (e.g. audiovisual files) should receive a single, Bates stamped slipsheet in place of document images. All files shall be imaged to show track changes, comments, notes, or hidden content.
 - ii. Native Files. Native files will be provided for Microsoft Excel and other similar spreadsheet files, Microsoft Powerpoint and other similar presentation files, technical files or files that cannot be imaged and have received image slipsheets. The native file will be named as the first Bates number of the respective document. The corresponding metadata load file shall include a link (the path to the native file within the production).
 - iii. Extracted Text Files. Document-level text files will be provided for each document produced. Text should be extracted during processing/preparation of documents using UTF-8 encoding. Text files will be provided in UTF-8 encoding. Text files will be named as the first Bates number of the respective document. Extracted text will be provided where it exists for non-redacted documents. OCR Text will be provided for hard copy documents, redacted documents, or PDFs with no extracted text.

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- iv. Metadata Loadfile. For each production, a metadata load file shall be provided as a DAT file in standard Concordance delimited format with metadata field header information added as the first line of the file. Documents will be produced with related metadata (to the extent it exists) as described in Instruction 8.b.vi. of this document.
- v. Image Loadfile. A standard Opticon cross-reference file (OPT) will be provided linking the Bates number to the TIFF images and the Concordance loadfiles.
 1. Format:
<Bates Number>, <Not Required>, <Relative Path to TIFF Image>, <Y if first page of document, otherwise blank>,,<Page Count if first page of document, otherwise blank>
- vi. Metadata Fields for Production. The metadata fields listed in Annex A shall be contained in the Metadata Loadfile. Where values are reasonably available and/or can be reasonably calculated, values for each document produced shall be provided in the Metadata Loadfile for the fields listed in Annex A.

8. Please produce documents in color to the extent necessary to interpret the document, *i.e.*, if the coloring of any document communicates any substantive information. If black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, please submit the original, a like-colored photocopy, or PDF or JPEG format image. In the event JLI identifies documents that JLI believes require production in color in order to fully understand the document, JLI may request re-production of a document in color. You will consider such requests in good faith.

9. If you assert that any part of a Request is objectionable, please respond to the remaining parts of the Request to which you do not object. In particular, if you object to a Request as overly broad or unduly burdensome as to scope, time period, or for any other reason, please respond to the Request as narrowed to the least extent necessary to render it not objectionable in your opinion. If you object to a Request as vague or ambiguous, please identify the particular words or phrases that you assert render the Request objectionable. For any objection, on whatever ground, please state in detail the reasons for the objection and describe how you intend to construe or narrow the Request and any documents or categories of documents that you intend to withhold on the basis of the objection.

10. If, following a reasonable search, you conclude that no documents responsive to a particular Request exist, please expressly so indicate in your response.

11. If you intend to withhold from production any responsive document, or any responsive portion of a document, on account of privilege, please provide a privilege log describing each such document with such particularity as necessary to enable JLI to assess the applicability of the privilege claimed. If you believe any portion of any requested document is

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privileged but the remainder of the document is not, please produce a redacted version of the document. The privilege log should at a minimum include the following information for each withheld document or portion thereof:

- a. Name and company/entity of each person who prepared the document (identifying any attorneys among them);
- b. Name and company/entity of each person to whom the document was addressed and/or distributed (identifying any attorneys among them);
- c. Date of the document;
- d. Description of the general nature of the document;
- e. Specification and basis for the privilege(s) that you contend apply to the document; and
- f. For withholdings of portions of documents or document families, identification by document control number of the redacted version of the document being produced.

12. The obligation to produce the documents sought by these Requests is of a continuing nature pursuant to 16 C.F.R. § 3.31(e). If, after responding, you become aware of further information responsive to these Requests, please produce such information.

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APPENDIX A
METADATA FIELDS FOR PRODUCTION

Field Names	Description
BEGBATES	Bates number of the first page of a document
ENDBATES	Bates number of the last page of the document
BEGATTACH	Bates number of the first page of a document family
ENDATTACH	Bates number of the last page of a document family
ALLCUSTODIANS	Name of person(s) from whom all copies of a produced document was obtained, including family-level copies of documents removed through de-duplication.
PARENTDATE	Master date of parent document including both ESI and hardcopy documents; populated as MM/DD/YYYY. For email families, this should be the Date Sent of the parent document. For non-email documents, where reasonably available this should be the Date Last Modified for the parent document. For Hardcopy documents, where reasonably available, this should be the Date visible on the document itself.
DATESENT	For emails, the date the email was sent; populated as MM/DD/YYYY
DATELASTMOD	For ESI, if reasonably available, the date the file was last modified; populated as MM/DD/YYYY
FROM	For email, the sender of the email
TO	For email, the recipient(s) of the email
CC	For email, persons copied on the email
BCC	For email, persons blind copied on the email
EMAILSUBJECT	For email, the subject line of the email
FILENAME	For ESI, Saved name of the collected file
FILEEXT	For ESI, File extension of the collected file
FILEPATH	For ESI, if reasonably available, the filepath to the native file as it existed in the original environment in the ordinary course of business
FOLDER	For email, if reasonably available, the folder path to the email as it existed in the original mailbox in the ordinary course of business
HASH	For ESI, Hash value calculated during de-duplication using industry standard hashing algorithms and field setups
PAGECT	Page count of document

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AUTHOR	For ESI, author field value extracted from properties of a native file
TITLE	For ESI, title field value extracted from properties of a native file
NATIVELINK	Relative path to native file in production (if native file is produced)
TEXTLINK	Relative path to text file in production

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 16, 2020, I caused a true and correct copy of the foregoing Subpoena Duces Tecum to be served via e-mail upon the following:

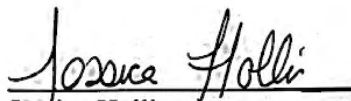
James Abell
Dominic Vote
Peggy Bayer Femenella
Erik Herron
Joonsuk Lee
Meredith Levert
Kristian Rogers
David Morris
Michael Blevins
Michael Lovinger
Frances Anne Johnson
Simone Oberschmied
Julia Draper
Federal Trade Commission
400th Street, SW
Washington, DC 20024
Phone Number: (202) 326-2289

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Jonathan M. Moses
Kevin S. Schwartz
Adam L. Goodman
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51 West 52nd Street
New York, NY 10019
Phone Number: (212) 403-1000

Debbie Feinstein
Robert Katerberg
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Le-Tanya Freeman
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601 Massachusetts Avenue, NW
Washington, DC 20001
Phone Number: (202) 942-5000

Counsel for Respondent Altria Group, Inc.



