UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of
Altria Group, Inc.
a corporation;

And

JUUL Labs, Inc.
a corporation.

DOCKET NO. 9393

NON-PARTY 7-ELEVEN’S MOTION FOR IN CAMERA TREATMENT

Pursuant to 16 C.F.R. §3.45(b), non-party 7-Eleven, Inc. (“7-Eleven”) respectfully moves this Court for indefinite in camera treatment of Exhibits PX3204 (7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386), RX119, RX1193, RX1194, RX1195, and PX7044; and for and in camera treatment for up to five years for twenty-nine (29) of 7-Eleven’s competitively-sensitive, confidential business documents (“Confidential Documents”). 7-Eleven’s motion is based on this Motion; the attached Memorandum of Law in Support of 7-Eleven’s Motion for In Camera Treatment, the Declaration of Shazad Hooda (Exhibit 1), and thirty-seven (37) selected documents (Exhibits 2-38); and any other matter properly considered.
Dated: May 7, 2021

Respectfully submitted,

/s/ Robert M. Manley

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ATTORNEYS FOR NON-PARTY 7-ELEVEN, INC.
MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY 7-ELEVEN’S MOTION FOR IN CAMERA TREATMENT

I. Introduction

Pursuant to 16 C.F.R. §3.45(b), non-party 7-Eleven, Inc. (“7-Eleven”) respectfully moves this Court for *in camera* treatment of 37 competitively-sensitive, confidential business documents (the “Confidential Documents”). 7-Eleven produced these documents, among others, in response to a Subpoena Duces Tecum served on December 7, 2020 by the Federal Trade Commission (“FTC”) and a Subpoena Duces Tecum served on December 4, 2020 by Altria Group, Inc. (“Altria”). Counsel for Complainant, the FTC, and counsel for Respondents, Altria and JUUL Labs, Inc. (“JUUL”) have notified 7-Eleven that they collectively intend to introduce 29 of 7-Eleven’s documents, with their relevant attachments (a total of 52 documents), into evidence in the upcoming FTC evidentiary hearing in the above-captioned matter.

7-Eleven seeks *in camera* treatment for 37 documents as confidential business documents because, if those records were to become public, 7-Eleven would experience significant
harm in its ability to be competitive in the tobacco and convenience store industries. For the reasons set forth below, 7-Eleven respectfully requests that Confidential Documents specified below receive in camera treatment indefinitely, or alternatively, for five years. In support of its motion, 7-Eleven relies on the Declaration of Shazad Hooda (the “Hooda Declaration”). See General Foods Corp., 95 F.T.C. 352, 355 (1980) (explaining that “to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury”).

II. Documents For Which Protection Is Sought

7-Eleven seeks in camera treatment for the following Confidential Documents, copies of which are attached as sealed Exhibits 2-37:

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### III. Confidential Documents Contain Material That If Disclosed Would Result In Serious Injury To 7-Eleven

#### A. Legal Standard

Pursuant to 16 C.F.R. § 3.45(b), *in camera* treatment is permitted when “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” the *in camera* treatment. An applicant seeking *in camera* treatment must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *General Foods Corp.*, 95
F.T.C. 352, 355 (1980); see also H.P. Hood & Sons, Inc., 58 F.T.C. 1184, 1188 (1961) (explaining that “the correct rule requires a showing that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.). In determining whether in camera treatment is justified, courts consider factors, including:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.


B. 7-Eleven’s Documents Are Confidential And Disclosure Would Result In Serious Injury To 7-Eleven

7-Eleven’s Confidential Documents contain information regarding 7-Eleven’s sales revenue, marketing strategies, and negotiation strategies and practices. Such information should receive in camera treatment. See, e.g., In re Champion Spark Plug Co., No. 9141, 1982 F.T.C. LEXIS 85, at *2 (Apr. 5, 1982) (granting in camera treatment for documents that have never been publicly disclosed by a company or its competitors).
1. Nine Of The Identified Confidential Documents Are Trade Secrets That Would Result In Serious Harm To 7-Eleven If Publicly Disclosed

Attachments to PX3204 marked 7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386, and Exhibits RX119, RX1193, RX1194, and RX1195.

