[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

This Document Relates to:
All Class Actions

CASE NO. 19-md-02913-WHO

CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND EXPENSES ON ALTRIA CLASS SETTLEMENT

MOTION HEARING

DATE: March 6, 2024
TIME: 2:00pm
LOCATION: Courtroom 2, 17th Fl.

HON. WILLIAM H. ORRICK III

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NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

PLEASE TAKE NOTICE THAT on March 6, 2024, at 2:00 p.m., before the Honorable William H. Orrick III of the United States District Court for the Northern District of California, San Francisco Division, located in Courtroom 2, 17th Floor at 450 Golden Gate Avenue, San Francisco, CA 94102, Class Counsel will and hereby do move for entry of an order:[1]

(1) awarding 30% of the Altria Settlement Fund, or $13,659,375, in attorneys' fees plus a proportional share of interest; and

(2) awarding $1,000,000 in expenses.

Class Counsel's Motion is based on Federal Rule of Civil Procedure 23, the Northern District's Procedural Guidance for Class Action Settlements, the supporting Memorandum of Points and Authorities, the Declaration of Dena Sharp, the reports of Common Benefit Special Master Hon. (Ret.) Gail A. Andler (attached as Exhibit 1 to the Sharp Declaration), the Declaration of Professor Robert Klonoff Relating to Attorneys' Fees and Service Awards ("Klonoff Decl.") (attached as Exhibit 2 to the Sharp Declaration), and the pleadings and papers on file in MDL No. 2913, and any other matter this Court may take notice of.

A copy of Class Counsel's [Proposed] Order Granting Motion for Attorneys' Fees and Expenses is submitted along with this motion.

MEMORANDUM OF POINTS AND AUTHORITIES[2]

I. INTRODUCTION

The Altria Class Settlement will create a non-reversionary fund of over $45 million for the Settlement Class, in addition to the $255 million fund created by the earlier JLI Class Settlement. The Altria Class Settlement was reached only in the midst of trial, after years of intense and complex litigation, including mediation overseen by Special Settlement Master Thomas J. Perrelli.

[1] Capitalized terms in this Motion incorporate the defined terms from the Altria Class Settlement Agreement.

[2] The relevant factual and procedural background is set forth in the concurrently filed Motion for

This Court closely oversaw every step of the litigation, including ruling on Defendants' motions to dismiss, conducting monthly case management conferences, enlisting the assistance of Judge Corley on discovery matters, certifying two nationwide classes with claims against Altria, denying Defendants' motions for summary judgment and *Daubert* motions, ruling on critical *in limine* challenges, deposition designations and other pretrial matters, and ultimately presiding over the San Francisco Unified School District (SFUSD) trial. When the Altria Class Settlement was reached, Class Plaintiffs were defending this Court's class certification order on appeal and the parties were preparing to try the class case.

The fees Class Counsel request reasonably reflect the result achieved for the Class, the quality and quantity of the time and expense incurred by Class Counsel, and the risks undertaken in this litigation. This Court is familiar with the risks inherent to this litigation as a whole. *See, e.g.*, Order on Motion for Attorney Fees re JLI Settlement of Class Claims ("JLI Class Fee Order"), Dkt . 4179 at 3 (the Court is "intimately familiar with the work that has been done by counsel within this MDL"). The Altria case carried those risks as well, as adverse FDA findings would have encumbered the case against Altria just as they would the case against JLI, and Altria surely would have argued that any JLI bankruptcy stayed the claims against it as well. But the litigation against Altria involved additional and different challenges, as well. The claims against JLI and its Directors were novel and difficult, *see, e.g.*, Reply in support of JLI Fee Motion, Dkt. 4091 at 20, 20-31, but attaching liability to Altria involved further complications. As Altria pointed out repeatedly in litigating class certification and the merits, holding a minority investor liable for the actions of a third-party company is unprecedented or close to it. Its argument were bolstered by the fact that much of the relevant alleged misconduct occurred before Altria invested in JLI at all. These challenges were concrete and overcome only through tenacity, skill, and commitment. Had Class Counsel not been successful, there either would have been no Altria class

Final Approval of Class Action Settlement. Pursuant to the Northern District's Procedural Guidelines for Class Action Settlements, this "motion for attorneys' fees [] refer[s] to the history and facts set out in the motion for final approval." Additional factual and procedural history can be found in the Sharp Declaration.

settlement, or, at best, a much smaller (additional) recovery for the class.

Further risks were certain. Even assuming that Ninth Circuit substantially affirmed this Court's class certification order (no sure thing), the next step was a class trial. As this Court could observe for itself in the SFUSD trial (and in the discussion with jurors that followed), Altria's defenses on the merits of the RICO claim were significant and the outcome far from guaranteed. Altria had colorable arguments that it did not direct the affairs of the alleged enterprise or conspire with others do so. Altria also maintained through trial that much of the activity Plaintiffs allege constituted acts of mail or wire fraud was First Amendment-protected lobbying that may not be used as a basis for liability (in addition to failing to support a finding of causation under RICO). The day the settlement was announced, the parties were preparing to argue crucial jury instructions on that topic. Had just that one issue (not to mention countless others) gone in Altria's favor, there may have been no recovery at all for the class.

For the risks undertaken, the resources invested, the novelty and complexity of the issues, and the result achieved, Class Counsel seek attorneys' fees of 30% of the Altria Settlement Fund (or $13,659,375; the "Altria Fee"), plus proportional interest accrued from the Altria Settlement Fund. The requested fee, which is separate from the attorneys' fees and expenses that the Court previously awarded in connection with the JLI Class Settlement, Dkt. 4179, falls within the range awarded in the Ninth Circuit for cases involving similar risks and results, and the circumstances here warrant an upward adjustment from the 25% "benchmark." As detailed below, the $45.5 million fund represents an exceptional result that reflects the skill, experience, and creativity that counsel brought to this case.