Jessica Hollis
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 974-1637
jhollis@cgsh.com

PUBLIC

)
**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)
In the Matter of)
)
Altria Group, Inc.)
a corporation,)
)
and)
)
JUUL Labs, Inc.)
a corporation,)
)
Respondents.)
_____)

Docket No. 9393

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: April 2, 2020

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT E



SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO <div style="background-color: black; width: 100%; height: 60px; margin-top: 10px;"></div>	2. FROM <p style="text-align: center; margin-top: 20px;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION The deposition will be conducted remotely. Pursuant to Additional Provision 11 of the FTC Scheduling Order, we are providing advance notice that the deposition may be recorded by videotape.	4. YOUR APPEARANCE WILL BE BEFORE Linden Bernhardt, Esq. or designee 5. DATE AND TIME OF DEPOSITION January 28, 2021, at 9:00 a.m. Or such other dates as may be agreed.
---	--

6. SUBJECT OF PROCEEDING

In the Matter of Altria Group, Inc. and JUUL Labs, Inc., Docket No. 9393

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	8. COUNSEL AND PARTY ISSUING SUBPOENA Linden Bernhardt Cleary Gottlieb Steen & Hamilton LLP 2112 Pennsylvania Ave. NW, Washington DC 20037 Counsel for Respondent JUUL Labs, Inc.
---	---

DATE SIGNED 1/11/2021	SIGNATURE OF COUNSEL ISSUING SUBPOENA /s/ Linden Bernhardt
--------------------------	---

GENERAL INSTRUCTIONS

APPEARANCE
 The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH
 The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES
 The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 13, 2021, I caused a true and correct copy of the foregoing Subpoena Ad Testificandum to be served via e-mail upon the following:

James Abell
Dominic Vote
Peggy Bayer Femenella
Erik Herron
Joonsuk Lee
Meredith Levert
Kristian Rogers
David Morris
Michael Blevins
Michael Lovinger
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Debbie Feinstein
Robert Katerberg
Justin Hedge
Francesca Pisano
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Beth Wilkinson
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Moir Kim Penza
J.J. Snidow
Wilkinson Stekloff
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Washington, DC 20036
Phone Number: (202) 847-4000

Counsel for Respondent Altria Group, Inc.

/s/ Linden Bernhardt
Linden Bernhardt

CLEARY GOTTLLIEB STEEN &
HAMILTON LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037

Counsel for Respondent Juul Labs, Inc.

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)

Altria Group, Inc.)
a corporation,)

and)

JUUL Labs, Inc.)
a corporation,)

Respondents.)
_____)

Docket No. 9393

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: April 2, 2020

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT F

From: David.Kully@hklaw.com
To: [Lovinger, Michael; lbernhardt@cqsh.com](mailto:Lovinger,Michael;lbernhardt@cqsh.com)
Cc: Ashley.Shively@hklaw.com; AGilman@crowell.com
Subject: Deposition of [REDACTED]
Date: Monday, January 25, 2021 12:31:28 PM

Michael and Lindy – We apologize for the late notice, but we discovered in the past week that Swiss law would prohibit [REDACTED], who currently resides in [REDACTED] from participating in even a remote deposition while on Swiss soil. We have been working hard to try to find an alternate location to which he could travel for the deposition, but COVID-related travel restrictions have seriously complicated our ability at this point to find a solution. We remain hopeful that there might be an answer, but none that would allow us to accommodate proceeding with the deposition on Thursday, as planned. We will provide any updates on as soon as we have any further information to share. Please let me know if you'd like to discuss.

David Kully | Holland & Knight

Partner

Holland & Knight LLP

800 17th Street N.W., Suite 1100 | Washington, District of Columbia 20006

Phone 202.469.5415 | Mobile 202.669.5442

david.kully@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

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EXHIBIT G

CONFIDENTIAL - REDACTED IN ENTIRETY

EXHIBIT H

From: [Lovinger, Michael](#)
To: [Bernhardt, Linden](#); [Abell, James](#); [Vote, Dominic E.](#); [Bayer Femenella, Peggy](#); [Herron, Erik](#); [Lee, Joonsuk](#); [Levert, Meredith R.](#); [Rogers, Kristian](#); [Morris, David](#); [Blevins, Michael](#); [Johnson, Frances Anne](#); [Oberschmied, Simone](#); [Draper, Julia](#)
Cc: [Wilkinson, Beth A. \(Wilkinson Stekloff\)](#); [Rosenthal, James M. \(Wilkinson Stekloff\)](#); [Penza, Moira Kim \(Wilkinson Stekloff\)](#); [Snidow, John James \(Wilkinson Stekloff\)](#); [Feinstein, Debbie](#); [Katerberg, Robert J.](#); [Pisano, Francesca](#); [Pergament, Adam](#); [Freeman, Tanya](#); [jmmoses@wlrk.com](#); [KSchwartz@wlrk.com](#); [ALGoodman@wlrk.com](#); [Siddiqui, Hasan](#); [Marra, Bryan M.](#); [Calsyn, Jeremy J.](#); [Gelfand, David I.](#); [Bachrack, Matthew I.](#); [Hollis, Jessica](#); [Sibarium, Michael L. \(Pillsbury Winthrop Shaw Pittman LLP\)](#)
Subject: RE: In the Matter of Altria Group/JLI (Dkt. No. 9393)
Date: Wednesday, January 27, 2021 5:37:00 PM

David/Lindy,

We wanted to confirm receipt of your letter dated Jan. 26, 2021. While we still intend to rely on [REDACTED] sworn declaration, we also recognize your desire to conduct a deposition. Our understanding is that [REDACTED] is doing their best to make [REDACTED] available, and given the travel difficulties imposed by the COVID-19 pandemic, we appreciate your flexibility as [REDACTED] works to reschedule this deposition.

Best regards,

Michael

Michael Lovinger
 Attorney – Federal Trade Commission
 Bureau of Competition
 400 7th Street, SW, Washington DC, 20024
 Tel: 202.326.2539

From: Bernhardt, Linden <lbernhardt@cgsh.com>
Sent: Tuesday, January 26, 2021 7:59 PM
To: Abell, James <jabell@ftc.gov>; Vote, Dominic E. <dvote@ftc.gov>; Bayer Femenella, Peggy <PBAYER@ftc.gov>; Herron, Erik <eherron@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>; Levert, Meredith R. <mlevert@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Morris, David <DMORRIS1@ftc.gov>; Blevins, Michael <mblevins@ftc.gov>; Johnson, Frances Anne <fjohnson@ftc.gov>; Lovinger, Michael <mlovinger@ftc.gov>; Oberschmied, Simone <soberschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>
Cc: Wilkinson, Beth A. (Wilkinson Stekloff) <bwilkinson@wilkinsonstekloff.com>; Rosenthal, James M. (Wilkinson Stekloff) <jrosenthal@wilkinsonstekloff.com>; Penza, Moira Kim (Wilkinson Stekloff) <mpenza@wilkinsonstekloff.com>; Snidow, John James (Wilkinson Stekloff) <jsnidow@wilkinsonstekloff.com>; Feinstein, Debbie <Debbie.Feinstein@arnoldporter.com>; Katerberg, Robert J. <Robert.Katerberg@arnoldporter.com>; Pisano, Francesca <Francesca.Pisano@arnoldporter.com>; Pergament, Adam <Adam.Pergament@arnoldporter.com>; Freeman, Tanya <Tanya.Freeman@arnoldporter.com>; jmmoses@wlrk.com; KSchwartz@wlrk.com; ALGoodman@wlrk.com; Siddiqui, Hasan <Hasan.Siddiqui@arnoldporter.com>; Marra, Bryan M. <Bryan.Marra@arnoldporter.com>; Calsyn, Jeremy J. <jcalsyn@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>; Bachrack, Matthew I. <mbachrack@cgsh.com>; Hollis, Jessica <jhollis@cgsh.com>; Sibarium, Michael L. (Pillsbury Winthrop Shaw Pittman LLP) <michael.sibarium@pillsburylaw.com>
Subject: In the Matter of Altria Group/JLI (Dkt. No. 9393)

Dear Counsel:

Please see attached correspondence.

