IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mann-Campbell v. JUUL Labs Canada, Ltd.*, 2026 BCSC 1288

Date: 20260715
Docket: S1910927
Registry: Vancouver

Between:

Owen Mann-Campbell and Robert Osborn

Plaintiffs

And

JUUL Labs Canada, Ltd., JUUL Labs, Inc. and Altria Group, Inc.

Defendants

Before: The Honourable Justice Giaschi

Reasons for Judgment

Counsel for the Plaintiffs:	A. Leoni, K.C. J.R. Kendall D. Bach A. Dimson K. Shapiro G. Pao A. Azzopardi, A/S M. Brown, A/S
Counsel for Altria Group, Inc.:	S.I. Sofer J.D. Sapers J. Kara G. Matheson
Counsel for JUUL Labs Canada, Ltd. and JUUL Labs, Inc.	M.A. Feder, K.C. P.D.H. Williams G. Ringkamp D. Templer

Place and Date of Hearing:	Vancouver, B.C. January 27-29, 2026
Place and Date of Judgment:	Vancouver, B.C. July 15, 2026

Table of Contents

INTRODUCTION **4**
CHRONOLOGY **4**
POSITIONS OF THE PARTIES **10**
DISCUSSION **11**
Subclasses 11
Altria's Submissions 15
CONCLUSION **19**

Introduction

[1] By notice of application filed November 25, 2021, the plaintiffs sought to certify this proposed class action against JUUL Labs Canada, Ltd. ("JLC"), JUUL Labs, Inc. ("JLI") and Altria Group Inc. ("Altria") for, *inter alia,* damages for personal injuries suffered as a consequence of the use of JUUL branded e-cigarette devices. A certification hearing was held over several days in December 2023 and May 2024. In reasons released on May 14, 2025, and indexed as 2025 BCSC 771 ("2025 Reasons"), I made various findings and determinations relating to whether the plaintiff had met the certification requirements in the *Class Proceedings Act*, R.S.B.C. 1986, c. 50 [*CPA*]. Ultimately, the certification application was adjourned to permit the plaintiffs to make amendments to the fourth amended notice of civil claim, the class definition and the proposed common issues.

[2] The certification hearing resumed before me from January 27 to January 29, 2026, pursuant to an amended notice of application filed August 8, 2025. The plaintiffs say the issues identified in my 2025 Reasons have now been addressed and they seek certification of the action. The defendants continue to oppose certification.

[3] For the reasons that follow, certification is allowed.

Chronology

[4] A brief chronology is necessary to put matters in proper context.

[5] The action was commenced on September 30, 2019, against only JLC and JLI (collectively the "JUUL Defendants").

[6] On September 18, 2022, Altria was added as a defendant to the action and the plaintiffs were given leave to file an amended notice of civil claim. The second amended notice of civil claim was filed on October 30, 2020 (the "second amended NOCC").

[7] On December 2, 2020, Altria filed a jurisdictional response to the second amended NOCC in which it disputed the jurisdiction of this court and sought orders dismissing or staying the claim as against it. I heard arguments on Altria's jurisdiction application and, on October 14, 2022, in reasons indexed at 2022 BCSC 1807 ("Jurisdiction Reasons"), I dismissed Altria's application. In particular, I determined that the plaintiffs had shown a good arguable case that the claim against Altria was for a tort committed in British Columbia and that Altria had not rebutted the resulting presumption of jurisdiction under s. 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28. In particular, I found that:

a) the evidence disclosed a relationship between Altria and JLI that went beyond that of a mere shareholder to a company: paras. 81-84 and 95; and

b) the evidence did not rule out the possibility that Altria had some involvement, direct or indirect, with the distribution, marketing or sale of JUUL products in Canada or British Columbia: para. 96.

[8] Altria appealed the dismissal of its jurisdiction application to the Court of Appeal. On March 12, 2024, in reasons indexed at 2024 BCCA 99, the Court of Appeal dismissed Altria's appeal. I observe that, on the appeal, Altria argued that certain evidence of its minimal involvement with JUUL products in Canada was ignored or misconceived. Justice Dickson, writing for the Court of Appeal, rejected this submission.

