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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

CASE NO. 19-md-02913-WHO

This Document Relates to:  
All Class Actions

**[PROPOSED] ORDER GRANTING CLASS  
COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND EXPENSES RE  
ALTRIA CLASS SETTLEMENT**

1           Following a settlement with JUUL Labs, Inc. (“JLI”) and related Released Parties (“JLI  
2 Class Settlement”), the Class Plaintiffs, on behalf of themselves and the Settlement Class, entered  
3 into a subsequent settlement with the remaining defendant Altria<sup>1</sup> to fully resolve the Class’s  
4 claims.<sup>2</sup> The Court preliminarily approved the Altria Class Settlement on September 7, 2023. The  
5 Court has considered Class Counsel’s Motion for Attorneys’ Fees and Expenses (“Motion”),  
6 including all arguments and briefing presented.

7           The Court **GRANTS** the motion and **ORDERS** as follows:

8 **I. SUMMARY OF ATTORNEYS’ FEES AND EXPENSES**

9           Class Counsel request the following payments from the \$45,531,250.00 Altria Settlement  
10 Fund:

- 11           • Attorneys’ fees in the amount of 30% of the Altria Settlement Fund
- 12           (\$13,659,375.00), plus a proportionate amount of accrued interest; and
- 13           • Expenses of \$1,000,000.

14           Class Counsel seeks these awards solely from the proceeds of the Altria Settlement, and  
15 are not seeking the payment of any service awards from that settlement. The Court previously  
16 granted Class Counsel’s separate motions for the payment of attorneys’ fees and expenses from  
17 the JLI settlement. *See* Order on Motion for Attorney Fees re JLI Settlement of Class Claims (“JLI  
18 Class Fee Order”), Dkt. No. 4179. This motion is considered separately, but I take into account the  
19 fees and expenses previously awarded in ruling on the present motion.

20 **II. ATTORNEYS’ FEES**

21           In the Ninth Circuit, there are two ways to assess requests for attorneys’ fees in common  
22 fund cases: the percentage-of-the-recovery method (where the fee is evaluated as a percentage of  
23 the common fund) and the lodestar method (where the fee is evaluated by reference to counsel’s  
24 lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022); *see also*

25 \_\_\_\_\_  
26 <sup>1</sup> “Altria” refers to Defendants Altria Group, Inc., Altria Client Services LLC, Altria Enterprises,  
27 LLC, Altria Group Distribution Company, Philip Morris USA, Inc.

28 <sup>2</sup> Unless otherwise defined herein, capitalized terms have the same meaning as in the Altria Class  
Settlement.

1 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power*  
2 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994) (“WPPSS”).

3 In the Ninth Circuit, “courts have discretion to employ either the lodestar method or the  
4 percentage-of-recovery method.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942  
5 (9th Cir. 2011); *Apple Device*, 50 F.4th at 78. Consistent with that discretion, the Ninth Circuit has  
6 not prescribed a rigid set of factors courts should consider when deciding which method is most  
7 appropriate in a particular case. To the contrary, “no presumption in favor of either the percentage  
8 or the lodestar method encumbers the district court’s discretion to choose one or the other.” *In re*  
9 *Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (quoting *WPPSS*, 19  
10 F.3d at 1296). The guidance the Ninth Circuit has provided, as well as the unique circumstances of  
11 this case, weigh in favor of using the percentage-of-recovery method to determine the appropriate  
12 fee award.

13 Where “the benefit to the class is easily quantified,” the Ninth Circuit has “allowed courts  
14 to award attorneys a percentage of the common fund in lieu of the more time-consuming task of  
15 calculating the lodestar.” *Bluetooth*, 654 F.3d 942; *c.f. Hyundai*, 926 F.3d at 570 (“When  
16 evaluating the settlement is difficult or impossible, the lodestar method may be more  
17 convenient.”). Here, the benefit to the class of a single lump-sum common fund payment by Altria  
18 is easily quantified and permits a straightforward application of the percentage method. Also  
19 counseling for application of the percentage method in this case is the nature of this litigation and  
20 how it was prosecuted. In this MDL, lawyers representing plaintiffs with different types of claims  
21 (class action, personal injury, and government entity) worked collaboratively to advance the  
22 common interests of all plaintiffs. This approach, which ultimately contributed to the results  
23 achieved across the MDL, is not conducive to a rigid allocation of the of hours spent on each task  
24 in the MDL and how to credit those hours as common benefit time across the plaintiff groups.