Best regards,
Lindy

Linden Bernhardt

Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
T: +1 202 974 1511 | M: +1 443 878 6956
lbernhardt@cgsh.com | clearygottlieb.com

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EXHIBIT I

From: [Gelfand, David I.](#)
To: [Lovinger, Michael](#); [Bernhardt, Linden](#); [Abell, James](#); [Vote, Dominic E.](#); [Bayer Femenella, Peggy](#); [Herron, Erik](#); [Lee, Joonsuk](#); [Levert, Meredith R.](#); [Rogers, Kristian](#); [Morris, David](#); [Blevins, Michael](#); [Johnson, Frances Anne](#); [Oberschmied, Simone](#); [Draper, Julia](#)
Cc: [Wilkinson, Beth A. \(Wilkinson Stekloff\)](#); [Rosenthal, James M. \(Wilkinson Stekloff\)](#); [Penza, Moira Kim \(Wilkinson Stekloff\)](#); [Snidow, John James \(Wilkinson Stekloff\)](#); [Feinstein, Debbie](#); [Katerberg, Robert J.](#); [Pisano, Francesca](#); [Pergament, Adam](#); [Freeman, Tanya](#); jimmoses@wlrk.com; KSchwartz@wlrk.com; ALGoodman@wlrk.com; [Siddiqui, Hasan](#); [Marra, Bryan M.](#); [Calsyn, Jeremy J.](#); [Bachrack, Matthew I.](#); [Hollis, Jessica](#); [Sibarium, Michael L. \(Pillsbury Winthrop Shaw Pittman LLP\)](#)
Subject: RE: In the Matter of Altria Group/JLI (Dkt. No. 9393)
Date: Friday, January 29, 2021 1:25:58 PM

Dear Michael,

Thanks for your email. To avoid any confusion, while we have asked [REDACTED] counsel to figure out how to make [REDACTED] available for this deposition before the discovery cutoff, we do not think he will do so. If he does not do so, then we will not have had an opportunity to depose [REDACTED] and you would not be permitted under the scheduling order to admit his declaration at trial. This is your declarant. If you have some way to arrange for his deposition before the discovery cutoff, please let us know. Otherwise, we will expect you to acknowledge that you will not attempt to introduce his declaration. Thanks.

Best regards,

Dave

David I. Gelfand

Cleary Gottlieb Steen & Hamilton LLP

Assistant: lmontgomery@cgsh.com

2112 Pennsylvania Avenue, NW

Washington, DC 20037

T: +1 202 974 1690 | M: +1 301 787 4703

dgelfand@cgsh.com | clearygottlieb.com

From: Lovinger, Michael <mlovinger@ftc.gov>

Sent: Wednesday, January 27, 2021 5:37 PM

To: Bernhardt, Linden <lbernhardt@cgsh.com>; Abell, James <jabell@ftc.gov>; Vote, Dominic E. <dvote@ftc.gov>; Bayer Femenella, Peggy <PBAYER@ftc.gov>; Herron, Erik <eherron@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>; Levert, Meredith R. <mlevert@ftc.gov>; Rogers, Kristian <krogers@ftc.gov>; Morris, David <DMORRIS1@ftc.gov>; Blevins, Michael <mblevins@ftc.gov>; Johnson, Frances Anne <fjohnson@ftc.gov>; Oberschmied, Simone <soberschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>

Cc: Wilkinson, Beth A. (Wilkinson Stekloff) <bwilkinson@wilkinsonstekloff.com>; Rosenthal, James M. (Wilkinson Stekloff) <jrosenthal@wilkinsonstekloff.com>; Penza, Moira Kim (Wilkinson Stekloff) <mpenza@wilkinsonstekloff.com>; Snidow, John James (Wilkinson Stekloff) <jsnidow@wilkinsonstekloff.com>; Feinstein, Debbie <Debbie.Feinstein@arnoldporter.com>; Katerberg, Robert J. <Robert.Katerberg@arnoldporter.com>; Pisano, Francesca <Francesca.Pisano@arnoldporter.com>; Pergament, Adam <Adam.Pergament@arnoldporter.com>;

Freeman, Tanya <Tanya.Freeman@arnoldporter.com>; jmmoses@wlrk.com; KSchwartz@wlrk.com; ALGoodman@wlrk.com; Siddiqui, Hasan <Hasan.Siddiqui@arnoldporter.com>; Marra, Bryan M. <Bryan.Marra@arnoldporter.com>; Calsyn, Jeremy J. <jcalsyn@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>; Bachrack, Matthew I. <mbachrack@cgsh.com>; Hollis, Jessica <jhollis@cgsh.com>; Sibarium, Michael L. (Pillsbury Winthrop Shaw Pittman LLP) <michael.sibarium@pillsburylaw.com>

Subject: RE: In the Matter of Altria Group/JLI (Dkt. No. 9393)

David/Lindy,

We wanted to confirm receipt of your letter dated Jan. 26, 2021. While we still intend to rely on [REDACTED] sworn declaration, we also recognize your desire to conduct a deposition. Our understanding is that [REDACTED] is doing their best to make [REDACTED] available, and given the travel difficulties imposed by the COVID-19 pandemic, we appreciate your flexibility as [REDACTED] works to reschedule this deposition.

