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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

PROTECTIVE ORDER

This Document Relates to:

ALL ACTIONS

I. PURPOSE AND LIMITATIONS

1. The Parties agree and are entering into this Stipulated Protective Order with a goal towards moving this case forward in a speedy, collaborative, and efficient manner, while also balancing the public interest in access to information concerning the matters addressed in this litigation.
2. Disclosure and discovery activity in this action and related actions are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation may be warranted. Accordingly, the Parties hereby stipulate to and request that the Court enter the following Stipulated Protective Order (“Order”). The Parties acknowledge that this Order governs discovery in *In re: Juul Labs Inc., Marketing, Sales Practices, and Products Liability Litigation*, No. 19-md-2913. This order shall apply to all

1 cases currently pending in MDL No. 2913 and to all related actions that have been or will
2 be originally filed in, transferred to, or removed to this Court and assigned hereto.

3 3. This Order is binding on all Parties and their counsel in all cases currently pending and
4 subsequently made part of these MDL proceedings and shall govern each case in the
5 proceedings. The purpose of this Order is to expedite the flow of discovery material,
6 facilitate the prompt resolution of disputes over confidentiality, and protect material to be
7 kept confidential, pursuant to the Court's inherent authority, its authority under Federal
8 Rule of Civil Procedure 26(c), and the judicial opinions interpreting such Rules.

9 4. The Parties acknowledge that this Order does not confer blanket protections on all
10 disclosures or responses to discovery and that the protection it affords from public
11 disclosure and use extends only to the limited information or items that are entitled to
12 confidential treatment under the applicable legal principles. The Parties further
13 acknowledge, as set forth in Paragraph 52 below, that this Order does not entitle them to
14 file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
15 that must be followed and the standards that will be applied when a Party seeks permission
16 from the Court to file material under seal.

17 5. This Order shall not abrogate or diminish any statutory, or other legal obligation or right
18 of any party or person with respect to any Confidential Information.

19 6. The recipient of any Confidential Information hereby agrees to subject himself/herself to
20 the jurisdiction of this Court for the purpose of any proceedings related to the performance
21 under, compliance with, or violations of this Order.

22 7. This Order supersedes the Protective Order in *In re JUUL Labs, Inc., Products Litigation*,
23 Case No. 18-cv-2499 (WHO) (Docket No. 91, March 3, 2019). All documents and
24 materials previously produced under that order and designated as Confidential or Highly
25 Confidential will be treated as produced under the same designation under this Order unless
26 challenged.

1 **II. DEFINITIONS**

2 8. Action: This pending lawsuit, *In re: JUUL Labs, Inc. Marketing, Sales Practices, and*
3 *Products Liability Litigation*, United States District Court, Northern District of California,
4 Case No. 19-md-02913-WHO, including any amendments thereto, and all cases that have
5 been or will be originally filed in, transferred to, or removed to this Court and assigned
6 thereto.

7 9. Challenging Party: a Party or Non-Party that challenges the designation of information
8 or items under this Order.

9 10. CONFIDENTIAL Information or Items: information (regardless of how it is generated,
10 stored or maintained) or tangible things that qualify for protection under Federal Rule of
11 Civil Procedure 26(c), or other federal or state laws, rules, or regulations, which may
12 include:

13 (a) Information protected from disclosure by statute or regulation, including, but not
14 limited to, the Family Educational Rights and Privacy Act;

15 (b) Information that constitutes a trade secret in accordance with Uniform Trade
16 Secrets Act;

17 (c) Non-public communications with regulators or other governmental bodies that are
18 protected from disclosure by statute or regulation;

19 (d) Information that includes material protected by federal, state, or foreign data
20 protection laws or other privacy obligations, including (but not limited to) The
21 Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (financial information); The
22 Health Insurance Portability and Accountability Act, 45 CFR Part 160 and Subparts
23 A and E of Part 164 (medical information); Directive 95/46/EC of the European
24 Parliament and of the Council of 24 October 1995 on the Protection of Individuals
25 with Regard to the Processing of Personal Data and on the Free Movement of Such
26 Data,^[1] 1995 O.J. (L281/31) (European Union personal information); Data

27 ^[1] Note: Directive 95/46/EC will be replaced by the EU General Data Protection Regulation (GDPR) in
28 May 2018.