> [46] I do not agree with Altria's submissions that this evidence was either material to the judge's analysis, or overlooked by him. The judge reviewed Altria's evidence that it: did not directly distribute, market, advertise or sell JUUL products in British Columbia; played no governance or management role in relation to the JUUL Defendants; and provided only limited services to JUUL USA under the Services Agreement. The judge noted that Mr. Valiquette's evidence addressed the cross-border effects of advertising and marketing carried out in the United States. He found that, in light of Mr. Valiquette's expert report, Altria's evidence of its lack of physical presence in British Columbia was of less relevance. The judge referenced evidence of the pre-Transaction discussions at several points in his judgment, but clearly did not (at least for the purpose of the jurisdictional application) adopt Altria's interpretation of the evidence. While the judge may not have cited every piece of evidence and every point raised in argument, the law does not require this of him: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 72. The

> "uncited evidence" listed by Altria had limited relevance given the live issues before the judge.
>
> …
>
> [48] On the basis of the evidentiary record as a whole, the judge concluded, at the first stage of the *Ewert* framework, that Altria's evidence did not demonstrate that it did not engage in activities that were related to the advertising or marketing of JUUL products in British Columbia. In reaching this conclusion, the judge did not ignore or misconceive evidence that was material to his analysis. He was clearly alive to, and referenced at length, Altria's evidence of its lack of physical presence in British Columbia. He was simply not persuaded that the evidence was sufficient to undermine the good arguable case for jurisdiction that the respondents had put forward. I am not persuaded that Altria has shown any palpable and overriding error in relation to the judge's impugned findings.

[9] Altria applied to the Supreme Court of Canada to appeal the decision of the Court of Appeal. Leave was denied in *Altria Group, Inc. v. Jaycen Stephens, et al.*, 2024 CanLII 105163 (SCC).

[10] Meanwhile, the original certification hearing was held over seven days in December 2023 and May 2024. The evidence at this hearing consisted of seven 4-inch binders comprising 32 affidavits. At the conclusion of the hearing, judgment was taken under reserve.

[11] The 2025 Reasons were released on May 14, 2025 and comprised 115 pages. The 2025 Reasons addressed the various iterations of the notice of civil claim with emphasis on the fourth amended notice of civil claim, the evidence on the certification hearing, and the requirements for certification of a class proceeding under the *CPA*. In particular:

a) In relation to the requirement that the pleadings disclose a cause of action, s. 4(1)(a) of the *CPA*, I addressed each of the pleaded causes of action (negligence, toxic tort, breach of consumer protection legislation, breach of contract, unjust enrichment, civil fraud and conspiracy, breach of the *Competition Act*, R.S.C. 1985, c. C-34 and *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27) and determined that the plaintiffs disclosed causes of action against all or some of the defendants except for the claims of toxic tort and fraud. I wrote that the fourth amended NOCC needed to be amended by deleting these claims. I also identified some irregularities and ambiguities in the pleading that needed correction;

b) In relation to the requirement that there be some basis in fact that there is an identifiable class, s. 4(1)(b) of the *CPA*, I determined that there were some minor issues with the class definition that required correction and directed that the plaintiffs amend the fourth amended NOCC to correct those issues;

c) In relation to the requirement that the claims of the class members raise common issues, s. 4(1)(c) of the *CPA*, I again determined that there were some minor issues with some of the proposed common issues that needed to be corrected before they could be certified; and

d) In relation to the requirement that a class action be the preferable procedure, I determined that a class proceeding would be the preferable procedure once the common issues were appropriately framed.