The Court also has discretion to decide whether to conduct a high-level "cross-check" of the requested fee by reference to counsel's lodestar and consider all work performed in the case from inception, in this context of a second fee petition. While the hybrid nature of this MDL presents an inapt context in which to apply a lodestar cross-check, any one of the various available metrics—including the one offered by Professor Klonoff—supports the requested fees. The expenses for which counsel seek reimbursement are reasonable as well, as they are based on

costs that were necessarily incurred beyond the amounts reimbursed from the JLI Settlement Fund. In the end, the Court is thoroughly familiar with the effort involved in the litigation and substantial risks the Class faced, and is best positioned to evaluate the proposed settlement, as well as the requested fee and expense awards.

II. SUMMARY OF REQUESTED FEES AND EXPENSES.

Class Counsel request that the Court authorize the following payments from the $45.5 million Settlement Fund:

- Attorneys' fees in the amount of 30% of the Settlement Fund ($13,659,375.00), plus a proportionate amount of accrued interest
- Expenses of $1,000,000.

Class Counsel seeks these awards solely from the proceeds of the Altria Settlement. Class Counsel's separate motion for the payment of attorneys' fees and expenses from the JLI settlement was already addressed by the Court. *See* JLI Class Fee Order, Dkt. 4179.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

In the Ninth Circuit, there are two ways of assessing requests for attorneys' fees in common fund cases: the percentage-of-the-recovery method (where the fee is evaluated as a percentage of the common fund) and the lodestar method (where the fee is evaluated by reference to counsel's lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994) ("*WPPSS*")); *see also* JLI Class Fee Order (using the percentage-of-the-recovery method and performing a cross-check with the lodestar method). District courts have discretion concerning which method to apply in a particular case. *Apple Device*, 50 F.4th at 784. In this case, the more appropriate and reliable method for evaluating the requested fee is the percentage-of-the recovery method. Although the Ninth Circuit has established a 25% "benchmark" for fee awards, the factors courts should consider when deciding whether to adjust that percentage upwards or downwards strongly favor a 30% award in this case.

In cases with multiple settlements resulting in serial fee petitions, the Court may consider the requested percentage of the individual settlement amounts and the aggregate settlement amount, the cumulative lodestar, and any prior fee awards. *See, e.g.*, *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018); *In re Transpacific Passenger Air Trans. Antitrust Litig.*, 2019 WL 6327363, at *1 (N.D. Cal. Nov. 26, 2019) (considering aggregate amounts of settlements in the context of the "third and final settlement"); *Lobatz v. U.S. West Cellular of Calif., Inc.*, 222 F.3d 1142, 1149-50 (9th Cir. 2000) (affirming consideration of cumulative lodestar and combined settlement value for a subsequent settlement). "Because the total work performed by counsel from inception of the case makes each settlement possible, courts typically base fee awards in subsequent settlements on all work performed in the case." *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6. Considering serial fee petitions, courts may consider the percentage-of-the-recovery based on both the individual and aggregate settlement amounts. *In re Capacitors Antitrust Litig.*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (after multiple rounds of settlements and fee awards, awarding 40% of final settlement, which brought aggregate fee award to 31% of all settlements).

While a lodestar cross-check is not required, in the context of a second settlement and fee application in the case, it provides additional confirmation that the fee requested is warranted and not excessive. If they perform a lodestar cross-check in this circumstance, "courts typically calculate the lodestar multiplier by dividing (1) all past and requested fee awards by (2) all of counsel's time from inception of the case." *In re Capacitors Antitrust Litig.*, 2020 WL 6544472, at *2 (N.D. Cal. Nov. 7, 2020) (citations omitted). As explained below, there are multiple ways to evaluate the lodestar in this case, including a cross-check of the cumulative lodestar against the total fees across both settlements, each of which confirms that the proposed fee award is not excessive and would not result in a windfall to counsel.

A. The Court Should Employ the Percentage-of-the-Recovery Method

The Ninth Circuit has frequently held that "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab.*

Litig., 654 F.3d 935, 942 (9th Cir. 2011); *Apple Device*, 50 F.4th at 78. Consistent with that discretion, the Ninth Circuit has not prescribed a rigid set of factors courts should consider when deciding which method is most appropriate in a particular case. To the contrary, "no presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other." *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (quoting *WPPSS*, 19 F.3d at 1296). The guidance the Ninth Circuit has provided, as well as the unique circumstances of this case, weigh in favor of using the percentage-of-recovery method to determine the appropriate fee award.

Where "the benefit to the class is easily quantified," the Ninth Circuit has "allowed courts to award attorneys a percentage of the common fund in lieu of the more time-consuming task of calculating the lodestar." *Bluetooth*, 654 F.3d at 942; *c.f. Hyundai*, 926 F.3d at 570 ("When evaluating the settlement is difficult or impossible, the lodestar method may be more convenient."). Here, the benefit to the class of a single lump-sum common fund payment by Altria is easily quantified and permits a straightforward application of the percentage method. Also counseling for application of the percentage method in this case is the nature of this litigation and how it was prosecuted. In this MDL, lawyers representing different types of plaintiffs (class action, personal injury, and government entity) worked collaboratively to advance the common interests of all plaintiffs. Key experts and fact witnesses, for example, provided opinions and testimony that supported each set of plaintiffs' claims against Altria, but to varying degrees and on differing ranges of issues depending on the plaintiff. While this "rising tide" approach to the litigation on the plaintiffs' side ultimately contributed to the results achieved across the MDL, it is not conducive to attempting to parse, for example, how many of the hours spent working with experts on their reports, defending their depositions, and preparing for and taking the fact witness depositions should be credited as common benefit time for the class case versus the other types of cases.

In these circumstances, the Court previously concluded that applying the percentage-of-the-recovery method was appropriate. *See* JLI Class Fee Order, Dkt. 4179 at 3-4.

