

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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](#)

**FINAL APPROVAL OF THE JLI
SETTLEMENT**

Re: Dkt. No. 4054

Class Plaintiffs¹ have moved the Court for final approval of a proposed class action settlement with Defendant JUUL Labs, Inc. (“JLI”), on behalf of itself and the Released Parties, the terms and conditions of which are set forth in the Class Settlement Agreement (the “JLI Class Settlement”). ECF No. 3745-4 (revised agreement). The Court previously granted preliminary approval to the proposed settlement and directed notice to the Settlement Class. ECF No. 3779.

For the reasons described more fully below, the Court GRANTS final approval of the Settlement.

I. BACKGROUND

Class Plaintiffs and JLI seek to resolve economic loss claims (other than claims asserted in *In re Juul Labs, Inc. Antitrust Litigation*, Case No. 3:20-cv-02345-WHO that arise from alleged anticompetitive conduct) asserted against JLI and the Released Parties involving the manufacture, labeling, marketing, and sale of JUUL—an electronic nicotine delivery system consisting of an electronic cigarette and a nicotine pack called a JUULpod. Class Plaintiffs allege that Defendants created, marketed, and sold JUUL by misleading the public about the addictiveness and risks of JUUL, and by trying to expand the market by capturing and addicting individuals—specifically minor users—who had not previously used tobacco or e-cigarette products. *See In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, 497 F. Supp. 3d

¹ The capitalized terms used in this Order shall have the same meaning as defined in the JLI Class Settlement Agreement and Plan of Allocation except as otherwise noted.

United States District Court
Northern District of California

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1 552, 574 (N.D. Cal. 2020). The economic loss claims were repeatedly tested through multiple
 2 motions to dismiss and a contested class certification motion. Extensive discovery was conducted
 3 in connection with the MDL. Defendants produced millions of pages of documents. Class
 4 Plaintiffs obtained information pursuant to interrogatories and stipulations. Plaintiffs conducted
 5 over 100 depositions of Defendants, their employees, and third parties. The parties also engaged
 6 in expert discovery, which included reports and depositions from dozens of experts on topics
 7 including the chemistry of JUUL Products, the marketing of JUUL Products, and classwide injury
 8 and damages.

9 The Court granted the contested motion to certify bellwether classes asserting federal and
 10 California law claims, certifying four classes² of purchasers of JUUL products. The Court also
 11 appointed Class Representatives and Class Counsel and denied related *Daubert* motions. *In re*
 12 *JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.*, 609 F. Supp. 3d 942, 1023 (N.D. Cal.
 13 2022) (“*Class Cert. Order*”).

14 The Court had previously appointed Thomas J. Perrelli as Settlement Master. He oversaw
 15 a years-long mediation process that led to the JLI Class Settlement. Under the JLI Class
 16 Settlement, the Class will receive \$255 million in exchange for a release of the Settlement Class
 17 Released Claims. The JLI Class Settlement does not include Altria Group, Inc., and related
 18 companies, so no class or individual claims against those entities will be released.³

19 On January 30, 2023, the Court granted Class Plaintiffs’ motion for preliminary approval
 20 of the JLI Class Settlement, conditionally certifying the Settlement Class, appointing Epiq
 21 Systems, Inc., as the Settlement Administrator, and approving the Notice Plan and directing notice
 22 to be provided to Class Members. ECF No. 3779 (“*Preliminary Approval Order*”).

23
 24 ² These were the **Nationwide Class** (All individuals who purchased, in the United States, a JUUL
 25 product); the **Nationwide Youth Class** (All individuals who purchased, in the United States, a
 26 JUUL product and were under the age of eighteen at the time of purchase); the **California Class**
 (All individuals who purchased, in California, a JUUL product); and the **California Youth Class**
 (All individuals who purchased, in California, a JUUL product and were under the age of eighteen
 at the time of purchase).

27 ³ In separate agreements, JLI has resolved the claims brought by other claimants in the MDL,
 28 including individuals who asserted claims for personal injury, school district and local government
 entities, and Native American tribal entities.

1 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **A. Jurisdiction**

3 This court has jurisdiction under 28 U.S.C. § 1332(d)(2).

4 **B. Notice and Administration**

5 Following the Court’s Preliminary Approval Order, the Class Settlement Administrator
6 established a settlement website at www.JUULclassaction.com, which includes: the long form
7 notice, a contact information page that includes addresses and telephone numbers for the Class
8 Settlement Administrator and Class Counsel, the JLI Class Settlement Agreement, the
9 Preliminary Approval Order, online and printable versions of the Claim Form and the opt out
10 forms, and answers to frequently asked questions. In addition, the motion papers filed in
11 connection with the Settlement, and Class Plaintiffs’ application for Attorneys’ Fees and
12 Expenses and Service Awards⁴ were placed on the settlement website after they were filed
13 (before the opt out and objection deadline). The Class Settlement Administrator also operated a
14 toll-free number for Settlement Class Member inquiries.

15 Notice of the JLI Class Settlement was provided by: (1) direct notice via email to those
16 Settlement Class Members for whom an email address was available; (2) direct notice via
17 postcard mailed to those Settlement Class Members for whom a physical mailing address was
18 available, but for whom an email address was not available; (3) publication notice of the
19 Settlement, which comprised 427 million impressions, targeted at likely Settlement Class
20 Members served across relevant internet websites and social media platforms; and (4) publication
21 on the settlement website.