[12] I summarized my conclusions at paras. 329-330 of the 2025 Reasons, as follows:

> [329] I have identified multiple issues with the FANOCC, the class definition and the common issues as proposed that preclude certification of this class action at the present time. In particular:
>
> a) The FANNOC must be amended
>
> i. by deleting the claim for damages for “purchasing and using JUUL products when they would not have otherwise done so” from para. 128 of the FANOCC,
>
> ii. by removing the claim of “toxic tort”,
>
> iii. to correct the ambiguity about direct sales by all of the defendants to consumers, and
>
> iv. by removing the claim in fraud;
>
> b) The class definition in the FANOCC must be amended
>
> i. by replacing “and/or” with “and” and by including person who indirectly purchased JUUL products,
>
> ii. by substituting “JUUL device” and “JUUL pods” for “JUUL products”;

iii. by repositioning the phrase “in Canada” such that it precedes the phrase “for purposes that were primarily personal”; and

iv. by deleting the words “family or household”; and

c) The proposed common issues must be amended as follows,

i. common issue 5 needs to be reworded to reference only JLC,

ii. common issues 9-12 are not common across the class but relate to only a potential sub-class who purchased directly from JLC. These questions cannot be certified until the pleading for breach of contract and breaches of the SGA is amended and then they will need to be re-worded to reference only JLC as the contract party and seller,

iii. common issues 13-16 must be broken down by jurisdiction and legislation, and must list the specific representations or omissions that are alleged to constitute the unconscionable or deceptive practice. Additionally, common issue 15 needs to address the issues identified in para. 264 of these reasons,

iv. common issues 17-20 must be amended to address the requisite elements of claims in negligence and failure to warn,

v. common issues 22-26 need to be reworded to address the legal requirements of the two types of conspiracy and to conform with the pleading, which, for unlawful means conspiracy, alleges only breaches of consumer protection legislation and the *TVPA*. Further, because the unlawful means conspiracy is, in part, for breaches of provincial consumer protection legislation, the issues must be broken down by jurisdiction and legislation, and

vi. common issue 28 must be amended to stipulate that the aggregate assessment is only in respect of the monetary claim for refunds or restitution and nominal damages for breach of contract.

> [330] In view of the amendments that are necessary to the FANOCC, the class definition and the proposed common issues, pursuant to s. 5(6) of the *CPA*, I adjourn this application for certification to permit the plaintiff to make the necessary amendments.

[13] As noted in para. 330, I adjourned the application “to permit the plaintiff to make the necessary amendments”. Paragraph 3 of the 2025 Reasons also expressly stated the certification hearing was adjourned to permit the plaintiffs to make further amendments.

> [3] For the reasons that follow, the certification application is adjourned to permit the plaintiffs to make further amendments to the notice of civil claim and to make amendments to the proposed common issues.

[14] On June 11, 2025, notices of appeal were filed by both the JUUL Defendants and Altria.

[15] On August 29, 2025, a hearing was held to settle the terms of the order flowing from the 2025 Reasons. At that hearing, the JUUL Defendants proposed a form of order that included multiple individual findings and determinations, whereas the plaintiffs proposed a form of order that merely adjourned the certification hearing. The order was settled on the terms proposed by the plaintiffs. I declined to include various individual findings and determinations in the order. I did, however, make it clear that those findings and determinations were not open to re-argument upon the continuation of the application.

[16] Following the settlement of the order, the JUUL Defendants filed a notice of application on October 28, 2025, requesting that I disqualify and recuse myself from any further involvement in this action on the grounds of a reasonable apprehension of bias. That application was heard by me and dismissed on December 19, 2025. In oral reasons I said:

> [8] In particular, I agree with the plaintiffs, and emphasize, that the premise of the argument of the JUUL defendants is that I have not yet decided any issues in this matter. The JUUL defendants say this is so because the entered order merely adjourns the certification hearing. This premise, in my view, is fundamentally incorrect. The reasons are full of findings and determinations that were made after hearing full argument and considering all of the evidence of the parties. The fact that the order merely adjourns the hearing does not negate these findings and determinations. They are not open to further argument on the continuation of the hearing except insofar as they may be affected by amendments. The continuation will primarily address whether the amendments have been made and are sufficient to correct the deficiencies noted. I do not foreclose the possibility that there could also be other issues that arise as a consequence of the amendments. If there are, it will be necessary to address those issues. But it is not a matter of things having been prejudged or predetermined. Matters were judged and determined after full argument.
>
> [9] In my view, this application is merely an attempt to eventually relitigate my various findings and determinations before a new judge. That would be a complete waste of judicial resources and add unreasonably to the

> expense and the delay in this matter. The proper course is for the JUUL defendants to challenge my findings and determinations in the Court of Appeal in due course.