B. The Requested Attorneys' Fees are Reasonable Under the Percentage-of-the-Recovery Method

In the Ninth Circuit, the starting point—or "benchmark"—for a fee award under the percentage-of-the-recovery method is 25% of the settlement fund. *Bluetooth*, 654 F.3d at 942 (citation omitted).[3] But adjustments may be warranted "when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The factors courts consider when determining whether to depart from the 25% benchmark are: "(1) the result achieved; (2) the risk involved in the litigation; (3) the skill required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases." *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *13-16 (N.D. Cal. Feb. 17, 2023) (applying the same factors).

The Ninth Circuit has made clear that when determining the appropriate percentage to apply, the size of the settlement fund is relevant, but the percentage does not necessarily decrease as the size of the settlement increases. *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir. 2020) ("we have already declined to adopt a bright-line rule requiring the use of sliding-scale fee awards for class counsel in megafund cases"); *see also In re Toyota Corp. Unintended Mktg., Sales Pracs. and Prods. Liab. Litig.*, 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) ("no rule in the Ninth Circuit that requires a court to decrease the percentage of the fee award as the size of the settlement increases") (citing *Vizcaino*, 290 F.3d at 1047). Instead, the size of the fund is simply one factor courts can look to when determining a reasonable fee. *Vizcaino*, 290 F.3d at 1047. A presumption that a certain percentage applies based on the size of the settlement fund "flies in the face" of a court's obligation to "consider[] all the circumstances of the case and reach[] a reasonable percentage." *Id.* at 1048; *see also WPPSS*, 19 F.3d at 1298 ("courts cannot rationally apply any particular percentage—whether 13.6 percent, 25 percent or

[3] When calculating the percentage, courts should use the gross settlement amount—*i.e.* including amounts that will be used to pay notice and administrative costs and litigation expenses—as the denominator. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015).

any other number—in the abstract, without reference to all the circumstances of the case").

As discussed below, consideration of the relevant circumstances in this case weighs in favor of an upward adjustment from the 25% benchmark and a fee award of 30% of the Altria Settlement Fund. Considering many of the same circumstances regarding Attorneys' Fees from the JLI Class Settlement, the Court previously concluded that a 30% fee was warranted. *See* JLI Class Fee Order, Dkt. 4179 at 2-6.

1. The Result Achieved

The result obtained for the Settlement Class—a settlement of $45.5 million funded by the remaining Defendants in the case, in addition to $255 million already paid by other Defendants—is exceptional and warrants an upward adjustment. *See Apple Device*, 2023 WL 2090981, at *16 (noting $310 million settlement on relatively novel computer intrusion and trespass-to-chattels claims was exceptional). The settlement amount is non-reversionary, meaning that class members who submit eligible claims will receive the full benefit of the settlement (after deducting any fees and costs the Court may award) based on their *pro rata* share of the claims submitted. This recovery, for the class as a whole and for each claimant, was anything but assured. To achieve this recovery, Class Plaintiffs overcame numerous obstacles and pursued novel theories, against a backdrop of unfavorable existing class certification caselaw and the challenges associated with seeking a full refund for youth purchasers.

2. The Litigation Risks

The result is particularly significant given the risks posed throughout the litigation. The tobacco industry, including Altria, is notorious for aggressively defending itself and is willing to fight for decades if needed. *See generally United States v. Philip Morris, Inc.*, 449 F. Supp. 2d 1, 28 (D.D.C. 2006) (discussing history); *see also In re Tobacco II*, 240 Cal. App. 4th 779, 785-87 (2015) (after eighteen years of litigation, denying restitution from Philip Morris due to lack of competent economic evidence, despite tobacco company's advertising violations of UCL and FAL). Another case involving tobacco products noted that, because tobacco cases are so aggressively defended and plaintiffs' success rate is so low, the risk factor supported a 30% fee

award of $123 million settlement. *Kurzweil v. Philip Morris Cos.,* 1999 WL 1076105, at *3-4 (S.D.N.Y. Nov. 30, 1999).

Throughout the course of the litigation, counsel faced significant risks and hurdles, including uncertainty in the legal landscape. When the lawsuit was initiated, the regulation of e-cigarettes was unclear—an issue that has become even more pronounced with the FDA's ongoing review of e-cigarette products—and Defendants have argued that they cannot be liable under such circumstances. *See* Dkt. 3270 at 2-3 (rejecting challenges to expert testimony as contrary to federal regulations). In particular, Defendants argued that Plaintiffs' claims were preempted by several federal laws and regulations. *Id*. There was also uncertainty concerning the types of conduct and injuries that are actionable under RICO (an issue raised in Defendants' appeals, concerning which there is little controlling precedent), as well as whether the Court would grant class certification. At the class certification stage, Defendants agued "that no class of purchasers of nicotine or other addictive products could ever be certified" and that federal courts have consistently declined to certify such classes. *In re JUUL Labs, Inc. Mktg., Sales Pracs., and Prods. Liab. Litig.*, 609 F. Supp. 3d 942, 969 (N.D. Cal. 2022). The Supreme Court's recent decision in *TransUnion* and the Ninth Circuit's recent ruling in *Sonner* also created uncertainty about whether Class Plaintiffs could ultimately prevail on some or all of their claims. *Id*. at 998-99. These risks go beyond the risks faced in other consumer products or class action litigations.

In addition, after JLI and the Individual Defendants settled, the Class faced heightened risks in litigating against Altria alone. Altria advanced several arguments that the previously-settled Defendants—who were the sellers of JUUL and represented the majority voting interest of the board of directors—were solely to blame for the most culpable conduct at issue, the historic rise in JUUL's popularity, and the resulting harm. Altria persuasively presented these arguments to the jury in the first bellwether trial, and the Class would have faced similar—and in some instances, more forceful—defenses. Altria advanced similar arguments in its appeal of the class certification order, including arguing that the Class's damages model was required to but could not quantify the harm caused by Altria's actions.