Best regards,

Michael

Michael Lovinger
Attorney – Federal Trade Commission
Bureau of Competition
400 7th Street, SW, Washington DC, 20024
Tel: 202.326.2539

From: Bernhardt, Linden <lbernhardt@cgsh.com>

Sent: Tuesday, January 26, 2021 7:59 PM

To: Abell, James <jabell@ftc.gov>; Vote, Dominic E. <dvote@ftc.gov>; Bayer Femenella, Peggy <PBAYER@ftc.gov>; Herron, Erik <eherron@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>; Levert, Meredith R. <mlevert@ftc.gov>; Rogers, Kristian <kr Rogers@ftc.gov>; Morris, David <DMORRIS1@ftc.gov>; Blevins, Michael <mblevins@ftc.gov>; Johnson, Frances Anne <fjohnson@ftc.gov>; Lovinger, Michael <mlovinger@ftc.gov>; Oberschmied, Simone <soberschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>

Cc: Wilkinson, Beth A. (Wilkinson Stekloff) <bwilkinson@wilkinsonstekloff.com>; Rosenthal, James M. (Wilkinson Stekloff) <jrosenthal@wilkinsonstekloff.com>; Penza, Moira Kim (Wilkinson Stekloff) <mpenza@wilkinsonstekloff.com>; Snidow, John James (Wilkinson Stekloff) <jsnidow@wilkinsonstekloff.com>; Feinstein, Debbie <Debbie.Feinstein@arnoldporter.com>; Katerberg, Robert J. <Robert.Katerberg@arnoldporter.com>; Pisano, Francesca <Francesca.Pisano@arnoldporter.com>; Pergament, Adam <Adam.Pergament@arnoldporter.com>; Freeman, Tanya <Tanya.Freeman@arnoldporter.com>; jmmoses@wlrk.com; KSchwartz@wlrk.com; ALGoodman@wlrk.com; Siddiqui, Hasan <Hasan.Siddiqui@arnoldporter.com>; Marra, Bryan M. <Bryan.Marra@arnoldporter.com>; Calsyn, Jeremy J. <jcalsyn@cgsh.com>; Gelfand, David I. <dgelfand@cgsh.com>; Bachrack, Matthew I. <mbachrack@cgsh.com>; Hollis, Jessica <jhollis@cgsh.com>; Sibarium, Michael L. (Pillsbury Winthrop Shaw Pittman LLP) <michael.sibarium@pillsburylaw.com>

Subject: In the Matter of Altria Group/JLI (Dkt. No. 9393)

Dear Counsel:

Please see attached correspondence.

Best regards,
Lindy

Linden Bernhardt

Cleary Gottlieb Steen & Hamilton LLP

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Washington, DC 20037

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EXHIBIT J

From: [Lovinger, Michael](#)
To: [Gelfand, David I.](#); David.Kully@hklaw.com; [Bernhardt, Linden](#); Ashley.Shively@hklaw.com; [Calsyn, Jeremy J.](#)
Cc: [Milici, Jennifer](#); [Bayer Femenella, Peggy](#); [Abell, James](#); [Oberschmied, Simone](#); [Draper, Julia](#); [Beth Wilkinson](#); [J.J. Snidow](#); [Katerberg, Robert J.](#); jmmoses@wlrk.com
Subject: RE: In re Altria/JLI - Deposition of [REDACTED]
Date: Monday, February 8, 2021 3:43:00 PM

Dave,

We believe that [REDACTED] declaration is admissible, and we are willing to schedule a meet and confer to discuss this issue further. Are there any days/times that work well on your end?

Best regards,

Michael

From: Gelfand, David I. <dgelfand@cgsh.com>
Sent: Monday, February 8, 2021 2:51 PM
To: Lovinger, Michael <mlovinger@ftc.gov>; David.Kully@hklaw.com; Bernhardt, Linden <lbernhardt@cgsh.com>; Ashley.Shively@hklaw.com; Calsyn, Jeremy J. <jcalsyn@cgsh.com>
Cc: Milici, Jennifer <jmilici@ftc.gov>; Bayer Femenella, Peggy <PBAYER@ftc.gov>; Abell, James <jabell@ftc.gov>; Oberschmied, Simone <soberschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>; Beth Wilkinson <bwilkinson@wilkinsonstekloff.com>; J.J. Snidow <jsnidow@wilkinsonstekloff.com>; Katerberg, Robert J. <Robert.Katerberg@arnoldporter.com>; jmmoses@wlrk.com
Subject: RE: In re Altria/JLI - Deposition of [REDACTED]

Dear Michael,

We have been trying for weeks to take this deposition. After settling on a date for the deposition, we were told at the last minute that it could not go forward due to restrictions under Swiss law. Despite repeated attempts since then to obtain information about how the deposition might go forward, we were provided no information until your email today about whether it is even potentially possible.

Today is the discovery cut-off. Other than now telling us for the first time that you are consulting with Swiss counsel, neither you nor Mr. Kully have proposed a date for the deposition or provided any indication that it will even be possible for [REDACTED] to go forward. We have agreed to schedule a small number of depositions after the discovery cut-off but it is not reasonable to expect us to wait beyond the discovery cut-off to determine whether this deposition will even happen.

As noted in our prior correspondence, we ask that complaint counsel confirm that, as provided in the Scheduling Order, complaint counsel will not seek to introduce [REDACTED] declaration as we have not had a fair opportunity to take his deposition. We are available to discuss this issue with you if that would be useful. In the meantime, we reserve all objections.

Best regards,

Dave

David I. Gelfand

Cleary Gottlieb Steen & Hamilton LLP

Assistant: lmontgomery@cgsh.com

2112 Pennsylvania Avenue, NW

Washington, DC 20037

T: +1 202 974 1690 | M: +1 301 787 4703

dgelfand@cgsh.com | clearygottlieb.com

From: Lovinger, Michael <mlovinger@ftc.gov>

Sent: Monday, February 8, 2021 12:59 PM

To: David.Kully@hklaw.com; Bernhardt, Linden <lbernhardt@cgsh.com>;

Ashley.Shively@hklaw.com; Calsyn, Jeremy J. <jcalsyn@cgsh.com>; Gelfand, David I.

<dgelfand@cgsh.com>

Cc: Milici, Jennifer <jmilici@ftc.gov>; Bayer Femenella, Peggy <PBAYER@ftc.gov>; Abell, James <jabell@ftc.gov>; Oberschmied, Simone <soberschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>

Subject: RE: In re Altria/JLI - Deposition of [REDACTED]

Dear Counsel,

As Mr. Kully explained, complaint counsel has been working with [REDACTED] to find a solution that would permit [REDACTED] to be deposed from Switzerland.

As you are aware, Mr. Kully informed complaint counsel and respondent's counsel on Jan. 25, 2021 that Swiss law would prohibit [REDACTED] from participating in a remote deposition while on Swiss soil. Mr. Kully has represented that [REDACTED] remains willing to sit for a voluntary deposition, and that [REDACTED] has been working hard to find an alternative solution that would allow [REDACTED] to be deposed.

Our understanding is that under ordinary circumstances, [REDACTED] would be willing and able to travel to an alternative location that would allow the deposition to take place. However, due to COVID-19 travel restrictions, [REDACTED] will not be able to travel for a deposition before the close of discovery. As a result, complaint counsel has retained local Swiss counsel who is working to obtain the necessary approvals for [REDACTED] to be deposed in Switzerland.

We share your desire to take this deposition as soon as possible. However, given the unique circumstances posed by deposing a witness currently residing in a foreign country during the COVID-19 pandemic, we hope that you will be flexible as we and [REDACTED] work to find a solution that will allow [REDACTED] deposition to take place.