Hooda Decl. at ¶¶ 14, 24, 30. Similarly, testimony contained within Exhibit PX7044, Attachments to PX3204, marked 7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386, and Exhibit RX119.

Because 7-Eleven is privately owned and keeps its sales information confidential, Id.; see also id. at ¶ 6; 14-15; 24.

RX119

Publicly disclosing these internal processes would severely harm 7-Eleven.

RX1193, RX1194, and RX1195 contain information regarding 7-Eleven’s
33. Public disclosure of this information would harm 7-Eleven because it would disclose 7-Eleven’s confidential negotiation strategies. The testimony within PX7044 Decl. at ¶ 67; 69. All the information above constitutes the type of “process” and “secret technical information” that the FTC states warrants in camera treatment. *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977).

2. **Indefinite In Camera Treatment Should Be Granted For Specified Documents**

The above-mentioned documents contain highly sensitive information that warrants indefinite in camera treatment. The trade secrets are “likely to remain sensitive or become more sensitive with the passage of time,” such that indefinite confidentiality is warranted. *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS at *7-*8. These documents contain trade secrets, such as Decl. at ¶ 36-48. The competitive significance of all of these documents is unlikely to decrease over time and, thus, warrants indefinite protection. In the alternative, 7-Eleven respectfully requests that these documents receive in camera treatment for five years, and requests that any redacted paragraphs relating to negotiation and business practices remain redacted indefinitely.

3. **The Remaining Confidential Documents Are Business Records That Would Result In Serious Harm To 7-Eleven If Publicly Disclosed**

Significantly, as discussed in the Hooda Declaration, the remaining Confidential
Documents are business records

The FTC has recognized the importance of *in camera* treatment for documents that contain product sales data and pricing information. *In re Otto Block Healthcare N. Am., Inc.*, No. 9378, 2018 FTC Lexis 111, at *11 (July 16, 208); *see also 1-800-Contacts*, 2017 F.T.C. LEXIS 55 at *17 (granting *in camera* treatment where documents included information related to the company’s “prices, sales, and financial performance.”). *In camera* treatment is also granted where disclosure of such information would give competitors insight into a company’s “relative size in a particular product line market which competitors could employ to their advantage.” *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at *2.

Several Confidential Documents contain information

Other Confidential Documents

These confidential business records constitute the very type of business records that the FTC deems warrant *in camera* treatment. *See, e.g., In re Otto Bock Healthcare N. Am., Inc.*, 2018 FTC LEXIS 111, *6 (July 6, 2018) (noting that business records include “business plans, marketing plans, or sales documents.”); *see also, e.g., 1-800-Contacts*, 2017 F.T.C. LEXIS 55 at *17 (granting *in camera* treatment of documents containing evaluation of market plans, future strategic plans, and market growth indicators); *In the Matter of Benco Dental Supply Co.*, 2018 F.T.C. Lexis 156, at *20 (Oct. 11, 2018) (granting *in camera* treatment for documents containing business information
relating to “marketing strategies, sales and profit plans, and future sales outlook”).

If these documents became public, See, e.g., In re Dura Lube, Corp., 1999 F.T.C. Lexis 255 at *7 (Dec. 23, 1999) (explaining that the “likely loss of business advantages” is an example of a “clearly defined, serious injury.”) (internal citation omitted). Disclosure of these documents would seriously harm 7-Eleven because Thus, it is appropriate for the identified Confidential Documents to receive in camera treatment. See In re 1-800 Contacts, 2017 FTC Lexis 55, at *3, *8 (recognizing that in camera treatment is appropriate for “competitively sensitive information”).

7-Eleven has taken significant steps to protect the information contained in the Confidential Documents, which were produced pursuant to a protective order dated April 2, 2020 (the “Protective Order”) (Exhibit 36). The Protective Order was issued to protect parties and third parties, including 7-Eleven, from improper disclosure and use of their confidential information. Pursuant to the Protective Order, all of 7-Eleven’s produced documents were designated “Confidential.”