The substantial risk of non-payment presented throughout the course of the litigation—in particular after the JLI settlement when Altria could have pointed to the settled parties as the real wrongdoers—weighs strongly in favor of an upward adjustment from the 25% benchmark.

3. The Skill Required and Quality of Work by Counsel

Achieving the results that are now before the Court required experience, skill, and tenacity. Over the course of the litigation, both this Court and Judge Corley frequently noted the professional and cooperative manner in which the parties have conducted themselves, and the tremendous amount of work that has gone into litigating this matter (despite much of the litigation occurring during the COVID pandemic).[4] In awarding fees in connection with the JLI settlement, the Court noted that "[t]he skill of the attorneys representing the Class's interests . . . and the quality of their work has been superb." JLI Class Fee Order, Dkt. 4179 at 4. Successful coordination among the various plaintiff groups in the litigation also posed substantial challenges and required close collaboration on the facts, the law, and case management among lawyers with practices in different areas. Plaintiffs' counsel also deployed their skills and experience to successfully pursue factual and legal issues on a wide range of topics including: the history of tobacco marketing and regulation, the chemistry of JUUL products, the products' addictiveness and health risks, marketing and consumer psychology, corporate responsibility, personal injuries, and economic theories of injury and damages. Despite the sprawling nature of the litigation, with the Court's oversight and guidance, Plaintiffs' counsel prepared this litigation for trial and ultimately resolved the entire litigation less than four years after the MDL was formed.

[4] *E.g.* ECF 2281 at 21 ("I mean, quite honestly, that you have this much discovery done coming up with that deadline is a model, a model MDL."); ECF 2477 at 4 ("I continue to be impressed by the ability of the lawyers to work out issues to the extent that they can, and to propose reasonable alternatives when they can't"); ECF 2539 at 7 ("Well, I continue to be impressed by the way that you're addressing and working through the issues, and so I'm -- I very much appreciate that."); ECF 2767 at 10 ("I have been super impressed in this case how hard the parties have worked and how much you have accomplished"); ECF 3430 at 10 ("there's so much work going on and I appreciate the manner and professionalism in which you're carrying it out"); ECF 3772 at 40 ("I continue to be impressed with the way that . . . you are working together to push these cases into a place where they can be resolved").

The risk here also included an ominous trail of failed class actions involving tobacco products, which Class Counsel reviewed and carefully formulated a strategy to succeed where other cases had faltered. Class Plaintiffs, for example, focused on a price premium theory of harm and retaining experts to address classwide exposure (Prof. Chandler and Dr. Pratkanis) and the common nature of the "abuse liability" posed by JUUL products (Dr. Shihadeh). As the Court noted, Defendants' reliance on other tobacco products cases "ignor[ed] the specific facts and legal theories here that distinguish the cases [Defendants] rely on and the expert support provided by plaintiffs that was missing in those cases." *Id*. Success in a space where other cases have failed supports an upward adjustment. *See Farrell v. Bank of Am. Corp.*, 827 Fed. Appx. 628, 630 (9th Cir. 2020) ("Indeed, excepting the district court in this particular matter, no court has ever ruled for bank accountholders on the controlling legal issues.").

4. The Contingent Nature of the Fee

Counsel has litigated this case on a contingent fee basis, dedicating over $220 million in attorney time and many millions in expenses, the payment of which was not guaranteed (particularly in light of the risks discussed above). It is well-recognized that representation on a contingency basis weighs in favor of an upward adjustment from the 25% benchmark. *See Larsen*, 2014 WL 3404531, at *9 ("the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing for their work"). Further, for many counsel, this lawsuit has been their primary focus, requiring them to forego or limit work on other cases. *See Vizcaino*, 290 F.3d at 1050 (that litigation required counsel to "forgo significant other work" and entailed "hundreds of thousands of dollars of expense" supported 28% fee award).

5. Awards in Similar Cases

In similar cases, courts have not hesitated to grant fee requests exceeding the 25% benchmark where, as here, the circumstances warrant it. *E.g.*, *Larsen*, 2014 WL 3404531, at *9 (citing numerous cases awarding fees of 32% or greater); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re Lenovo Adware Litig.*, 2019 WL

1791420, at *7-9 (N.D. Cal. Apr. 24, 2019) (30% of $8,300,000 recovery). In the most comparable case available—this case—the Court previously concluded that a 30% fee in with respect to the JLI Settlement was justified by "the excellent result secured for the Class." JLI Class Fee Order, Dkt. 4179 at 2.

6. An Aggregate Award of 30% of the Combined JLI and Altria Settlements is Reasonable

The above analysis would apply with equal force if the Court were to consider not just the 30% fee request from the Altria Settlement, but the resulting 30% award across both the JLI Settlement and the Altria Settlement. The combined settlements—over $300 million—represent a highly successful resolution of this litigation for JUUL purchasers, and one that was hard-fought, risky, and the result of counsel's dedication and skill.

The fact that the total settlements exceed $300 million does not necessitate that the Court award an overall fee below at or below the 25% benchmark. As discussed above, the Ninth Circuit has explained that the percentage does not necessarily decrease as the size of the settlement increases. *See In re Optical Disk Drive*, 959 F.3d at 933; *Vizcaino*, 290 F.3d at 1048; *WPPSS*, 19 F.3d at 1298. Even for settlements in which the recovery is over $100 million—sometimes referred to as "megafund" cases—courts have "routinely awarded class counsel fees in excess of the 25% 'benchmark.'" *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *5 & n.30 (N.D. Cal. Dec. 6, 2017) ("*NCAA I*"), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) ("*NCAA II*") (collecting cases, including those awarding fees of 1/3 of the settlement fund); *see also In re Capacitors Antitrust Litig.*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (following serial fee petitions, awarding 40% of final settlement, which brought cumulative fee award to 31% of all settlements, and collecting cases awarding 30% or more).[5]