25 I GRANT plaintiffs’ request for an award of 30% of the gross Altria Settlement Fund. In  
26 making this award, I have considered – as explained in more detail below – the excellent result  
27

1 secured for the Class that justifies an award higher than the Ninth Circuit’s 25% benchmark, as  
2 well as an appropriate lodestar cross-check.

3 **A. The Court is Familiar with the MDL Work Performed**

4 At the start of these MDL proceedings and as part of my selection and appointment  
5 process, I required the Co-Lead Plaintiffs’ Counsel (“Co-Leads”) and members of the Plaintiffs’  
6 Steering Committee (“PSC”) to address how they were going to ensure that all counsel working  
7 within the MDL only billed reasonable and necessary hours for MDL work and accurately tracked  
8 and reported their time. Dkt. Nos. 229, 341. Common Benefit Orders were entered to govern what  
9 common benefit work and expenses could be covered by any eventual settlement or judgment in  
10 the MDL cases. Dkt. Nos. 352, 596, 1202, 2307.

11 Soon after the appointment of the Co-Leads and PSC, I appointed the Hon. (Ret.) Gail A.  
12 Andler as a Common Benefit Special Master under Rule 53 of the Federal Rules of Civil  
13 Procedure. Judge Andler’s duties included monitoring, auditing, conducting legal analysis and  
14 advising Co-Leads on all matters relating to common benefit time, fees, expenses and  
15 disbursements. Dkt. No. 680. The settlement process – for all the Class, personal injury  
16 government entity, and tribal entity claims – was overseen and facilitated through the intensive  
17 efforts of Thomas J. Perrelli, who I appointed as the Settlement Special Master for these MDL  
18 proceedings. Dkt. No. 564.

19 The review of the reasonableness of hours billed by attorneys working for the common  
20 benefit in this MDL – including the hours that benefitted the litigation and eventual resolution of  
21 the Class claims – has been thorough and consistent throughout this litigation. As the Co-Lead  
22 filings submitted in connection with this Motion, the JLI Fee request motion (Dkt. 4055), and the  
23 filings submitted in the related Motion to Approve the Fee Committee Recommendations (Dkt.  
24 No. 4152) demonstrate, the excellent result in this case for the Class claims was achieved as the  
25 result of common benefit work necessarily performed by numerous attorneys: This included  
26 attorneys who primarily represented Class plaintiffs and also attorneys who primarily represented  
27 personal injury plaintiffs and public entity plaintiffs. In approving the request made here – for  
28

1 30% of the gross Altria Settlement Fund – I necessarily consider the Fee Committee  
2 Recommendations as well as the reality that the work of these differently-situated lawyers  
3 contributed to the litigation of the Class claims as well as the other claims asserted throughout the  
4 MDL.

5 As was the case in connection with the JLI Class Fee Order, I have also considered the  
6 report of Professor Robert H. Klonoff, Dkt. X. But I am intimately familiar with the work that has  
7 been done by counsel in this MDL and am well-situated to review the reasonableness of the hours  
8 billed and the results achieved with respect to the resolution of the Class claims.

9 The claims against Altria were heavily litigated – through multiple rounds of motions to  
10 dismiss, numerous and unusually complex informal and formal discovery disputes, class  
11 certification, motions for summary judgment, and a bellwether trial that proceeded against Altria  
12 alone after JLI and related defendants settled.<sup>3</sup> While some of the discovery, summary judgment,  
13 and pre-trial issues did not directly concern the Class claims, in large part the discovery, motions  
14 practice, and case management work was *common* work that benefitted every case within the  
15 MDL, whether personal injury, government entity, tribal entity, or class. I need not and do not rely  
16 on Klonoff for my conclusion as to reasonableness of the time billed. Instead, I find Klonoff’s  
17 analysis of the possible lodestar cross-checks and resulting multiplier to be helpful.