7-Eleven’s status as a non-party is especially pertinent. The FTC has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” H.P. Hood & Sons, 58 F.T.C. at 1186. The FTC has noted that “[a]s a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery

4. **In Camera Treatment For 7-Eleven’s Business Documents Should Extend For Five Years**

Given the sensitive nature of the remaining Confidential Documents, including information related to 7-Eleven’s sales, negotiations, and marketing strategies and practices, protection of these documents for five years is appropriate to prevent competitive injuries to 7-Eleven. If the information within the Confidential Documents is publicly disclosed,

The FTC has recognized that confidential business records may receive *in camera* treatment for up to five years. *In re 1-800 Contacts, Inc.*, 2017 F.T.C. LEXIS 55, at *6 (April 4, 2017). Accordingly, 7-Eleven respectfully requests that this information receive *in camera* treatment for a period of five years.

**IV. Conclusion**

For the reasons set forth above and in the accompanying Hooda Declaration, non-party 7-Eleven respectfully requests that this Court grant *in camera* treatment indefinitely for Exhibits PX3204 (7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386), RX119, RX1193, RX 1194, RX1195, and PX7044; and for five years for the remaining Confidential Documents.

Dated: May 7, 2021

Respectfully submitted,

/s/ Robert M. Manley

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Houston, TX 77002

ATTORNEYS FOR NON-PARTY 7-ELEVEN, INC.

STATEMENT REGARDING MEETING AND CONFER

The undersigned counsel for non-party 7-Eleven, Inc. (“7-Eleven”) certifies that counsel for the parties were notified via email on or about May 6, 2021, that 7-Eleven would be seeking in camera treatment of certain Confidential Documents. Counsel for Complainant, the Federal Trade Commission, indicated via email on May 6, 2021 that they do not oppose 7-Eleven’s motion for in camera treatment of its Confidential Documents. Counsel for Respondents, Altria Group, Inc. and JUUL Labs, Inc. indicated via email on May 6, 2021 as follows: “Respondents do not object to the in camera motion to the extent it seeks to protect the covered documents from disclosure to the general public, however, we reserve our rights to seek relief from exclusion of certain in-house counsel of Respondents from in camera sessions or filings due to the covered documents’ in camera designation.”

/s/ Lisa Houssiere

Lisa Houssiere
PUBLIC

EXHIBIT 1

DECLARATION OF

SHAZAD HOODA

PARTIAL REDACTIONS
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Altria Group, Inc.

a corporation;

And

JUUL Labs, Inc.

a corporation.

DOCKET NO. 9393

DECLARATION OF SHAZAD HOODA

I, Shazad Hooda, hereby declare as follows:

1. I am a Senior Category Manager at 7-Eleven, Inc. (“7-Eleven”), a non-party to the above-captioned proceeding.

2. I am making this declaration in support of non-party 7-Eleven’s motion for in camera treatment for certain confidential documents (the “Motion”).

3. I have personal knowledge of the matters stated herein, and if called upon to do so, could competently testify about them.

4. I have reviewed and am familiar with the confidential documents (the “Confidential Documents”) 7-Eleven produced in response to the Subpoena Duces Tecum served on December 7, 2020 by the Federal Trade Commission (the “FTC”) and the Subpoena Duces Tecum served on December 4, 2020 by Altria Group, Inc. (“Altria”).

5. Given my position at 7-Eleven, I am familiar with the type of information contained in the documents at issue and their competitive significance to 7-Eleven. Based on my review of the documents, my knowledge of 7-Eleven’s business, and my familiarity with the confidentiality protections afforded this type of information by 7-Eleven, the disclosure of the Confidential Documents to the public and to competitors of 7-Eleven would cause serious, irreparable harm to 7-Eleven.

6. As described in the Motion, 7-Eleven seeks in camera treatment for Confidential Documents identified below because they contain information related to

[Redacted]
and other propriety information as further described below.

Confidentiality Measures

7. 7-Eleven is a privately owned and is not publicly traded in the United States. As a result, much of the information contained in the Confidential Documents that 7-Eleven seeks in camera treatment for could only be known or determined by 7-Eleven itself.

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Documents Containing Confidential Sales Information

14. The FTC, JUUL Labs, Inc. (“JUUL”), and Altria have notified 7-Eleven that they intend
to introduce eleven Confidential Documents that contain confidential sales information. As described in the Motion, 7-Eleven seeks *in camera* treatment for these documents as they contain information.