1 Protection Act 1998 (c. 29) (United Kingdom personal information); Federal Data
2 Protection Act (Germany personal information); the Belgian Law of December 8,
3 1992 on Privacy Protection in relation to the Processing of Personal Data (Belgium
4 personal information); Personal Information Protection and Electronic Documents
5 Act (PIPEDA), S.C. 2000, c. 5 (Canada personal information); The Federal Law on
6 Protection of Personal Data held by Private Parties (published July 5, 2010)
7 (Mexico personal information); and Act on the Protection of Personal Information
8 (Japan personal information);

9 (e) Personally identifiable information (“PII”), including: Social Security Numbers;
10 health information relating to the past, present or future physical or mental health
11 or condition of an individual; the provision of health care to an individual, or the
12 past present, or future payment for the provision of health care to an individual;
13 personal financial information such as tax information, bank account numbers, and
14 credit card numbers; insurance claim numbers; insurance policy numbers; or the
15 personal email addresses or other contact information of company board members,
16 executives, and employees; and/or

17 (f) Information, materials, and/or other documents reflecting non-public business or
18 financial strategies, and/or confidential competitive information which, if
19 disclosed, would result in competitive harm to the disclosing party.

20 However, CONFIDENTIAL information shall not include the following

21 (a) Any information that is in the public domain at the time of disclosure to a
22 Receiving Party, or becomes part of the public domain after its disclosure to a
23 Receiving Party as a result of publication not involving a violation of this Order,
24 including, but not limited to, by becoming part of the public record through
25 trial, and any public information posted by a Party that has subsequently been
26 made unavailable by removal from the public’s view (*e.g.*, deleted or closed
27 social media posts); and/or

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1 (b) Any information known to the Receiving Party prior to the disclosure or obtained
2 by the Receiving Party after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the
4 Designating Party.

5 11. Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as well
6 as their support staff).

7 12. Designated In-House Counsel: attorneys who are employees of a Party to this Action
8 who have access to documents designated “HIGHLY CONFIDENTIAL” for use in this
9 Action.

10 13. Designating Party: a Party or Non-Party that designates information or tangible items
11 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL.”

13 14. Disclosure or Discovery Material: all items or information, regardless of the medium or
14 manner in which it is generated, stored, or maintained (including, among other things,
15 testimony, transcripts, and tangible things), that are produced or generated in
16 disclosures or responses to discovery in this matter, including but not limited to, answers
17 to interrogatories, responses to requests for production, responses to requests for
18 admission, and transcripts of depositions and hearings (or portions of such transcripts).

19 15. Expert: a person who has been retained by a Party or its counsel to serve as an expert
20 witness or as an undisclosed consultant in this Action (as well as his or her employees
21 and support staff).

22 16. “HIGHLY CONFIDENTIAL” Information or Items: information that is extremely
23 confidential and/or sensitive in nature and the Producing Party reasonably believes that the
24 disclosure of such material is likely to cause serious economic harm or competitive
25 disadvantage to the Producing Party, is highly personal non-public information, or will
26 otherwise seriously compromise or jeopardize the Producing Party’s business interests,
27 such that protecting the information cannot be avoided by less restrictive means than
28 designation as “HIGHLY CONFIDENTIAL.” The Parties agree that a Party may designate

1 the following information, if non-public and subject to challenge in accordance with
2 Section VI, as “HIGHLY CONFIDENTIAL: Trade Secrets, and other non-public
3 information of similar competitive and business sensitivity, or material that constitutes
4 highly personal and confidential non-public information.

5 17. Trade Secrets: information whose disclosure would result in tangible economic loss, and
6 includes a formula, pattern, compilation, program, device, method, technique, or process,
7 that:

8 (a) derives independent economic value from not being generally known to, and not
9 being readily ascertainable by proper means by other persons who can obtain
10 economic value from its disclosure or use; and

11 (b) is the subject of efforts that are reasonable under the circumstances to maintain its
12 secrecy.

13 18. In-House Counsel: attorneys who are employees of a Party to this Action. In-House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 19. Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this Action.

17 20. Outside Counsel of Record: attorneys who are not employees of a party to this Action
18 but are retained to represent or advise a party to this Action and have appeared in this
19 Action on behalf of that party or are affiliated and/or associated with a law firm which
20 has appeared on behalf of that party, and their support staff.

21 21. Party: any party to this Action, including all of its officers, directors, employees,
22 consultants, Experts, and Outside Counsel of Record (and their support staffs).

23 22. Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
24 this Action.

25 23. Professional Vendors: persons or entities that provide litigation support services (*e.g.*,
26 photocopying, videotaping, translating, preparing exhibits or demonstrations, and
27 organizing, storing, or retrieving data in any form or medium) and their employees and
28 subcontractors.

1 24. Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

3 25. Receiving Party: a Party that received Disclosure or Discovery Material from a Producing
4 Party.

5 **III. SCOPE**

6 26. The protections conferred by this Order apply to not only Protected Material (as defined
7 above), but also to: (1) any information copied or extracted from Protected Material; (2)
8 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any oral,
9 written, or electronic communications, testimony or presentation by Parties or their
10 Counsel that might reveal Protected Material.

11 27. This Order and its protections apply for pre-trial purposes only. This Order does not govern
12 the use of Protected Materials at trial. The Parties will meet and confer at the appropriate
13 time regarding any use of Protected Material at trial, which use shall be governed by a
14 separate agreement or order.