[5] *See also Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at *3 (W.D. Wash. June 1, 2023) (awarding 29.3% fee of a $415,000,000 settlement fund); *Andrews v. Plains All Am. Pipe L.P.*, 2022 WL 4453864, at *2-4 (C.D. Cal. Sept. 20, 2022) (applying the percentage method and awarding 32% of a $230 common fund); *In re Lithium Ion Batteries Antitrust Litig.*, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018) (30% of $139,000,000 recovery); *In re: Cathode*

Thus, whether the Court considers the requested fee of the $45.5 million Altria settlement alone, or the aggregate settlement amount of over $300 million, the requested 30% fee award is well within the range of awards in similar cases.[6]

C. A Lodestar Cross-Check of the Altria Settlement Alone and the JLI and Altria Settlements Together Support the Requested Attorneys' Fees

The Ninth Circuit has explained that courts may consider class counsel's lodestar to "provide[] a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. The use of the lodestar cross-check is not mandatory, and the Ninth Circuit "has consistently refused to adopt a crosscheck requirement." *Farrell*, 827 Fed. Appx. at 630; *see also Senne v.*

Ray Tube (CRT) Antitrust Litig., 2016 WL 183285, at *2 (N.D. Cal. Jan. 14, 2016) (approving 30% fee award of $127.45 million settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575003 (N.D. Cal. Dec. 27, 2011) (approving 30% fee award of $405.02 million settlement); *Meijer, Inc. v. Abbott Labs*, No. C-07-05985 CW, 2011 WL 13392313, at *2 (N.D. Cal. Aug. 11, 2011) (33 1/3% of $52,000,000 recovery); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2-4 (N.D. Cal. Sept. 20, 2018) (fee award of 33.3% of $104.75 million settlement, which resulted in a 1.37 multiplier); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1115 (D. Kan. 2018), *aff'd* No. 19-3008, 2023 WL 2262878 (10th Cir. Feb. 28, 2023) (awarding a 33.33% fee award in a $1.51 billion settlement); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) ("although a one-third fee would be at the top of the range of awards in megafund cases, that figure does still fall within that range, especially in more recent cases"); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) ("courts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements") (collecting cases).

[6] Some courts have also considered whether counsel's performance "generated benefits beyond the cash settlement fund." *Vizcaino*, 290 F.3d at 1047. The *Colgate* class action was the first litigation of any kind filed against JLI for the issues in suit and predates every government enforcer lawsuit. Since the initiation of this litigation, JLI has largely suspended its marketing (including print, broadcast, and digital advertising within a year of the Court denying JLI's first motion to dismiss), and Altria has completely divested from JLI. According to surveys, JUUL was the most popular brand among teenagers when this lawsuit was filed in 2018, with over 55% of teens aged 15-17 reporting JUUL use; today, JUUL use among teens has dropped significantly, while other vaping devices have taken off. The relative decline of JUUL during the litigation is another factor that weighs in favor of an upward adjustment on attorneys' fees. In *Vizcaino*, for example, the court approved a fee increase where Microsoft changed its hiring practices to address allegations it was misclassifying workers. 290 F.3d at 1150. Similarly, in the 46-state class action brought by states against tobacco companies, the attorneys' success in stopping tobacco companies from engaging in conduct parallel to that alleged here supported attorneys' fees of several *billion* dollars. See *Lorillard Tobacco Co. v. Chester*, 589 F.3d 835, 838 (6th Cir. 2009) (discussing background of multistate tobacco litigation fee award).

Kansas City Royals Baseball Corp., 2023 WL 2699972, at *18 (N.D. Cal. Mar. 29, 2023) ("a cross-check is not required so long as the court achieves a reasonable result using the method it selects"). In other words, "a cross-check is discretionary." *Apple Device*, 50 F.4th at 784. And as one court observed, "[a]lthough modification of a fee award based on a lodestar cross-check may serve some utility in cases at the fringes, routine recourse to it threatens to swallow the benefits that the percentage-of-the-fund method provides . . . ." *NCAA I*, 2017 WL 6040065, at *10.

The utility of a cross-check is significantly reduced where the court has closely supervised the litigation. *See Andrews*, 2022 WL 4453864, at *2 (finding a cross-check unnecessary in light of the "exceptional circumstances of this case and the Court's extensive involvement in supervising" the litigation); *Senne*, 2023 WL 2699972, at *20 (granting 30% fee request and noting that "[a]rguably, a lodestar cross-check is not required here because the Court has been extensively involved in supervising this litigation and has observed first-hand the monumental efforts Class Counsel put into this case"). This Court was, of course, extensively involved in every aspect of overseeing this litigation: the Court held monthly (or more frequent) status conferences, guided the parties through complex pretrial issues and trial preparation, made itself available to resolve disputes (both big and small) among the parties throughout the litigation, ruled on numerous rounds of briefing on dispositive and non-dispositive issues, and oversaw several weeks of trial. Based on this first-hand knowledge of the parties' efforts, the Court has frequently commented upon the volume and quality of the work involved in prosecuting plaintiffs' claims. *See* fn. 5, above.

1. The Purpose of Any Lodestar "Cross-Check" Is to Prevent an Unreasonable Windfall to Counsel, Not to Re-Calculate the Fee Award

Although unnecessary, application of a lodestar cross-check confirms the reasonableness of the requested fee award. The Ninth Circuit has recognized that awarding a percentage of the recovery without further inquiry into the reasonableness of the award in megafund cases could conceivably result in "windfall profits to class counsel" that have little relation to the work performed. *Bluetooth*, 654 F.3d at 942. The cross-check can be used to guard against this outcome by ensuring that the multiplier on class counsel's lodestar is not "extraordinarily high or low."