These documents are identified below:

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15. PX3204 marked 7_ELEVEN_ALTRIA_00013381-00013383. This e-mail

Similarly, Attachment to PX3204 marked 7-ELEVEN_ALTRIA_00013384 is
Disclosure of information regarding ... This information is not publicly available and releasing this information would expose 7-Eleven’s proprietary business information to the public. Thus, it is appropriate for these documents to be given in camera treatment.

16. Attachments to PX3204 marked 7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386 are [REDACTED]. These spreadsheets contain [REDACTED]. This information would be nearly impossible for anyone outside of 7-Eleven to recreate, which would give competitors [REDACTED]. This information is also not publicly available and releasing this information [REDACTED]. Thus, it is appropriate for these documents to be given in camera treatment.

17. Attachments to PX3205 marked 7-ELEVEN_ALTRIA_00005441 and 7-ELEVEN_ALTRIA_00005442 are [REDACTED]. Attachment to PX3205 7-Eleven_Altria_00005443 is [REDACTED]. This information contains [REDACTED]. If this information becomes public, it would allow competitors to know 7-Eleven’s [REDACTED]. It is therefore necessary that this document receive in camera treatment.

18. RX1702 marked 7-ELEVEN_ALTRIA_00002466 is [REDACTED]. This [REDACTED] was intended to remain confidential to the recipients only. This [REDACTED] includes [REDACTED]. Disclosing information regarding 7-Eleven [REDACTED] would be detrimental to 7-Eleven as it [REDACTED]. Thus, it is appropriate for these documents to be given in camera treatment.

19. RX 1703 marked 7_ELEVEN_ALTRIA_00004632 [REDACTED] This information relates to [REDACTED]
Similarly, RX1704 marked is 7_ELEVEN_ALTRIA_00004636 is 7-Eleven moves to redact specific information to receive in camera treatment of both documents. This information specifically relates to

These documents were marked by 7-Eleven as propriety and confidential. These documents were not intended This would Thus, it is appropriate for these documents to be given in camera treatment.

20. RX1205 marked 7-ELEVEN-ALTRIA_00015336 is

Thus, it is appropriate for these documents to be given in camera treatment.

21. Publicly disclosing 7-Eleven’s confidential financial and strategic information identified in paragraphs 13-18 is not necessary in this proceeding and could be detrimental to 7-Eleven, whose only involvement in this proceeding is as a non-party.

22. With respect to all of these documents, 7-Eleven has taken significant steps to protect the confidential information contained in the documents identified in paragraphs 13-18. 7-Eleven

The information is not, and would not otherwise become, publicly available.

Documents Containing Confidential Marketing Information

23. The FTC, JUUL, and Altria have notified 7-Eleven that they intend to introduce five Confidential Documents containing. As described in the Motion, 7-Eleven seeks in camera treatment for these documents as they

These documents are identified below:
<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
<th>Date</th>
<th>Beginning Bates No.</th>
<th>Ending Bates No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment to PX3205</td>
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<td>7- ELEVEN_ALTRIA_000 05439</td>
<td>7- ELEVEN_ALTRIA_000 05439</td>
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<tr>
<td>RX119/Attachment to PX3205</td>
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<td>7- ELEVEN_ALTRIA_000 05440</td>
<td>7- ELEVEN_ALTRIA_000 05440</td>
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<tr>
<td>RX 1700</td>
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<td>7- ELEVEN_ALTRIA_000 00901</td>
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<tr>
<td>RX1701</td>
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<td>7- ELEVEN_ALTRIA_000 00904</td>
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<tr>
<td>RX1212</td>
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<td>7-ELEVEN_ALTRIA_00014311</td>
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</tr>
</tbody>
</table>

24. Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005438 is Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005439 is 

Thus, it is appropriate for these documents to be given in camera treatment.

25. RX119 marked 7-ELEVEN_ALTRIA_00005440 is

This document contains

Thus, it is appropriate for these documents to be given in camera treatment.

26. RX1200 marked 7-ELEVEN_ALTRIA_00000901 and RX1201 marked 7-ELEVEN_ALTRIA_000904

If this were to be made public,

Thus, it is appropriate for these documents to be given in camera treatment.

27. RX1212 marked 7-ELEVEN_ALTRIA_014311 includes

this document were to
become public

Thus, it is appropriate for this document be given *in camera* treatment.