22 In total, the Notice Plan is estimated to have reached at least 80% of Settlement Class
23 Members. The Court finds that the Notice Plan provided the best practicable notice to the
24 Settlement Class Members and satisfied the requirements of due process.

25 Settlement Class Members were given until July 14, 2023, to object to or exclude
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27 _____
28 ⁴ The Court will address Class Plaintiffs’ application for Attorneys’ Fees and Expenses and Service Awards in a separate order, following further briefing and consideration of the determinations made by the Court-appointed Fee Committee.

1 themselves from the proposed Settlement. Eight Settlement Class Members submitted objections⁵
 2 and 2,620 individuals timely submitted requests to be excluded from the Settlement Class. As of
 3 July 21, 2023, 6,349,982 timely Claim Forms were received by the Class Settlement
 4 Administrator.

5 **C. Certification of the Settlement Class**

6 For purposes of the JLI Class Settlement only and this Final Approval Order and
 7 Judgment, Class Plaintiffs have moved to certify the following Settlement Class: “All individuals
 8 who purchased, in the United States, a JUUL Product from brick and mortar or online retailers
 9 before December 6, 2022.” Excluded from the Settlement Class are: (a) the judges in this MDL
 10 and any other judges that have presided over the litigation, including the coordinated proceeding
 11 captioned *JUUL Labs Product Cases*, Judicial Counsel Coordination Proceeding No. 5052,
 12 pending in the Superior Court of California, County of Los Angeles, Department 11, Settlement
 13 Master Thomas J. Perrelli, and their staff, and immediate family members; (b) Defendants, their
 14 employees, officers, directors, legal representatives, heirs, successors, and wholly or partly owned
 15 subsidiaries or affiliated companies; (c) Class Counsel and their employees; (d) any individuals
 16 who purchased JUUL Products only secondarily from non-retailers; and (e) all individuals who
 17 timely and properly excluded themselves from the Settlement Class.⁶

18 The Court previously certified a nearly identical nationwide class under RICO and a class
 19 of California JUUL purchasers under California law. The Settlement Class is co-extensive with
 20 the certified class, except that the claims of the Settlement Class apply to JLI on a nationwide
 21 basis, include an end date for the Settlement Class (as is necessary to settlement administration),
 22 and include purchases of JUUL accessories and products in addition to JUULpods and devices.
 23 The slight differences between the litigation class and the proposed Settlement Class do not alter
 24

25 ⁵ Over 400 purported class members submitted objections to the Claims Administrator’s rejection
 26 of en masse claim submissions by third-party claims aggregator ClaimClam. Those objections are
 27 addressed below. An additional objection raised issues only with respect to the requested
 attorneys’ fees, and will be addressed in a separate order.

28 ⁶ The list of individuals who timely and properly submitted exclusion requests and are therefore
 not members of the Settlement Class was filed with the Court on July 21, 2023. Dkt. 4075-2.

1 the Court’s previous analysis, except insofar as the predominance and superiority analysis
2 prerequisites operate differently and are easier to meet in the settlement context. The Court finds
3 that the Settlement Class largely overlaps with those previously certified by the Court and that,
4 for settlement purposes only, there is a sound basis for expanding the scope of the previously
5 certified classes to encompass all the Settlement Class Released Claims against JLI and the
6 Released Parties.

7 The Court independently finds that the Settlement Class meets the requirements of Rule
8 23 as set forth below:

9 a. Members of the Settlement Class are so numerous as to make joinder
10 impracticable. JLI’s direct sales data, which covers only a portion of the Settlement Class,
11 contains over two million unique names, meaning that the proposed Settlement Class contains
12 millions of members.

13 b. There are questions of law and fact common to the Settlement Class. Those
14 questions include whether the Defendants’ conduct was likely to mislead a reasonable consumer,
15 whether the conduct would have been material to a reasonable consumer, the existence of a RICO
16 enterprise, the existence of a pattern of racketeering, the existence of a scheme to defraud,
17 whether Defendants’ conduct was unfair and/or unconscionable, whether JUUL Products were fit
18 for their ordinary use, and the appropriate measure of aggregate damages.

19 c. Common questions predominate over any questions affecting only
20 individual Settlement Class Members for purposes of the JLI Class Settlement because the
21 Defendants’ conduct will drive the litigation. That is particularly true in the settlement context.
22 As the Ninth Circuit has held, “predominance is easier to satisfy in the settlement
23 context.” *Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020); *see also Sullivan v. DB Inv.,*
24 *Inc.*, 667 F.3d 273, 304 n. 29 (3d Cir. 2011) (en banc) (courts are “more inclined to find the
25 predominance test met in the settlement context”) (internal quotation marks and alteration
26 omitted). That is because “[s]ettlement may ‘obviate the need to litigate individual issues that
27 would make a trial unmanageable,’ making common questions more important in the relative
28 analysis.” *Jabbari*, 965 F.3d at 1005-06 (quoting *Hyundai*, 926 F.3d at 558). One issue that takes