15 **IV. DURATION**

16 28. Even after final disposition of this Action, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing, or a court
18 order otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal
19 of all claims and defenses in this Action, with or without prejudice; and (2) final judgment
20 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
21 reviews of this Action, including the time limits for filing any motions or applications for
22 extension of time pursuant to applicable law. The Court retains jurisdiction even after
23 termination of this Action to enforce this Order and to make such amendments,
24 modifications, deletions and additions to this Protective Order as the Court from time to
25 time deem appropriate.
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1 **V. DESIGNATING PROTECTED MATERIAL**

2 29. Exercise of Restraint and Care in Designating Material for Protection. Except as specified
3 in Paragraph 28, each Party or Non-Party that designates information or items as
4 CONFIDENTIAL or HIGHLY CONFIDENTIAL under this Order must take care to limit
5 any such designation to specific material that qualifies under the appropriate standards.
6 Designations of material for protection must be made in good faith. Designations of
7 material for protection must be made in good faith. Designations that are clearly unjustified
8 or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard
9 the case development process or to impose unnecessary expenses and burdens on other
10 parties) are prohibited. If it comes to a Designating Party's attention that information or
11 items that it designated for protection do not qualify for protection at all or do not qualify
12 for the level of protection initially asserted, that Designating Party must promptly notify
13 all other Parties that it is withdrawing the inapplicable designation.

14 30. Bulk Designation. To expedite production of potentially voluminous materials, a
15 Producing Party may, but is not required to, produce materials without a detailed
16 confidentiality review. In so doing, the Producing Party may designate those collections of
17 documents that by their nature contain "CONFIDENTIAL" or "HIGHLY
18 CONFIDENTIAL" information with the appropriate designation notwithstanding that
19 some of the documents within the collection may not qualify for such designation.
20 Notwithstanding the foregoing, a Receiving Party may at any time challenge the
21 designation of one or more particular documents, or categories of documents, bulk
22 designated pursuant to this Paragraph 28 on the grounds that it does not or they do not
23 qualify for such protection. If the Producing Party agrees, it must promptly notify all
24 Receiving Parties that it is withdrawing or changing the designation.

25 31. Manner and Timing of Designations. Except as otherwise provided in this Order or as
26 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
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1 protection under this Order must be clearly so designated before the material is disclosed
2 or produced.

3 Designation in conformity with this Order requires:

4 (a) For information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL” to each page of a paper or electronic document that contains
8 protected material or to the cover page of bound or grouped material. A Party or
9 Non-Party that makes original documents or materials available for inspection need
10 not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. During the inspection and before
12 the designation, all of the material made available for inspection shall be treated as
13 “HIGHLY CONFIDENTIAL” information. After the inspecting Party has
14 identified the documents it wants copied and produced, the Producing Party must
15 determine which documents, or portions thereof, qualify for protection under this
16 Order. Then, before producing the specified documents, the Producing Party must
17 affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” legend to each
18 page of a paper or electronic document that contains Protected Material. A Party
19 may designate documents produced by a Non-Party as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL” if the document contains information for which that
21 Party would have a right to apply the proposed designation if produced by that
22 Party, by notifying all other Parties of the designation within a reasonable period of
23 time after the production of documents by the Non-Party.

24 (b) For testimony given in deposition or in other pretrial proceedings, in the event that
25 a Producing Party designates some or all of a witness’s deposition or other testimony
26 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the specific page and line
27 designations over which confidentiality is claimed must be provided to the Receiving
28 Party within thirty (30) days of receipt of the final transcript, provided, however, that

1 the Receiving Party will consider reasonable requests for an extension of the deadline.
2 Deposition testimony shall be treated as “HIGHLY CONFIDENTIAL” pending the
3 deadline. After the 30-day period, if no Party has designated some or all of that
4 deposition transcript as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
5 under this Protective Order, the entire deposition, or those portions of the deposition
6 not designated as confidential, will no longer be considered confidential.

7 (c) For information produced in some form other than documentary and for any other
8 tangible items, that the Producing Party affix in a prominent place on the exterior
9 of the container or containers in which the information or item is stored the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or portions
11 of the information or item warrant protection, the Producing Party, to the extent
12 practicable, shall identify the protected portion(s). With respect to documents
13 produced in native format, the Electronically Stored Information Protocol, or ESI
14 Protocol, to be entered in this Action shall govern the form and method for marking
15 such documents as Confidential. When possible, in order to minimize the likelihood
16 of inadvertent disclosure of confidential information for any information
17 transmitted by electronic means, the Producing Party shall make a good faith effort
18 to place the appropriate confidentiality designation in the subject of the electronic
19 mail conveying the confidential information and on the title of the digital document
20 or media through which it is conveyed, or otherwise notify the Receiving Party of
21 the fact that confidential information is being conveyed. A Party may designate
22 information produced by a Non-Party as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL” if the document contains information for which that Party
24 would have a right to apply the proposed designation if produced by that Party, by
25 notifying all other Parties of the designation within a reasonable period of time after
26 the production of information by the Non-Party.