28. Publicly disclosing 7-Eleven’s confidential financial and strategic information identified in paragraphs 22-26 is not necessary in this proceeding and could be detrimental to 7-Eleven, whose only involvement in this proceeding is as a non-party.

29. With respect to all of these documents, 7-Eleven has taken significant steps to protect the confidential information contained in the documents identified in paragraphs 22-26. 7-Eleven takes substantial measures to guard the secrecy of this confidential information

The information is not, and would not otherwise become publicly available.

**Documents Containing Confidential Negotiation Information**

30. The FTC, JUUL, and Altria have notified 7-Eleven that they intend to introduce seventeen Confidential Documents containing confidential information. As described in the Motion, 7-Eleven seeks *in camera* treatment for these documents as they contain information. These documents are identified below:

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
<th>Date</th>
<th>Beginning Bates No.</th>
<th>Ending Bates No.</th>
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<tr>
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<td>7-ELEVEN_ALTRIA_00008185</td>
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<tr>
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<tr>
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<td>7-ELEVEN_ALTRIA_00018194</td>
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<td>RX1708</td>
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<td>7-</td>
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<tr>
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<td>Description</td>
<td>Date</td>
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<tr>
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</tr>
</tbody>
</table>

31. RX1193 marked 7-ELEVEN_ALTRIA_0008205 is

Similarly, RX1194 marked 7-ELEVEN_ALTRIA_008206 is

Thus, it is appropriate for these documents to be given *in camera* treatment.

32. RX1215 marked 7-ELEVEN_ALTRIA_008185 is

Thus, it is appropriate for this document to be given *in camera* treatment.

33. RX1706 marked 7-ELEVEN_ALTRIA_013872 is

The
Attachments to RX1706 marked 7-ELEVEN_ALTRIA_0131874 through 7-Eleven_Altria_013884 include Therefore, it is appropriate for this document to receive in camera treatment.

34. Attachments to RX1708 marked 7-ELEVEN_ALTRIA_00018194 and ELEVEN_ALTRIA_00018195. Therefore, the information contained in this document is Therefore, in camera treatment is appropriate.

35. Publicly disclosing any of 7-Eleven’s confidential financial and strategic information identified in paragraphs 30-33 is not necessary in this proceeding and could be detrimental to 7-Eleven, whose only involvement in this proceeding is as a non-party.

36. With respect to all of these documents, 7-Eleven has taken significant steps to protect the confidential information contained in the documents identified in paragraphs 30-33. 7-Eleven takes substantial measures to guard the secrecy of this confidential information by The information is not, and would not otherwise become publicly available.

Declaration of Jack Stout

37. PX8001 is. Although has already been marked Outside Attorney’s Eyes only subject to a protective order, it should also receive in camera treatment. The contains
The details of these statements and specific potential disadvantages faced by 7-Eleven are further discussed below:

38. Paragraphs 5, and 6 of PX8001

Thus, it is appropriate for this testimony to be given *in camera* treatment.

39. Paragraphs 8, of PX8001

Thus, it is appropriate for this testimony to be given *in camera* treatment.

40. Paragraphs 10 and 11 of

This testimony therefore should receive *in camera* treatment.

41. Paragraph 4 of PX8001 contains

Therefore, this testimony should receive *in camera* treatment.
42. Paragraphs 7, 11, and 16 of PX8001 contain

Thus, *in camera* treatment is appropriate.

43. Paragraph 11, 14, and 17 of PX8001 contain

Therefore, this testimony should receive *in camera* treatment.

44. Paragraph 17 of PX8001

Therefore, this testimony should receive *in camera* treatment.

45. Paragraph 15 of PX8001 discusses

Therefore, this testimony should receive *in camera* treatment.

46. Paragraphs 9, 14, and 15 of PX8001 contain
This testimony should therefore receive *in camera* treatment.

47. PX7044 is a deposition by Jack Stout, Senior Vice President of Merchandising and Demand Chain for 7-Eleven prepared in connection with this proceeding (hereinafter, “Deposition”). The Deposition took place on March 10, 2021, and Jack Stout provided testimony under oath. Therefore, *in camera* treatment is appropriate.

48. In addition, the Deposition contains direct quotes, references to, and a discussion of the Confidential Documents. The details of these statements and specific potential disadvantages faced by 7-Eleven are further discussed below. Therefore, *in camera* treatment is appropriate.

