

EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

CASE NO. 19-md-02913-WHO

This Document Relates to:
All Class Actions

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
JUDGMENT**

1 Class Plaintiffs¹ have moved the Court for final approval of a proposed class action
 2 settlement with Defendant JUUL Labs, Inc. (“JLI”), on behalf of itself and the Released Parties,
 3 the terms and conditions of which are set forth in the Class Settlement Agreement ~~filed with the~~
 4 ~~Court on December 19, 2022,~~ Dkt. 3745-4 (revised agreement)³⁷²⁴. The Court previously
 5 granted preliminary approval to the proposed settlement and directed notice to the Settlement
 6 Class. Dkt. X.

7 For the reasons described more fully below, the Court GRANTS final approval of the
 8 Settlement.

9 I. BACKGROUND

10 Class Plaintiffs and JLI seek to resolve economic loss claims (other than claims asserted in
 11 *In re Juul Labs, Inc. Antitrust Litigation, Case No. 3:20-cv-02345-WHO that arise from alleged*
 12 *anticompetitive conduct*~~antitrust claims~~) asserted against JLI and the Released Parties involving
 13 the manufacture, labeling, marketing, and sale of JUUL—an electronic nicotine delivery system
 14 consisting of an electronic cigarette and a nicotine pack called a JUULpod. Plaintiffs allege that
 15 Defendants created, marketed, and sold JUUL by misleading the public about the addictiveness
 16 and risks of JUUL, and by trying to expand the market by capturing and addicting individuals—
 17 specifically including minor users—who had not previously used tobacco or e-cigarette products.
 18 *See In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, 497 F. Supp. 3d 552, 574
 19 (N.D. Cal. 2020).

20 Bradley Colgate and Kaytlin McKnight filed the first complaint in this litigation against
 21 JLI on April 26, 2018. Case No. 2018-cv-2499 (N.D. Cal) (“Colgate”) Dkt. 1. The Court denied
 22 JLI’s motion to compel arbitration and for the most part denied multiple motions to dismiss
 23 Plaintiffs’ amended complaint. *See Colgate* Dkts. 40, 41, 66, 82, 98, 99, and 139; *Colgate v.*
 24 *JUUL Labs, Inc.*, 345 F. Supp. 3d 1178, 1187 (N.D. Cal. 2018); *Colgate v. JUUL Labs, Inc.*, 402
 25 F. Supp. 3d 728 (N.D. Cal. 2019). Other individual and class cases were subsequently filed in this

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 27 ¹ The capitalized terms used in this Order shall have the same meaning as defined in the
 28 Settlement Agreement and Plan of Allocation except as otherwise noted.

1 Court and in other jurisdictions. The Judicial Panel on Multidistrict Litigation transferred all these
2 cases to this Court for pretrial purposes on October 2, 2019. Plaintiffs filed a consolidated class
3 action complaint on March 1, 2020, and then amended it on April 6, 2020. Defendants again
4 moved to dismiss, and the Court denied the motions in part and granted the motions in part with
5 leave to amend on October 23, 2020. *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prods. Liab.*
6 *Litig.*, 497 F. Supp. 3d 552, 677. Plaintiffs filed a second amended consolidated class action
7 complaint on November 12, 2020, Dkt. 1358, and the Court denied Defendants' motions to
8 dismiss that complaint on April 13, 2021. *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prods.*
9 *Liab. Litig.*, 533 F. Supp. 3d 858, 862-63 (N.D. Cal. Apr. 13, 2021).

10 Discovery proceeded prior to, during, and after the motions to dismiss. Defendants
11 produced millions of pages of documents, and Plaintiffs obtained information pursuant to
12 interrogatories and stipulations and conducted over 100 depositions of Defendants, their
13 employees, and third parties. The parties also engaged in expert discovery, which included reports
14 and depositions from experts on topics including the chemistry of JUUL products, the marketing
15 of JUUL products, and classwide injury and damages.

16 After a contested motion to certify bellwether classes asserting federal and California law
17 claims, on June 28, 2022, the Court certified four classes² of purchasers of JUUL products,
18 appointed Class Representatives and Class Counsel, and denied related Daubert motions. *In re*
19 *JUUL Labs, Inc., Mktg. Sales Pracs. & Prods. Liab. Litig.*, No. 19-md-02913-WHO, Dkt. 3327,
20 2022 WL 2343268 (N.D. Cal. June 28, 2022) ("Class Cert. Order"). On July 12, 2022, Defendants
21 filed three Rule 23(f) petitions seeking permission to appeal from the Court's order granting class
22 certification. *See* Ninth Circuit Case Nos. 22-80061, 22-80062, and 22-80063. On October 24,

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24 _____
25 ² These were the **Nationwide Class** (All individuals who purchased, in the United States, a JUUL
26 product); the **Nationwide Youth Class** (All individuals who purchased, in the United States, a
27 JUUL product and were under the age of eighteen at the time of purchase); the **California Class**
28 (All individuals who purchased, in California, a JUUL product); and the **California Youth Class**
(All individuals who purchased, in California, a JUUL product and were under the age of eighteen
at the time of purchase).

