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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:
ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d) and the Court’s October 16, 2020 Minute Order (ECF No. 1067), counsel for Defendants Juul Labs, Inc. (“JLI”), Altria,¹ Director Defendants,² E-Liquid Defendants,³ Retailer Defendants,⁴ and Distributor Defendants⁵ (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as the “Parties”)

¹ “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), *see* ECF Nos. 387, 388.

² “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

³ “E-Liquid Defendants” refers to Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

⁴ “Retailer Defendants” refers to Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

⁵ “Distributor Defendants” refers to McLane Company, Inc., Eby-Brown Company, LLC, and Core-Mark Holding Company, Inc.

1 respectfully provide this Joint Case Management Statement in advance of the Further Case
2 Management Conference scheduled for November 20, 2020.

3 **I. PARTICIPANT INFORMATION**

4 The conference will proceed via Zoom, and the Parties will not appear in person. Anyone
5 who wishes to attend the conference must log in using the information available at:
6 <https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

7 **II. ISSUES TO BE DISCUSSED BELOW AND PROPOSED AGENDA**

- 8 1. Status of Case Filings and Dismissals
- 9 2. Case Management Matters
- 10 3. Rule 26(f) Report
- 11 4. Discovery Status
- 12 5. ADR Status

13 **III. STATUS OF CASE FILINGS AND DISMISSALS**

14 As of November 18, 2020, 1200 cases are pending in this MDL, naming 83 defendants. A
15 list of these defendants is attached as **Exhibit A**. To date, 1025 personal injury cases and 141
16 government entity cases (including 103 school districts, 18 counties, 1 city, and 19 tribes) have
17 been filed in this MDL. 89 MDL plaintiffs have voluntarily dismissed their cases (85 personal
18 injury plaintiffs and 4 class plaintiffs); 94 cases have been dismissed without prejudice pursuant to
19 CMO No. 8; and 55 other cases are subject to pending motions to dismiss that have not yet been
20 ruled upon.

21 There are 270 complaints pending in JCCP 5052, which is assigned to Judge Ann I. Jones
22 of the Los Angeles Superior Court as the Coordination Trial Judge. There are 66 government entity
23 cases, including 64 school districts and 204 personal injury cases brought on behalf of over 2400
24 individual personal injury plaintiffs. There are 16 defendants named in those JCCP cases.

25 The Parties are also aware of 14 cases filed by State Attorneys General specifically:
26 California, Illinois, Hawaii, New York, North Carolina, Mississippi, Minnesota, Washington D.C.,
27 Arizona, Pennsylvania, New Mexico, Massachusetts, Colorado, and Washington. Plaintiffs’
28

1 Liaison Counsel continue their outreach to various State Attorneys General to discuss cooperation
2 with this MDL.

3 An update on matters of significance in (including hearings, schedules, deadlines, and trial
4 dates) in Related Actions as defined by the Joint Coordination Order (CMO 9, ECF No. 572 at 1,
5 3), is attached hereto as **Exhibit B**.

6 **IV. CASE MANAGEMENT MATTERS**

7 **A. Amended Complaints**

8 On November 12, 2020, Plaintiffs filed a Second Amended Consolidated Class Action
9 Complaint (ECF No. 1035), and Amended Complaints for the following Government Entities:
10 Tucson Unified School District 19-cv-07335 (ECF No. 25); The Livermore Valley Joint Unified
11 School District 19-cv-08176 (ECF No. 21); The School Board of Broward County, Florida 19-cv-
12 08289 (ECF No. 20); The School Board of Escambia County, Florida 20-cv-00459 (ECF No. 36);
13 Three Village Central School District 19-cv-07208 (ECF No. 25); and County of Santa Cruz,
14 Individually And on Behalf of The People of The State of California 20-cv-02261 (ECF No. 29).
15 The Parties have agreed on a proposed briefing schedule for any Rule 12(b)(6) motions in response
16 to these Complaints as follows:

17 Opening Motions: January 4, 2021

18 Opposition Briefs: February 3, 2021

19 Reply Briefs: February 24, 2021

20 **B. Personal Injury Bellwether Selection Issues**

21 On November 9, 2020, the Court entered its Order Regarding (1) Lexecon and Bellwether
22 Selection for Personal Injury Cases and (2) Class Representative Personal Injury Claims. (ECF No.
23 1125.) The Court granted Plaintiffs' request for "leave to amend to change their 'designated forum'
24 under CMO No. 3 to designate the Northern District of California," and gave Plaintiffs "fourteen
25 days from the date of [that] Order to re-designate this forum as their designated forum." (ECF No.
26 1125 at 2-3.) The Court indicated that "[a]ny such re-designated cases will be included in and
27 available for selection as part of the bellwether pool." (*Id.* at 3.) The Parties agree, subject to the
28 Court's approval, to extend the deadline for the Parties' bellwether selections (which were

1 scheduled for December 15, 2020) by two weeks to December 29, 2020 to provide additional time
 2 once the universe of potential bellwether discovery pool candidates has been defined. Under this
 3 agreement, the Court's bellwether selection date would remain as scheduled (December 15, 2020).

4 In addition, the Parties also agree to modest changes in other dates in the scheduling order:

- 5 • January 7, 2021: Meet and Confer Deadline as to Deferred Pleading Challenges to the
 6 Court's bellwether selections
- 7 • January 14, 2021: Meet and Confer Deadline as to Deferred Pleading Challenges to the
 8 Parties' bellwether selections
- 9 • January 25, 2021: Deadline for Bellwether Plaintiffs to Amend Complaints, if not
 10 previously amended
- 11 • February 5, 2021: Deadline for Defendants to File Deferred Pleading Challenges

12 The other dates in the personal injury schedule will not be affected by these modest extensions.

13 **Certain Defendants'⁶ Position:**

14 While the Court adopted Plaintiffs' proposal to allow the amendment of complaints filed in
 15 accordance with the Direct Filing Order, Defendants believe this is procedurally improper. Absent
 16 an MDL, Plaintiffs could not "amend" their complaints to transfer their cases from one federal
 17 district court to another. Instead, Plaintiffs would need to dismiss their complaints in the original
 18 jurisdiction and then refile new complaints in the second jurisdiction.⁷ Plaintiffs' "amendments"
 19 should be treated as a dismissal of the original action in the jurisdiction identified as the
 20 "Designated Forum" and the filing of a new action in the Northern District of California, including
 21 for purposes of applying Federal Rule of Civil Procedure Rule 41(a)(1)(B).

22
 23 _____
 24 ⁶ The Altria Defendants do not join this section of the CMC Statement and have no issues to report
 regarding bellwether selection at this time.

25 ⁷ As previously indicated in their respective Memoranda Regarding Bellwether Selection, *Lexecon*,
 26 and Jurisdiction (ECF No. 1078, ECF No. 1076), the Retailer Defendants (except for Chevron
 27 Corporation), Distributor Defendants, E-Liquid Defendants, and Altria maintain that there is no
 28 personal jurisdiction over them in any case filed by a non-California resident in this Court, and will
 further detail their objections to personal jurisdiction in accordance with the applicable deadline
 imposed by this Court for deferred pleading challenges. Chevron Corporation maintains that it is
 not a proper defendant in any current case in which it is named as none involve a gas station
 Chevron owns or operates, but instead involve independent franchisees who likely will have their
 own personal jurisdiction and *Lexecon* objections.

1 **Plaintiffs' Position:**

2 Plaintiffs object to Certain Defendants' request for reconsideration of the Court's Order
3 regarding *Lexecon* (ECF No. 1125). There is nothing "procedurally improper" about Plaintiffs
4 amending Short Form Complaints that were filed in the Northern District of California to allege
5 that venue is proper in this district. If there were, Certain Defendants would have raised that point
6 in their supplemental briefing to Plaintiffs' request to amend and provided case law or other
7 authority in support.