18 **B. The Requested Attorneys’ Fees are Reasonable Under the Percentage-of-the-**  
19 **Recovery Method**

20 In the Ninth Circuit, the starting point—or “benchmark”—for a fee award under the  
21 percentage-of-the-recovery method is 25% of the settlement fund. *Bluetooth*, 654 F.3d at 942  
22  
23

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24 <sup>3</sup> Taking in account all matters handled in the MDL, including discovery from all defendants,  
25 there were more than 33 million pages of documents produced by defendants and reviewed by  
26 plaintiffs; more than 190 third-party subpoenas issued; more than 100 fact witness depositions;  
27 more than 50 generic or bellwether-specific experts who prepared reports and were deposed;  
28 dozens of highly contested motions made or opposed; 24 bellwethers worked up through the close  
of discovery; one bellwether (B.B.) taken to the eve of trial, and one bellwether (SFUSD) taken to  
the eve of submission to the jury.

1 (citation omitted).<sup>4</sup> But adjustments may be warranted “when special circumstances indicate that  
 2 the percentage recovery would be either too small or too large in light of the hours devoted to the  
 3 case or other relevant factors.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d  
 4 1301, 1311 (9th Cir. 1990). Factors courts consider when determining whether to depart from the  
 5 25% benchmark are: “(1) the result achieved; (2) the risk involved in the litigation; (3) the skill  
 6 required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made  
 7 in similar cases.” *Larsen v. Trader Joe’s Co.*, 2014 WL 3404531, at \*9 (N.D. Cal. 2014) (citing  
 8 *Vizcaino*, 290 F.3d at 1048-50); *see also In re Apple Inc. Device Performance Litig.*, 2023 WL  
 9 2090981, at \*13-16 (N.D. Cal. Feb. 17, 2023) (applying the same factors).

10 The Ninth Circuit has made clear that in a percentage fee award analysis, the size of the  
 11 settlement fund is relevant, but the percentage does not necessarily decrease as the size of the  
 12 settlement increases. *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir.  
 13 2020) (“we have already declined to adopt a bright-line rule requiring the use of sliding-scale fee  
 14 awards for class counsel in megafund cases.”); *see also In re Toyota Corp. Unintended Marketing,*  
 15 *Sales Pracs. And Prods. Liab. Litig.*, 2013 WL 12327929, at \*34 (C.D. Cal. July 24, 2013) (“there  
 16 is no rule in the Ninth Circuit that requires a court to decrease the percentage of the fee award as  
 17 the size of the settlement increases”) (citing *Vizcaino*, 290 F.3d at 1047). The size of the fund is,  
 18 instead, simply one factor courts can look to when determining a reasonable fee. *Vizcaino*, 290  
 19 F.3d at 1047. A presumption that a certain percentage applies based on the size of the settlement  
 20 fund “flies in the face” of a court’s obligation to “consider[] all the circumstances of the case and  
 21 reach[] a reasonable percentage.” *Id.* at 1048. Consideration of the relevant circumstances in this  
 22 case weighs in favor of an upward adjustment from the 25% benchmark and a fee award of 30%  
 23 of the Altria Settlement Fund, as discussed further below.

24 In cases with multiple settlements resulting in serial fee petitions, the Court may consider  
 25 the requested percentage of the individual settlement amounts and the aggregate settlement

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26 <sup>4</sup> When calculating the percentage, courts routinely use the gross settlement fund—*i.e.*, including  
 27 amounts that will be used to pay notice and administrative costs and litigation expenses—as the  
 28 denominator. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015).

