

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro Bedoya

In the Matter of

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

and

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

Respondents.

DOCKET NO. 9393

**RESPONDENTS' MOTION FOR LEAVE TO FILE REPLY
IN FURTHER SUPPORT OF MOTION TO REMOVE MATTER
FROM ADJUDICATION TO DISCUSS SETTLEMENT**

Respondents Altria Group, Inc. (“Altria”) and Juul Labs, Inc. (“JLI”) respectfully move, pursuant to Commission Rule § 3.22(d), for leave to file a short reply in further support of their Motion to Remove Matter from Adjudication to Discuss Settlement. Respondents seek only to address three factually incorrect assertions in Complaint Counsel’s Opposition, for which there is good cause to grant leave to file this reply. The proposed reply is attached as Exhibit A.

Dated March 24, 2023

Respectfully submitted,

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By: s/ Beth Wilkinson
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Altria Group, Inc.
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DOCKET NO. 9393

**[PROPOSED] ORDER GRANTING RESPONDENTS' MOTION FOR LEAVE TO FILE
REPLY IN FURTHER SUPPORT OF MOTION TO REMOVE MATTER FROM
ADJUDICATION TO DISCUSS SETTLEMENT**

Upon consideration of Respondents' Motion for Leave to File Reply in Further Support of Motion to Remove Matter From Adjudication to Discuss Settlement,

IT IS HEREBY ORDERED, that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED, that Respondents are authorized to file the reply substantially in the form annexed to the Motion as Exhibit A.

ORDERED By the Commission:

April J. Tabor
Secretary

Dated:

EXHIBIT A

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**RESPONDENTS' REPLY IN FURTHER SUPPORT OF MOTION TO REMOVE
MATTER FROM ADJUDICATION TO DISCUSS SETTLEMENT**

Respondents Altria Group, Inc. (“Altria”) and Juul Labs, Inc. (“JLI”) respectfully submit this short reply in response to Complaint Counsel’s Opposition to Respondents’ Motion to Withdraw Matter from Adjudication to Discuss Settlement (the “Opposition”). Respondents seek only to address three factually incorrect assertions in the Opposition.

First, Complaint Counsel contends that Respondents’ settlement proposal falls “woefully short” because it does not provide the relief sought by the Commission. Opposition at 2. This is false. Respondents’ settlement proposal meets entirely the actual relief sought by the Commission in the Notice of Contemplated Relief, including the three specific forms of relief that Complaint Counsel highlighted as critical in its opposition to the motion to dismiss. Indeed, the only aspect of the Notice of Contemplated Relief that Complaint Counsel points to as supposedly not met is boilerplate catchall language at the end of the Notice. Notice of

Contemplated Relief, part (h) (“[a]ny other relief appropriate . . .”). Complaint Counsel has absolutely nothing to say about any of the substantive items in the Notice of Contemplated Relief because Respondents’ settlement proposal fully addresses each of them. When Complaint Counsel says that Respondents’ settlement proposal does not provide all of the relief sought by the Commission, what Complaint Counsel really means is that it does not address each of the points in *Complaint Counsel’s Proposed Order*—which materially, and improperly, expanded the relief that was noticed in the Commission’s Complaint, as Respondents have already briefed. *See* Respondents’ Post-Trial Reply Brief at 104–10; *see also* Respondents’ Appeal Br. at 46–48.¹

Second, Complaint Counsel points to Altria’s proposed acquisition of NJOY Holdings, Inc., an e-vapor company, as showing that its expansive prior-approval requirement is needed. Opposition at 4. Complaint Counsel ignores that the NJOY transaction and any like transaction would be subject to the HSR process. [REDACTED]

[REDACTED]

[REDACTED]

Id. And a prior-approval requirement that extends beyond future agreements between Respondents would in any event be overbroad and competition-*destroying* here. *See* Respondents’ Post-Trial Reply Brief at 106-108; *see* n.1, *supra*.

Third, in suggesting that the “imminent resolution of this case” is around the corner, Opposition at 6, Complaint Counsel ignore the possibility of an appeal from any decision of the

¹ Indeed, Complaint Counsel places the greatest weight on the fact that its Proposed Order would “require Respondents to obtain the Commission’s prior approval before entering into *any* transaction” with anyone who operates in the e-vapor category (including distributors, wholesalers, and retailers). Opposition at 4 (emphasis added). As any neutral observer would conclude, that provision, as drafted by Complaint Counsel, would eviscerate Altria and JLI’s ability to compete and would put the Commission in the position of running their businesses.

Commission. Resolution of this case through the federal courts could potentially take years. There is no explanation for Complaint Counsel's demand that the Commission waste further taxpayer dollars on years more of litigation when the transaction in question has been undone and Respondents have offered to consent to the relief the Commission sought when it initiated this case for the sake of the resolving it.

* * *

Respondents have terminated the transaction and investment that gave rise to the Commission's Complaint. Respondents, despite prevailing at trial, are thus now prepared to enter into a consent order giving the Commission the remaining relief it sought in this matter. Any differences that Respondents and the agency have regarding the Proposed Order can and should be discussed in settlement negotiations. Respondents thus respectfully request that the Commission remove this matter from adjudication for a short period so that Respondents and Complaint Counsel can promptly negotiate and enter into a consent order consistent with the Proposed Order.

Dated March 24, 2023

Respectfully submitted,

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Counsel for Altria Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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