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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

21 DOUGLAS J. REECE, on his own behalf and  
22 all others similarly situated,

23 Plaintiff,

24 v.

25 ALTRIA GROUP, INC., and JUUL LABS,  
26 INC.,

27 Defendants.

Civil Action No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

28 Plaintiff Douglas J. Reece, on behalf of himself and all others similarly situated, brings this Class Action Complaint against Defendants Altria Group, Inc. and Juul Labs, Inc., for violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2 and Section 7 of the Clayton Act, 15

1 U.S.C. § 18. Plaintiff alleges, based upon the investigation of counsel and personal knowledge as  
2 to paragraph 16, as follows:

### 3 I. INTRODUCTION

4 1. This is an antitrust class action against Defendants Altria Group, Inc. (“Altria”)  
5 and Juul Labs, Inc. (“Juul”), concerning anticompetitive agreements between them in which  
6 Altria agreed to refrain from competing against Juul in the United States market for closed-  
7 system electronic cigarettes (“e-cigarettes”) in return for a substantial ownership interest in Juul.  
8 Juul was and is the dominant player in the sale of closed-system electronic cigarettes (“e-  
9 cigarettes”) in the United States (“relevant market”). E-cigarettes are electronic devices that  
10 deliver nicotine to a user by vaporizing a liquid nicotine solution. In a closed system, the liquid  
11 is contained in a pre-filled, sealed cartridge or pod.

12 2. In light of declining sales in the market for traditional cigarettes and a shift by  
13 consumers to alternative nicotine delivery devices, Altria viewed participation in the e-cigarette  
14 market as essential to its long-term survival. In 2013, Altria entered the market through its  
15 subsidiary Nu Mark LLC. Its flagship product was the MarkTen e-cigarette.

16 3. In 2015, Juul entered the relevant market with a sleek new device and quickly  
17 captured a substantial share of the market. By 2018, Juul had amassed market share of over 70  
18 percent<sup>1</sup> stunning Altria and other competitors. Juul’s swift rise posed a grave competitive threat  
19 to Altria in the both the e-cigarette and traditional cigarette markets. To eliminate that threat,  
20 Altria began a two-prong strategy of trying to acquire Juul while continuing to compete  
21 aggressively against it. Its efforts to acquire Juul were unsuccessful initially, and Altria  
22 introduced a new product known as the MarkTen Elite which closely resembled Juul’s product.

23 4. Altria continued to press the acquisition. In the fall of 2018, Juul agreed to  
24 negotiate with Altria under the condition that Altria stop competing with Juul in the market for e-  
25

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26 <sup>1</sup> Bonnie Herzog & Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 8/11* at 10, Wells  
27 Fargo Securities (Aug. 21, 2018), available at [https://athra.org.au/wpcontent/uploads/2018/09/  
Wells-Fargo-Nielsen-Tobacco-All-Channel-Report-Period-Ending-8.11.18.pdf](https://athra.org.au/wpcontent/uploads/2018/09/Wells-Fargo-Nielsen-Tobacco-All-Channel-Report-Period-Ending-8.11.18.pdf).

1 cigarettes. Discussions would not begin until Altria had pulled its products off the shelves.  
2 Altria, at first, refused to consider this condition, but in October 2018 it succumbed to the  
3 pressure and began to withdraw its e-cigarette products from the relevant market.

4 5. Two months later in December of 2018, Altria announced its intention to cease  
5 competing entirely in the relevant market.<sup>2</sup>

6 6. Approximately two weeks after making this announcement, Altria disclosed that,  
7 on October 20, 2018, it had executed a Purchase Agreement and related agreements (the  
8 “Transaction”) with Juul.

9 7. Under the Purchase Agreement, Altria purchased a 35% non-voting stake in Juul,  
10 which Altria could convert to a voting stake upon receiving Hart-Scott Rodino approval. In  
11 addition, Altria and Juul executed: (i) a Relationship Agreement, which contained a non-compete  
12 provision (“the “Non-Compete”) restricting Altria from competing in the relevant market; (ii) a  
13 Services Agreement, whereby Altria agreed to provide a variety of support services for Juul; (iii)  
14 an Intellectual Property License Agreement licensing Altria's e-cigarette intellectual property to  
15 Juul; and (iv) a Voting Agreement providing Altria representation on Juul’s board of directors  
16 following the conversion of its shares. Pending Hart-Scott Rodino approval, the transaction  
17 provided Altria the right to appoint one of its executives to a non-voting “observer” position on  
18 Juul’s board.