Best regards,

Michael

Michael Lovinger

Attorney – Federal Trade Commission

Bureau of Competition

400 7th Street, SW, Washington DC, 20024

Tel: 202.326.2539

From: David.Kully@hklaw.com <David.Kully@hklaw.com>

Sent: Monday, February 8, 2021 12:36 PM

To: lbernhardt@cgsh.com

Cc: Ashley.Shively@hklaw.com; jalsyn@cgsh.com; dgelfand@cgsh.com; Lovinger, Michael <mlovinger@ftc.gov>

Subject: RE: In re Altria/JLI - [REDACTED] Production

Hi, Lindy. As we continue to try to find a solution to the complications presented by Swiss law and the pandemic to allow [REDACTED] deposition to proceed, [REDACTED] is cooperating with efforts on the part of the FTC to allow his deposition to be taken remotely from Switzerland. We appreciate your understanding as we work through these issues.

David Kully | Holland & Knight

Partner

Holland & Knight LLP

800 17th Street N.W., Suite 1100 | Washington, District of Columbia 20006

Phone 202.469.5415 | Mobile 202.669.5442

david.kully@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



EXHIBIT K

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
Altria Group, Inc.)
 a corporation,)
)
 and)
)
JUUL Labs, Inc.)
 a corporation.)
)
)

Docket No. 9393

DECLARATION OF DAVID C. KULLY

1. I am counsel for [REDACTED], representing the company in connection with efforts to respond to two subpoenas *duces tecum* issued in *In the Matter of Altria Group, Inc. & JUUL Labs, Inc.* (FTC Docket No. 9393), one served by Juul Labs, Inc. on September 14, 2020 and the other by the Federal Trade Commission on September 24, 2020. I will also represent [REDACTED] in any deposition of him taken in connection with these proceedings.

2. Working with counsel for Juul and the FTC, I arranged on behalf of [REDACTED] for a deposition of him to proceed on January 28, 2021. In the days leading up to the deposition, I learned that the laws of Switzerland (namely, article 271 of the Swiss Criminal Code), where [REDACTED] currently resides, prohibit [REDACTED] from sitting for a remote deposition in a foreign proceeding while on Swiss soil.

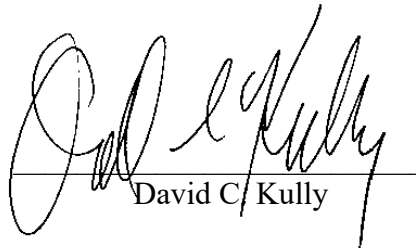
3. Because [REDACTED] were interested in allowing the deposition to proceed as scheduled, we explored all possible solutions to deal with this situation, including evaluating whether it would be possible for [REDACTED] to travel to a country where it would be legally permissible for him to participate in the deposition. That potential solution in the end proved unworkable, because restrictions precipitated by the COVID-19 pandemic (imposed by the United States and other countries to which [REDACTED] considered traveling, as well as by business travel corporate policies) prevented [REDACTED] from pursuing international travel. We also considered whether a [REDACTED] employee might possess sufficient knowledge about the subjects on which [REDACTED] could testify to allow the employee to replace [REDACTED] as the deponent, but concluded that [REDACTED] knowledge and perspective were unique and could not be replicated by another person.

4. On January 25, 2021, I conveyed to counsel for Juul and the FTC that [REDACTED] would be unable to proceed with the deposition as scheduled.

5. [REDACTED] remains willing to sit for a deposition. If performed under procedures that would comply with Swiss law, [REDACTED] would appear voluntarily in Switzerland and answer questions concerning the matters at issue in these proceedings. Similarly, if the travelling conditions and restrictions brought upon by the pandemic were to improve in the future, [REDACTED] will be willing to travel to another country to provide his testimony, all in compliance with the travel polices and health and safety guidelines that would be applicable then.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 26, 2021



David C. Kully

EXHIBIT L

From: [REDACTED]
To: [Lovinger, Michael](mailto:Michael.Lovinger@ftc.gov); [J.J. Snidow](mailto:JJ.Snidow@wilkinsonstekloff.com); [Lee, Joonsuk](mailto:Joonsuk.Lee@ftc.gov)
Subject: RE: [REDACTED] deposition
Date: Thursday, February 18, 2021 8:03:34 PM

Michael and J.J.,

Thank you for understanding and being flexible given the circumstances. [REDACTED], and I really appreciate it. Unfortunately, after checking again, the earliest he is available is March 10. The next available date was April 16. We have the full day reserved for his deposition on March 10, so hopefully that will work.

Thanks, and best regards,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

From: Lovinger, Michael [<mailto:mlovinger@ftc.gov>]
Sent: Thursday, February 18, 2021 3:55 PM
To: J.J. Snidow; [REDACTED]; Lee, Joonsuk
Subject: RE: [REDACTED] deposition

[REDACTED]

We're sorry to hear about the extreme weather and disruptions that you and [REDACTED] and millions of others are experiencing right now. Given the circumstances, we are happy to work with you and [REDACTED] to find an alternative date. We agree with JJ Snidow about scheduling this deposition as soon as possible, but we would not object to a March 10 date if that is the earliest that [REDACTED] is available.

Thanks, and best wishes,

Michael

From: J.J. Snidow <jsnidow@wilkinsonstekloff.com>
Sent: Thursday, February 18, 2021 4:43 PM
To: [REDACTED] Lovinger, Michael <mlovinger@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>
Subject: RE: [REDACTED] deposition

Thanks, Lisa. On the Altria side, we are fine with postponing the deposition in light of the weather, but March 10 is pretty late. We have a number of court deadlines coming up, so we would like to get this deposition scheduled as soon as we can. We'd appreciate you trying to find an earlier time if you can.

And please stay safe and warm—hope this gets resolved very very soon.

Best,

JJ

J.J. Snidow | Associate

WILKINSON STEKLOFF LLP

2001 M Street NW, 10th Flr, Washington, DC 20036

Direct: (202) 847-4040 | Fax: (202) 847-4005

jsnidow@wilkinsonstekloff.com

wilkinsonstekloff.com

From: [REDACTED]

Sent: Thursday, February 18, 2021 12:14 PM

To: Lovinger, Michael <mlovinger@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>; J.J. Snidow <jsnidow@wilkinsonstekloff.com>

Subject: RE: [REDACTED] deposition

Michael, Joonsuk, and J.J.,

[REDACTED] assistant said that he is available for an all-day deposition on March 10. If it has to be sooner, I can ask to move around his other meetings. Again, apologies for putting you in this situation. I would not ask if it was not so dire here.

Thanks, and please let me know.

[REDACTED]

From: [REDACTED]

Sent: Thursday, February 18, 2021 9:52 AM

To: Lovinger, Michael; Lee, Joonsuk; J.J. Snidow

Subject: [REDACTED] deposition

Michael, Joonsuk, and J.J.,

I am reaching out to see if we could possibly move [REDACTED] deposition scheduled for Monday, February 22. We are still experiencing rolling power outages and do not have water in Houston/Dallas. [REDACTED] has [REDACTED] assistant looking into his availability to reschedule the deposition at the earliest date possible.