1 amount, the cumulative lodestar, and any prior fee awards. *See, e.g., In re Capacitors Antitrust*  
2 *Litig.*, 2018 WL 4790575, at \*6 (N.D. Cal. Sept. 21, 2018); *In re Transpacific Passenger Air*  
3 *Trans. Antitrust Litig.*, 2019 WL 6327363, at \*1 (N.D. Cal. Nov. 26, 2019) (considering aggregate  
4 amounts of settlements in the context of the “third and final settlement”); *Lobatz v. U.S. West*  
5 *Cellular of Calif., Inc.*, 222 F.3d 1142, 1149-50 (9th Cir. 2000) (affirming consideration of  
6 cumulative lodestar and combined settlement value for a subsequent settlement). “Because the  
7 total work performed by counsel from inception of the case makes each settlement possible, courts  
8 typically base fee awards in subsequent settlements on all work performed in the case.” *In re*  
9 *Capacitors Antitrust Litig.*, 2018 WL 4790575, at \*6.

10 The result obtained for the Class—a settlement of \$45.5 million from Altria, in addition to  
11 the \$255 million settlement with JLI and related Defendants already approved by this Court—is  
12 exceptional and warrants an upward adjustment from the “benchmark.” *See Apple Device*, 2023  
13 WL 2090981, at \*16 (noting that a \$310 million settlement on relatively novel computer intrusion  
14 and trespass-to-chattels claims was exceptional). The Altria Settlement Fund is non-reversionary,  
15 meaning that Class Members who submit Eligible Claims will receive the full benefit of the Altria  
16 Settlement (after deducting any fees, costs, and service awards the Court may award) based on  
17 their *pro rata* share of the claims submitted.

18 This settlement recovered a substantial additional amount as a result of the Class’s  
19 economic losses from the last remaining defendant. The plaintiffs faced significant legal (e.g.,  
20 potential preemption of claims, defendants’ weighty attacks on plaintiffs’ theories of economic  
21 loss and common proof of damages, challenges to plaintiffs’ claim that Altria directed the alleged  
22 RICO enterprise, and arguments for limiting or eliminating the time period of Altria’s liability  
23 following JLI’s settlement from the case) and practical risks (e.g., potential insolvency of JLI that  
24 could have delayed all proceedings, regulatory directives remained in flux throughout). Class  
25 Plaintiffs were defending the class certification order on appeal, and Plaintiffs only achieved this  
26 settlement by taking their RICO claims against Altria all the way to trial. In light of that, I find  
27 that an upward departure to 30% of the Altria Settlement Fund is merited.

1           The skill of the attorneys representing the Class’s interests – the Co-Leads and PSC  
 2 members – and the quality of their work has been excellent. Their payment was contingent on a  
 3 successful outcome. They incurred millions of dollars in out-of-pocket expenses to manage more  
 4 than 33 million pages of documents produced by the defendants and obtain expert opinions  
 5 regarding the JUUL product, the nature and impact of nicotine addiction, the marketing of JUUL,  
 6 the regulatory landscape impacting JUUL, Altria’s investment in and involvement with JLI’s  
 7 alleged misconduct, and in particular here econometric models of economic loss damages.  
 8 Plaintiffs’ counsel undertook these tasks at great expense and produced high quality work product  
 9 while they faced the possibility that the Class Certification Order would be reversed on appeal,  
 10 significant arguments from Altria that would limit or eliminate its liability, and the uncertainty of  
 11 regulatory actions by the FDA.

12           An award of 30%— of the Altria settlement alone, or of the aggregate class settlement  
 13 amounts achieved overall—is also within the range of awards approved in the Ninth Circuit. *E.g.*,  
 14 *Larsen*, 2014 WL 3404531, at \*9 (citing numerous cases awarding fees of 32% or greater); *In re*  
 15 *Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re*  
 16 *Lenovo Adware Litig.*, 2019 WL 1791420, at \*7-9 (N.D. Cal. Apr. 24, 2019) (30% of \$8,300,000  
 17 recovery). In “megafund” settlements (involving funds of more than \$100 million), courts  
 18 “routinely award[] class counsel fees in excess of the 25% ‘benchmark.’” *In re Nat’l Collegiate*  
 19 *Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at \*5 & n.30 (N.D.  
 20 Cal. Dec. 6, 2017) (“*NCAA I*”), *aff’d*, 768 F. App’x 651 (9th Cir. 2019) (collecting cases,  
 21 including those awarding fees of one-third of the settlement fund); *see also In re Capacitors*  
 22 *Antitrust Litig.*, 2023 WL 2396782, at \*2 (N.D. Cal. Mar. 3, 2023) (awarding 40% of final  
 23 settlement, which brought fee award to 31% of all settlements).<sup>5</sup> For both the requested fee of the