27 32. Inadvertent Failures to Designate. If timely corrected, disclosure of “CONFIDENTIAL”
28 “HIGHLY CONFIDENTIAL” Information does not waive the confidential status of such

1 Information. In the event that Confidential or Highly Confidential Information is disclosed
2 without a marking or designation of it as such, the Producing Party may thereafter assert a
3 claim or designation of confidentiality, and promptly provide replacement information or
4 items with the appropriate designation (and, if applicable, using the same Bates number as
5 the original production). Thereafter, the Receiving Party must immediately return the
6 original Confidential or Highly Confidential Information and all copies of the same to the
7 Producing Party and make no use of such Information.

8 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

- 9 33. Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time that is consistent with the Court's Scheduling Order.
- 11 34. Form of Challenges. The Challenging Party shall object to the propriety of the designation
12 of specific material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by providing
13 written notice to the Designating Party of each designation it is challenging and describing
14 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made,
15 the written notice must recite that the challenge to confidentiality is being made in
16 accordance with this specific Section of this Order. The Designating Party or its counsel
17 shall thereafter, within fourteen (14) calendar days, respond to such challenge in writing
18 by either: (1) agreeing to remove the designation; or (2) stating the reasons for such
19 designation. Counsel may agree to reasonable extensions.
- 20 35. Meet and Confer. If the Challenging Party continues to dispute the designation(s) at issue,
21 it shall notify the Designating Party in writing within fourteen (14) calendar days of the
22 Designating Party's response pursuant to the preceding section. Counsel may agree to
23 reasonable extensions. The Parties shall attempt to resolve each challenge in good-faith by
24 conferring directly (in voice-to-voice dialogue; other forms of communication are not
25 sufficient). A Challenging Party may proceed to the next stage of the challenge process
26 only if it has engaged in this meet-and-confer process first or establishes that the
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1 Designating Party is unwilling to participate in the meet-and-confer process in a timely
2 manner.

- 3 36. Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
4 within twenty-one (21) calendar days of the Challenging Party's notice to the Designating
5 Party, the Parties shall submit a joint statement to the Court in accordance with Magistrate
6 Judge Corley's Civil Standing Order. The burden of persuasion in any such dispute shall
7 be on the Designating Party. Unless the Designating Party has expressly waived the
8 confidentiality designation or until the Court has ruled on the disputed at-issue designation,
9 all parties shall continue to afford the material in question the level of protection designated
10 by the Producing Party.

11 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

- 12 37. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation, including any appeal(s), or in
15 Coordinated Litigation as defined in Section 7.2.12, so long as such use is permitted herein.
16 Such Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the litigation has been terminated, a Receiving
18 Party must comply with the provisions of Section XIV below (FINAL DISPOSITION).
19 Protected Material must be stored and maintained by a Receiving Party at a location and in
20 a secure manner that ensures that access is limited to the persons authorized under this
21 Order. No Party or their representative, agent, or independent contractor may contact any
22 person whose identity or contact information is ascertained from any Protected Material,
23 including through telephone, text messaging, social media, and/or Internet message boards.
24 38. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
25 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
26 information or item designated "CONFIDENTIAL" only to:
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- 1 (a) The Receiving Party’s Outside Counsel of Record in this Action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary
3 to disclose the information for this litigation;
- 4 (b) The Parties and the directors, officers, and employees (including In-House
5 Counsel) to whom disclosure is reasonably necessary for the purpose of assisting
6 in the prosecution or defense of the Action for use in accordance with this
7 Protective Order;
- 8 (c) Experts (as defined in this Order) retained by the Producing Party and their staff,
9 which may be shown, or examined on, any information, document, or thing
10 designated “CONFIDENTIAL” by the Producing Party;
- 11 (d) Experts retained by the Receiving Party and their staff to whom disclosure is
12 reasonably necessary for this Action and who have signed the “Acknowledgment
13 and Agreement to Be Bound” (Exhibit A);
- 14 (e) The Court and its personnel, and any appellate court or other court (and their
15 personnel) before which the Parties appear in this Action;
- 16 (f) Court reporters, videographers, and their staff;
- 17 (g) Professional jury or trial consultants, and mock jurors, and Professional Vendors to
18 whom disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 20 (h) Deponents and witnesses during a deposition or hearing may be shown or examined
21 on any information, document or thing designated “CONFIDENTIAL” if it appears
22 that the witness authored or received a copy of it, or knew the information described
23 therein, or was employed by the Producing Party at the time the information,
24 document or thing was created, or if the Producing Party consents to such
25 disclosure, provided that any witness who is no longer employed by the Producing
26 Party shall be first required to sign the Acknowledgment and Agreement to Be
27 Bound” (Exhibit A). To the extent a party desires that any former employee of that
28 party whose deposition is to be taken in this matter execute the Acknowledgement