I certainly wish this was not the situation. It has been one of the most personally challenging weeks with my family.

I will be in touch soon with [REDACTED] availability to see if we can find a workable solution.

Thanks and best regards,



The information contained in this communication is confidential, may be attorney-client privileged and constitute protected work product, may constitute inside information, and is intended only for the use of the intended addressee. It is the property of Wilkinson Stekloff LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email and destroy this communication and all copies thereof, including all attachments.

EXHIBIT M



SUBPOENA AD TESTIFICANDUM ADJUDICATIVE HEARING

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO 	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---------------	---

This subpoena requires you to attend and give testimony at an adjudicative hearing, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF ADJUDICATIVE HEARING The deposition will be conducted remotely. Pursuant to Additional Provision 11 of the FTC Scheduling Order, we are providing advance notice that the deposition may be recorded by videotape.	4. YOUR APPEARANCE WILL BE BEFORE John James Snidow, or designee
5. DATE AND TIME OF ADJUDICATIVE HEARING March 10 at 10:00 a.m. CT Or such other date as may be agreed	

6. SUBJECT OF PROCEEDING In the Matter of Altria, Group, Inc. and JUUL Labs, Inc., Docket No. 9393

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	8. COUNSEL AND PARTY ISSUING SUBPOENA John James Snidow Wilkinson Stekloff LLP 2001 M St NW, 10th Floor Washington DC, 20036 Counsel for Respondent Altria Group, Inc.
--	---

DATE SIGNED 02/22/2021	SIGNATURE OF COUNSEL ISSUING SUBPOENA /s/ John James Snidow
-------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 22, 2021, I caused a true and correct copy of the foregoing Subpoena Ad Testificandum to be served via email upon the following:

Jennifer Milici (jmilici@ftc.gov)
James Abell (jabell@ftc.gov)
Dominic Vote (dvote@ftc.gov)
Peggy Bayer Femenella (pbayer@ftc.gov)
Erik Herron (eherron@ftc.gov)
Joonsuk Lee (jlee4@ftc.gov)
Meredith Levert (mlevert@ftc.gov)
Kristian Rogers (krogers@ftc.gov)
David Morris (dmorris1@ftc.gov)
Michael Blevins (mblevins@ftc.gov)
Michael Lovinger (mlovinger@ftc.gov)
Frances Anne Johnson (fjohnson@ftc.gov)
Jasmine Rosner (jrosner@ftc.gov)
Steve Rodger (srodger@ftc.gov)
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024
Telephone: (202) 326-2289

Complaint Counsel

Michael L. Sibarium (michael.sibarium@pillsburylaw.com)
David C. Grossman (david.grossman@pillsburylaw.com)
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW
Washington, DC 20036
Phone Number: (202) 663-8086
Fax Number: (202) 663-8007

David Gelfand (dgelfand@cgsh.com)
Jeremy Calsyn (jcalsyn@cgsh.com)
Jessica Hollis (jhollis@cgsh.com)
Matthew Bachrack (mbachrack@cgsh.com)
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Phone Number: (202) 974-1500

Counsel for Respondent
Juul Labs, Inc.

s/ J.J. Snidow

J.J. Snidow
Wilkinson Stekloff LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
Counsel for Altria Group, Inc.

PUBLIC

)
**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)
In the Matter of)
)
Altria Group, Inc.)
a corporation,)
)
and)
)
JUUL Labs, Inc.)
a corporation,)
)
Respondents.)
_____)

Docket No. 9393

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: April 2, 2020

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT N



Subpoena to Testify at a Deposition

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO [REDACTED]	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION The deposition will be conducted remotely	4. YOUR APPEARANCE WILL BE BEFORE Frances Anne Johnson Esq., or designee 5. DATE AND TIME OF DEPOSITION February 9, 2021 at 12:00pm EST Or such other date as may be agreed
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6. SUBJECT OF PROCEEDING

In the Matter of Altria Group, Inc., a corporation; and JUUL Labs, Inc., a corporation; Docket No. 9393

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Frances Anne Johnson or designee Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2289
--	---

DATE SIGNED 1/29/2021	SIGNATURE OF COUNSEL ISSUING SUBPOENA s/ Frances Anne Johnson
------------------------------	--

INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or travel@ftc.gov. PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

on the person named herein on:

January 29, 2021

(Month, day, and year)

Frances Anne Johnson

(Name of person making service)

Attorney

(Official title)

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Altria Group, Inc.

and

JUUL Labs, Inc.

Docket No. 9393

**STIPULATION AND ORDER CONCERNING REMOTE DEPOSITION
PRACTICES AND PROTOCOLS**

WHEREAS, the COVID-19 public health crisis (the “Crisis”) has impacted and continues to affect the conduct of this action (the “Litigation”);

WHEREAS, Complaint Counsel and Counsel for Respondents Altria Group, Inc. and JUUL Labs, Inc. (collectively, “Counsel”) for the parties (“Parties”) recognize the need to avoid travel and to maintain social distancing among the attorneys, court reporting personnel, and witnesses who may be deposed in this matter;

WHEREAS, Counsel have met and conferred about practices and protocols in order to minimize the health risks of conducting depositions during the Crisis; and

WHEREAS, the Parties stipulate and agree to the following practices and procedures (the “Protocol”) to govern remote depositions (as that term is defined below);

NOW, THEREFORE, IT IS HEREBY ORDERED:

I. Definitions

1. “Attending Counsel” shall mean any legal counsel for a party (including counsel of record and agency/in-house counsel) who is not Deposing Counsel or Defending Counsel, but who is attending a Remote Deposition either in person or remotely.

2. “Defending Counsel” shall mean legal counsel representing the Witness with respect to a deposition in this Litigation. In the event a non-party Witness does not have counsel, then “Defending Counsel” shall mean the Witness.

3. “Deposing Counsel” shall mean the legal counsel of the party or Parties noticing and/or questioning the Witness at a Remote Deposition in this litigation.

4. “Noticing Party” means a party that noticed a Remote Deposition of a Witness pursuant to Rule 3.33 of the Part 3 Rules of Practice for Adjudicative Proceedings (the “Part 3 Rules of Practice”).

5. “Platform” means the video-conferencing computer application that the Noticing Party utilizes to enable a Remote Deposition in accord with this Protocol.

6. “Primary Counsel” means counsel designated by the Parties and the Witness at the beginning of the Remote Deposition as provided in Paragraph 18.

7. “Remote Deposition” means any deposition by oral examination conducted pursuant to Rule 3.33 of the Part 3 Rules of Practice where fewer than all of the participants—including Deposing Counsel, Defending Counsel, Attending Counsel, the Witness, court reporters, or videographers—are physically present in the same location at the time the deposition is taken. A “Remote Deposition” is a deposition conducted on the Platform, which will allow for Deposing Counsel, Defending Counsel, Attending Counsel, the Witness, court reporters, and videographers to participate without attending the deposition in person or by other means to which the Parties may agree for a particular deposition or Witness.