1 2022, the Ninth Circuit consolidated the cases and granted Defendants permission to appeal. *E.g.*
2 Ninth Circuit Case No. 22-80063, Dkt. 14.

3 On May 18, 2020, the Court appointed Thomas J. Perelli as Settlement Master, who
4 oversaw a years-long mediation process that led to the Class Settlement Agreement. Under the
5 Class Settlement Agreement, the Class will receive \$255 million in exchange for a release of the
6 class claims. The settlement does not include Altria Group, Inc. and related companies, so no class
7 or individual claims against those entities will be released, and the litigation against them will
8 continue.³

9 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10 **A. Jurisdiction**

11 This court has jurisdiction under 28 U.S.C. § 1332(d)(2).

12 **B. Notice and Administration**

13 Following the Court's Preliminary Approval Order, the Class Settlement Administrator,
14 Epiq Systems, Inc., established a settlement website at www.JUULclassaction.com, which
15 includes: the long-form notice (explaining the procedures for [Settlement](#) Class Members to submit
16 claims, object, or exclude themselves), a contact information page that includes address and
17 telephone numbers for the Class Settlement Administrator and Class Counsel, the Class
18 Settlement Agreement, the Preliminary Approval Order, online and printable versions of the claim
19 form and the opt out forms, and answers to frequently asked questions. In addition, the motion
20 papers filed in connection with the Settlement and Class Plaintiffs' application for Attorneys' Fees
21 and Expenses and Service Awards were placed on the settlement website after they were filed
22 (which was before the opt out and objection deadline). The Class Settlement Administrator also
23 operated a toll-free number for Settlement Class Member inquiries.

24 Notice of the Settlement was provided by: (1) direct notice via email to those Settlement
25 Class Members for whom an email address was available; (2) direct notice via postcard mailed to

26 ³ In separate agreements, JLI has resolved the claims brought by other claimants in the MDL,
27 including individuals who asserted claims for personal injury, school district and local government
28 entities, and Native American tribal entities.

1 those Settlement Class Members for whom a physical mailing address was available but an email
2 address was not available; (3) publication notice of the Settlement, which comprised X
3 impressions, targeted at likely Settlement Class Members served across relevant internet websites
4 and social media platforms; and (4) publication on the settlement website.

5 In total, the Notice Plan is estimated to have reached at least 80% of Settlement Class
6 Members. *See, e.g., Ellison v. Steven Madden, Ltd.*, No. CV115935PSGAGR, 2013 WL
7 12124432, at *3 (C.D. Cal. May 7, 2013) (approving a notice plan reaching 77%); *In re:*
8 *Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL
9 5338012, at *9 (N.D. Ohio Sept. 23, 2016) (approving notice plan reaching approximately 77.5
10 percent of Class Members).

11 The Court finds that the Notice Plan provided the best practicable notice to the Settlement
12 Class Members and satisfied the requirements of due process.

13 Settlement Class Members were given until DATE to object to or exclude themselves from
14 the proposed Settlement. X Settlement Class Members timely submitted objections and X
15 individuals timely submitted requests to be excluded from the Settlement Class. As of DATE, X
16 Claim Forms have been received by the Class Settlement Administrator.

17 **C. Certification of the Settlement Class**

18 For purposes of the Settlement only and this Final Approval Order and Judgment, Class
19 Plaintiffs have moved to certify the following Settlement Class: “All individuals who purchased,
20 in the United States, a JUUL product from brick and mortar or online retailers before December 6,
21 2022.” Excluded from the Settlement Class are: (a) the judges in this MDL and any other judges
22 that have presided over the litigation, including the coordinated proceeding captioned *JUUL Labs*
23 *Product Cases*, Judicial Counsel Coordination Proceeding No. 5052, pending in the Superior
24 Court of California, County of Los Angeles, Department 11, Settlement Master Thomas J. Perrelli,
25 and their staff, and immediate family members; (b) Defendants, their employees, officers,
26 directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or
27 affiliated companies; (c) Class Counsel and their employees; (d) any individuals who purchased
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1 JUUL products only secondarily from non-retailers; and (e) all individuals who timely and
2 properly excluded themselves from the Settlement Class.⁴