1 attached as Exhibit A, it shall be that party's burden to obtain such an agreement
2 prior to the deposition. If a former employee refuses to execute the
3 Acknowledgment, the parties will meet and confer on the issue. If the parties cannot
4 reach an agreement and a party continues to desire to preclude its former employee
5 from receiving information, documents, or things, designated "CONFIDENTIAL"
6 at his or her deposition, that party shall move for a protective order in a timely
7 fashion so that the issue may be resolved by the Court prior to the deposition.
8 Without such an additional protective order, nothing in this Order shall prevent
9 Counsel from showing information, documents, or things, designated
10 "CONFIDENTIAL" to the witness at the deposition of any former employee of a
11 party who currently works for a company that may otherwise preclude the receipt
12 of information, documents, or things, designated "CONFIDENTIAL" by that
13 witness had he or she had not been formerly employed by the party. If the Receiving
14 Party intends on disclosing information, documents, or things, designated
15 "CONFIDENTIAL" to a former employee outside of a deposition or other formal
16 proceeding under oath, the former employee must either execute the
17 Acknowledgment attached as Exhibit A prior to disclosure or acknowledge on the
18 record that he or she will be bound by Exhibit A;

- 19 (i) The author or recipient of a document containing the information or a custodian or
20 other person who otherwise possessed or knew the information and who has signed
21 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 22 (j) A witness during a hearing, a deposition, or preparation for a deposition who is a
23 current employee of the Party that produced the applicable document(s) or who
24 appears, based upon the document itself or testimony in a deposition, to have
25 specific knowledge of the contents of the document, provided such witness has
26 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 27 (k) Any other person as to whom the Designating Party has consented to disclosure in
28 advance;

- 1 (l) Such other persons as the parties may agree or may be ordered by the Court;
- 2 (m) Special masters or discovery referees appointed by the Court;
- 3 (n) Mediators or settlement officers, and their supporting personnel, mutually agreed
- 4 upon by any of the Parties engaged in settlement discussions; and

5 39. Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Highly Confidential
6 Information that is being made available or produced shall be delivered directly into the
7 custody of one of the receiving party’s outside counsel of record. As it pertains to
8 documents and information produced by Altria Group, Inc. and Altria’s wholly-owned
9 subsidiaries (collectively “Altria”), and only to Altria, the parties agree to meet and confer
10 concerning the manner in which Altria makes Highly Confidential Information available
11 for review after Highly Confidential Information has been requested. In particular, if
12 Plaintiffs serve requests for discovery, and the requested documents or information might
13 include information that Altria contends is Highly Confidential Information, Altria will
14 inform Plaintiffs that the requested documents or information might include Highly
15 Confidential Information when it serves its initial objections and responses to those
16 requests, and identify the additional steps, if any, that Altria believes are necessary for the
17 review of these documents or information. Plaintiffs and Altria shall then promptly meet
18 and confer to determine the manner in which Highly Confidential Information that is
19 responsive to these requests and otherwise discoverable may be made available for review.
20 In the event that Altria identifies Highly Confidential Information that is responsive after
21 it has served its initial objections and responses, it shall notify Plaintiffs within five (5)
22 business days and promptly meet and confer concerning the manner in which that Highly
23 Confidential Information may be reviewed. Unless otherwise ordered by the Court or
24 permitted in writing by the Designating Party, a Receiving Party’s Outside Counsel of
25 Record may disclose any information or item designated “HIGHLY CONFIDENTIAL”
26 only to:

- 27 (a) Employees of said Outside Counsel of Record to whom it is reasonably necessary
- 28 to disclose the information for this litigation;

- 1 (b) No more than three Designated In-House Counsel of the Receiving Party (and up
2 to 4 paralegals or similar support staff) to whom disclosure is reasonably necessary
3 for this litigation;
- 4 (c) Experts to the extent necessary for the Expert to prepare a written opinion, to
5 prepare to testify, or to assist counsel of record in the prosecution or defense of this
6 Action, provided, however, that: (i) the disclosure shall be made only to an
7 individual expert, or to members, partners, employees or agents of an expert
8 consulting firm as the expert consulting firm shall designate as the persons who will
9 undertake the engagement on behalf of the expert consulting firm (the “Designated
10 Expert Personnel”); (ii) the individual expert or Designated Expert Personnel use
11 the information solely in connection with this Action; (iii) the individual and/or a
12 representative of each expert consulting firm sign the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A) on behalf of any Designated Expert Personnel
14 associated with that firm; and (iv) absent notice and the Producing Party’s
15 opportunity to object, excluding any retention for this Action, the individual expert
16 and each of the Designated Expert Personnel is neither a current nor former (within
17 the past year from the date of this Order) employee of any party or any entity that
18 manufactures, distributes, or markets combustible cigarettes or e-cigarettes or any
19 component thereof;
- 20 (d) The court and its personnel, and any appellate court or other court (and their
21 personnel) before which the Parties appear in this Action;
- 22 (e) Court reporters, videographers, and their staff;
- 23 (f) Professional jury or trial consultants, mock jurors, and Professional Vendors to
24 whom disclosure is reasonably necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 26 (g) Persons who prepared, received, or reviewed the “HIGHLY CONFIDENTIAL”
27 Information prior to its production and who have signed the “Acknowledgment and
28 Agreement to Be Bound” (Exhibit A);