1 on significantly less importance in a settlement class is the particulars of the state law being
2 applied. *See id.* at 1007 (“For purposes of a settlement class, differences in state law do not
3 necessarily, or even often, make a class unmanageable.”). Even in the litigation context, “[w]hen
4 ‘one or more of the central issues in the action are common to the class and can be said to
5 predominate, the action may be considered proper under Rule 23(b)(3) even though other
6 important matters will have to be tried separately, such as . . . some affirmative defenses peculiar
7 to some individual class members.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54
8 (2016) (quoting 7AA C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1778, at
9 123–24 (3d ed. 2005)). Under California law, for example, Class Members would not need to
10 show their individual reliance, and Class Plaintiffs’ California law claims focus on whether
11 Defendants’ conduct would have misled and have been material to a reasonable consumer. *See*
12 *Krommenhock v. Post Foods*, 334 F.R.D. 552, 564, 565, 575 (N.D. Cal. 2020) (discussing the
13 objective nature of the key inquires under the UCL, CLRA, and FAL). Class Plaintiffs may, for
14 example, be able to demonstrate classwide injury and damages through a price premium theory.
15 *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1104 (N.D. Cal. 2018) (“It is well-established
16 that the ‘price premium attributable to’ an alleged misrepresentation on product labeling or
17 packaging is a valid measure of damages in a mislabeling case under the FAL, CLRA, and
18 UCL.”).

19 d. Class Plaintiffs’ claims and the defenses thereto are typical of the claims of
20 the Settlement Class Members and the attendant defenses for purposes of the JLI Class
21 Settlement. Class Plaintiffs allege that Defendants misled JUUL purchasers, engaged in a
22 fraudulent scheme to enhance JUUL sales, and engaged in unfair conduct to market JUUL
23 Products to minors. Those theories of liability and injury are the same for Class Plaintiffs and
24 members of the Settlement Class. Class Plaintiffs’ allegation that JUUL Products are not fit for
25 their ordinary use is based on the design of JUUL Products and is thus the same for Class
26 Plaintiffs and members of the Settlement Class.

27 e. Class Plaintiffs and their counsel have fairly and adequately protected the
28 interests of the Settlement Class Members in this action with respect to the JLI Class Settlement

1 and will continue to do so. Each Class Plaintiff has the same goal as members of the proposed
2 Settlement Class (*i.e.*, vigorously pursuing their claims against Defendants). Class Plaintiffs’
3 interests are aligned with, and not in conflict with, those of Settlement Class Members. The
4 record reflects that each Class Plaintiff has dedicated substantial time and effort to this litigation
5 by working with their counsel; reviewing pleadings; responding to discovery; searching for,
6 collecting, and producing documents; and preparing to sit for depositions, among other things.

7 f. A class action is superior to all other available methods for fairly and
8 efficiently resolving this action. While individuals with personal injury claims may be motivated
9 to file individual personal injury suits, the same is not true with respect to claims for economic
10 losses. No plaintiffs have expressed a desire to individually litigate their economic loss claims; in
11 fact, plaintiffs sought to litigate their economic loss claims as class actions instead of through
12 their separate personal injury complaints. Given the substantial overlap among all Class
13 Members’ claims, it is highly desirable to concentrate economic loss claims in a single
14 proceeding.

15 The Court appoints Bradley Colgate, Joseph DiGiacinto on behalf of C.D., Lauren Gregg,
16 Tyler Krauel, and Jill Nelson on behalf of L.B. as the Settlement Class Representatives, and Dena
17 Sharp of Girard Sharp LLP as Settlement Class Counsel.

18 **D. Final Approval of Settlement**

19 A court may approve a proposed class action settlement only “after a hearing and on
20 finding that it is fair, reasonable, and adequate after considering whether:

21 (A) the class representatives and class counsel have adequately represented the
22 class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for
23 the class is adequate, taking into account: (i) the costs, risks, and delay of trial
24 and appeal; (ii) the effectiveness of any proposed method of distributing relief to
25 the class, including the method of processing class-member claims; (iii) the terms
26 of any proposed award of attorney's fees, including timing of payment; and (iv)
27 any agreement required to be identified under Rule 23(e)(3); and (D) the proposal
28 treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, the Court need not address whether
the settlement is ideal or the best outcome, but only whether the settlement is fair, free of

1 collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v. Chrysler*
2 *Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

3 For the reasons further detailed below, the Court finds that the proposed settlement is fair,
4 reasonable, and adequate under the Rule 23(e)(2) factors. Defendants dispute whether the
5 manufacture, marketing, advertising, and sale of the JUUL products was unlawful, unfair,
6 deceptive and/or in violation of other state and federal laws. There would also have been a battle
7 of the experts regarding consumer understanding of JUUL marketing and advertising and
8 regarding the computation of restitution/damages, if any. Further, JLI was prepared to assert an
9 arbitration defense against a large portion of the class. Proceeding to trial as against JLI and the
10 Released Parties would have been costly, recovery was not guaranteed, and there was the
11 possibility of protracted appeals and the potential for bankruptcy.

12 Counsel for all Parties are highly experienced; Class Counsel provided detailed
13 declarations explaining why they supported the Settlement, and there is no factual basis to support
14 any allegation of collusion or self-dealing.

15 **1. Settlement Class Representatives and Class Counsel Have Adequately**
16 **Represented the Settlement Class**

17 In the Preliminary Approval Order, this Court found that the Settlement Class
18 Representatives and Class Counsel adequately represented the interests of the certified classes.
19 This Court has seen no evidence to contradict its previous finding, and the Court reconfirms it here
20 with respect to Settlement Class Representatives and Class Counsel, who have vigorously
21 prosecuted this action through discovery, motion practice, mediation, and preparations for trial.
22 Class Counsel possessed sufficient information to make an informed decision about settlement.

