

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CIVIL MINUTES

Date: August 21, 2020	Time: 10 minutes 12:57 p.m. to 1:17 p.m.	Judge: WILLIAM H. ORRICK
Case No.: 19-md-02913-WHO	Case Name: In Re: Juul Labs, Inc., Marketing, Sales Practices	

Attorneys for Plaintiffs: Sarah London, Dena Sharp, Ellen Relkin, Dean Kawamoto, and Geoffrey Strommer

Attorneys for Defendants: Renee Smith, Peter Farrell, Gregory Stone, John Massaro, Jason Ross, Michael Guzman, Marissa Ronk, Christopher Esbrook, and Mitchell B. Malachowski

Deputy Clerk: Jean Davis

Court Reporter: Ana Dub

PROCEEDINGS

At 12:30 p.m. plaintiffs' Co-Lead Counsel and defense counsel identified above participated in an *in camera* videoconference.

At 12:57 p.m. the monthly Case Management Conference was conducted via videoconference. Access information was published to the public, and a large number of additional counsel involved in the litigation attended. Only lead and liaison counsel and those who addressed the Court have been identified.

The Court will adopt the agreements of the parties identified in the Case Management Statement, including Proposed Case Management Order No. 11 re Deposition Protocol. Dkt. 888.

The Court will adopt a Second Amended Case Management Order No. 3 to include updated service email address. Dkt. No. 826. Counsel shall submit the proposed Second Amended CMO No. 3 in Word to WHOpO@cand.uscourts.gov. Mitchell Malachowski is appointed as the liaison counsel for the E-Liquid defendants. Dkt. No. 825.

The Court will enter the proposed Order Extending Alternative Service. Counsel shall submit the proposed order in Word to WHOpO@cand.uscourts.gov.

Renee D. Smith and Peter A. Farrell of Kirkland & Ellis LLP will serve as their Defense Liaison Counsel to coordinate with Plaintiffs on scheduling and other case management matters.

Geoffrey Strommer has been appointed liaison Tribal counsel to the PSC. The proposal for appointment of a Tribal Leadership Sub-Committee is adopted and Riley Plumer, Mario Gonzalez, Trey Frazer, and Dan Drachler are appointed to that sub-committee. Dkt. No. 859.

JLI's pending Motions to Dismiss for Failure to Comply with CMO No. 8 – Dkt. Nos. 852, 862, 905 – are reset for hearing (if necessary) to the next Case Management Conference on September 21, 2020. All similar motions in the future shall be noticed for hearing at the next CMC that is at least 30 days out and defense counsel shall provide a consolidated update at least five days prior to the CMC informing the Court as to the status of each plaintiff/case identified in the motion(s). All responses to these and similar motions from plaintiffs shall be filed in the underlying case dockets, and not in the MDL docket.

As to the Retailer, Distributor, E-Liquid and Director Defendants (Newly Named Defendants, or NNDs) desire to file motions to dismiss claims in the Amended Master Complaint (Personal Injury) prior to the bellwether selection process, the Court is open to hearing such motions prior to bellwether selection *only* if they address cross-cutting and potentially dispositive issues (with respect to claims or groups of defendants). It would not be efficient or useful to consider motions challenging the particularity of fraud allegations under Rule 9(b) or challenges that would be considered again during the motions to dismiss the PI bellwethers. If the NNDs want to proceed with any early motions to dismiss they shall, in advance of the September Case Management Conference, identify with specificity the exact motions they wish to file and explain why early determination is efficient and necessary as opposed to waiting until the testing of the PI bellwethers. The Court might allow appropriate identified motions to proceed on or close to the schedule the NNDs suggested in the CMC Statement.

On the remaining disputes over the case schedule and the PI bellwether selection process, discussed in 27 pages submitted 12 hours before the CMC, the Court provides the following general guidance. The pleading deadlines suggested by plaintiffs seem reasonable. If plaintiffs are ready to file their motion for class certification in January 2021, they may do so. Having the fact discovery cutoff fall around the same time as the hearing on plaintiffs' motion for class certification (in May or June 2021) would make sense. Plaintiffs' suggestion for bellwether selection – both as to numbers of cases involved and the selection methodology – is also sensible but the Court will need time to review the authorities and case orders from other MDLs. While the Court had hoped that the first bellwether trial could be held at the end of 2021, given the pandemic and trial scheduling issues February 2022 may be more realistic.

If the parties believe that, given this general guidance, they may be able to refine or even reach agreement on their competing proposals, they may do so and submit revised proposals for the case schedule and bellwether selection process within seven days. The Court will review the authorities on which the parties relied and hopefully issue an order in a couple of weeks regarding the case schedule and bellwether process.

The September Case Management Conference is continued to September 21, 2020 at 9:00 a.m. and will commence following the argument on the pending round of motions to dismiss.