Kang v. Wells Fargo Bank, N.A., 2021 WL 5826230, at *16 (N.D. Cal. Dec. 8, 2021) (lowering a requested 6.24 multiplier to 5.47 after conducting a cross-check). The cross-check should confirm the reasonableness of the fee resulting from the percentage method, rather than recalculate the fee. It should therefore "not result in a second major litigation," transform courts into "green-eyeshade accountants," or seek to "achieve auditing perfection," but should instead "do rough justice" to confirm an award's reasonableness. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018).

The analysis when doing a cross-check thus does not need to be as exacting as when the primary means for calculating the fee is the lodestar method. In *Senne*, for example, the court granted attorneys' fees of 30% of the common fund and, due to its familiarity with the litigation and counsel's work, only "performed a rough calculation of Class Counsel's lodestar to evaluate whether the percentage-of-recovery method gives rise to a reasonable result." 2023 WL 2699972, at *20. And in *In re Apple iPhone/iPod Warranty Litigation*, the court held that while the "plaintiffs' submission would be woefully insufficient" were it being used "to calculate a lodestar as the primary basis for the fee award," it was sufficient to show that "applying a percentage-based fee recovery is within reason." 40 F. Supp. 3d 1176, 1181 (N.D. Cal. 2014); *see also NCAA II*, 768 F. App'x at 654 ("The district court must gather sufficient information so that the lodestar is a meaningful crosscheck of the percentage-of-the-fund method."); *Larsen*, 2014 WL 3404531, at *9 ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting.") (quotation omitted).

As discussed in the following section, a review of counsel's lodestar confirms that the requested fee award is reasonable and will not result in windfall profits.

2. The Requested Fee Would Not Result in a Windfall

Where there are multiple settlements resulting in serial fee petitions, courts have discretion to consider a lodestar cross-check on both the individual settlement amount and the aggregate settlement amount, taking account of the cumulative lodestar and any prior fee awards. *See, e.g.*, *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6; *In re Transpacific Passenger Air Trans. Antitrust Litig.*, 2019 WL 6327363, at *1; *Lobatz*, 222 F.3d at 1149-50. "Because the

total work performed by counsel from inception of the case makes each settlement possible, courts typically base fee awards in subsequent settlements on all work performed in the case." *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6. When considering serial fee petitions, "courts typically calculate the lodestar multiplier by dividing (1) all past and requested fee awards by (2) all of counsel's time from inception of the case." *Id.* (citations omitted).

There are ample ways to evaluate the time spent by plaintiffs' counsel under either the single settlement or combined settlements approach. Any evaluation of that time—which Judge Andler has reviewed and determined was reasonably incurred—leads to the same conclusion: neither a $13,659,375.00 fee from the Altria Settlement alone nor a cumulative $90,159,375.00 fee of the aggregate $300 million Class settlement would result in the type of windfall the Ninth Circuit has cautioned against.

As the Court has recognized, a substantial portion of the work performed by plaintiffs' counsel in this MDL inured to the benefit of each plaintiff group (class, personal injury, and government entities) and attempting to isolate the hours incurred specifically for the benefit of the class would overlook the important benefits the overall advancement of the litigation provided to class members, as well as other plaintiffs across the MDL. *See* JLI Class Fee Order, Dkt. 4179 at 5. The Altria Class Settlement is a stark example of how work done to further the litigation generally benefitted the Settlement Class. Despite the efforts of counsel and the Settlement Master, prior to the SFUSD trial the class had not settled their claims against Altria and Altria was in the process of seeking to have the Ninth Circuit overturn the Court's class certification order. SFUSD is a government entity, but the trial work also directly developed the Class's RICO claims, including by securing favorable rulings on RICO jury instructions and the admissibility of key evidence and deposition designations for witnesses whose conduct was central to the RICO claims. Precisely because of this overlap, the trial team for SFUSD included attorneys representing all plaintiff types, and Ms. Sharp, Class Counsel, served as one of the four lead trial counsel. The work done before and during the SFUSD trial crystalized the strengths and weaknesses of the claims of *all* plaintiffs in the MDL against Altria, and led to a mid-trial

settlement of the class claims even though they were not directly at issue in the SFUSD trial.

In considering that significant overlap, the Court should continue to use Professor Klonoff's method of taking a third of the overall lodestar to approximate Class-specific time, "based on the theory that 1/3 of the work was attributable to each main category of case within this MDL: class, personal injury, and government entity," as a helpful tool in evaluating the fee request. *See id.* (noting that "Professor Klonoff's method of roughly calculating a lodestar cross-check is helpful on this issue.").

Each of the below methods of evaluating the lodestar support the requested award.

Total Altria-specific Class Lodestar: $11,022,954.79 (1.24 multiplier on Altria Fee). Under the approach taken by Professor Klonoff, the Class lodestar allocation is the total lodestar for the MDL divided by three, in recognition of the fact that there are three primary plaintiff groups. Sharp Decl. Ex. 2 ("Klonoff Decl."); *see also* Klonoff Declaration in Support of JLI Fee Motion, Dkt. 4056-2 at 53. To isolate the portion of the Class-specific lodestar attributable to the litigation against Altria, Professor Klonoff then further reduces the resulting lodestar by 85%, because the JLI Settlement represents 85% of the combined value of the Class Settlements and Altria represents 15%. *Id.*; Dkt. 4056-2 at 53. The total lodestar from inception is $220,459,095.85; the one third allocated to the Class is $73,486,365.28, and after an 85% reduction, the Altria-specific Class lodestar is $11,022,954.79. Under this approach, the requested fee amounts to a 1.24 multiplier.[7]

Cumulative Lodestar for Combined Class Settlements: $73,486,365.28 (1.23 multiplier on aggregate fee). The total lodestar from the inception of the case is $220,459,095.85. Under the approach taken by Professor Klonoff, the Class-specific portion is the total lodestar divided by three, in recognition of the fact that there are three primary plaintiff groups, or $73,486,365.28. The combined JLI and Altria settlements total $300,531,250.00, and Class Counsel were awarded

[7] This approach, taken by Professor Klonoff, is particularly conservative, because it reduces by 85% the class lodestar from both before and after the JLI Settlement, despite that the time billed after December 6, 2022, includes litigation against Altria only. Alternatively, applying the 85% reduction to only the time billed from inception to December 6, 2022 (which included litigation against both JLI and Altria) would yield an Altria-specific class lodestar of $17 million, with a 0.80 multiplier.