[17] Altria also made submissions on the recusal application. I addressed its submissions as follows:

> [10] Altria supports JUUL's application for recusal but presents quite different arguments from JUUL as to why I should recuse myself. It alleges, among other things, that I have given no or insufficient consideration to:
>
> a) arguments it has raised;
>
> b) authorities it has submitted; and
>
> c) evidence it has submitted.
>
> [11] These particular arguments all appear to be matters that should properly be brought before the Court of Appeal. Moreover, Altria has not bought its own application for my recusal. In my view, if it wishes to make the arguments it has, it ought to have filed its own application for recusal. It cannot piggyback on JUUL's application. That is simply not fair to the plaintiffs who have not had full opportunity to respond to the new submissions.

[18] As a result of the settlement of the order, the defendants realized they required leave to appeal and filed applications with the Court of Appeal for leave to appeal and for an extension of time to appeal. Those applications were heard by Justice Griffin. In reasons indexed as 2025 BCCA 426, she dismissed the applications because the appeals were premature.

[19] Meanwhile, on August 8, 2025, the plaintiffs filed an amended notice of application for orders certifying this action as a class proceeding. The amended notice of application includes a proposed fifth amended notice of civil claim (Schedule D) and a list of amended proposed common issues (Schedule A). It also includes a proposed litigation plan (Schedule B) and a proposed notice plan (Schedule C).

<u>Positions of the Parties</u>

[20] The plaintiffs submit that all of the amendments that were identified as required in the 2025 Reasons have been made in the proposed fifth amended notice

of civil claim (Schedule D) and the list of amended proposed common issues (Schedule A). They accordingly seek certification of the action.

[21] The defendants continue to oppose certification but for different reasons.

[22] The JUUL Defendants did not file an amended application response but in written and oral submissions say the action cannot be certified because the plaintiffs have not created or proposed subclasses. They say the 2025 Reasons required that there be subclasses and that s. 6 of the *CPA* also requires subclasses.

[23] Altria filed an amended application response and filed extensive written submissions of 43 pages, excluding appendices. It says that many findings or determinations made by me in the 2025 Reasons can and should be revisited and changed. I will address Altria's submissions in somewhat more detail below.

[24] In reply to the submissions of the JUUL Defendants, the plaintiffs say the 2025 Reasons did not direct that subclasses be created and the creation of subclasses is not necessary at this time.

[25] In reply to the submissions of Altria, the plaintiffs say that Altria is attempting to relitigate issues already decided, including the issue of jurisdiction.

Discussion

Subclasses

[26] As noted, the JUUL Defendants submit that certification cannot proceed because the plaintiffs have not proposed appropriate subclasses as required by the 2025 Reasons and s. 6 of the *CPA*. They say the 2025 Reasons contain "definitive conclusions" that the creation of subclasses is necessary. Alternatively, they say the creation of subclasses was implied.

[27] The JUUL Defendants refer to paras. 209, 304, 216 and 329(c)(ii) of the 2025 Reasons in support of their submissions that I expressly or implicitly directed that subclasses be created. I do not agree that these paragraphs contain any such direction, express or implied.

[28] Paragraph 209 of the 2025 Reasons addressed the defendants' submissions that the class definition was overbroad because it included persons who smoked cigarettes or used other nicotine products, persons who were aware of the risks, and persons who minimally used JUUL products. I recognized that these were subgroups and that the creation of a subclass was likely in respect of persons who smoked cigarettes or used other nicotine products. I did not, however, direct that any subclasses be created or say that subclasses were necessary before certification.