- 1 (h) The author or recipient of a document containing the information or a custodian or
- 2 other person who otherwise possessed or knew the information and who has signed
- 3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 4 (i) A witness during a hearing, a deposition, or preparation for a deposition who is a
- 5 current employee of the Party that produced the applicable document(s) or who
- 6 appears, based upon the document itself or testimony in a deposition, to have
- 7 specific knowledge of the contents of the document, provided such witness has
- 8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 9 (j) Any other person as to whom the Designating Party has consented to disclosure in
- 10 advance;
- 11 (k) Such other persons as the parties may agree or may be ordered by the Court;
- 12 (l) Special masters or discovery referees appointed by the Court; and
- 13 (m) Any mediator or settlement officer, and their supporting personnel, mutually agreed
- 14 upon by any of the Parties engaged in settlement discussions.

15 40. Exclusion of Individuals From Depositions. Counsel shall have the right to exclude any

16 person who is not authorized by this Order to receive documents or information designated

17 as Protected Materials from any deposition where testimony regarding Protected Materials

18 or the use of Protected Materials is likely to arise, but only during periods of examination

19 or testimony directed to or comprising Protected Material. This paragraph does not apply

20 to the deponent.

21 **VIII. SECURITY OF PROTECTED MATERIAL**

22 41. Any person in possession of another Party’s Protected Material shall exercise the same care

23 with regard to the storage, custody, or use of Protected Material as they would apply to

24 their own material of the same or comparable sensitivity. Receiving Parties must take

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1 reasonable precautions to protect Protected Material from loss, misuse and unauthorized
2 access, disclosure, alteration, and destruction, including but not limited to the following:

3 (a) Protected Material in electronic format shall be maintained in a secure litigation
4 support site(s) that applies standard industry practices regarding data security,
5 including but not limited to application of access control rights to those persons
6 entitled to access Protected Material under this Order;

7 (b) Any Protected Material downloaded from the litigation support site(s) in electronic
8 format shall be stored only on device(s) (*e.g.* laptop, tablet, smartphone, thumb
9 drive, portable hard drive) that are password protected and encrypted with access
10 limited to persons entitled to access Protected Material under this Order. If the user
11 is unable to password protect and encrypt the device, then the Protected Material
12 shall be password protected and encrypted at the file level;

13 (c) Protected Material in paper format is to be maintained in a secure location with
14 access limited to persons entitled to access Protected Material under this Order;

15 (d) Summaries of Protected Material, including any lists, memorandum, indices, or
16 compilations prepared or based on an examination of Protected Material that quote
17 from or paraphrase Protected Material in a manner that enables it to be identified
18 shall be afforded the same status of confidentiality as the underlying Protected
19 Material;

20 (e) If the recipient of Protected Material is shipping data in electronic format, the
21 recipient shall ship the data to a recipient who is authorized to receive the protected
22 material under this order and shall encrypt the data prior to shipping and provide
23 the encryption key in separate correspondence. If hard copy documents are shipped,
24 the Receiving Party will ship the documents using secure packaging tape via
25 Federal Express or UPS and retain a tracking number for the materials. If the
26 Receiving Party learns at any time that the Protected Material has been retrieved or
27 viewed by unauthorized parties during shipment, it will immediately notify the
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1 Producing Party and take all reasonable measures to retrieve the improperly
2 disclosed materials; and

- 3 (f) If the Receiving Party discovers a breach of security^[2] relating to the Protected
4 Material of a Producing Party, the Receiving Party shall: (1) provide written notice
5 to the Producing Party of the breach within 48 hours of the Receiving Party's
6 discovery of the breach; (2) investigate and remediate the effects of the breach, and
7 provide the Producing Party with reasonable assurance that the breach shall not
8 recur; and (3) provide sufficient information about the breach that the Producing
9 Party can ascertain the size and scope of the breach. The Receiving Party agrees to
10 cooperate with the Producing Party or law enforcement in investigating any such
11 security incident

12 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
13 **LITIGATION**

14 42. If a Receiving Party is served with a subpoena or a court order issued in other litigation
15 that would compel disclosure of any information or items designated in this Action as
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" the Receiving Party must:

- 17 (a) promptly notify in writing the Outside Counsel of Record for the Designating Party
18 (by email, if possible) unless prohibited by law from doing so. Such notification
19 must include a copy of the subpoena or court order;
- 20 (b) promptly notify in writing the party who caused the subpoena or order to issue in
21 the other litigation that some or all of the material covered by the subpoena or order
22 is subject to this Order. Such notification shall include a copy of this Order; and
- 23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
24 Designating Party whose Protected Material may be affected.