23 **2. The Class Settlement Was Negotiated at Arm's Length**

24 The Court finds that the JLI Class Settlement is the product of serious, non-collusive,
25 arm's length negotiations by experienced counsel with the assistance of a well-respected,
26 experienced, Court-appointed Settlement Master, Thomas J. Perrelli. Before agreeing on the terms
27 of the Settlement, the parties engaged in extensive factual investigation, which included dozens of
28 depositions, the production and review of millions of pages of documents, extensive written

1 discovery, robust motion practice, and expert discovery. The record was thus sufficiently
2 developed that the parties were fully informed as to the viability of the claims and able to
3 adequately evaluate the strengths and weaknesses of their respective positions and risks to both
4 sides if the case did not settle.

5 The Court has independently and carefully reviewed the record for any signs of collusion
6 and self-dealing and finds no such signs. Specifically, the Court finds that Class Counsel did not
7 compromise the claims of the Settlement Class in exchange for higher fees as there has been no
8 agreement concerning attorneys' fees or otherwise disadvantaging the Settlement Class.

9 **3. The Cash Payments Provide Adequate Recovery to the Class**

10 JLI has agreed to pay \$255 million on behalf of itself and the Released Parties, which will
11 be used as a common fund to pay cash benefits to Settlement Class Members as set forth in the
12 Plan of Allocation. Settlement Class Members who submit Eligible Claims will therefore have the
13 opportunity to receive substantial payments corresponding to their JUUL purchases. In addition,
14 because the JLI Class Settlement Agreement does not release claims against Defendant Altria and
15 related entities (that are the subject of a separate approval process), there will be additional
16 recoveries to benefit the Settlement Class. Based on the record evidence and argument the parties
17 submitted in connection with the Settlement, as well as the familiarity the Court has developed
18 with this case, the Court finds that this monetary recovery is fair, reasonable, and adequate given
19 the risks of proceeding to trial and the recovery potentially available to Settlement Class Members
20 if the Class Representatives had prevailed at trial.

21 **4. The Risk of Continuing Litigation**

22 The amount provided for in the Settlement is also reasonable in light of the risks of
23 continued litigation. The Ninth Circuit, for example, granted the Defendants' Rule 23(f) petitions
24 and Class Plaintiffs faced the risk that the Ninth Circuit would reverse or modify the Court's class
25 certification decision. There were also substantial questions whether Class Plaintiffs would be able
26 to prove at trial that JLI's and other parties' practices were fraudulent, unlawful, or unfair, and that
27 JLI and other defendants should be held liable. Both sides believed they had persuasive facts to
28 support their positions, and there is limited precedent available regarding the parties' competing

1 theories. Trial would have involved a battle of experts and their analyses concerning whether the
2 marketing, advertising, and sales of JUUL Products were unlawful, unfair, or fraudulent, the
3 methods of calculating damages/restitution, and ultimately what damages and/or restitution, if any,
4 should be awarded. JLI was prepared to assert an arbitration defense against a large portion of the
5 Class. And even if Class Plaintiffs succeeded at trial, appeals would undoubtedly have followed.
6 Finally, there was the possibility that JLI could file for bankruptcy protection, thereby slowing or
7 even eliminating any recovery.

8 **5. Attorneys' Fees and Expenses**

9 The parties have reached no agreement regarding the amounts of attorneys' fees, expenses,
10 and service awards to be paid. The payment of attorneys' fees, expenses, and service awards, if any,
11 will be addressed by the Court in a separate order, but the amounts requested do not undermine the
12 Court's conclusions that the JLI Class Settlement as a whole is fair and reasonable.

13 **6. Other Agreements**

14 The Court is required to consider "any agreements required to be identified under Rule
15 23(e)(3)." The Court has reviewed the JLI Class Settlement and relevant accompanying materials
16 and has been made aware that JLI (on behalf of itself and the Released Parties) has agreed to fund
17 parallel settlement programs to provide recoveries for other claimants in this MDL and the parallel
18 JCCP proceedings, including individuals who asserted claims for personal injury, and school
19 district and local government entities, as well as Native American tribal entities. Under the
20 supervision of Special Master Perrelli, the amount of the Settlement Fund was negotiated
21 separately from the amounts for the other settlements, with co-lead counsel Dena Sharp
22 representing the Class, and the other co-lead counsel in the MDL representing interests of the
23 personal injury and government entity plaintiffs. The Court is also aware that the Settlement
24 provides for the creation of a trust to hold assets on behalf of the Class, which benefits the
25 Settlement Class, as do the protections the Settlement contemplates in the event of bankruptcy or
26 non-payment.

27 Certain of the Class Plaintiffs have asserted personal injury claims, and thus will be
28 eligible to apply to share in the amounts allocated to the resolution of personal injury claims.

1 Personal injury claimants will receive no favorable treatment compared to other Class Members.
 2 All personal injury claims will be paid from funds set aside to resolve personal injury claims,
 3 while the economic loss claims asserted by the Settlement Class will be paid from the Net
 4 Settlement Fund. Only after a diligent effort to identify all Class Members and distribute to them
 5 the full amount of the Net Settlement Fund will the parties confer regarding the disposition of any
 6 residual funds, the distribution of which would be subject to the Court's approval and a finding
 7 that the parties first exhausted all reasonable efforts to distribute remaining funds to Settlement
 8 Class Members. Under the terms of the Settlement, the Net Settlement Fund is non-reversionary
 9 and no portion of the Gross Class Settlement Amount or Net Settlement Fund will revert to JLI or
 10 any other Released Party.