3 ~~The Court finds that the prerequisites of Rule 23 have been satisfied for certification of the~~
4 ~~Settlement Class for purposes of Settlement because: Settlement Class Members are so numerous~~
5 ~~that joinder of all members is impracticable; there are questions of law and fact common to the~~
6 ~~Settlement Class; the claims and defenses of the Settlement Class Representatives are typical of~~
7 ~~the claims and defenses of the Settlement Class; the Settlement Class Representatives have fairly~~
8 ~~and adequately protected the interests of the Settlement Class with regard to the claims of the~~
9 ~~Settlement Class; common questions of law and fact predominate over questions affecting only~~
10 ~~individual Settlement Class Members, rendering the Settlement Class sufficiently cohesive to~~
11 ~~warrant a class settlement; and the certification of the Settlement Class is superior to individual~~
12 ~~litigation and/or settlement as a method for the fair and efficient resolution of this matter.~~

13 The Court previously certified a nearly identical nationwide class under RICO and a class
14 of California JUUL purchasers under California law. The Settlement Class is co-extensive with
15 the certified class, except that the claims of the Settlement Class apply to JLI on a nationwide
16 basis, includes an end date for the Settlement Class (as is necessary to settlement administration),
17 and includes purchases of JUUL accessories and products in addition to JUULpods and devices.
18 The slight differences between the litigation class and the proposed Settlement Class do not alter
19 the Court's previous analysis, except insofar as the predominance and superiority analysis
20 prerequisites operate differently and are easier to meet in the settlement context. *See In re Hyundai*
21 *& Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019). ~~The bases for the Court's prior~~
22 ~~certification order are applicable to the certification of the Settlement Class and the Court~~
23 ~~incorporates its reasoning herein.~~ The Court finds that the Settlement Class largely overlaps with
24 those previously certified by the Court and that, for settlement purposes only, there is a sound
25 basis for expanding the scope of the previously certified classes to encompass all the Settlement

26 _____
27 ⁴ The list of individuals that timely and properly submitted exclusion requests and are therefore
28 not members of the Settlement Class are identified in Exhibit X to the Declaration of NAME.

1 Class Released Claims against JLI and the Released Parties.

2 The Court independently finds that the Settlement Class meets the requirements of Rule 23
3 as set forth below:

4 a. Members of the Settlement Class are so numerous as to make joinder
5 impracticable. JLI’s direct sales data, which covers only a portion of the Settlement Class,
6 contains over two million unique names, meaning that the proposed Settlement Class contains
7 millions of members.

8 b. There are questions of law and fact common to the Settlement Class. Those
9 questions include whether the Defendants’ conduct was likely to mislead a reasonable consumer,
10 whether the conduct would have been material to a reasonable consumer, the existence of a RICO
11 enterprise, the existence of a pattern of racketeering, the existence of a scheme to defraud, whether
12 Defendants’ conduct was unfair and/or unconscionable, whether JUUL products were fit for their
13 ordinary use, and the appropriate measure of aggregate damages.

14 c. Common questions predominate over any questions affecting only individual
15 Settlement Class Members for purposes of the Settlement because the Defendants’ conduct will
16 drive the litigation. That is particularly true in the settlement context. As the Ninth Circuit has
17 held, “predominance is easier to satisfy in the settlement context.” *Jabbari v. Farmer*, 965 F.3d
18 1001, 1006 (9th Cir. 2020); see also *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 304 n. 29 (3d Cir.
19 2011) (en banc) (courts are “more inclined to find the predominance test met in the settlement
20 context”) (internal quotation marks and alteration omitted). That is because “[s]ettlement may
21 ‘obviate the need to litigate individual issues that would make a trial unmanageable,’ making
22 common questions more important in the relative analysis.” *Jabbari*, 965 F.3d at 1005-06
23 (quoting *Hyundai*, 926 F.3d at 558). One issue that takes on significantly less importance in a
24 settlement class is the particulars of the state law being applied. *See id.* at 1007 (“For purposes of a
25 settlement class, differences in state law do not necessarily, or even often, make a class
26 unmanageable.”). Even in the litigation context, “[w]hen ‘one or more of the central issues in the
27 action are common to the class and can be said to predominate, the action may be considered

1 proper under Rule 23(b)(3) even though other important matters will have to be tried separately,
2 such as . . . some affirmative defenses peculiar to some individual class members.” *Tyson Foods,*
3 *Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016) (quoting 7AA C. Wright, A. Miller & M. Kane,
4 Federal Practice and Procedure § 1778, at 123–24 (3d ed. 2005)). Under California law, for
5 example, class members would not need to show their individual reliance, and Class Plaintiffs’
6 California law claims focus on whether Defendants’ conduct would have misled and have been
7 material to a reasonable consumer. See *Krommenhick v. Post Foods*, 334 F.R.D. 552, 564, 565,
8 575 (N.D. Cal. 2020) (discussing the objective nature of the key inquires under the UCL, CLRA,
9 and FAL). Class Plaintiffs may, for example, be able to demonstrate classwide injury and damages
10 through a price premium theory. *Hadley v. Kellogg Sales Co.*, 324 F. Supp. 3d 1084, 1104 (N.D.
11 Cal. 2018) (“It is well-established that the ‘price premium attributable to’ an alleged
12 misrepresentation on product labeling or packaging is a valid measure of damages in a mislabeling
13 case under the FAL, CLRA, and UCL”).