24 \_\_\_\_\_  
 25 <sup>5</sup> *See also Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at \*3 (W.D. Wash. June  
 26 1, 2023) (awarding 29.3% fee of a \$415,000,000 settlement fund); *Andrews v. Plains All Am. Pipe*  
 27 *L.P.*, 2022 WL 4453864, at \*2-4 (C.D. Cal. Sept. 20, 2022) (applying the percentage method and  
 28 awarding 32% of a \$230 million 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*

1 \$45.5 million Altria settlement alone and the aggregate settlement amount of over \$300 million,  
2 the requested 30% fee award is thus well within the range of awards in similar cases.

3 **C. Although Not Required, a Lodestar Cross-Check Supports the Requested**  
4 **Attorneys' Fees**

5 Courts may consider class counsel's lodestar to "provide[] a check on the reasonableness  
6 of the percentage award." *Vizcaino*, 290 F.3d at 1050. The use of the lodestar cross-check is not  
7 mandatory, and the Ninth Circuit "has consistently refused to adopt a crosscheck requirement."  
8 *See Farrell v. Bank of Am. Corp.*, 827 Fed. Appx. 628, 630 (9th Cir. 2020). In other words, "a  
9 cross-check is discretionary." *Apple Device*, 50 F.4th at 784. And as one court observed,  
10 "[a]lthough modification of a fee award based on a lodestar cross-check may serve some utility in  
11 cases at the fringes, routine recourse to it threatens to swallow the benefits that the percentage-of-  
12 the-fund method provides . . . ." *NCAA I*, 2017 WL 6040065, at \*10.

13 The utility of a cross-check is significantly reduced here because the Court has closely  
14 supervised the litigation. *See Andrews*, 2022 WL 4453864, at \*2 (finding a cross-check  
15 unnecessary in light of the "exceptional circumstances of this case and the Court's extensive  
16 involvement in supervising" the litigation); *Senne v. Kansas City Royals Baseball Corp.*, 2023  
17 WL 2699972, at \*20 (N.D. Cal. Mar. 29, 2023) (granting 30% fee request and noting that  
18 "[a]rguably, a lodestar cross-check is not required here because the Court has been extensively  
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20 *Ray Tube (CRT) Antitrust Litig.*, 2016 WL 183285, at \*2 (N.D. Cal. Jan. 14, 2016) (approving  
21 30% fee award of \$127.45 million settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011  
22 WL 7575003 (N.D. Cal. Dec. 27, 2011) (approving 30% fee award of \$405.02 million settlement);  
23 *Meijer, Inc. v. Abbott Labs*, No. C-07-05985 CW, 2011 WL 13392313, at \*2 (N.D. Cal. Aug. 11,  
24 2011) (33 1/3% of \$52,000,000 recovery); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at  
25 \*2-4 (N.D. Cal. Sept. 20, 2018) (fee award of 33.3% of \$104.75 million settlement, which resulted  
26 in a 1.37 multiplier); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1115 (D.  
27 Kan. 2018), *aff'd* No. 19-3008, 2023 WL 2262878 (10th Cir. Feb. 28, 2023) (awarding a 33.33%  
28 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).

