

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

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

And

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

Respondents.

The Honorable D. Michael Chappell

Docket No. 9393

**NON-PARTY TURNING POINT BRANDS, INC.'S MOTION FOR EXTENSION OF
TIME TO MOVE TO LIMIT OR QUASH SUBPOENAS *DUCES TECUM***

Non-party Turning Point Brands, Inc. (“Turning Point”) hereby moves for the extension of time to move to limit or quash two subpoenas *duces tecum* served on Turning Point: one by Respondent Juul Labs, Inc. (“JLI”) on September 16, 2020 (the “JLI Subpoena”), and one by Complaint Counsel on September 24, 2020 (the “Complaint Counsel Subpoena,” and together with the JLI Subpoena, the “Subpoenas”). Turning Point respectfully requests that its deadline to move to limit or quash the Subpoenas pursuant to 16 C.F.R. § 3.34(c) (“Rule 3.34(c)”) be extended to October 23, 2020. This motion is unopposed by the serving parties. In support of this motion, Turning Point states as follows:

1. The JLI Subpoena includes 39 distinct requests, and 4 of those requests include a total of 25 subparts. On its face, the JLI Subpoena seeks *inter alia* documents relating to (1) the transaction at issue in the above-captioned matter, (2) sales, marketing, market analysis, and pricing of Turning Points’ E-Vapor Products (as defined therein) and the E-Vapor Products sold

by other suppliers, (3) extensive sales and other financial data, and (4) documents relating to Turning Point's research and development, strategic decisions, and product planning. The JLI Subpoena seeks all responsive documents dating back to January 1, 2017, and with respect to some requests to 2015.

2. The Complaint Counsel Subpoena seeks production of "all documents responsive to the Specifications" in the JLI Subpoena and explicitly calls for "a complete search of all the files of the Company," defined to include *inter alia* Turning Point and all of its subsidiaries and affiliates.

3. Pursuant to Rule 3.34(c), the 10-day deadline to move to limit or quash the Subpoenas would run on September 28, 2020 for the JLI Subpoena, and October 5, 2020 for the Complaint Counsel Subpoena.

4. Turning Point has engaged the undersigned counsel to assist in negotiating a reasonable scope of production in response to the Subpoenas, and to make a timely collection and production. Turning Point respectfully submits that it would be unduly burdensome for a non-party to prepare objections and move to quash or limit subpoenas of this breadth in the 10-day default time limit prescribed by Rule 3.34(c). Turning Point also believes that it and the serving parties should focus their efforts on negotiating the appropriate scope of discovery, and schedule for production, in the hopes of eliminating any need for motion practice, or at least substantially narrowing any issues that need to be presented for resolution. Without the extension, the parties would have to devote substantial time to motion practice, especially given the breadth of the Subpoenas, which would make compromise less likely.

5. Pursuant to the August 4, 2020 Scheduling Order, the parties have several months, until February 1, 2021, to complete fact discovery and therefore Turning Point submits that the

requested extension (of approximately three-and-a-half weeks) will not delay the progress of these proceedings, and will afford the parties sufficient time to engage in meaningful negotiations.

6. On September 25, 2020, undersigned counsel conferred by telephone separately with counsel for JLI and Complaint Counsel. Both informed Turning Point that they do not object to the proposed extension, and the parties plan to begin the substantive meet-and-confer process this week.

WHEREFORE, for good cause shown, Turning Point respectfully requests that Your Honor grant the requested relief pursuant to 16 C.F.R. § 4.3(b), and extend the deadline for Turning Point to move to limit or quash the subpoenas pursuant to Rule 3.34 to October 23, 2020, should such a filing be necessary.

Date: September 28, 2020

Respectfully submitted,

/s/ Mark A. Ford

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

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

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Respondents.

Docket No. 9393

**[PROPOSED] ORDER GRANTING MOTION FOR EXTENSION OF TIME TO MOVE
TO LIMIT OR QUASH SUBPOENAS *DUCES TECUM***

On September 28, 2020, non-party Turning Point Brands, Inc. (“Turning Point”) filed a Motion for Extension of Time to Move to Limit or Quash two Subpoenas *Duces Tecum* (“Motion”) received by Turning Point: one by Respondent Juul Labs, Inc. (“JLI”) on September 16, 2020, and the second by Complaint Counsel for the Federal Trade Commission (“FTC”) on September 24, 2020.