14 d. Class Plaintiffs’ claims and the defenses thereto are typical of the claims of
15 the Settlement Class Members and the attendant defenses for purposes of the Settlement. Class
16 Plaintiffs allege that Defendants misled JUUL purchasers, engaged in a fraudulent scheme to
17 enhance JUUL sales, and engaged in unfair conduct to market JUUL products to minors. Those
18 theories of liability and injury are the same for Class Plaintiffs and members of the Settlement
19 Class. Class Plaintiffs’ allegation that JUUL products are not fit for their ordinary use is based on
20 the design of JUUL products and is thus the same for Class Plaintiffs and members of the
21 Settlement Class.

22 e. Class Plaintiffs and their counsel have fairly and adequately protected the
23 interests of the Settlement Class Members in this action with respect to the Settlement, and will
24 continue to do so. Each Class Plaintiff has the same goal as members of the proposed Settlement
25 Class (*i.e.*, holding Defendants accountable for their alleged deceptive and youth-focused
26 marketing). Class Plaintiffs’ interests are aligned with, and not in conflict with, those of
27 Settlement Class members. The record reflects that each Class Plaintiff has dedicated substantial
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1 time and effort to this litigation by working with their counsel;’ reviewing pleadings; responding
2 to discovery; searching for, collecting, and producing documents; and preparing to sit for
3 depositions, among other things.

4 a.f. A class action is superior to all other available methods for fairly and
5 efficiently resolving this action. While individuals with personal injury claims may be motivated
6 to file individual personal injury suits, the same is not true with respect to claims for economic
7 losses. No plaintiffs have expressed a desire to individually litigate their economic loss claims; in
8 fact, plaintiffs sought to litigate their economic loss claims as class actions instead of through their
9 separate personal injury complaints. Given the substantial overlap among all class members’
10 claims, it is highly desirable to concentrate economic loss claims in a single proceeding.

11 The Court appoints Bradley Colgate, Joseph DiGiacinto on behalf of C.D., Lauren Gregg,
12 Tyler Krauel, and Jill Nelson on behalf of L.B. as the Settlement Class Representatives and Dena
13 Sharp of Girard Sharp LLP as Class Counsel.

14 **D. Final Approval of Settlement**

15 A court may approve a proposed class action settlement only “after a hearing and on
16 finding that it is fair, reasonable, and adequate after considering whether: (A) the class
17 representatives and class counsel have adequately represented the class; (B) the proposal was
18 negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i)
19 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
20 distributing relief to the class, including the method of processing class-member claims; (iii) the
21 terms of any proposed award of attorney's fees, including timing of payment; and (iv) any
22 agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members
23 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).⁵ In reviewing the proposed settlement,

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25 ⁵ Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had
26 enumerated a similar list of factors to consider in evaluating a proposed class settlement. *See*
27 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following
28 factors: “(1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely
duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4)

1 the Court need not address whether the settlement is ideal or the best outcome, but only whether
2 the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the
3 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

4 For the reasons further detailed below, the Court finds that the proposed settlement is fair,
5 reasonable, and adequate under the Rule 23(e)(2) factors. Defendants dispute whether the
6 manufacture, marketing, advertising and sale of the JUUL products was unlawful, unfair,
7 deceptive and/or in violation of other state and federal laws. There would also have been a battle
8 of the experts regarding consumer understanding of JUUL marketing and advertising and
9 regarding the computation of restitution/damages, if any. Further, JLI was prepared to assert an
10 arbitration defense against a large portion of the class. Proceeding to trial as against JLI and the
11 Released Parties would have been costly, recovery was not guaranteed, and there was the
12 possibility of protracted appeals and the potential for bankruptcy.

13 Counsel for all Parties are highly experienced; they provided detailed declarations
14 explaining why they supported the Settlement, and there is no factual basis to support any
15 allegation of collusion or self-dealing.

16 **1. Settlement Class Representatives and Class Counsel Have Adequately**
17 **Represented the Settlement Class.**

18 In the Preliminary Approval Order, this Court found that the Settlement Class
19 Representatives and Class Counsel adequately represented the interests of the certified classes.
20 This Court has seen no evidence to contradict its previous finding, and the Court reconfirms it
21 here with respect to Settlement Class Representatives and Class Counsel, who have vigorously

22 the amount offered in settlement; (5) the extent of discovery completed and the stage of the
23 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
24 participant; and (8) the reaction of the class members to the proposed settlement"). In the notes
25 accompanying the Rule 23 amendments, the Advisory Committee explained that the amendments
26 were not designed "to displace any factor, but rather to focus the court and the lawyers on the core
27 concerns of procedure and substance that should guide the decision whether to approve the
28 proposal." Accordingly, this Court applies the framework of Rule 23 while "continuing to draw
guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Co.*,
No. 16-cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 17, 2018), *aff'd sub nom. Hefler*
v. Pekoc, 802 F. App'x 285 (9th Cir. 2020).