[29] Paragraph 216 of the 2025 Reasons addressed the submission of the JUUL Defendants that a person who had purchased JUUL products from JUUL.ca cannot be part of the class since they were subject to an arbitration clause. I rejected this submission based on the questionable validity of the arbitration clause. I then wrote, "In any event, the enforceability of the arbitration and class action waiver clauses can be addressed by creation of a subclass or, perhaps as an individual issue." Again, I did not state that the creation of such a subclass was necessary before certification.

[30] Paragraph 304 of the 2025 Reasons addressed preferability and the differences between class members. I wrote that "these differences can be addressed by the creation of appropriate subclasses". I did not direct that subclasses be created before certification.

[31] Finally, para. 329(c)(ii) of the 2025 Reasons summarized my earlier determination that common issues 9-12 applied only to persons who purchased JUUL products directly from JLC and did not apply to the other defendants. I noted that those common issues "are not common across the class but relate to only a potential sub-class who purchased directly from JLC". Again, I did not direct that a subclass be created before certification.

[32] Put simply, nowhere in the 2025 Reasons did I stipulate that subclasses were required prior to certification. I merely recognized that subclasses will likely eventually be required.

[33] The JUUL Defendants additionally submit that s. 6 of the *CPA* requires the creation of subclasses before certification. I disagree.

[34] Section 6 of the *CPA* is as follows:

> 6(1) Despite section 4 (1), if a class includes a subclass whose members have claims that raise common issues not shared by all the class members so that, <u>in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented</u>, the court must not certify the proceeding as a class proceeding unless there is, in addition to the representative plaintiff for the class, a representative plaintiff who
>
> > (a) would fairly and adequately represent the interests of the subclass,
> >
> > (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the subclass and of notifying subclass members of the proceeding, and
> >
> > (c) does not have, on the common issues for the subclass, an interest that is in conflict with the interests of other subclass members
>
> [Emphasis added.]

[35] It is to be noted that s. 6 only requires the creation of a subclass with its own representative plaintiff if the court is of the opinion that separate representation is necessary to protect their interests. This normally requires a finding that there is an insurmountable conflict of interest. In *Cheetham v. Bank of Montreal*, 2023 BCSC 1319 at paras. 221-222, Justice Shergill wrote:

> [221] However, a subclass is not necessarily required just because there is some variability between groups: see *Persaud v Talon international Inc.*, 2020 ONSC 3858.
>
> [222] The threshold test for the creation of a subclass was described as follows in *Tataskweyak Cree Nation v. Canada (Attorney General)*, 2021 MBQB 153 at para. 54:
>
> > The preponderance of legal authority seems to favour maintaining the integrity of the class at least until an insurmountable conflict arises on the common issues.

[36] The JUUL Defendants submit that a conflict of interest is not required. They refer me to *Kidd v. Canada Life*, 2011 ONSC 6324 at paras. 78-79 and 81-85 [*Kidd*], for this proposition. At paras. 78-79 of *Kidd*, Justice Perell wrote:

> [78] Under s. 5(2) of the *Class Proceedings Act*, 1992, where the class includes a subclass whose members have claims that raise common issues