1 involved in supervising this litigation and has observed first-hand the monumental efforts Class  
2 Counsel put into this case”). Many of the factors that weigh in favor of using the percentage-of-  
3 recovery method also weigh in favor of not applying a lodestar cross-check in this case, including  
4 that a substantial portion of the work performed by plaintiffs’ counsel in this MDL inured to the  
5 benefit of each plaintiff group (class, personal injury, and government entity). In short, while a  
6 cross-check supports the requested fee award, “given the unique circumstances presented by this  
7 litigation, . . . a lodestar cross-check would not be a valuable tool to help assess the reasonableness  
8 of Class Counsel’s fee request.” *See Benson, LLC*, 2023 WL 3761929, at \*3.

9         The Court nonetheless conducts a lodestar cross-check to generally assess the  
10 reasonableness of the fee award. A cross-check can be used to prevent “windfall profits to class  
11 counsel” that have little relation to the work performed. *Bluetooth*, 654 F.3d at 942. To guard  
12 against a windfall, the cross-check may be used to ensure that the multiplier on class counsel’s  
13 lodestar is not “extraordinarily high or low.” *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230,  
14 at \*16 (N.D. Cal. Dec. 8, 2021) (lowering a requested 6.24 multiplier to 5.47 after conducting a  
15 cross-check). The cross-check should confirm the reasonableness of the fee resulting from the  
16 percentage method, rather than recalculate the fee. But it should “not result in a second major  
17 litigation,” transform courts into “green-eyeshade accountants,” or seek to “achieve auditing  
18 perfection”—instead, any cross-check should “do rough justice” to confirm an award’s  
19 reasonableness. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at \*14 (N.D. Cal. Dec. 18,  
20 2018) (cleaned up).

21         The analysis when doing a cross-check thus does not need to be as exacting as when the  
22 primary means for calculating the fee is the lodestar method. *See Senne*, 2023 WL 2699972, at  
23 \*20 (court “performed a rough calculation of Class Counsel’s lodestar to evaluate whether the  
24 percentage-of-recovery method gives rise to a reasonable result”); *In re Apple iPhone/iPod*  
25 *Warranty Litigation*, 40 F. Supp. 3d 1176, 1181 (N.D. Cal. Apr. 14, 2014) (“plaintiffs’ submission  
26 would be woefully insufficient” were it being used “to calculate a lodestar as the primary basis for  
27 the fee award,” but it was sufficient to show that “applying a percentage-based fee recovery is  
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1 within reason.”); *Larsen*, 2014 WL 3404531, at \*9 (“The lodestar cross-check calculation need  
2 entail neither mathematical precision nor bean counting.”) (quotation omitted).

3 Where there are multiple settlements resulting in serial fee petitions, courts have discretion  
4 to consider a lodestar cross-check on both the individual settlement amount and the aggregate  
5 settlement amount, taking account of the cumulative lodestar and any prior fee awards. *See, e.g.*,  
6 *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at \*6. “Because the total work performed by  
7 counsel from inception of the case makes each settlement possible, courts typically base fee  
8 awards in subsequent settlements on all work performed in the case.” *Id.* When considering serial  
9 fee petitions, “courts typically calculate the lodestar multiplier by dividing (1) all past and  
10 requested fee awards by (2) all of counsel’s time from inception of the case.” *Id.* (citations  
11 omitted).

12 A lodestar cross-check analysis supports the 30% award. Given the efficient and effective  
13 approach plaintiffs’ counsel took in this MDL, where lawyers representing plaintiffs with different  
14 types of claims worked collaboratively to advance the common interests of all plaintiffs,  
15 calculating the appropriate lodestar to use for a cross-check is more difficult. As it was in my  
16 consideration of the JLI fee request, Professor Klonoff’s method of roughly calculating a lodestar  
17 cross-check is helpful on this issue. Evaluating the cumulative fee from the \$300 million  
18 combined settlements using Professor Klonoff’s method, 1/3 of the \$220 million in time audited  
19 by Judge Andler is lodestar attributable to the Class (based on the theory that 1/3 of the work was  
20 attributable to each main category of case within this MDL; class, personal injury, and  
21 government entity). The total fee is \$90,159,375.00 (30% awarded from the JLI settlement, Dkt.  
22 4179, and 30% from Altria here), for a 1.23 multiplier on the \$73.4 million cumulative Class  
23 lodestar. To evaluate the Altria fee alone, Professor Klonoff starts with the same 1/3 of the total  
24 lodestar attributable to the Class, and further reduces it by 85 percent to account for the separate  
25 JLI settlement. That calculation, based on reasonable averaged hourly rates charged, yields a 1.24  
26 multiplier. Klonoff Report ¶ 15. This level of multiplier is justified, as noted above, by the  
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1 excellent results of the Settlement, the skill and effectiveness of plaintiffs' counsel, the significant  
2 risks counsel faced, and the large expenses counsel incurred.