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27 ^[2] Breach is defined to include, but is not limited to, the confirmed or suspected: (i) disclosure or use of
28 Protected Material by or to an unauthorized person; and/or (ii) the loss, theft or hacking of a device
containing Protected Material.

1 43. If the Designating Party timely seeks a protective order, the Receiving Party served with
2 the subpoena or court order shall not produce any information designated in this Action as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a determination by the court
4 from which the subpoena or order issued, unless the Party has obtained the Designating
5 Party’s permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material – and nothing in these provisions should
7 be construed as authorizing or encouraging a Receiving Party in this Action to disobey a
8 lawful directive from another court or violate any applicable state or federal law, rules or
9 regulations.

10 **X. PARTY’S OWN INFORMATION**

11 44. The restrictions on the use of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
12 Information established by this Protective Order are applicable only to the use of the
13 Information received by a Party from another Party or from a non-party. A Party is free to
14 do whatever it desires with its own confidential information, provided that any
15 dissemination of the information by the Party that owns the information may lead to the
16 loss of that information’s confidential status.

17 45. Nothing herein shall impose any restrictions on the use or disclosure by a Party or witness
18 of documents, material, or information obtained by such Party or witness independently of
19 the discovery proceedings in these actions, whether or not such documents, material or
20 information are also obtained through discovery proceedings in these actions.

21 **XI. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
22 **LITIGATION**

23 46. The terms of this Order are applicable to information produced by a Non-Party in this
24 Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such
25 information produced by Non-Parties in connection with this litigation is protected by the
26 remedies and relief provided by this Order. Nothing in these provisions should be construed
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1 as prohibiting a Non-Party from seeking additional protections. Any Party issuing a
2 subpoena to a Non-Party shall enclose a copy of this Order.

3 47. In the event that a Party is required, by a valid discovery request, to produce a Non-Party's
4 confidential information in its possession, and the Party is subject to an agreement with the
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (a) promptly notify in writing the Requesting Party and the Non-Party that some or all
7 of the information requested is subject to a confidentiality agreement with a Non-
8 Party;

9 (b) promptly provide the Non-Party with a copy of the Order in this litigation, the
10 relevant discovery request(s), and a reasonably specific description of the
11 information requested; and

12 (c) make the information requested available for inspection by the Non-Party.

13 48. If the Non-Party fails to object or seek a protective order from this Court within fourteen
14 (14) days of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request. If
16 the NonParty timely seeks a protective order, the Receiving Party shall not produce any
17 information in its possession or control that is subject to the confidentiality agreement with
18 the Non-Party before determination by the Court. Absent a Court order to the contrary, the
19 Non-Party shall bear the burden and expense of seeking protection in this court of its
20 Protected Material. All disclosure and discovery disputes are subject to the undersigned's
21 standing order for civil cases.

22 49. For a period of fourteen (14) calendar days following production by a Non-Party, that
23 production shall be deemed "HIGHLY CONFIDENTIAL" even if not so designated by the
24 Non-Party, to provide the Parties an adequate opportunity to designate information as
25 appropriate. The inadvertent failure by any Party to designate information produced by
26 Non-Parties as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" within that fourteen
27 (14) day period shall not waive a Party's right to later so designate such information with
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1 prospective effect, so long as the designation correction is made in a timely fashion,
2 consistent with Paragraph 32 of this Order.

3 **XII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 50. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Order, the
6 Receiving Party must immediately (a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
8 Protected Material, (c) inform the person or persons to whom unauthorized disclosures
9 were made of all the terms of this Order, and (d) request such person or persons to execute
10 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.
11 This shall not limit any remedies that the Designating party may have for disclosure of
12 protected material.

13 **XIII. MISCELLANEOUS**

14 51. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
15 modification by the Court in the future. Any Party, entity or person covered by this Order
16 may at any time apply to the Court for relief from any provision of this Order. Subject to
17 the agreement of the Parties or an order of the Court, other entities or persons may be
18 included in this Order by acceding to its provisions in a writing served upon Plaintiffs’ Co-
19 Lead Counsel and Defendants’ Liaison Counsel, with such writings to be filed with the
20 Court if so directed. The Parties expressly reserve all rights to seek further protection.