> not shared by all members of the class, if necessary to protect their interests, a separate representative plaintiff should be appointed. Subclasses are required to be included in an order certifying the proceedings only if, in the opinion of the court, separate representation is required for the protection of the interests of their members: *Elliott v. Boliden Ltd.*, [2006] O.J. No. 4116 (S.C.J.) at para. 15. In order to justify the creation of a subclass, the subclass must have issues that are not shared by all class members and those claims will be subject to defences that are not applicable to all class members: *578115 Ontario Inc. v. Sears Canada Inc.*, 2010 ONSC 5673 at para. 7.
>
> [79] Subclasses are properly certified where there are both common issues for the class members as a whole and other issues that are common to some but not all of the class members: *Caputo v. Imperial Tobacco Ltd.*, 2004 CanLII 24753 (ON SC), [2004] O.J. No. 299 (S.C.J.) at para. 45. <u>Circumstances that necessitate defining subclasses at the certification stage include the circumstance where a subclass of the generally described class raises common issues that could be determined in the class proceeding but are not shared by other members of the class</u>: *Wuttunee v. Merck Frosst Canada Ltd.*, 2009 SKCA 43 (CanLII), [2009] S.J. No. 179 (Sask. C.A.) at paras. 121-124, rev'g 2007 SKQB 29 (CanLII), [2007] S.J. No. 7 (Q.B.) and [2008] S.J. No. 101 (Q.B.) and 2008 SKQB 229 (CanLII), [2008] S.J. No. 324 (Q.B.), leave to appeal to C.A. granted [2008] S.J. No. 378 (C.A.), leave to appeal to S.C.C. ref'd [2008] S.C.C.A. No. 512. The statute envisions that there should be a single, over-riding class, with its set of issues common to all members, some of whom might form a subclass with a distinct additional set of issues common to its members but not other members of the class as a whole: *Wuttunee v. Merck Frosst Canada Ltd.*, *supra*, at para. 125. [Emphasis added.]

[37] The above excerpt from *Kidd* seems to suggest that subclasses are required where the common issues are not shared and that a conflict of interest is not required. However, this is a selective reading of Perell J.'s reasons. At para. 80 of *Kidd*, Perell J. wrote:

> [80] If the differences between the situation of the representative plaintiff and the class members do not impact on the common issues, then <u>the differences do not affect the representative plaintiff's ability to adequately and fairly represent the class and they do not create a conflict of interest</u>: *Hoy v. Medtronic*, 2001 BCSC 1343 (CanLII), [2001] B.C.J. No. 1968 at paras. 83-85, aff'd 2003 BCCA 316 (CanLII), [2003] B.C.J. No. 1251 (C.A.); *Endean v. Canadian Red Cross Society*, 1997 CanLII 2079 (BC SC), [1997] B.C.J. No. 1209 (S.C.), rev'd in part (1998), 1998 CanLII 6489 (BC CA), 157 D.L.R. (4th) 465 (C.A.), leave to appeal granted but appeal abandoned, [1998] S.C.C.A. No. 260 (S.C.C.); *T.L. v. Alberta (Director of Child Welfare)*, [2008] A.J. No. 157 (Q.B.) at para. 40, aff'd [2009] A.J. No. 512 (C.A.); *Reid v. Ford Motor Co.*, 2003 BCSC 1632 (CanLII), [2003] B.C.J. No. 2489 (S.C.) at para. 73.
>
> [Emphasis added.]

[38] Hence, *Kidd* does not stand for the proposition that subclasses are necessary whenever the common issues are not shared. To the contrary, it affirms that subclasses are necessary only where the representative plaintiff cannot adequately and fairly represent the class and there is a conflict of interest.

[39] Importantly, the JUUL Defendants have failed to identify a conflict of interest. They also do not identify any differences that affect the ability of representative plaintiffs to adequately and fairly represent all members of the class, including those who are differently situated and who may, eventually, become a subclass. Put in terms of the language of s. 6 of the *CPA*, the JUUL Defendants have not shown, or even attempted to show, that the protection of the interests of the subclass members requires that they be separately represented.

[40] Accordingly, the creation of subclasses is not a certification requirement.

Altria's Submissions

[41] I now turn to the submissions of Altria. As noted, it has filed extensive written submissions inviting me to revisit many findings and determinations made in the 2025 Reasons. It summarizes its submissions as follows:

> 1. It has been more than two years since Altria provided its original written submissions to the Court opposing certification. Over those two years, several important decisions relevant to this Application have been rendered, which the Court has not had the benefit of considering.
>
> 2. In the last six months, the Plaintiffs and Defendants have taken this Court to the same recent British Columbia Court of Appeal decision, relying on it for the holding that upon the return of this adjourned proceeding the Court is at liberty to revisit and change its earlier findings.
>
> 3. All parties agree that at the return of the adjourned certification hearing, the Court would hear submissions on subclasses: are they required and what is their impact on whether a class proceeding is the preferable procedure for this proceeding.
>
> 4. All parties also agree that the Court will hear submissions on the amendments the Plaintiffs have made to the proposed class definition and common issues and in their proposed Fifth Amended Notice of Civil Claim ("Fifth Amended NOCC"), and on the impact of the amendments on preferable procedure and adequacy of their litigation plan.
>
> 5. As Altria advised the Court in both August and December 2025, Altria will also make submissions on recent decisions, including;