3 Class Counsel presented additional alternatives for evaluating the lodestar. Considering  
4 only the lodestar after the date of the JLI Settlement spent defending the class certification order  
5 on appeal, preparing for trial against Altria, and trying the SFUSD bellwether case  
6 (\$12,353,290.70) leads to a 1.11 multiplier. Finally, considering only the time spent after the JLI  
7 Settlement, when Altria was the sole remaining defendant (\$21,122,551.80) results in a 0.65  
8 multiplier.

9 This lodestar cross-check is meaningful, as the lodestar reflects hours reasonably spent and  
10 reasonable hourly rates. The hours spent were audited first by a Co-Lead and then by Judge  
11 Andler. Judge Andler concluded that "the tasks, hours and expenses incurred were appropriate,  
12 fair and reasonable and for the common benefit." *See* Declaration of Dena C. Sharp (Dkt. No. X),  
13 Ex. 1 at 11; Sharp Decl. in support of JLI Fees (Dkt. No. 4056), Ex. 1 at 12. I appreciate Judge  
14 Andler's fine work in this case, but I do not rely exclusively on it. I also rely on the  
15 reasonableness of those hours as supported by my first-hand view of the motions, case  
16 management conferences, and other proceedings that took place before me and before the judge  
17 overseeing discovery. This case was complex – legally, factually, and as a matter of case  
18 management – and the hours plaintiffs' counsel spent are reasonable.

19 The hourly rates used to calculate the lodestar are also reasonable, and I previously  
20 approved the same or similar rates. *See* JLI Class Fee Order at 6. The vast majority of the time  
21 billed fell into the following ranges: for over 97% of partner hours, rates range from \$275 –  
22 \$1,200; for over 95.5% of senior counsel hours, rates range from \$325 – \$1,000; for over 94.1% of  
23 associate hours, rates range from \$175 – \$800; for over 90.8% of contract or staff attorney hours,  
24 rates range from \$100 – \$500; and for over 84.8% of paralegal hours, rates range from \$50 –  
25 \$425. These rates are consistent with rates approved in complex litigations throughout this  
26 District. *In re MacBook Keyboard Litig.*, 2023 WL 3688452, at \*15 (N.D. Cal. May 25, 2023)  
27 (approving partner rates up to \$1,195, associate rates up to \$850, \$425 for contract attorneys, and  
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1 \$325 for paralegals); *Hefler*, 2018 WL 6619983, at \*14 (approving partner rates up to \$1,250,  
2 \$650 for associates, and \$350 for paralegals); *In re Volkswagen “Clean Diesel” Mktg., Sales*  
3 *Practices, & Prods. Liab. Litig.*, 2017 WL 1047834, at \*5 (N.D. Cal. Mar. 17, 2017) (approving  
4 rates of up to \$1600 for partners, \$790 for associates, and \$490 for paralegals). Capping the hourly  
5 rates that exceed the above ranges (*i.e.*, capping all partner rates at \$1,200 and all paralegal rates at  
6 \$425) has a minimal effect on the lodestar, reducing it by 1.19% (or \$2,350,225.50). In sum,  
7 consideration of the time counsel spent at these hourly rates provides the Court no basis to doubt  
8 the reasonableness of the requested fee award.

9 While the Court finds the Klonoff Declaration helpful, the Court is not basing its decision  
10 on that Declaration. The Court has exercised its own, independent judgment regarding the  
11 appropriate fee award in this case. The Court grants Class Counsel’s request for a 30% award of  
12 the Altria Settlement Fund.