1 prosecuted this action through discovery, motion practice, mediation, and preparations for trial.
2 Class Counsel “possessed sufficient information to make an informed decision about settlement.”
3 *Hefler*, 2018 WL 6619983 *6.

4 **2. The Settlement Was Negotiated at Arm’s Length.**

5 The Court finds that the Settlement is the product of serious, non-collusive, arm’s length
6 negotiations by experienced counsel with the assistance of a well-respected, experienced, Court-
7 appointed Settlement Master, Thomas J. Perrelli. *See, e.g., G. F. v. Contra Costa Cty.*, 2015 WL
8 4606078, at *13 (N.D. Cal. July 30, 2015) (noting that “[t]he assistance of an experienced
9 mediator in the settlement process confirms that the settlement is non-collusive”); *Hefler*, 2018
10 WL 6619983 *6 (noting that the settlement “was the product of arm’s length negotiations through
11 two full-day mediation sessions and multiple follow-up calls” supervised by a mediator). Before
12 agreeing on the terms of the Settlement, the Parties engaged in extensive factual investigation,
13 which included dozens of depositions, the production and review of millions of pages of
14 documents, extensive written discovery, robust motion practice, and expert discovery. The record
15 was thus sufficiently developed that the Parties were fully informed as to the viability of the
16 claims and able to adequately evaluate the strengths and weaknesses of their respective positions
17 and risks to both sides if the case did not settle.

18 The Court has independently and carefully reviewed the record for any signs of collusion
19 and self-dealing, and finds no such signs. Specifically, the Court finds that Class Counsel did not
20 compromise the claims of the Settlement Class in exchange for higher fees as there has been no
21 agreement concerning attorneys’ fees or otherwise disadvantaging the Settlement Class.

22 **3. The Cash Payments Provide Adequate Recovery to the Class.**

23 In the Rule 23(e) analysis, “[t]he relief that the settlement is expected to provide to class
24 members is a central concern.” Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee’s note to 2018
25 amendment. “The Court therefore examines ‘the amount offered in settlement.’” *Hefler*, 2018 WL
26 6619983 *8 (quoting *Hanlon*, 150 F.3d at 1026).

27 JLI has agreed to pay \$255 million on behalf of itself and the Released Parties, which will
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1 be used as a common fund to pay cash benefits to Settlement Class Members as set forth in the
2 Plan of Allocation. Settlement Class Members who submit Eligible Claims will therefore have the
3 opportunity to receive substantial payments corresponding to their JUUL purchases. In addition,
4 because the Settlement does not release claims against Defendant Altria and related entities,
5 against whom the litigation will remain pending, there remains the possibility of additional
6 recoveries to benefit the Settlement Class. Based on the record evidence and argument the parties
7 submitted in connection with the Settlement, as well as the familiarity the Court has developed
8 with this case, the Court finds that this monetary recovery is fair, reasonable, and adequate given
9 the risks of proceeding to trial and the maximum recovery potentially available to Settlement
10 Class Members if the Class Representatives had prevailed at trial.

11 **4. The Risk of Continuing Litigation.**

12 The amount provided for the in the Settlement is also reasonable in light of the risks of
13 continued litigation. The Ninth Circuit has, for example, granted the Defendants' Rule 23(f)
14 petitions and Class Plaintiffs therefore face the risk that the Ninth Circuit would reverse or modify
15 the Court's class certification decision. There were also substantial questions as to whether Class
16 Plaintiffs would be able to prove at trial that JLI's and other parties' practices were fraudulent,
17 unlawful or unfair, and that JLI and other defendants should be held liable. Both sides believed
18 they had persuasive facts to support their positions, and there is limited precedent available
19 regarding the Parties' competing theories. Trial would have involved a clash of expert analysis as
20 to whether the marketing, advertising and sales of JUUL products were unlawful, unfair or
21 fraudulent, the methods of calculating damages/restoration, and ultimately what damages and/or
22 restitution, if any, should be awarded. JLI was prepared to assert an arbitration defense against a
23 large portion of the class. And even if Class Plaintiffs succeeded at trial, appeals would
24 undoubtedly have followed. Finally, there is the risk that one or more of the Defendants would file
25 for bankruptcy protection, thereby slowing or even eliminating any recovery.

26 **5. Attorneys' Fees and Expenses.**

27 The Parties have reached no agreements regarding the amounts of attorneys' fees,
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1 expenses, and service awards to be paid. *See, e.g., Hyundai.*, 926 F.3d at 569-70 (rejecting fairness
2 objection because class counsel “did not reach an agreement with the automakers regarding the
3 amount of attorney's fees to which they were entitled,” which “[p]rovid[es] further assurance that
4 the agreement was not the product of collusion”). The payment of attorneys’ fees, expenses, and
5 service awards, if any, is subject to approval of the Court based on a finding that such amounts are
6 fair and reasonable.