49. Deposition lines 30:4-31:3 discuss Therefore, *in camera* treatment is appropriate.

50. Deposition lines 44:19-45:4 refer to RX1194, a Confidential Document referenced above. Therefore, *in camera* treatment is appropriate.

51. Deposition lines 48:7-16 and 48:20-49:7 refer to PX8001, a Confidential Document referenced above, and discuss Therefore, *in camera* treatment is appropriate.

52. Deposition lines 106:11-22: reference RX1205, a
53. Deposition lines 127:6-128:14; 128:17-113:10; and 133:22-140:8: discuss Therefore, in camera treatment is appropriate.

54. Deposition lines 31:4-20: discuss Therefore, in camera treatment is appropriate.

55. Deposition lines 68:7-74:13: Thus, in camera treatment is appropriate.

56. Deposition lines 75:19-76:18: Therefore, in camera treatment is appropriate.

57. Deposition lines 143:15-144:9; and 149:23-150:11 directly quote Paragraph 7 of PX8001, which is an above referenced Confidential Document. Because the Deposition lines are a direct quote of PX8001, the harm to 7-Eleven would be the same if the document was shared as if the Deposition testimony was shared. Therefore, in camera treatment is appropriate.

Discuss PX8001 Paragraph 11, which is an above referenced Confidential Document. Because the Deposition lines are a direct quote, the harm to 7-Eleven would be the same if the document was shared as if the Deposition testimony was shared. Therefore, *in camera* treatment is appropriate.

59. Deposition lines 36:5-37:18 and 46:2-18:4 refer to RX1194, an above referenced Confidential Document. RX1194 is an above referenced Confidential Document, and discuss. Therefore, *in camera* treatment is appropriate.

60. Deposition lines 38:22-39:13; 39:19-23; 40:4-41:7; and 41:24-42:21 refer to RX1194, an above referenced Confidential Document, and discuss. This would give those competitors an unfair advantage over 7-Eleven. Therefore, *in camera* treatment is appropriate.

61. Deposition lines 63:13-64:10 discuss. Therefore, *in camera* treatment is appropriate.
62. Deposition lines 67:6-16: reference Therefore, \textit{in camera} treatment is appropriate.

63. Deposition lines 113:24-115:2: reference RX1195, Therefore, \textit{in camera} treatment is appropriate.

64. Deposition lines 79:4-19 and 80:11-25 Therefore, \textit{in camera} treatment is appropriate.

65. Deposition lines 158:12-160:9; 167:20-171:12 discuss paragraph 17 of PX8001, Therefore, \textit{in camera} treatment is appropriate.

66. Deposition lines 166:4-23 discuss Therefore, \textit{in camera} treatment is appropriate.

67. Deposition lines 103:4-104:9 discuss
lines 115:4-121:8 quote directly from a

Deposition lines 121:12-125:10 discuss

. Deposition lines 147:14-148:12 discuss

Therefore, these documents require in camera treatment.

68. Deposition lines 26:9-28:13: discuss

Deposition lines 29:15-30:3 discuss

Deposition lines 34:12-25 discuss

Deposition lines 42:21-44:2 discuss

Deposition lines 47:11-24: refers to

This would place 7-Eleven at a competitive disadvantage. Therefore, in camera treatment is appropriate.

69. Furthermore, deposition lines 42:21-44:2 and 47:11-24 quote RX1194, an above referenced Confidential Document.

Therefore, in camera treatment is appropriate.

70. Deposition lines 161:2-6 and 161:17-32 discuss DX1198.

. Deposition lines 162:3-164:20 describe DX1199.

Therefore, in camera treatment is appropriate.
I declare under penalty of perjury that the foregoing is true and correct. See 28 U.S.C. § 1746.