19 8. Altria’s investment in Juul and its exit from the market not only eliminated its  
20 existing e-cigarette product but also, through the Non-Compete, halted its ongoing innovation  
21 efforts toward developing a new and improved portfolio of products. Thus, consumers lost the  
22 benefit of current and future head-to-head competition between Altria and Juul, and between  
23 Altria and other competitors.

24  
25  
26  
27 <sup>2</sup> See *MarkTen Discontinuation Notice* (Dec. 19, 2018), <https://www.markten.com>.

1           9.       The transaction eliminated a threat to Juul’s market dominance and required  
2 Altria to dedicate its vast resources, including distribution and shelf-space, to ensure Juul’s  
3 continued market dominance.

4           10.      After executing the transaction, Altria appointed its Chief Growth Officer as its  
5 observer on the Juul board of directors. Following that executive’s departure from Altria to  
6 become Chief Executive Officer of Juul, Altria appointed its Chief Financial Officer and Vice  
7 Chairman to fill the observer position.

8           11.      The Transaction’s anticompetitive effects were particularly clear in the market for  
9 closed-system e-cigarettes given high barriers to entry, such as U.S. Food & Drug  
10 Administration (“FDA”) approval. Repositioning new products in the market was also  
11 unavailing to counter the anticompetitive impact of the Transaction. Defendants cannot show the  
12 transaction restricting competition resulted in cognizable efficiencies sufficient to outweigh the  
13 competitive harm caused by Altria’s agreement to exit the relevant market. Nor can Defendants  
14 point to pro-competitive benefits that could not have been achieved through less restrictive  
15 means. In fact, much of the Defendants’ collaboration was restructured in January 2020 to  
16 eliminate its marketing aspects, further reducing the scope of theoretical benefits from their  
17 agreements.

18           12.      Defendants’ conduct has illegally restrained competition in the relevant market in  
19 violation of federal antitrust laws. As a direct and proximate result of Defendants’  
20 anticompetitive conduct, entities that purchased Juul products were overcharged and sustained  
21 injury to their business and property.

## 22                               **II. JURISDICTION AND VENUE**

23           13.      This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)  
24 because this is a class action involving common questions of law or fact in which the aggregate  
25 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, there are more than  
26 one hundred members of the Class, and at least one member of the putative Class is a citizen of a  
27 state different from that of one of the Defendants.

1           14.     Venue is appropriate within this district under 28 U.S.C. §1391 because, at all  
2 relevant times, Defendants transacted business within this district, and the interstate trade and  
3 commerce described hereinafter is carried out, in substantial part, in this district. Further,  
4 Defendants and/or their agents may be found in this district.

5           15.     The Court has personal jurisdiction over each Defendant. Each Defendant has  
6 transacted business, maintained substantial contacts, and/or committed overt acts in furtherance  
7 of the illegal scheme and conspiracy throughout the United States, including in this district. The  
8 scheme and conspiracy have been directed at, and have had the intended effect of, causing injury  
9 to persons residing in, located in, or doing business throughout the United States, including in  
10 this district.

### 11                               **III.     INTRADISTRICT ASSIGNMENT**

12           16.     Assignment to any division in this District is proper because the interstate trade  
13 and commerce involved and affected by the violations of the antitrust laws was and is carried out  
14 within each division. Defendant Juul Labs, Inc. has its principal place of business in the San  
15 Francisco division.

### 16                               **IV.     THE PARTIES**

17           17.     Plaintiff Douglas J. Reece is a resident of the State of California. Douglas J.  
18 Reece purchased Juul products directly from Juul on the Juul.com website during the relevant  
19 period. Plaintiff was injured in connection with his purchases during the Class Period.

20           18.     Defendant Juul Labs, Inc. (“Juul”), is a Delaware corporation headquartered at  
21 560 20th Street, San Francisco, California. Juul is the leading manufacturer of closed-system e-  
22 cigarettes, generating over \$1 billion in sales in 2018.

23           19.     Defendant Altria is a Virginia corporation headquartered at 6601 West Broad  
24 Street, Richmond, Virginia. Altria is one of the country’s largest tobacco companies and was  
25 formerly a manufacturer of closed-system e-cigarettes.

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