11 **7. The Plan of Allocation is Reasonable and Treats Class Members**
 12 **Equitably Relative to Each Other**

13 The claims process and distribution method are reasonable. Settlement Class Members
 14 who seek benefits under the Settlement need only submit a simple claim form, and the form is
 15 prepopulated if their purchase information is known to JLI because they made purchases on JLI's
 16 website. The claim process is no more onerous than would be required after trial.

17 The method for distributing funds to Eligible Claimants is also reasonable. The Court finds
 18 that the Plan of Allocation is fair, reasonable, and adequate and is hereby approved.

19 Under the Plan of Allocation, all Settlement Class Members who submit an Eligible Claim
 20 will receive cash payments based on their *pro rata* allocation of the Net Settlement Fund. The Plan
 21 of Allocation provides higher payments for those who first purchased in the earlier years of the
 22 class period or when they were underage. The larger payments for those who made their initial
 23 purchases earlier is consistent with the evidence about changes in relevant warnings over time,
 24 which led the Court to note in its class certification order that:

25 JLI will be free to argue at the appropriate points (on summary judgment, trial,
 26 post-trial) that a reasonable consumer who purchased after a certain date could
 27 not have been misled by its representations or omissions about its products given
 28 the other information in the market or given the addition of the 'black-box'
 nicotine warning on JUUL's packaging.

1 *Class Cert. Order*, 609 F. Supp. at 990. The enhanced payments for those who began purchasing
 2 when underage is based on Class Plaintiffs’ full refund theory of recovery for their youth targeting
 3 claims, as opposed to the price premium damages model applicable to other claims. *See id.* at *17
 4 (holding “Plaintiffs’ full refund model, with respect to the Youth Classes, supports certification”
 5 because such sales were allegedly illegal). Further, it is rational to provide enhancements for all
 6 purchases by such persons, even after the warnings were augmented or the purchasers reached
 7 adulthood, because of the addictive nature of JUUL Products.

8 Setting a cap on the recoveries by Claimants who lack proof of purchase while claims that
 9 are accompanied by proof of purchase will not be capped is also reasonable. The use of a cap for
 10 Claimants without proof of purchase ensures a fair distribution and serves to disincentivize
 11 illegitimate or exaggerated claims.

12 Settlement Class Members can select their preferred method of payment, including mailed
 13 check, direct deposit, PayPal, or prepaid MasterCard. After an initial distribution, if there are
 14 substantial funds from uncashed payments and it is economically rational to do so, the monies will
 15 be redistributed to the Settlement Class Members who made claims and accepted their initial
 16 distribution payments where economically feasible. Only if residual funds remain thereafter will
 17 they be otherwise distributed, subject to the Court’s approval.

18 **8. The Response of Class Members**

19 Out of millions of Settlement Class Members, there were 2,620 timely opt-outs and eight
 20 timely objections to the Settlement, other than over 400 timely and untimely objections submitted
 21 by ClaimClam users that will be separately addressed below. As of July 21, 2023, Settlement
 22 Class Members had timely submitted an estimated 6,349,982 Claim Forms. These figures
 23 represent an overwhelmingly favorable response from the Class.

24 The Court has considered each of the objections and finds that none undermines the
 25 fairness and adequacy of the Settlement.

26 **a. PHAI Objection**

27 The Court has carefully considered the objections of Cade Beauparlant, Matthew Murphy,
 28 and Marianne Savage, represented by the Public Health Advocacy Institute (“PHAI Objectors”).

1 Dkt. No. 4062. Counsel from PHAI appeared and argued in support of their objectors at the Final
2 Approval Hearing. The concerns raised by PHAI regarding the current lack of research into
3 effective evidence-based treatments and the need for significant funds to develop and implement
4 effective cessation practices for adolescents and young adults who use e-cigarettes are serious,
5 significant, and of paramount concern to the Court. However, the PHAI objections based on the
6 argument that public health funds should be made available as part of the JLI Class Settlement of
7 the economic loss claims are **OVERRULED**.

8 I agree with PHAI that as part of this MDL generally, public health solutions to the vaping
9 crisis allegedly caused by JLI are needed. But I agree with Class Counsel (and objector Reilly
10 Stephens, represented by the Hamilton Lincoln Law Institute Center For Class Action Fairness,
11 Dkt. No. 4073), that the settlement of the class economic loss claims is not the appropriate place to
12 require those solutions. The JLI Class Settlement releases only economic loss claims (claims
13 based on overpayments by class members for JLI's products). I will not reject what is —as
14 described above – an obviously fair, reasonable, and adequate settlement of the economic loss
15 claims against JLI because the JLI Class Settlement did not reach further than the economic loss
16 claims, which were the only ones pleaded and litigated. If, at the end of the claims distribution
17 process, there are funds left over from the Class settlements (both the JLI Settlement and, if finally
18 approved, the companion Altria Class Settlement) that are not economically feasible to distribute
19 directly to class members, Class Counsel shall apply to the Court for distribution to a *cy pres*
20 recipient. While I find that the public health funds sought by PHAI cannot be required as a part of
21 the JLI Class Settlement, I retain the ability to select PHAI or another appropriate public health
22 agency or organization as a recipient of any potential *cy pres* funds.