7 **6. Other Agreements.**

8 The Court is required to consider “any agreements required to be identified under Rule
9 23(e)(3).” The Court has reviewed the Class Settlement Agreement and relevant accompanying
10 materials, and has been made aware that JLI (on behalf of itself and the Released Parties) has
11 agreed to fund parallel settlement programs to provide recoveries for other claimants in this MDL
12 and the parallel JCCP proceedings, including individuals who asserted claims for personal injury,
13 and school district and local government entities, as well as Native American tribal entities. Under
14 the supervision of Special Master Perrelli, the amount of the Class Settlement Fund was
15 negotiated separately from the amounts for the other settlements, with co-lead counsel Dena Sharp
16 representing the Class, and the other co-lead counsel in the MDL representing interests of the
17 personal injury and government entity plaintiffs. The Court is also aware that the settlement
18 provides for the creation of a trust to hold assets on behalf of the Class, which benefits the
19 Settlement Class, as do the protections the settlement contemplates in the event of bankruptcy or
20 non-payment.

21 Certain of the Class Plaintiffs have asserted personal injury claims, and thus will be
22 eligible to apply to share in the amounts allocated to the resolution of personal injury claims.
23 Personal injury claimants will receive no favorable treatment compared to other class members.
24 All personal injury claims will be paid from funds set aside to resolve personal injury claims,
25 while the economic loss claims asserted by the Settlement Class will be paid from the Net
26 Settlement Fund. Only after a diligent effort to identify all class members and distribute to them
27 the full amount of the class settlement fund will the Parties confer regarding the disposition of any
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1 residual funds, the distribution of which would be subject to the Court’s approval and a finding
2 that the Parties first exhausted all reasonable efforts to distribute remaining funds to Settlement
3 Class members. Under the terms of the Agreement, the Settlement Fund is non-reversionary and
4 no portion of the Settlement Fund or Net Settlement Fund will revert to JLI or any other Released
5 Party.

6 **7. The Plan of Allocation is Reasonable and Treats Class Members**
7 **Equitably Relative to Each Other**

8 The claims process and distribution method are reasonable. Settlement Class Members
9 who seek benefits under the Settlement need only submit a simple claim form, and the form is
10 prepopulated if their purchase information is known to JLI because they made purchases on the
11 JUUL website. *See* 4 William B. Rubenstein, *Newberg on Class Actions* § 12:18 (5th ed. 2011)
12 (noting that “a claiming process is inevitable” in certain settlements such as those involving
13 “defective consumer products sold over the counter.”). Further, the claim process is no more
14 onerous than would be required after trial.

15 The method for distributing funds to Eligible Claimants is also reasonable. “[A]n
16 allocation formula need only have a reasonable, rational basis, particularly if recommended by
17 experienced and competent counsel.” *Rieckborn v. Velti PLC*, 2015 WL 468329, at *8 (N.D. Cal.
18 Feb. 3, 2015) (citation omitted). The Court finds that the Plan of Allocation is fair, reasonable, and
19 adequate and is hereby approved.

20 Under the Plan of Allocation, all Settlement Class Members who submit claims will
21 receive cash payments based on their *pro rata* allocation of the Net Settlement Fund. The Plan of
22 Allocation provides higher payments for those who first purchased in the earlier years of the class
23 period or when they were underage. *See In re MyFord Touch Consumer Litig.*, No. 13-cv-03072-
24 EMC (N.D. Cal. Mar. 28, 2019), Dkt. 526 at 4-5 (granting approval of settlement plan that pays a
25 lower dollar amount in relation to the comparative weakness of certain claims). The larger
26 payments for those who made their initial purchases earlier is consistent with the evidence about
27 changes in relevant warnings over time, which led the Court to note in its class certification order
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1 that “JLI will be free to argue at the appropriate points (on summary judgment, trial, post-trial)
2 that a reasonable consumer who purchased after a certain date could not have been misled by its
3 representations or omissions about its products given the other information in the market or given
4 the addition of the ‘black-box’ nicotine warning on JUUL’s packaging.” *In re JUUL Labs, Inc.*
5 *Mkt’g, Sales Pracs., and Prods. Liab. Litig.*, 2022 WL 2343268, at *30 (N.D. Cal. June 28, 2022).
6 The enhanced payments for those who began purchasing when underage is based on Class
7 Plaintiffs’ full refund theory of recovery as to their youth targeting claims, as opposed to the price
8 premium damages model applicable to other claims. *See id.* at *17 (holding “Plaintiffs’ full refund
9 model, with respect to the Youth Classes, supports certification” because such sales were
10 allegedly illegal). Further, it is rational to provide the enhancements for all purchases by such
11 persons, even after the warnings were augmented or the purchasers reached adulthood, because of
12 the addictive nature of the JUUL Products.