(a) *Sinclair v Venezia Turismo*, 2025 SCC 27 (*Sinclair*): the 2025 decision of the Supreme Court of Canada which modified in important ways the Ewert framework upon which this Court relied in its Jurisdiction Decision and then applied its findings from that decision in its Certification Adjournment; and

(b) *Carcillo v Ontario Major Junior Hockey League,* 2025 ONCA 652: the 2025 decision of the Court of Appeal for Ontario which held that in complex proceedings (such as this one because of the many different jurisdictions involved and numerous and significant individual issues which require determination before liability can be found in favour of any purported class member as against Altria) a boiler plate litigation plan, like the one proposed in this proceeding, is wholly inadequate.

6. In summary, Altria submits:

(a) the proposed Fifth Amended NOCC fails to plead the material facts necessary to support any of the claims against Altria, including with respect to alleged breaches of provincial legislation constitutionally inapplicable to Altria, and with even greater inconsistency variously refers to the “Defendants” or “JUUL Defendants”;

(b) the Plaintiffs have presented no basis in fact with respect to any of the amended common questions as against Altria particularly any common questions related to alleged misrepresentations under the common law or breach of statute and thus none of these common questions can be certified as against Altria;

(c) the consumer protection legislation that provides certain remedies to direct purchasers of JUUL Products does not apply to Altria; and

(d) for this purported product liability class action (as the Court described it in the first paragraph in the Jurisdiction Decision), the collective impact of the new class definition, the new proposed common questions, the modification of the claims in the non-compliant pleading against Altria and new information that came to Altria’s attention since May 2025, reveals that a class proceeding is not the preferrable procedure as against Altria.

[42] In essence, Altria says it was merely an indirect investor in JLI for a limited period, that it had no involvement in designing, manufacturing, distributing, advertising or selling of JUUL products in Canada, and that the certification requirements have not been made out as against it. More specifically:

a) Concerning the certification requirement that the pleadings disclose a cause of action, s. 4(1)(a) of the *CPA*, it says the proposed fifth amended notice of civil claim lacks material facts, improperly lumps the defendants together and fails to specify exactly what Altria did;

b) Concerning the certification requirement that the claims raise common issues, s. 4(1)(c) of the *CPA*, it says there is no evidence Altria made any misrepresentations, breached any statutes or engaged in any wrongdoing and that many of the common issues do not apply to it; and

c) Concerning the preferable procedure, s. 4(1)(d) of the *CPA*, it says a class action is not preferable because of the many individual issues and multiple subclasses. It additionally says the litigation plan is inadequate.

[43] Altria also specifically submits that some of its arguments at the certification hearing were overlooked or not addressed in the 2025 Reasons and that the reasons themselves are inadequate. In particular, it says its arguments that consumer protection legislation did not apply to it were overlooked and that the 2025 Reasons are inadequate in that it was not specified what evidence was relied on in concluding that Altria had some involvement in the affairs of JLC.

[44] I do not intend to address Altria's submissions in any detail. In my view, as the plaintiffs submit, Altria is attempting to re-argue issues that were addressed and determined in the 2025 Reasons. I accept that I have the discretion to revisit any findings and determinations made in the 2025 Reasons since the only order made was to adjourn the certification hearing. However, in the circumstances, I do not consider that it is appropriate to do so.

[45] First, I attempted to make it clear in the 2025 Reasons that the adjournment was to address <u>only</u> the deficiencies noted and was not so that positions could be re-argued. Paragraphs 3 and 330 of the 2025 Reasons expressly stated that the adjournment was "to permit the plaintiff to make the necessary amendments". The adjournment was not ordered for any other or extended purpose.