### 13 **III. EXPENSES**

14 “Class counsel is entitled to reimbursement of reasonable expenses.” *Larsen*, 2014 WL  
15 3404531, at \*10 (citing Fed. R. Civ. P. 23(h)). In this case, Class Counsel has requested the  
16 reimbursement of the expenses of \$1,000,000.

17 Class Counsel requests the reimbursement of expenses of \$1,000,000, which brings the  
18 total expense award from the combined Class settlements to \$5.1 million. *See* JLI Class Fee Order  
19 at 7 (awarding \$4.1 million in expenses). The Court finds that the payment of \$1,000,000 from the  
20 Altria Settlement Fund would be reasonable in light of the expenses incurred by counsel, the size  
21 of the Settlement, and the relative proportion of the expenses that counsel expects to be borne by  
22 each plaintiff group. Class Counsel estimates that the expenses the class would have incurred had  
23 it litigated the case on its own and without the other plaintiff groups would likely have exceeded  
24 \$10 million. The requested expense reimbursement from the Altria Settlement Fund is therefore  
25 significantly less than it otherwise would have been absent the involvement of other plaintiff  
26 groups. In other words, the class substantially benefits from the involvement of other plaintiff  
27 groups by spreading litigation costs among the various plaintiff groups.

1           The class would have incurred costs exceeding \$5,100,000 total based just on a portion of  
2 the total case costs. In support of the \$4.1 million JLI expense award, Class Counsel and the Court  
3 cited \$2,050,000 in expert costs for only those experts who provided opinions in connection with  
4 class certification, over \$1,450,000 for document hosting costs, and over \$800,000 for costs  
5 associated with deposition transcripts and related materials. *See* Dkt. 4179 at 6-7. Additional costs  
6 in just those same categories exceed the additional expense award here. For example, since the JLI  
7 expense request was submitted, plaintiffs have incurred over \$188,000 in additional document  
8 hosting expenses, and over \$1,700,000 in deposition-related expenses that were not included in the  
9 JLI expense request, such as additional costs for deposition transcripts, service of subpoenas, fees  
10 for Special Master Judge Larson’s services resolving disputes during depositions and ruling on  
11 objections in deposition designations, expenses for Nextpoint (a technology platform used to  
12 prepare, exchange, and review designations), and expenses for technicians to cut the deposition  
13 video corresponding to designations as plaintiffs revised and refined their cuts. Thus, on those  
14 isolated case costs alone, the class would have incurred costs exceeding the requested  
15 \$1,000,000.<sup>6</sup>

16           Lastly, with respect to whether the expenses were reasonably incurred for the common  
17 benefit, Judge Andler has concluded that they were. *E.g.*, Sharp. Decl., Ex. 1 at 11 (finding that  
18 the expenses were “appropriate, fair and reasonable and for the common benefit”); *see also* Dkt.  
19 No. 4056-01 at 12 (same). By far the largest costs in this litigation related to experts, which is  
20 appropriate given the wide range of topics that Plaintiffs—and Class Plaintiffs specifically—  
21 would have had to have addressed at summary judgment and trial. The litigation also involved a  
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23 <sup>6</sup> Applying another metric confirms the reasonableness of the class expense figure. The requested  
24 amount is consistent with the amount that results from applying a 2% cost assessment to the Class,  
25 which is the amount of assessments paid by other plaintiffs in the litigation. *See* Dkt. 586 at 11. A  
26 2% cost assessment on the Altria settlement alone would be \$910,625.00, while a 2% cost  
27 assessment on the combined class settlements would be \$6,010,625.00. Considering that the Court  
28 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.

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large number of fact and expert depositions, and costs related to those depositions (*i.e.*, court reporting service) were reasonably incurred.

Plaintiffs' request for costs of \$1,000,000 is GRANTED.

**IV. CONCLUSION**

For the reasons set forth above, the Court grants Class Counsel's motion and the following awards:

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

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Judge William H. Orrick