13 Setting a cap on the recoveries by Claimants who lack proof of purchase while claims that
14 are accompanied by proof of purchase will not be capped is also reasonable. The use of a cap for
15 Claimants without proof of purchases ensures a fair distribution and serves to disincentivize
16 illegitimate or exaggerated claims. *See, e.g., In re Groupon, Inc.*, No. 11md2238 DMS (RBB),
17 2012 WL 13175871, at *6 (S.D. Cal. Sep. 28, 2012) (holding requirement of a voucher number or
18 other proof of purchase serves “to ensure that money is fairly distributed for valid claim.”) Such a
19 cap is a common feature of consumer class action settlements. *See, e.g., Broomfield v. Craft Brew*
20 *All., Inc.*, No. 17-cv-01027-BLF, 2020 WL 1972505, at *30 (N.D. Cal. Feb. 5, 2020) (finally
21 approving settlement with cap on no-proof claims); *Fitzhenry-Russell v. Coca-Cola Co.*, No. 5:17-
22 cv-00603-EJD, 2019 WL 11557486, at *7 (N.D. Cal. Oct. 3, 2019) (approving settlement with cap
23 for claims without proof of purchase, stating that such a claim process “would be no different than
24 that required after trial.”); *Bruno v. Quten Research Inst., LLC*, No. SACV 11-00173 DOC(Ex),
25 2013 WL 990495, at *2 (C.D. Cal. Mar. 13, 2013) (finally approving settlement with claims
26 limited to \$10.65 (e.g., 3 bottles) without proof of purchase, with no cap on claims accompanied
27 by a proof of purchase, for example a receipt or product packaging).

1 Settlement Class Members can elect their preferred method of payment, including mailed
 2 check, direct deposit, PayPal, prepaid MasterCard, or Amazon gift card. After an initial
 3 distribution, if there are substantial funds from uncashed payments and it is economically rational
 4 to do so, the monies will be redistributed to the Settlement Class Members who made claims and
 5 accepted their initial distribution payments where economically feasible. Only if residual funds
 6 remain thereafter will they be otherwise distributed, subject to the Court's approval.

7 8. The Response of Class Members

8 Out of an estimated minimum of X Settlement Class Members, there were X opt-outs and
 9 X objections. In comparison, as of DATE Settlement Class Members have submitted an estimated
 10 X valid Claims. See Decl. of NAME, Dkt. X at X. These figures represent a positive response. See
 11 *Churchill Village, LLC v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (explaining that a
 12 court may infer appropriately that a class action settlement is fair, adequate, and reasonable when
 13 few class members object to it); *Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *16 (N.D. Cal.
 14 Mar. 24, 2017) (holding “the indisputably low number of objections and opt-outs, standing alone,
 15 presents a sufficient basis upon which a court may conclude that the reaction to settlement by the
 16 class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19,
 17 2014) (“A court may appropriately infer that a class action settlement is fair, adequate, and
 18 reasonable when few class members object to it.”); see also, e.g., *In re Carrier IQ, Inc., Consumer*
 19 *Privacy Litig.*, 2016 WL 4474366, at *4 (N.D. Cal. Aug. 25, 2016) (stating that, “[i]n an analysis
 20 of settlements where notice relied on media notice exclusively, the claims rate ranged between
 21 0.002% and 9.378%, with a median rate of 0.023%”).

22 E. Releases and Effect of This Order

23 1. Releases by Settlement Class Members

24 By operation of this Order and Judgment, on the date specified in the Class Settlement
 25 Agreement, Settlement Class Members, including the Settlement Class Representatives, release
 26 and forever discharge and hold harmless the Released Parties of and from any and all Settlement
 27 Class Released Claims which the Settlement Class Member ever had, now have, or will have in
 28

1 the future. The Settlement Class Released Claims shall not release any Settlement Class
2 Member's: (i) claim(s) for personal injury against the Released Defendants; (ii) claims asserted in
3 *In re Juul Labs, Inc. Antitrust Litigation, Case No. 3:20-cv-02345-WHO that arise from alleged*
4 *anticompetitive conduct*~~claims arising under the antitrust laws~~; (iii) claim(s) against any non-
5 settling Defendants; (iv) claim(s) arising from the purchase of any JUUL product after December
6 6, 2022; or (v) right(s) to enforce the Class Settlement Agreement. Settlement Class Members
7 shall not release their claims if either the Effective Date does not occur or the Settlement Amounts
8 are not paid. The scope of the Released Claims is consistent with the economic loss claims pled in
9 the class action complaint.