30% from JLI, Dkt. 4179, and now seek a fee award of 30% from Altria, for an aggregate fee of $90,159,375.00. The requested $90 million fee from the combined settlements would be a 1.23 multiplier on the cumulative Class lodestar.

Total Lodestar Post-Dating the JLI Settlement: $21,122,551.80 (0.65 multiplier on Altria Fee). In their motion for attorneys' fees based on the JLI Class Settlement, the lodestar reported by Class Counsel did not include any time after the December 6, 2022, settlement date with JLI. The vast majority of the time spent by the MDL lawyers after December 6, 2022, furthered the common interests of all plaintiffs, including the Class Plaintiffs, in prosecuting the claims against Altria. The requested $13.6 million fee from the Altria Class Settlement Fund would be a 0.65 multiplier on that time, even without reference to any of the time incurred before the JLI Class Settlement.

Altria Trial and Appeal Lodestar: $12,353,290.70 (1.11 multiplier on requested Altria Fee). After the JLI settlement, the time that most directly furthered the interests of the Class's case against Altria was time spent defending the Class Certification order on appeal, preparing for trial against Altria, and trying the SFUSD case (where Class Counsel served as one of four lead trial counsel for SFUSD). In the time after December 6, 2022, the 19,133.6 total hours billed in categories 17 (trial preparation), 18 (trial), and 19 (appeal) capture this work and only this work, resulting in a $12.3 million lodestar. The requested $13.6 million fee from the Altria Class Settlement Fund would be a 1.11 multiplier on that time, without reference to any other work done after December 6, 2022, or any of the time incurred before the JLI settlement.

Each of the lodestar metrics above support the requested fee—even though each metric is highly conservative and significantly understates the common benefit work performed. Depending on which of the above metrics is used, the requested fee award is anywhere from a significant negative multiplier to a 1.24 multiplier—a lower multiplier than the Court approved in awarding attorneys' fees in connection with the JLI Settlement. *See* Dkt. 4179 at 5 (holding that a 1.36 multiplier is justified). Courts in the Ninth Circuit have frequently granted, and the Ninth Circuit has approved of, fee awards that result in significant multipliers, including in megafund

cases where the fee award is above the 25% benchmark. *E.g. Vizcaino*, 290 F.3d at 1050 (affirming 28% fee and multiplier of 3.65); *Capacitors*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (31% aggregate fee award, a 1.81 multiplier); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at *6, 10 (N.D. Cal. Aug. 3, 2016) (awarding a fee of 27.5% and a 1.96 multiplier). There is no risk that the fee award will result in an unwarranted multiplier or one that is outside the bounds of what is regularly approved in by courts in the Ninth Circuit.

3. Plaintiffs' Counsel's Hours and Hourly Rates Are Reasonable

For a lodestar cross-check to be meaningful, counsel must demonstrate that the lodestar reflects hours reasonably spent and reasonable hourly rates. *Bluetooth*, 654 F.3d at 941. Both criteria are readily met here.

The majority of the total hours spent in the litigation directly benefitted the Settlement Class, regardless of the type of client the firm performing the work represents.[8] As noted above, this overlapping benefit is particularly true of the time billed after December 6, 2022, because much of that time involved trial preparations and presentation against Altria, which significantly advanced the Class's case even though SFUSD was the plaintiff at trial.

The hours spent were also reasonably incurred. The Sharp Declarations—the first submitted in connection with the JLI Settlement and covering work performed through December 6, 2022, and the second submitted with this motion focuses on Altria-specific and post-December 6, 2022 work—detail the work performed by Plaintiffs' counsel that inured to the benefit of all Plaintiffs, including class members. As noted above, all time used to calculate the lodestar has been periodically reviewed by Judge Andler. Courts frequently rely on special masters to assess the reasonableness of class counsel's lodestar. *E.g.*, *In re Capacitors Antitrust Litig.*, 2020 WL 6544472, at *2 (court "adopt[ed] in full" the "determinations" of the special master). Judge Andler concluded that "the tasks, hours and expenses incurred were appropriate, fair and reasonable and for the common benefit." *E.g.*, Sharp. Decl., Ex. 1 at 11. A full breakdown of the

[8] To ensure that the Altria Fee Application is not based on hours spent pursuing attorneys' fees under Rule 23(h), Class Counsel has identified and excluded from the lodestar calculations above time related to the JLI Fee Motion. *See* Sharp Decl. ¶ 45.

new lodestar after December 6, 2022, into distinct litigation categories can be found at paragraph 42 of the Sharp Declaration, and the breakdown of the time from inception to December 6, 2022, is detailed in paragraph 122 of the prior Sharp Declaration submitted in support of the JLI fee award, Dkt. 4056.

The hourly rates used to calculate the lodestar are also reasonable, and the vast majority of the time billed from the inception of the case fell into the following ranges:

- For over 97.1% of partner hours, rates range from $275 – $1,200.
- For over 95.5% of senior counsel hours, rates range from $325 – $1,000.
- For over 94.1% of associate hours, rates range from $175 – $800.
- For over 90.8% of contract or staff attorney hours, rates range from $100 – $500.
- For over 84.8% of paralegal hours, rates range from $50 – $425.

In the Court's order granting Class Counsel's fee motion for the JLI Class Settlement, it found that these same hourly billing rates were reasonable. JLI Class Fee Order, Dkt. 4179 at 5.