8. “Witness” means any person or entity whose Remote Deposition has been noticed in this Litigation.

II. Agreement to Conduct Remote Depositions

9. Remote Depositions in this case shall be taken in compliance with applicable local and state regulations and orders governing the Witness’s location, and any federal guidance, regulations or orders concerning social distancing and public health.

10. It is presumed that all depositions in this case shall be Remote Depositions. A copy of this stipulation shall be provided to each Witness or Defending Counsel.

11. The Parties hereby expressly waive all objections to any Remote Deposition, and the admissibility of any testimony given during a Remote Deposition, based solely on the fact it was a Remote Deposition. Testimony given during a Remote Deposition, including both the transcript and video record, if any, may be used at a trial, at hearings, in motions, or in other modes in these proceedings to the same extent that in-person deposition testimony may be used at trial, at hearings, in motions, or in other modes in these proceedings.

12. Notwithstanding any other rule to the contrary, the Parties stipulate that the Witness’s oath or affirmation may be administered remotely.

III. Technology to be Used for Remote Depositions

13. Any Platform must allow for the court reporter to accurately record, and for all participating attorneys and the court reporter to hear and see, the Witness and all Primary Counsel.

14. The Parties agree to use U.S. Legal Support (the “Vendor”) for all Remote Depositions, except that, in the event that circumstances prevent or significantly impede the effective use of the Vendor, other vendors may be used upon consent of the Parties, which will not be unreasonably withheld.

15. The Noticing Party shall be responsible for arranging the taking of a Remote Deposition, including retention of a vendor that will provide a Platform to be used consistent with this Protocol, and ensuring that email invitations to attend the deposition are sent to the Witness, the court reporter and any Attending or Defending Counsel who, no later than three (3) days before the deposition, informs the Noticing Party of their intent to attend the deposition and provides their email address to the Noticing Party.

16. The Parties shall ensure that the Witness has access to technology that meets the minimum standards required by the Platform to ensure the transmission of audio and video feeds via the Platform.

17. Remote Depositions subject to this Protocol shall be recorded by stenographic means. Either Party may also request a video recording of the deposition at the requesting Party’s expense, and each Party will bear its own costs for copies of transcripts and copies of video recordings of any deposition. Neither video recording nor stenography shall occur when the Parties are off the record. No one other than the court reporter—or the court reporter’s designee—and the videographer may use video, audio, or still images to record any part of a Remote Deposition.

18. Prior to the start of a Remote Deposition, each of the Parties shall identify no more than one counsel each to serve as Primary Counsel. Similarly, if the Witness is a non-party Witness, then the Witness shall also identify no more than one counsel to serve as Primary Counsel during the Remote Deposition.

19. Unless the Parties agree otherwise, the video feed visible to the Witness shall be limited to the images of Primary Counsel, the image of the court reporter, any exhibits being displayed to the Witness, and the image of the Witness.

20. Each Party shall give the other Party notice if it reasonably expects a deposition could include Confidential Material (as that term is defined in the protective order entered in this litigation). As appropriate during a deposition, any counsel shall make note on the record of their reasonable belief that Confidential Material is about to be discussed and any Attending Counsel who are not permitted access to such Confidential Material shall sign off from the Remote Deposition feed. When discussion of Confidential Material has been completed, such Attending Counsel may re-join the deposition. Primary Counsel for the Party whom such

Attending Counsel represents shall be responsible for notifying Attending Counsel that they may re-join the Remote Deposition feed. The time used to allow Attending Counsel to sign off or re-join the Remote Deposition feed shall not count against the time allowed for the deposition.

21. The Parties may agree to utilize a “chat” feature on the Platform to communicate with the Witness or the court reporter only if the chat feed is available and displayed to all Attending Counsel, Defending Counsel, Deposing Counsel and the court reporter throughout the deposition, and only if it is used solely for the purpose of allowing them to alert one another about any technical issues that arise during the deposition. All other “chat,” instant message, and/or texting features that may be visible to or used to communicate with the Witness are prohibited and shall be disabled during the deposition if possible. Breakout room features may be enabled only for breaks and recesses off the record.

22. Each Party as well as counsel for the Witness shall be responsible for ensuring that they have a means of communicating with co-counsel or the Witness, as appropriate, during breaks in the deposition. The Parties agree not to oppose reasonable accommodations to allow such conferences during breaks, as well as communications among co-counsel during the Remote Deposition.

IV. Technical Difficulty

23. The Parties or counsel for the Witness may elect to have a technical specialist attend a Remote Deposition to ensure that technical issues are resolved in a timely manner.

24. If technical difficulties result in the inability of any Primary Counsel or the Witness to receive either the audio or video feed of a Remote Deposition, the deposition shall be paused. The remaining Primary Counsel shall note the disconnection on the record as soon as they become aware of it. The deposition must immediately be suspended until the disconnected Primary Counsel or the disconnected Witness has re-joined the deposition and has full access to both audio and video. Any portion of the deposition that has been transcribed while a Primary Counsel or the Witness was disconnected or experiencing technical difficulties must be re-read upon the resolution of the technical difficulty, and the disconnected Primary Counsel must be given an opportunity to object to any questions or answers that occurred in their absence. If the technical difficulties cannot be resolved, then the deposition shall be suspended until the concerns are resolved by the Parties or, if necessary, by order of the Court.

25. If at any time the court reporter or videographer indicates that they are unable to transcribe or record the deposition due to technical difficulties, the deposition shall be paused and the Parties will attempt to resolve those issues. The suspended time will not count against the time allowed for the deposition. If the technical difficulties cannot be resolved to the satisfaction of the court reporter, the deposition shall be suspended.

26. If technical difficulties arise during the taking of a Remote Deposition, counsel for the Parties must meet and confer as soon as is practicable, by telephone or other means, to determine whether the Remote Deposition can proceed or should be continued to a future date. If technical difficulties arise that make the completion of a Remote Deposition impracticable,

counsel for Parties and the Witness shall resume the Remote Deposition at a mutually convenient opportunity within a reasonable period of time.

V. Exhibits

27. To the extent possible, the Parties agree to display exhibits in a manner that allows all Attending Counsel and the Witness to view the exhibit. However, the Noticing Party shall be responsible for ensuring that any exhibits that Deposing Counsel wishes to mark and use at a Remote Deposition can be shown to the Witness in a manner that enables at least the Witness, the court reporter, and Primary Counsel to view the exhibits in their entirety and in a manner that is legible during the course of the deposition. The Parties agree that the Witness shall be afforded the opportunity to print a hard copy of the exhibit, to the extent practicable, if they so choose. If the electronic version of the exhibit may be viewed in its entirety in a manner that is legible, any time spent printing a hard copy of an exhibit shall not count against the time allowed for the deposition. The Parties further agree that the preferred method of marking exhibits for a Remote Deposition is through the Platform enabled for Remote Depositions, which shall enable Deposing Counsel to share exhibits with the Witness, court reporter, and all Attending Counsel.