10 **2. Waiver of Provisions of California Civil Code § 1542**

11 By operation of this Order and Judgment, with respect to the Settlement Class Released
12 Claims, Class Plaintiffs, the Released Parties, and Settlement Class Members shall be deemed to
13 have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
14 benefits conferred by any law of any state of the United States, or principle of common law or
15 otherwise, which is similar, comparable, or equivalent to section 1542 of the California Civil
16 Code, which provides:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
18 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR
21 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
22 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

21 Plaintiffs, JLI (on behalf of itself and the Released Parties), and Settlement Class Members
22 understand and acknowledge the significance of these waivers of California Civil Code section
23 1542 and any other applicable federal or state statute, case law, rule or regulation relating to
24 limitations on releases.

25 The Settlement Class Released Claims of the Settlement Class are dismissed with
26 prejudice and without costs. Accordingly, the Second Amended Consolidated Class Action
27 Complaint and any other complaints in the litigation asserting Settlement Class Released Claims
28 are hereby dismissed with prejudice and without costs.

1 **3. Compliance with Class Action Fairness Act**

2 The record establishes that the Class Settlement Administrator served the required notices
3 under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required
4 by 28 U.S.C. § 1715(b)(1-8). [Dkt. 3742](#).

5 **F. Costs of Administering the Class Settlement**

6 The Class Settlement Administrator has submitted an invoice for its expenses incurred as
7 of DATE, totaling \$. The Class Settlement Administrator has stated that it expects to incur
8 additional amounts through the completion of its work and the distribution of settlements funds, in
9 the amount of \$. The Court finds that such amounts are reasonable and authorizes the total
10 payment (*i.e.* including costs previously incurred and future costs) of up to \$ to the Class
11 Settlement Administrator, though in no event shall the Class Settlement Administrator receive
12 payment exceeding its actual, documented out-of-pocket costs.

13 The Court also authorizes total payment of up to \$ per year for previously incurred and
14 future costs related to the administration of the Trust (including all expenses and compensation
15 payable under the terms of the Trust). Payments up to such amount are reasonable given the role
16 of the Trust in protecting the Class Settlement Fund from being subject to reduction or clawback
17 in the event JLI were to file for bankruptcy. In no event shall payments related to the
18 administration of the Trust exceed the Class Settlement Fund’s share of the actual, documented
19 out-of-pocket costs for administering the Trust.

20 **G. Other Effects of This Order**

21 No action taken by the Parties, either previously or in connection with the negotiations or
22 proceedings connected with the Settlement Agreement, shall be deemed or construed to be an
23 admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment
24 or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever to any
25 other Party. Neither the Settlement Agreement nor any act performed or document executed
26 pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an
27 admission of, or evidence of, the validity of any claim made by the Settlement Class Members or
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1 Class Counsel, or of any wrongdoing or liability of the persons or entities released under this
2 Order and Judgment and the Settlement Agreement, or (b) is or may be deemed to be, or may be
3 used as an admission of, or evidence of, any fault or omission of any of the persons or entities
4 released under this Order and Judgment and the Settlement Agreement, in any proceeding in any
5 court, administrative agency, or other tribunal. JLI's and the Released Parties' agreement not to
6 oppose the entry of this Order and Judgment shall not be construed as an admission or concession
7 that class certification was or would be appropriate in the litigation outside of the context of
8 settlement or would be appropriate in any other action.

9 Except as provided in this Order, Class Plaintiffs shall take nothing against the Released
10 Parties by the Released Claims. This Order shall constitute a final judgment binding the Parties
11 and Settlement Class Members with respect to the Released Claims.

12 No distributions shall be made the Settlement Fund, and any account holding the
13 Settlement Fund, without the written authorization of Class Counsel.

14 Defendants will have no role in, nor will they be held liable in any way for, the
15 determination of monetary relief to be accorded each Claimant. No Settlement Class Member or
16 any other person will sue or have any claim or cause of action against the Settlement Class
17 Representatives, Class Counsel or any person designated by Class Counsel, Co-Lead Counsel or
18 the Class Settlement Administrator arising from or relating to the Settlement, the Released Claims,
19 the litigation, or determinations or distributions made substantially in accordance with the
20 Settlement or Orders of the Court, including this Final Approval Order and Judgment.

21 Without affecting the finality of the judgment hereby entered, the Court reserves exclusive
22 jurisdiction over the implementation of the Class Settlement Agreement. In the event the Effective
23 Date does not occur in accordance with the terms of the Class Settlement Agreement, then this
24 Order and any judgment entered thereon shall be rendered null and void and shall be vacated, and
25 in such event, all orders and judgments entered and releases delivered in connection herewith shall
26 be null and void and the Parties shall be returned to their respective positions ex ante.

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Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.

There is no just reason for delay in the entry of this Judgment, and immediate entry by the Clerk of the Court is expressly directed.

Dated: _____, 2023

Hon. William H. Orrick
U.S. District Judge