8 **C. Government Entity Bellwether Selection Protocol**

9 The Parties have been meeting and conferring regarding the selection of government entity
10 bellwethers. While the parties are making progress, there are still additional details that need to be
11 worked out and would benefit from further discussion. The Parties have reached agreement on the
12 following parameters:

- 13 1. The pool of bellwether government entity nominees will consist of 12 government
14 entity plaintiffs, drawn from those government entity plaintiffs with complaints on
15 file by December 21, 2020.
- 16 2. Defendants and Plaintiffs will each select 6 government entities, with a mix of
17 counties and school districts, to be included in the pool. These selections will be
18 made and submitted to the Court by January 21, 2020.
- 19 3. The Plaintiffs will use their best efforts to have completed fact sheets submitted by
20 December 21, 2020, but a completed fact sheet will not be required for inclusion in
21 the bellwether pool.

22 The Parties also agree that sequencing and ordering of the bellwethers needs to occur such
23 that not all twelve of the bellwethers are undergoing discovery and expert work up at the same time.
24 The Parties agree that as a general matter, a separation of nine months is appropriate between
25 different groups drawn from the twelve bellwether cases. The Parties are continuing to meet and
26 confer on the process for grouping and sequencing the government entities in the bellwether pool
27 for purposes of trial, and propose reporting to the Court on whether they are able to reach agreement
28

1 at the next CMC. The Parties have attached as **Exhibit D** to this CMC an agreed-upon scheduling
2 stipulation reflecting the above dates.

3 **D. Second Amended Class Action Complaint**

4 On November 12, 2020, Plaintiffs filed the Second Amended Class Action Complaint.
5 (“SAC,” ECF No. 1035.) The SAC dropped 29 Class Representatives from the First Amended
6 Class Action Complaint, and added new 21 Class Representatives. (ECF No. 1035-1.) Although
7 the SAC alleges a potential California-law “nationwide” class, Plaintiffs have confirmed that “they
8 do not intend to seek nationwide certification of the claims under California law.” (ECF No. 442
9 at 9.)

10 **V. 26(F) REPORT**

11 Plaintiffs and Defendants continue Rule 26 discussions. The parties had several meet-and-
12 confer sessions and offer the following report:

13 **A. Initial Disclosures**

14 Plaintiffs and Defendants are continuing to meet and confer regarding supplementing
15 certain Defendants’ Initial Disclosures with the production of insurance policy documents, to the
16 extent applicable, and the Parties continue to discuss the timing and Plaintiffs’ Initial Disclosure
17 Requirements.

18 **B. Changes to Default Discovery Limits**

19 The Parties continue to confer regarding changing the default discovery limits to
20 accommodate the scale and complexity of the litigation.

21 **VI. DISCOVERY STATUS**

22 **A. MDL Discovery**

23 On November 17, 2020, the Parties participated in a discovery conference with Judge
24 Corley. A copy of the November 16, 2020 Joint Discovery Status Report provided in advance of
25 that conference is attached as **Exhibit C**. By December 4, 2020, JLI will provide Plaintiffs with a
26 proposed schedule for completing the noticed 30(b)(6) depositions regarding design, marketing,
27 sales, testing, and youth prevention sufficiently in advance of Plaintiffs’ motion for class
28 certification. In the meantime, JLI will block out and provide to Plaintiffs several dates in December

1 for completing topics related to design and will provide proposed dates for depositions of seven
2 current and former JLI employees.

3 **B. Coordination with JCCP on Discovery**

4 The MDL Plaintiffs are holding weekly calls with JCCP counsel regarding discovery
5 coordination. Defendants appreciate and encourage coordination between the MDL and the JCCP,
6 as detailed by the Joint Coordination Order (CMO No. 9, ECF No. 572) and the Deposition Protocol
7 (CMO No. 10, ECF No. 573).

8 **VII. ADR STATUS**

9 Pursuant to Civil Local Rule 16-10(d), the Parties report that they continue to confer with
10 Settlement Master Thomas J. Perrelli and cooperate with his recommendations.

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Dated: November 18, 2020

Respectfully submitted,

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