PUBLIC

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.**	**DOCKET NO. 9393**

RESPONDENTS' REPLY IN SUPPORT OF MOTION TO TAKE OFFICIAL NOTICE AND TO DISMISS THIS LITIGATION AS MOOT, OR IN THE ALTERNATIVE, TO STAY THE LITIGATION

Complaint Counsel does not dispute that the entire reason for this lawsuit—a "series of agreements between Altria and JLI, whereby Altria ceased to compete in the U.S. market for closed-system electronic cigarettes . . . in return for a substantial ownership interest in JLI," Compl. at 1—no longer exists. Each of the challenged "agreements" has been terminated, including the relationship and services agreements. Altria has no ownership interest in JLI. And Altria is attempting to compete against JLI by seeking to acquire a company with competing e-vapor products that FDA has permitted to remain on the market. Complaint Counsel sought divestment, and divestment has now occurred—despite Complaint Counsel's failure to prove its case before the Administrative Law Judge.

Complaint Counsel nevertheless insists the case is not moot because this divestment was voluntary, and Altria and JLI could (it alleges) somehow re-enter the agreements they just terminated. This argument defies common sense, and it ignores that under the Supreme Court's

ruling in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, to avoid mootness, the expectation of recurrence must be "*reasonabl[e]*." 528 U.S. 167, 189 (2000) (emphasis added). It is not reasonable to believe that, after (1) losing nearly all of its $12.8 billion dollar investment in JLI, (2) spending years tied up in various types of litigation related to the investment, (3) publicly announcing to shareholders and the SEC that it had terminated the non-compete, (4) subsequently relinquishing its 35 percent ownership interest in JLI, and (5) announcing a transaction to acquire one of JLI's competitors for $2.75 billion, Altria (or JLI) could simply re-enter their terminated agreements. That ship has sailed.

Respondents maintain that—as the Administrative Law Judge found—their initial transaction was not anticompetitive, and any further relief is unnecessary. However, as further evidence that this case is moot, Respondents are prepared to discuss a settlement that would address any remaining concerns the Commission may have. As further explained in Respondents' Motion to Remove Matter from Adjudication to Discuss Settlement, Respondents have filed a Proposed Order that fully addresses the relief sought by the Commission in this matter, including all three of the remedies specifically listed in Complaint Counsel's opposition. *See* Resp. Br. at 4-5.

The ALJ correctly dismissed the Complaint more than a year ago. But subsequent events have made it not worth anyone's time or resources to continue litigating this case, particularly now that there is nothing remaining of the transaction for Respondents to defend. The Commission should dismiss this matter as moot or in the alternative withdraw this matter from adjudication, accept Respondents' Proposed Order, and allow Altria and JLI to go their separate ways.

Dated March 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 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:

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The Honorable D. Michael Chappell
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I also certify that I caused the foregoing document to be served via email to:

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