

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro Bedoya

In the Matter of

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

and

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

Respondents.

DOCKET NO. 9393

**RESPONDENTS' MOTION TO WITHDRAW MATTER FROM
ADJUDICATION TO DISCUSS SETTLEMENT**

Respondents Altria Group, Inc. (“Altria”) and Juul Labs, Inc. (“JLI”) respectfully move, pursuant to Commission Rules §§ 3.25(b) and (d), to withdraw this matter from adjudication in order to pursue a proposed settlement. To that end, Respondents have attached a Proposed Order that fully addresses the relief sought by the Commission in this matter. Complaint Counsel has indicated they are unwilling to join this motion, and they are not in a position even to *negotiate* a settlement because the Proposed Order did not *already* give them all of the remedies they sought at trial, even beyond all of the remedies sought by the Commission in its Notice of Contemplated Relief. Respondents therefore file this motion so the Commission may direct Complaint Counsel to attempt to negotiate a settlement.

As described in Respondents’ Motion to Take Official Notice and to Dismiss this Litigation as Moot, or in the Alternative to Stay the Litigation, Altria has now divested its

interest in JLI, and Altria and JLI have terminated all the agreements related to Altria's holding that interest, including the Non-Compete Agreement and the Services Agreement. These actions moot, at minimum, the gravamen of the Commission's Complaint, which alleged that Respondents entered into a series of agreements in which Altria agreed not to compete in the e-cigarette market. Now that those agreements have been terminated, Altria is free to compete in the market. *See* Ex. A to Complaint Counsel's Opposition to Respondents' Motion to Dismiss ("CC's Opposition") at 3 n.4 (attaching as Ex. A an article describing Altria's planned acquisition of a competitor of JLI). Given these developments, although Respondents' actions did not violate the law, Respondents are willing to settle this matter in an effort to avoid further litigation that could take years to resolve while unnecessarily draining party, judicial, and taxpayer resources, and creating operational uncertainty for Respondents' respective businesses.

Respondents propose entry of a consent order in the form of the Proposed Order attached hereto. To facilitate the Commission's review, Respondents have set forth below each of the items in the Commission's Notice of Contemplated Relief and the provision in the Proposed Order that addresses that item:

- (a) **"Relief that restores Respondents' incentives to compete in the relevant market, including, as appropriate, divestiture of Altria's equity stake in JLI, rescission of Altria's purchase of that stake, and/or any other relief."**

Treatment in attached Proposed Order: Altria has already divested its equity stake in JLI. Paragraph II.C of the Proposed Order provides that Respondents shall not, without prior approval of the Commission, acquire any interest in another Respondent.

- (b) **“The voiding of all agreements related to the Transaction, including the Non-Compete agreement and the Services Agreement between Altria and JLI, as well as a prohibition against any future non-compete agreements between Respondents, except with prior approval by the Commission.”**

Treatment in attached Proposed Order: Respondents have already agreed to terminate or amend all agreements between them such that any remaining agreements relate to limited matters entirely consistent with the relief the FTC seeks. The Non-Compete Agreement and the Services Agreement have ended in their entirety.¹ Paragraph III of the Proposed Order prohibits Respondents from undoing these actions. Paragraph II.A-C of the Proposed Order prohibits the establishment of any future non-compete agreements between Respondents, except with prior approval by the Commission.

- (c) **A prohibition against any transaction between Altria and JLI that combines their businesses in the relevant market, except with prior approval by the Commission.**

Treatment in attached Proposed Order: This prohibition is set forth in Paragraph II.A of the Proposed Order.

- (d) **A prohibition against any officer or director of either Respondent serving on the other Respondent’s board of directors or attending its meetings.**

¹ The exceptions relate to matters that typically survive the termination of agreements and do not create any ongoing obligations. For example, the Cooperation Agreement continues, as it reflects Altria’s release of certain potential claims against JLI. Thus, taken as a whole, Altria and JLI will have no ongoing investment relationship and no ongoing relationship with respect to each other’s E-Cigarette Business.

Treatment in attached Proposed Order: This prohibition is set forth in Paragraph IV.A of the Proposed Order.