28. Any Noticing Party that wishes to use hard copies as exhibits during a deposition must ensure that the Witness, the court reporter, Primary Counsel, counsel for the opposing Party, and counsel for any non-Party Witness each receive a physical copy of the documents no fewer than 24 hours before the start of the deposition. Each recipient of the physical copies of the exhibits shall not review any exhibit until it is introduced as an exhibit by the Noticing Party at the Remote Deposition. Notwithstanding the use of a physical copy, an exhibit introduced by the Noticing Party shall also be marked through the Platform, which electronic copy will be the official exhibit, absent agreement otherwise by the Parties. If a Party provides documents in sealed envelopes, the Witness and any other recipient of the hard-copy exhibits shall not open the envelopes until asked to do so during the Remote Deposition and shall only open the envelopes on video. Non-party Witnesses and their Defending Counsel shall not retain any copies of documents sent in advance of or used during the deposition and shall confirm that they will return or destroy any such documents at the end of the deposition. Nothing in this paragraph is meant to preclude Defending Counsel who represents a Witness and is physically located in the same room as the Witness during the Remote Deposition from providing a hard copy of an exhibit that has been introduced to the Witness, provided that doing so does not unreasonably delay the Remote Deposition.

29. If, during the course of questioning, the Witness wishes to review a document or transcript that is being displayed, the Deposing or Primary Counsel then questioning the Witness shall display or facilitate access to all other portions of the document or transcript requested by the Witness before requiring an answer to the question.

30. If the Platform does not permit the court reporter to mark exhibits remotely, Deposing Counsel shall be responsible for marking exhibits and ensuring that such marks are communicated to the court reporter and other Attending Counsel during or as soon as is practicable after the deposition.

31. The Parties shall use a Platform that will allow the Witness and all Primary Counsel to have a complete copy and personal control of each exhibit when it is introduced and through the duration of questioning regarding that exhibit. To the extent that such functionality is not available for any exhibit during a deposition, the deposition shall be suspended until the resolution of the technical difficulties, and the Parties shall make best efforts to resume the deposition as expeditiously as possible.

VI. Miscellaneous Provisions

32. The Parties shall conduct a joint test of a Platform prior to taking the first Remote Deposition using that Platform. A Party that fails to participate in such a test shall waive any objections to using the Platform. The Noticing Party shall conduct a test of the Platform with the technology it intends to use to participate in a Remote Deposition before the time at which a Remote Deposition is scheduled to begin.

33. No person may be physically located in the same room as the Witness during the taking of a Remote Deposition except: (a) a non-attorney who is present solely for the purpose of providing technical assistance to the Witness in using the Platform; (b) Defending Counsel who represents a Witness; (c) any other counsel as the Parties may agree no later than two business days before the Remote Deposition; and (d) the court reporter and videographer. Any Defending Counsel or other counsel located in the same room as the Witness must be logged onto the Platform with a separate video connection or be otherwise visible to a camera at all times during the on-the-record portion of the Remote Deposition. At the beginning of the Remote Deposition, every person logged onto the Platform or otherwise viewing or listening to the deposition must be identified for the record. Any person joining or leaving the deposition after it begins must be identified at the time of their arrival or departure.

34. During on-the-record portions of a Remote Deposition, the Witness may not communicate with any person, except through the Platform, by any means, including through gestures, handwritten communications, email, chat, instant messaging, or text messaging. As referenced in Paragraph 21 all private chat features provided in a Platform shall not be used and must be disabled if possible. This restriction does not apply to conversations between the Witness and Defending Counsel during breaks or other recesses not on the record, which can occur in breakout rooms provided by the Platform or other means, to the extent such breaks or recesses and any such conversations taking place during them occur in the manner permitted under applicable rules and procedures.

35. During the Remote Deposition, the Witness shall not review, read, have before them, or otherwise consult any outside sources of information, including documents (except those presented as exhibits), cell phones, smart phones, computers, the Internet, text or instant messaging services, emails, chats, blogs, or websites such as Twitter, Facebook, or LinkedIn. This obligation does not apply to communications between the Witness and their counsel during breaks or recesses, to the extent any such communications occur in the manner permitted under applicable rules and procedures, nor does this obligation prevent the Witness from using email,

text, the Internet, social media, or other forms of electronic or telephonic communication during breaks for purposes not related to the subject matter of the Remote Deposition.

36. Based on their experience under this Protocol and the needs of individual witnesses, (a) the Parties, or the Parties and any non-party Witness, may stipulate to modifications of this Protocol applicable to an individual Remote Deposition; or (b) the Parties may stipulate and submit to the Court for its approval modifications to this Protocol applicable to all depositions.

37. The Noticing Party shall serve a copy of this Protocol with any subpoena for a Remote Deposition. The Parties shall use their best efforts to obtain the consent of a non-party Witness to this Protocol after service of the Subpoena. If a Party cannot obtain a non-party Witness's consent to this Protocol, it shall inform the other Parties.

38. All persons attending depositions taken by remote means are reminded that the typical rules of professionalism and etiquette during depositions still apply. All persons attending depositions taken pursuant to this order who do not have an immediate need to speak shall ensure that their telephone or video conference lines are muted. In addition, all persons attending depositions taken pursuant to this order shall ensure that they can do so in a space that is relatively free from distractions that would interfere with the deposition.

VII. Reservation of Rights

39. By entering into this stipulation and agreement, the Parties do not intend to limit their rights to seek relief from the Court if, at any time, any one or all of them determine that Remote Depositions are or have become impractical or prejudicial.

40. By entering into this stipulation and agreement, the Parties do not intend for this stipulation to act as a waiver of any Party's rights or protections or applicable procedures under either 16 CFR Part 3, Rules of Practice for Adjudicative Proceedings, or 16 CFR Part 4, Miscellaneous Rules, or any Order entered in the Litigation.

Dated: November 23, 2020

Respectfully submitted,

s/ Dominic Vote
Dominic Vote

s/ Jonathan M. Moses
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PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)
)
)
Altria Group, Inc.,)
 a corporation,)
)
 and)
)
JUUL Labs, Inc.)
 a corporation,)
)
 Respondents.)

Docket No. 9393

ORDER ENTERING STIPULATION

On November 23, 2020, Federal Trade Commission Complaint Counsel and Respondents Altria Group, Inc. and JUUL Labs, Inc. (collectively, the “Parties”) filed a Stipulation and Order Concerning Remote Deposition Practices and Protocols (“Stipulation”) and jointly request that the Stipulation be entered as an order in this matter.

The joint request is GRANTED, and it is ORDERED that the Stipulation is hereby entered as an order in this matter.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: November 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021, I served the foregoing document via email to:

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I hereby certify that on March 5, 2021, I served the foregoing document via email to:

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The Honorable D. Michael Chappell
Administrative Law Judge
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I also certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 5, 2021

By: s/ Michael Lovinger
Michael Lovinger, Attorney

Counsel Supporting the Complaint