Counsel's rates are also consistent with rates approved in complex litigations throughout this District. *In re MacBook Keyboard Litig.*, 2023 WL 3688452, at *15 (N.D. Cal. May 25, 2023) (approving partner rates up to $1,195, associate rates up to $850, $425 for contract attorneys, and $325 for paralegals); *Hefler*, 2018 WL 6619983, at *14 (approving partner rates up to $1,250, $650 for associates, and $350 for paralegals); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals). They are also consistent with rates courts have approved for Co-Lead Counsel and the Class Committee. Sharp Decl., ¶ 52 (collecting cases approving rates). Capping the hourly rates that exceed the above ranges (*i.e.*, capping all partner rates at $1,200 and all paralegal rates at $425) has a minimal effect on the lodestar, reducing the post-JLI settlement lodestar by 1.6% (or $338,725.70), and reducing the cumulative lodestar from inception by 1.2%. *Id.* ¶ 51.

In sum, consideration of the time reasonably spent at reasonable hourly rates provides no

reason to doubt the appropriateness of the requested fee award.

IV. THE REQUESTED EXPENSES ARE REASONABLE

"Class counsel is entitled to reimbursement of reasonable expenses." *Larsen*, 2014 WL 3404531, at *10 (citing Fed. R. Civ. P. 23(h)); *see also In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *16 (N.D. Cal. Sept. 2, 2015) ("In common fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense.") (citing *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)). In connection with the JLI Class Settlement, the Court previously granted Class Counsel's request for payment of $4.1 million for the reimbursement of out-of-pocket expenses. Dkt. 4179 at 6-7. Class Counsel requests an additional $1,000,000 from the Altria Class Settlement for reimbursement of out-of-pocket expenses.

The expense reimbursement request is reasonable. Judge Andler has concluded that the MDL expenses were reasonably incurred for the common benefit. *E.g.* Sharp Decl., Ex. 1 at 11 (finding that the expenses were "appropriate, fair and reasonable and for the common benefit"). After consultation with the Fee Committee, Class Counsel has concluded that the amount requested reflects a fair (and conservative) accounting of the share of the overall MDL expenses that benefitted the Settlement Class.[9] By far the largest cost in this litigation related to experts, which is appropriate given the wide range of topics that Plaintiffs—and Class Plaintiffs specifically—addressed at summary judgment and trial for SFUSD, and would have addressed in pretrial proceedings for the class. The litigation also involved a large number of fact and expert depositions, and costs related to those depositions (*e.g.*, court reporting service) were reasonably incurred. Deposition costs were also high because many key witnesses, particularly ones relevant to Altria, were outside the subpoena range of the Court, and plaintiffs incurred expenses to effectively present their testimony on video via deposition designations.

The majority of costs incurred in the litigation (which will exceed $25 million in total) would have been incurred even if the litigation included only class claims, and not personal injury

[9] As before, the requested expense award would be subject to the allocation recommendations of the Committee.

or government entity claims. Class Counsel estimate that well in excess of $10 million in expenses were unquestionably incurred for the common benefit of the class, and in most class actions would be payable solely from the class settlement fund. In addition to significant expenses for expert witnesses, other substantial common benefit expenses—such as deposition costs and documents hosting fees—would have been borne by the class alone absent cost-sharing with other plaintiff groups. The combined expense reimbursements from the JLI and Altria settlements would therefore be significantly lower than they otherwise would be absent the involvement of other plaintiff groups. Put another way, the class substantially benefits from the involvement of other plaintiff groups by spreading litigation costs among the various types of plaintiffs. By any metric, the costs reasonably attributable to the class would significantly exceed the combined cost reimbursement of $5.1 million from the JLI and Altria Settlements.

The requested $1 million expense award reflects just a portion of the Class's remaining costs after the award from the JLI Class Settlement. *See* Sharp Decl. ¶¶ 53-55. In support of the $4.1 million JLI expense award, Class Counsel and the Court cited $2,050,000 in expert costs for only those experts who provided opinions in connection with class certification (even though the class would have presented additional experts at trial), over $1,450,000 for document hosting costs, and over $800,000 for costs associated with deposition transcripts and related materials. *See* Dkt. 4179 at 6-7 (noting that the $4.1 million award was justified "based just on a portion of the total case costs"). Additional costs in just those same categories more than account for the additional expense award requested here. For example, since the JLI expense request was submitted, plaintiffs have incurred over $188,000 in additional document hosting expenses. Regarding expenses related to depositions, plaintiffs have incurred over $1,700,000 in expenses that were not included in the JLI expense request, such as additional costs for deposition transcripts, service of subpoenas, fees for Special Master Judge Larson's services resolving disputes during depositions and ruling on objections in deposition designations, expenses for Nextpoint (a technology platform used to prepare, exchange, and review designations), and expenses for technicians to cut the deposition video corresponding to designations as plaintiffs

revised and refined their cuts. The $1.7 million figure does not include the time spent by trial technicians to finalize and present video designations at the SFUSD trial.

The requested amount is also consistent with the amount that results from applying a 2% cost assessment to the Class, which is the amount of assessments paid by other plaintiffs in the litigation. *See* Dkt. 586 at 11. A 2% cost assessment on the Altria settlement alone would be $910,625.00, while a 2% cost assessment on the combined class settlements would be $6,010,625.00. Considering that the Court previously granted $4.1 million in expenses from the JLI Class Settlement, the additional $1,000,000 in expenses requested here for the class is reasonable and a fair approximation of the 2% cost assessment, both individually and in the aggregate.

Class Counsel requests that the Court authorize the payment of $1,000,000 from the class Settlement Fund for the payment of litigation costs.

V. CONCLUSION

For the above reasons, Class Counsel requests that the Court grant their requests for attorneys' fees and expenses.

Dated: January 16, 2024

Respectfully submitted,

By: /s/ *Dena C. Sharp*

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

By: /s/ *Dena C. Sharp*
Dena C. Sharp