Executed on May 7, 2021

Shazad Hooda
PUBLIC

EXHIBIT 2

PX3204

7_ELEVEN_ALTRIA_00013381-00013383

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 3

ATTACHMENT TO PX3204

7_ELEVEN_ALTRIA_00013384

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 4

ATTACHMENT TO PX3204

7_ELEVEN_ALTRIA_00013385

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 5

ATTACHMENT TO PX3204
7_ELEVEN_ALTRIA_00013386
[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 6

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005441

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 7

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005442

[REDACTED IN ITS ENTIRETY]
EXHIBIT 8

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005443

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 9

RX1702

7_ELEVEN_ALTRIA_00002466-00002468

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 10

PARTIAL REDACTION

RX1703

7_ELEVEN_ALTRIA_00004632-
00004635
From: Wilhelm, Phil <O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIOHF23SPDLT)/CN=RECIPIENTS/CN=DDFBAFE649644E14A53FC9950B79860B-WILHELM-PH>
To: Sabina Ahuja
Subject: New item sheets
Attachments: Info Dispatch - NJOY Device.pdf

FYI on examples for the new item sheets. They are all the same as the info has the same verbiage. These look better on our system, as to the way it loads on the PDF that I have attached.
Senior Category Manager-Other Tobacco Products
7-Eleven Inc.
Cypress Waters
3200 Hackberry Rd
Irving, Texas 75063
Office 972-628-6628
Phil.Wilhelm@7-11.com
PUBLIC

EXHIBIT 11

PARTIAL REDACTION

RX1704

7_ELEVEN_ALTRIA_00004636-00004641
Franchisees are independent contractors who control their employment matters and control the manner and means of the daily operation of their stores. Franchisees are obligated to follow the requirements of the franchise agreements they signed, most of which generally require purchasing certain merchandise from recommended vendors and carrying certain designated items and categories. 7-Eleven Confidential and Proprietary Information
PUBLIC

EXHIBIT 12

RX 1205

7_ELEVEN_ALTRIA_00015336

[REDACTED IN ITS ENTIRETY]
EXHIBIT 13
ATTACHMENT TO PX 3205
7_ELEVEN_ALTRIA_00005438
[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 14

ATTACHMENT TO PX 3205

7_ELEVEN_ALTRIA_00005439

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 15

RX119/ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005440

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 16

RX1700

7_ELEVEN_ALTRIA_00000901

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 17

PX1701

7_ELEVEN_ALTRIA_00000904

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 18

RX1212

7_ELEVEN_ALTRIA_00014311

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 19

RX1193

7_ELEVEN_ALTRIA_00008205

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 20

RX1194

7_ELEVEN_ALTRIA_00008206

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 21

RX1195

7_ELEVEN_ALTRIA_00008207

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 22

RX1215

7_ELEVEN_ALTRIA_00008185

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 23

RX1706

7_ELEVEN_ALTRIA_00013872-00013873

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 24

RX1706

7_ELEVEN_ALTRIA_00013874

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 25

RX1706

7_ELEVEN_ALTRIA_00013875

[REDACTED IN ITS ENTIRETY]
PUBLIC
EXHIBIT 26
RX1706
7_ELEVEN_ALTRIA_00013876
[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 27

RX1706

7_ELEVEN_ALTRIA_00013877

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 28

RX1706

7_ELEVEN_ALTRIA_00013878

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 29

RX1706

7_ELEVEN_ALTRIA_00013879

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 30

RX1706

7_ELEVEN_ALTRIA_00013880

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 31

RX1706

7_ELEVEN_ALTRIA_00013881

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 32

RX1706

7_ELEVEN_ALTRIA_00013882

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 33

RX1706

7_ELEVEN_ALTRIA_00013883

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 34

RX1706

7_ELEVEN_ALTRIA_00013884

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 35

RX1708

7_ELEVEN_ALTRIA_00018194

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 36

RX1708

7_ELEVEN_ALTRIA_00018195

[REDACTED IN ITS ENTIRETY]
PUBLIC

EXHIBIT 37

PARTIAL REDACTION

PX8001

Declaration of Jack Stout
DECLARATION OF JACK STOUT

SENIOR VICE PRESIDENT – MERCHANDISING AND DEMAND CHAIN

7-ELEVEN INC.

I. BACKGROUND

1. 7-Eleven was founded in Dallas, TX in 1927, and has since grown to become the largest convenience store chain in the United States and the world. There are approximately 9,300 7-Eleven stores located in the United States, approximately 80% of which are franchised and 20% of which are corporate owned. There are approximately 70,000 stores worldwide.