23 The public health and private health impacts caused by JLI's products were centrally raised
24 and litigated through summary judgment in other parts of this MDL, for bellwether personal injury
25 and government entity plaintiffs. They have also been raised, litigated, and by now largely
26 resolved through cases outside this MDL brought by various state Attorneys General. Given my
27 concerns about these impacts, after the hearing on the final approval motion for the JLI Class
28 Settlement I requested and Plaintiffs' Co-Lead Counsel have provided a Status Report on

1 Settlement Implementation. Dkt. No. 4134. It addresses the implementation of the personal
2 injury, government entity, and tribal settlement processes generally, and specifically details the
3 government entities' agreement to use their funds for "compensatory restitution or remediation" of
4 their damages from the vaping epidemic. The Report provides specific examples of how
5 bellwether and non-bellwether government entities as well as tribal entities are expected to fund
6 solutions to the public health youth e-cigarette crisis. *Id.* I will require an annual status report on
7 how the governmental entity and tribal settlements are funding public health solutions throughout
8 the country. And although it is beyond my purview, I anticipate that settlements outside of this
9 MDL by various state Attorneys General will likewise support ongoing and new research and
10 support for e-cigarette cessation initiatives.

11 All that said, I conclude that the JLI Settlement is fair, reasonable, and adequate. While
12 the JLI Settlement does not directly provide resources to fund public health research and e-
13 cigarette cessation initiatives, it appropriately addresses the economic loss claims of the Class
14 members that defined what was pleaded and litigated in this portion of the MDL.

15 **b. Gugliotta**

16 John Gugliotta objected to the Settlement on the grounds that: (1) Class Members are not
17 provided with information about the class size, (2) appearing at the fairness hearing is too
18 expensive, (3) JLI did not admit fault as part of the Settlement, (4) the Settlement should have
19 limited JUUL-related marketing practices, and (5) the Settlement should have done more to
20 address vaping generally, not just related to JUUL.

21 Each of Gugliotta's objections is OVERRULED. The notices provide sufficient
22 information about how Class Member payments are calculated to reasonably inform Class
23 Members of the potential benefits of the Settlement. The Court opened the Fairness Hearing to
24 attendance via Zoom, mooting any concerns with travel-related costs. Settlements are inherently
25 compromises in which there is no reasonable expectation that the defendants admit fault, and in
26 any event, the relief afforded to Class Members is reasonable, whether JLI has admitted fault or
27 not. As to the fourth objection, Gugliotta argues that the Settlement should require disclosure of
28 information regarding adverse drug interactions but does not provide any information about the

1 purported interactions. He also argues that JUUL should not be marketed as a smoking cessation
 2 device, but what JUUL marketing can say in that regard is the subject of FDA oversight. Nor is
 3 there any requirement that a settlement provide injunctive relief for it to be fair, reasonable, and
 4 adequate. Finally, because this litigation only concerned JUUL products, a settlement that is
 5 limited to those products—as opposed to the conduct of other e-cigarette manufacturers
 6 generally—is fair, reasonable, and adequate.

7 **c. Ashak and Marcom**

8 Olin Ashak and Samuel Marcom object to the Settlement because they appear to think that
 9 the lawsuit never should have been brought and that the claims are baseless. But disagreement
 10 with the litigation itself “is not a basis for denying the motion for final approval.” *Quiruz v.*
 11 *Specialty Commodities, Inc.*, 2020 WL 6562334, at *8 (N.D. Cal. Nov. 9, 2020). Ashak also
 12 objects to the objection process, stating that it was “difficult.” However, the objection process
 13 was clearly explained in the Notices approved by the Court. These objections are OVERRULED.

14 **d. Ready, Stampfer, Stawicki, and Toole**

15 The objections submitted by Lawanda Ready, John Stampfer, Melisa Stawicki, and Austin
 16 Toole did not provide any basis for their objections, and are therefore OVERRULED.

17 **e. ClaimClam**

18 As of August 9, 2023, approximately 460 objections were submitted by purported class
 19 members who were seeking to participate in the JLI Class Settlement with the assistance of third-
 20 party “ClaimClam.” Dkt. No. 4104-2 (listing ClaimClam submissions). The objections followed
 21 roughly the same form; they identified claimants’ contact information and dates of their purchases,
 22 and objected to the rejection of their claims by the Settlement Administrator. *Id.*

23 Zimin Hang objected as both a class member and as CEO of ClaimClam. Dkt. No. 4091-4.
 24 At the Final Approval hearing, the Court heard argument from ClaimClam’s attorney, Mathew
 25 Borden. The objections to the Claims Administrator’s rejection of claims submitted by third-party
 26 aggregator ClaimClam are OVERRULED.

27 Class Counsel directed the Settlement Administrator (Epiq) to reject the “tens of
 28 thousands” of claims submitted “en masse” by ClaimClam. Dkt. No. 4115 at 2. Class Counsel

1 argues that participation claims aggregators like ClaimClam in class action claims administration
2 can generally create confusion. Specific to this case, Class Counsel point to evidence that the
3 information provided by ClaimClam to Class Members about the JLI Class Settlement and claims
4 process was incorrect or potentially misleading. Dkt. No. 4091 at 8-14; Dkt. No. 4091-1, ¶¶ 28-
5 34.