- (e) **A requirement that, for a period of time, Altria and JLI provide prior notice to the Commission of acquisitions, mergers, consolidations or any other combinations of their businesses in the relevant market with any other company operating therein.**

Treatment in attached Proposed Order: This requirement is set forth in Paragraph II.D of the Proposed Order.

- (f) **A requirement to file periodic compliance reports with the Commission.**

Treatment in attached Proposed Order: This requirement is set forth in paragraph VII.B of the Proposed Order.

- (g) **Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.**

Treatment in attached Proposed Order: This requirement is set forth in Paragraph VI of the Proposed Order.

- (h) **Any other relief appropriate to correct or remedy the anticompetitive effects of the Transaction or any or all of the conduct alleged in this complaint.**

Treatment in attached Proposed Order: Since Altria no longer has an equity interest in JLI and Respondents have terminated all relevant agreements with each other, including the non-compete agreement, no further relief is necessary.

Notably, the provisions of the proposed settlement also exceed the relief that Complaint Counsel argued remained necessary to make this case moot. Complaint Counsel highlighted

parts (b), (c), and (e) of the Notice of Contemplated Relief, which cover generally undoing agreements between Respondents related to the Transaction, prohibiting future business combinations or non-competes between Respondents without prior Commission approval, and requiring prior notice of business combinations in the relevant market with any other company. See CC's Opposition at 4-5 (listing only parts (b), (c), & (e) of the Notice of Contemplated Relief). All of this relief is reflected in the proposed settlement.

* * *

The transaction and relationship that gave rise to the Commission's complaint no longer exist. Respondents are now prepared to enter into a consent order giving the Commission the remaining relief it sought in this matter. And Respondents are prepared to negotiate the content of the consent order should the Commission have any concerns regarding the Proposed Order. Respondents thus respectfully request that the Commission remove this matter from adjudication so that Respondents and Complaint Counsel can promptly negotiate and enter into a consent order consistent with the Proposed Order.

Dated March 21, 2023

Respectfully submitted,

By: /s/ David I. Gelfand
David I. Gelfand
Jeremy Calsyn
Matthew I. Bachrack
Linden Bernhardt
Jessica Hollis
Cleary Gottlieb Steen &
Hamilton LLP
2112 Pennsylvania Avenue,
NW
Washington, DC 20037
Telephone: (202) 974-1500

Counsel for Juul Labs, Inc.

By: /s/ Beth Wilkinson
Beth Wilkinson
James Rosenthal
Alysha Bohanon
Wilkinson Stekloff LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000

Moira Penza
Ralia Polechronis
Wilkinson Stekloff LLP
130 West 42nd Street, 24th Floor
New York, NY 10036

Telephone: (212) 294-8910

Jonathan M. Moses
Kevin S. Schwartz
Adam L. Goodman
Wilfred T. Beaye, Jr.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000

Counsel for Altria Group, Inc.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Cristine S. Wilson
 Alvaro Bedoya

In the Matter of

Altria Group, Inc.
a corporation;

and

JUUL Labs, Inc.
a corporation.

DOCKET NO. 9393

**[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION TO WITHDRAW
MATTER FROM ADJUDICATION**

Upon consideration of Respondents' Motion to Withdraw Matter from Adjudication and any opposition thereto,

IT IS HEREBY ORDERED, that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED, pursuant to Commission Rule 3.25(d), that this matter in its entirety be, and hereby is, withdrawn from adjudication.

ORDERED By the Commission:

April J. Tabor
Secretary

Dated:

**CONFIDENTIAL PROPOSED ORDER
REDACTED IN ENTIRETY**

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2023, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Stephen Rodger (srodger@ftc.gov)
James Abell (jabell@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)
Nicole Lindquist (nlindquist@ftc.gov)
Jeanine Balbach (jbalbach@ftc.gov)
Steven Wilensky (swilensky@ftc.gov)
Eric M. Sprague (esprague@ftc.gov)
Leslie Okonta (lokonta@ftc.gov)
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024

Counsel Supporting the Complaint

/s/ Beth Wilkinson

Beth Wilkinson
Counsel for Altria Group, Inc.