Under FTC Rule of Practice 3.34(c), any motion to limit or quash a subpoena must be filed within 10 days of receipt of the subpoena, 16 C.F.R. § 3.34(c). Turning Point states that it seeks an extension until October 23, 2020, in order to enable Turning Point to negotiate with JLI and with Complaint Counsel regarding the scope and asserted burden of the respective subpoenas. Turning Point argues that the extension is necessary given the breadth of the requested production, and so that the serving parties and Turning Point can devote their efforts to negotiating an agreed upon scope of production and production schedule in response to the subpoenas, rather than to preparing motions to quash that may not be necessary if such negotiations are successful. Turning Point represents, based on meeting and conferring with the serving parties, that neither JLI nor Complaint Counsel oppose the Motion.

FTC Rule 4.3(b) authorizes the Administrative Law Judge, except in circumstances not here presented, to extend any time limit prescribed by the rules “[f]or good cause shown.” 16 C.F.R. § 4.3(b). Based on the representations in the Motion, Turning Point has demonstrated good cause for the requested extension. Accordingly, the Motion is GRANTED and it is hereby

ORDERED that Turning Point's deadline for filing any motion to limit or quash the subpoenas pursuant to Rule 3.34(c) is extended to October 23, 2020.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: September [], 2020

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Docket No. 9393

**PROOF OF SERVICE OF PUBLIC FILING
AND CERTIFICATION PURSUANT TO 16 C.F.R. § 4.2**

I, Mark A. Ford, hereby certify that on September 28, 2020, I served a copy of Non-Party Turning Point Brands, Inc.'s Motion for Extension of Time to Move to Limit or Quash Subpoenas *Duces Tecum*, and its Proposed Order electronically via email and the Office of the Secretary's electronic filing system to:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-113
Washington, DC 20580
secretary@ftc.gov

And pursuant to ¶ 1 of the Scheduling Order in the above-captioned matter by email to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law Judges
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

And pursuant to ¶ 2 of the Scheduling Order in the above-captioned matter by email to Complaint Counsel and counsel of record for the Respondents:

<p>James Abell jabell@ftc.gov Dominic Vote dvote@ftc.gov Peggy Bayer Femenella pbayer@ftc.gov Erik Herron eherron@ftc.gov Joonsuk Lee jlee4@ftc.gov Meredith Levert mlevert@ftc.gov Kristian Rogers krogers@ftc.gov David Morris dmorris1@ftc.gov Michael Blevins mblevins@ftc.gov Michael Lovinger mlovinger@ftc.gov Frances Anne Johnson fjohnson@ftc.gov Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580</p> <p><i>Complaint Counsel</i></p>	<p>David Gelfand dgelfand@cgsh.com Jeremy Calsyn jcalsyn@cgsh.com Jessica Hollis jhollis@cgsh.com Matthew Bachrack mbachrack@cgsh.com Linden Bernhardt lbrenhardt@cgsh.com Cleary Gottlieb Steen & Hamilton LLP 2112 Pennsylvania Avenue NW Washington, DC 20037</p> <p><i>Counsel for Respondent Juul Labs, Inc.</i></p> <p>Debbie Feinstein debbie.feinstein@arnoldporter.com Robert Katerberg robert.katerberg@arnoldporter.com Justin Hedge justin.hedge@arnoldporter.com Francesca Pisano francesca.pisano@arnoldporter.com Le-Tanya Freeman tanya.freeman@arnoldporter.com Arnold & Porter Kaye Scholer LLP 601 Massachusetts Avenue NW Washington, DC 20011</p> <p>Marc Wolinsky MWolinsky@wlrk.com Jonathan Moses JMMoses@wlrk.com Kevin Schwartz KSchwartz@wlrk.com Adam Goodman ALGoodman@wlrk.com Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019</p> <p><i>Counsel for Respondent Altria Group, Inc.</i></p>
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/s/ Mark A. Ford