6 The Settlement Administrator appropriately rejected the ClaimClam submissions. The
7 method and contents of the notices given to class members – including the explanation of the case
8 and instructions on how to participate, opt-out, or object – were all approved by the Court as
9 required by Federal Rule of Civil Procedure 23(c)(2)(B). The Court also approved the
10 appointment of Epiq as the Claims Administrator based on representations of Epiq’s qualifications
11 and experience and an outline of administrative and communication services to be provided to
12 class members, under the supervision of Class Counsel and ultimately the Court. The Court takes
13 these steps to ensure that class members’ due process rights are fully protected. Allowing en
14 masse submissions by claims aggregators like ClaimClam raises real risks that Class Members
15 will not receive accurate information regarding the scope of the class and the claims process.
16 Allowing a third-party to submit hundreds or thousands of aggregated claims also hinders the
17 ability of the Court-appointed Claims Administrator to communicate directly with claimants and
18 conduct required follow up to identify fraudulent claims or verify the accuracy of claims and to
19 resolve claim disputes (*e.g.*, confirm hours worked in wage and hour suits, or the amount of
20 product purchased in consumer suits).

21 The rejection of the ClaimClam submissions in this case will cause no prejudice to Class
22 Members who may have authorized ClaimClam to submit a claim on their behalf. Class Counsel
23 shall work with Epiq (and to the extent ordered below with ClaimClam, who has appeared in this
24 case) to notify each impacted Class Member whose contact information is available (from the
25 objections or from the ClaimClam submissions) and allow reasonable time for each affected Class
26 Member to directly submit a claim to Epiq.

27 Therefore, it is ORDERED THAT with respect to the individuals for whom ClaimClam
28 submitted a claim on or before July 14, 2023, ClaimClam shall provide to Epiq and Class Counsel

1 within one week of this Order a spreadsheet containing the individuals' names and email addresses
 2 (or other means of primary communication with which ClaimClam communicated with such
 3 individuals). Class Counsel and Epiq shall thereafter notify such individuals, in writing, of this
 4 Order and provide instructions for how the individuals may submit claims directly to Epiq and/or
 5 rescind any opt-out requests.

6 Those individuals for whom ClaimClam submitted a claim shall have three months from
 7 the date of this Order to submit their claims directly to Epiq, and any such claims will be
 8 considered timely. As the Court has separately granted preliminary approval of the proposed
 9 settlement with Altria and related entities, this deadline shall be consistent with the claims
 10 deadline applicable to the Altria Class Settlement. Any claims directly filed with Epiq and
 11 requests to rescind opt-out requests from former ClaimClam clients shall not be deemed untimely
 12 simply because they were submitted after the July 14, 2023 deadline.

13 **E. Releases and Effect of This Order**

14 **1. Releases by Settlement Class Members**

15 By operation of this Order and Judgment, on the date specified in the JLI Class
 16 Settlement, Settlement Class Members, including the Settlement Class Representatives, release
 17 and forever discharge and hold harmless the Released Parties of and from any and all Settlement
 18 Class Released Claims which the Settlement Class Member ever had, now have, or will have in
 19 the future. The Settlement Class Released Claims shall not release any Settlement Class
 20 Member's: (i) claim(s) for personal injury against the Released Defendants; (ii) claims asserted in
 21 *In re Juul Labs, Inc. Antitrust Litigation*, Case No. 3:20-cv-02345-WHO that arise from alleged
 22 anticompetitive conduct; (iii) claim(s) against any non-settling Defendants; (iv) claim(s) arising
 23 from the purchase of any JUUL Product after December 6, 2022; or (v) right(s) to enforce the
 24 Settlement. Settlement Class Members shall not release their claims if either the Effective Date
 25 does not occur, or the Gross Settlement Amount is not paid. The scope of the Released Claims is
 26 consistent with the economic loss claims pled in the class action complaint.

27 **2. Waiver of Provisions of California Civil Code § 1542**

28 By operation of this Order and Judgment, with respect to the Settlement Class Released

1 Claims, Class Plaintiffs, the Released Parties, and Settlement Class Members shall be deemed to
2 have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
3 benefits conferred by any law of any state of the United States, or principle of common law or
4 otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil
5 Code, which provides:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
7 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
8 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
9 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR
10 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

12 Class Plaintiffs, JLI (on behalf of itself and the Released Parties), and Settlement Class
13 Members understand and acknowledge the significance of these waivers of California Civil Code
14 section 1542 and any other applicable federal or state statute, case law, rule or regulation relating
15 to limitations on releases, but acknowledge that this release extends only to economic loss claims
16 (other than those expressly exempted from the scope of the release).

17 The Settlement Class Released Claims of the Settlement Class are dismissed with
18 prejudice and without costs. Accordingly, the Second Amended Consolidated Class Action
19 Complaint and any other complaints in the litigation asserting Settlement Class Released Claims
20 are hereby dismissed with prejudice and without costs.

21 **3. Compliance with Class Action Fairness Act**

22 The record establishes that the Class Settlement Administrator served the required notices
23 under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required
24 by 28 U.S.C. § 1715(b)(1)-(8). ECF No. 3742.

25 **F. Costs of Administering the Settlement**

26 The Class Settlement Administrator received over six million claims, which exceeds the
27 outer bounds of the volume of claims that the Class Settlement Administrator had expected prior
28 to commencing the notice program. Based on the information provided by Class Plaintiffs, a
precise estimate of the costs needed to process those claims, conduct necessary follow-ups, weed

1 out invalid claims, and distribute funds is unknown given the ongoing nature of the analysis of the
2 claims.