21 52. Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives
22 any right it otherwise would have to object to disclosing or producing any information or
23 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party
24 waives any right to object on any ground to use in evidence of any of the material covered
25 by this Order.

26 53. No Modification of Privileges. Nothing in this Order shall modify the law regarding the
27 attorney-client privilege, the attorney work product doctrine, the joint defense privilege,
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1 and any other applicable privilege or protection from disclosure to the extent such privilege
2 or protection exists under applicable law.

3 54. Filing Protected Material. Without written permission from the Designating Party or a
4 Court order secured after appropriate notice to all interested persons, a Party may not file
5 in the public record in this Action any Protected Material. A Party that seeks to file under
6 seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material
7 may only be filed under seal pursuant to a Court order authorizing the sealing of the specific
8 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
9 only upon a request establishing that the Protected Material at issue is privileged,
10 protectable as a trade secret, or otherwise entitled to protection under the law. If a
11 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule
12 79-5(d) is denied by the Court, then the Receiving Party may file the Protected Material in
13 the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the
14 Court.

15 55. Trial. This Order does not apply to use of Protected Material at trial. The use of
16 Confidential or Highly Confidential Information during the trial shall be determined by
17 Order of the Court.

18 56. Violations of the Protective Order by Disclosure of Personal Information. In the event that
19 any person or party violates the terms of this Protective Order by disclosing personal
20 information relating to an individual third party, or in the event that any person or party
21 breaches the terms of the Protective Order in a manner that requires disclosure to a third
22 party under pertinent privacy laws or otherwise, it shall be the responsibility of the
23 breaching party to contact that third party and to comply with any laws or regulations
24 involving breaches of Personal Information.

25 57. Reservations: Entering into, agreeing, and/or complying with the terms of this Order shall
26 not: (a) operate as an admission by any Party that any particular documents, material, or
27 information contain(s) or reflect(s) currently valuable trade secrets or proprietary or
28 commercial information; or (b) prejudice in any way the right of a Party at any time: (i) to

1 seek a determination by the Court of whether any particular document, item of material, or
2 piece of information should be subject to the terms of this Order; (ii) to seek relief on
3 appropriate notice from any provision(s) of this Order, either generally or as to any
4 particular document, item, or piece of information; (iii) to object to any discovery request,
5 including the right to assert that no discovery should be had of certain documents or
6 information; or (iv) to seek documents or other information from any source.

7 58. Compliance with Federal and State Law. Nothing in this Order shall require a party to
8 violate any applicable public records access, disclosure or retention laws.

9 **XIV. FINAL DISPOSITION**

10 59. Unless otherwise ordered or agreed in writing by the Producing Party, within ninety (90)
11 days after the final disposition of this Action, as defined in Paragraph 26, above, each
12 Receiving Party must return all Protected Material to the Producing Party or destroy such
13 material, except: (1) backup tapes or other disaster recovery systems that are routinely
14 deleted or written over in accordance with an established routine system maintenance
15 practice, or (2) documents that must be preserved as government records or in compliance
16 with other statutory, regulatory or legal authorities. As used in this subdivision, “all
17 Protected Material” includes all copies, abstracts, compilations, summaries, and any other
18 format reproducing or capturing any of the Protected Material. Whether the Protected
19 Material is returned or destroyed, upon the written request of the Producing Party, the
20 Receiving Party must submit a written certification to the Producing Party (and, if not the
21 same person or entity, to the Designating Party) within a reasonable time after receiving
22 the request that (1) identifies by bates number listing all the Protected Material that was
23 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
24 abstracts, compilations, summaries or any other format reproducing or capturing any of the
25 Protected Material. Notwithstanding this provision, lead counsel are entitled to retain an
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
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1 work product, and consultant and expert work product, even if such materials contain
2 protected material.

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5 **IT IS SO ORDERED.**

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11 DATED: December 13, 2019

12 
13 _____
14 Honorable Judge William H. Orrick

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print or type full name], of
 2 _____ [print or type full address], declare under penalty of perjury
 3 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the
 4 United States District Court for the Northern District of California on _____, in the
 5 case of *In re: JUUL Labs Inc., Marketing, Sales Practices, and Products Liability Litigation*, United
 6 States District Court, Northern District of California, Case No. 19-md-02913-WHO. I agree to comply
 7 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
 8 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of
 9 contempt. I solemnly promise that I will not disclose in any manner any information or item that is
 10 subject to this Stipulated Protective Order to any person or entity except in strict compliance with the
 11 provisions of this Order.
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13
 14 I further agree to submit to the jurisdiction of the United States District Court for the Northern
 15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 16 such enforcement proceedings occur after termination of this Action.

17 I hereby appoint _____ [print or type full name] of
 18 _____ [print or type full address and telephone number] as my
 19 California agent for service of process in connection with this Action or any proceedings related to
 20 enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed Name: _____

24 Signature: _____

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