[46] Second, the findings and determinations made in the 2025 Reasons were made on an extensive record and after hearing thorough submissions from the

parties. This is not a situation where Altria did not have the opportunity to put its best foot forward. It made its arguments and was generally unsuccessful. Its remedy is to appeal to the Court of Appeal, not to relitigate the issues it lost.

[47] Third, Rule 1-3 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 is applicable. It provides that the object of the rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits. To revisit the findings and determinations made in the 2025 Reasons would not further this objective. To the contrary, revisiting the findings and determinations would add to the delay, a delay that has already been considerable given that almost seven years have passed since the first notice of civil claim was filed.

[48] Fourth, I am not convinced that *Sinclair v. Venezia Turismo*, 2025 SCC 27 [*Sinclair*], alters the jurisdiction analysis in any material way. *Sinclair* applied the two-stage framework set out in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 and *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181, the same framework that I applied in the Jurisdiction Reasons and that the Court of Appeal applied on appeal. Further, the facts of *Sinclair* were very different than the facts of this matter.

[49] Fifth, while I acknowledge that *Carcillo v. Ontario Major Junior Hockey League,* 2025 ONCA 652, held a boilerplate or superficial litigation plan to be inadequate, I bear in mind that it is not binding on me. In contrast, the authorities I referred to in the 2025 Reasons on the adequacy of a litigation plan are binding.

[50] Sixth, to the extent that the 2025 Reasons failed to address arguments made by Altria, or are otherwise inadequate, these are issues that can be raised on appeal and the appropriate remedy sought.

[51] Finally, to the extent Altria submits new and relevant information has come to light since May 2025, I note that Altria did not apply for leave to file additional material. In any event, the new information consists of reasons for sentence involving one of the representative plaintiffs and two government publications (one by Health Canada and one by the US Food and Drug Administration) relating to

vaping. The new information is not, in my view, significant and does not alter any of the findings and determinations made in the 2025 Reasons.

[52] In the circumstances, I decline to re-open or revisit the findings and determinations made in the 2025 Reasons.

<u>Conclusion</u>

[53] The original certification hearing was adjourned to allow the plaintiffs to make certain amendments identified as necessary in the 2025 Reasons. The plaintiffs have now made those amendments. Accordingly, I make the following orders:

a) The plaintiffs are granted leave to file the proposed fifth amended notice of civil claim, a copy of which is attached as Schedule D to the amended notice of application filed August 8, 2025;

b) This action is certified as a class proceeding under the *CPA*;

c) The class is defined as,

> All persons resident in Canada, except for the Excluded Persons, who used and directly or indirectly purchased JUUL Devices or JUUL Pods in Canada for purposes that were primarily personal, during the Class Period.
>
> The Excluded Persons are: (1) the Defendants and their officers and directors; and (2) the heirs, successors and assigns of the persons described in (1).

d) The class period is from August 1, 2018 to the date of certification;

e) Owen Mann-Campbell and Robert Osborn are appointed as the representative plaintiffs for the class;

f) Siskinds LLP and Rice Harbut Elliott LLP are appointed as class counsel;

g) The common issues set out in Schedule A to the amended notice of application filed August 8, 2025, are certified;

h) The litigation plan set out in Schedule B to the amended notice of application filed August 8, 2025, is approved; and

i) The notice plan set out in Schedule C to the amended notice of application filed August 8, 2025, is approved.

[54] The parties have made no submissions before me as to the orders sought in paras. 9-15 of Part 1 of the amended notice of application filed August 8, 2025. Accordingly, I make no orders insofar as it concerns paras. 9-15 of Part 1 of the amended notice of application filed August 8, 2025. However, I note that many of the orders sought in paras. 9-15 are addressed in either the litigation plan or the notice plan. To the extent these orders need to be further addressed, they can be addressed through case management or, if necessary, through a further application.

“Giaschi J.”