3 The Class Settlement Administrator and Class Counsel both anticipate that,
4 notwithstanding the very high claims volume, the Class Settlement Administrator will be able to
5 complete the necessary settlement administration work for less than the \$7,000,000 proposed in
6 the class notice. Given the uncertainty in the final amounts needed to complete settlement
7 administration, the Court authorizes payment to the Class Settlement Administrator of up to
8 \$6,000,000 for administration of both the JLI and Altria Class Settlements (inclusive of the
9 \$3,000,000 authorized for the JLI Class Settlement administration in the JLI Preliminary Approval
10 Order as well as the \$2,500,000 authorized for the Altria Class Settlement administration in the
11 Altria Preliminary Approval Order). If needed, Class Counsel may seek approval of payment of
12 additional costs with supporting documentation submitted to Class Counsel and approved by the
13 Court. Class Counsel shall only authorize payments to the Class Settlement Administrator for
14 actual costs incurred. Any difference between the actual costs incurred by the Class Settlement
15 Administrator and the \$6,000,000 approved amount shall remain a part of the Settlement Fund.
16 Class Counsel is directed to continue to work with the Class Settlement Administrator on methods
17 for reducing costs and to review billing statements on a weekly basis.

18 The Court also authorizes total payment of up to \$50,000 per year for previously incurred
19 and future costs related to the administration of the Trust (including all expenses and
20 compensation payable under the terms of the Trust). Payments up to such amount are reasonable
21 given the role of the Trust in protecting the Settlement Fund from being subject to reduction or
22 clawback in the event JLI were to file for bankruptcy. In no event shall payments related to the
23 administration of the Trust exceed the Settlement Fund's share of the actual, documented out-of-
24 pocket costs for administering the Trust.

25 **G. Other Effects of This Order**

26 No action taken by the parties, either previously or in connection with the negotiations or
27 proceedings connected with the JLI Class Settlement, shall be deemed or construed to be an
28 admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment

1 or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any
2 other party. Neither the JLI Class Settlement nor any act performed or document executed
3 pursuant to or in furtherance of the JLI Class Settlement: (a) is or may be deemed to be or may be
4 used as an admission of, or evidence of, the validity of any claim made by the JLI Class
5 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or
6 entities released under this Order and Judgment and the Settlement, or (b) is or may be deemed to
7 be, or may be used as an admission of, or evidence of, any fault or omission of any of the persons
8 or entities released under this Order and Judgment and the Settlement, in any proceeding in any
9 court, administrative agency, or other tribunal. JLI's and the Released Parties' agreement not to
10 oppose the entry of this Order and Judgment shall not be construed as an admission or concession
11 that class certification was or would be appropriate in the litigation outside of the context of
12 settlement or would be appropriate in any other action.

13 Except as provided in this Order, Class Plaintiffs shall take nothing against the Released
14 Parties by the Released Claims. This Order shall constitute a final judgment binding the Released
15 Parties and JLI Settlement Class Members with respect to the Released Claims.

16 No distributions shall be made from the Settlement Fund, or from any account holding the
17 Settlement Fund, without the written authorization of Class Counsel.

18 Defendants will have no role in, nor will they be held liable in any way for, the
19 determination of monetary relief to be accorded each Claimant. No JLI Settlement Class Member
20 or any other person will sue or have any claim or cause of action against the Settlement Class
21 Representatives, Class Counsel or any person designated by Class Counsel, Co-Lead Counsel or
22 the Class Settlement Administrator arising from or relating to the Settlement, the Released
23 Claims, the litigation, or determinations or distributions made substantially in accordance with the
24 JLI Settlement or Orders of the Court, including this Final Approval Order and Judgment.

25 Without affecting the finality of the judgment hereby entered, the Court reserves exclusive
26 jurisdiction over the implementation of the JLI Class Settlement. In the event the Effective Date
27 does not occur in accordance with the terms of the JLI Class Settlement, or the Gross Settlement
28 Amount is not paid, then this Order and any judgment entered thereon shall be rendered null and

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1 void and shall be vacated, and in such event, all orders and judgments entered, and releases
2 delivered in connection herewith shall be null and void and the parties shall be returned to their
3 respective positions ex ante.

4 Without further order of the Court, the parties may agree to reasonable extensions of time
5 to carry out any provisions of the Settlement.

6 In addition, IT IS ORDERED THAT with respect to the individuals for whom ClaimClam
7 submitted a claim on or before July 14, 2023, ClaimClam shall provide to Epiq and Class Counsel
8 within one week of this Order a spreadsheet containing the individuals' names and email addresses
9 (or other means of primary communication with which ClaimClam communicated with such
10 individuals). Class Counsel and Epiq shall thereafter notify such individuals, in writing, of this
11 Order and provide instructions for how the individuals may submit claims directly to Epiq and/or
12 rescind any opt-out requests.

13 IT IS FURTHER ORDERED THAT Class Counsel prepare and file an annual status report
14 describing how the governmental entity and tribal settlements are funding public health solutions
15 throughout the country as a result of the funds they receive through the settlement of their claims
16 in this MDL.

17 There is no just reason for delay in the entry of this Judgment, and immediate entry by the
18 Clerk of the Court is expressly directed.

19 **IT IS SO ORDERED.**

20 Dated: September 19, 2023



21
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23 William H. Orrick
United States District Judge
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