2. I have been Senior Vice President for Merchandising and Demand Chain at 7-Eleven since 2017. In my role, I manage the merchandising division, which is responsible for sourcing and pricing of products sold at our stores. I also manage 7-Eleven’s demand chain, which is responsible for getting products from suppliers to stores. I have been at 7-Eleven since 2003, and have held a number of other roles in operations, strategic planning, and merchandising during that time.

3. Prior to my time at 7-Eleven, I worked for TXU Energy and Booz Allen & Hamilton, and I served as an Officer in the United States Air Force. I have an MBA from Duke University Fuqua School of Business, an MS in Applied Statistics from Wright State University, and a BS in Mathematics from Duke University.

II. TOBACCO SALES AT 7-ELEVEN

4.  

5.  

6.  

-1-
7. 

8. In recent years, cigarette manufacturers typically have raised prices for cigarettes 2-3 times per year by about 8 or 9 cents per pack.

9. 7-Eleven has regional pricing zones for combustible cigarettes.

10. 

11. After JUUL withdrew its fruit flavors at the end of 2018 and its mint flavor in November 2019, there was a brief period where competitors like NJOY were offering flavored pods.

12. The FDA has recently imposed a number of new regulations with respect to the sale of tobacco products. First, the FDA raised the minimum age to purchase tobacco products to 21, including combustible cigarettes and electronic cigarettes. Second, the FDA prohibited the sale of all flavored pod-based electronic cigarette products beginning in February 2020, with the exception of tobacco and menthol. 7-Eleven sells only FDA-approved vapor products, and has stopped selling fruit and mint-flavored products.
13. Open vape systems differ from closed systems because customers are responsible for filling their vaping devices with vape liquids and for maintaining their vape devices. The upfront cost of the vaping device is much more expensive, and they are more complicated to use than closed vaping systems. I am not aware of any company-owned 7-Eleven stores that sell open vape systems. 7-Eleven does not recommend the sale of open vaping systems at any of its locations, although franchisees are free to sell whatever products they choose.

14. Open vape systems are typically sold at vape shops rather than convenience stores because vape shops are more prepared to educate customers on the use of these complex products. Convenience stores are transaction-focused and typically do not provide the level of service that a true vape enthusiast would look for in a primary tobacco retailer.

III. ALTRIA'S DISCONTINUATION OF MARKTEN

15. Until the end of 2018, Altria had made investments at 7-Eleven to grow MarkTen, its in-house brand of electronic cigarettes.

16. However, in December of 2018, Altria announced that it would be discontinuing MarkTen and shutting down its NuMark division.

17. In early 2020, Altria announced that it was terminating its services agreement with JUUL.
Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this 11th day of March, 2020:

[Signature]

Jack Stout
Senior VP – Merchandising & Demand Chain
7-Eleven Inc.
EXHIBIT 38
PX7044
PARTIAL REDACTION
Deposition of Jack Stout
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of
ALTRIA GROUP, INC.,
a corporation,

-and-

Docket No. 9393

JUUL LABS, INC.,
a corporation,

Respondents.

* * HIGHLY CONFIDENTIAL * *

(Via remote videoconference)

March 10, 2021
11:03 a.m. Eastern

Highly Confidential/Outside Counsel

Eyes Only Videoconference Deposition of

JACK STOUT, before Kristi Cruz, a Notary
Public of the State of New York.
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<td>Attorneys for Respondent Altria Group, Inc.</td>
<td>AMANDA CHILDs, ESQ., House Counsel, 7-Eleven</td>
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PX7044-002
1. J. Stout - Outside Counsel Eyes Only
2. Jack Stout,
called as a witness, having been duly
sworn by a Notary Public, was examined
and testified as follows:

EXAMINATION BY

7. Mr. Snidow:

Q. Good morning, Mr. Stout.
A. Good morning.

Mr. Snidow: Before we begin, I do
want to designate the transcript of this
deposition to be outside counsel only, at
least for the present time.

Q. Could you please state your name for
the record?

Mr. Manley: J.J., this is Robert
Manley. I apologize for interrupting.

Given that we're on Zoom and I'm not sure
I can see everybody, can we make
announcements of who's on the record
[inaudible].

And I'm happy to start because
Amanda Childs of 7-Eleven's Legal
Department is here with us in the room.

This is Robert Manley. I'm with outside
counsel McKool Smith, I'm also present in
the room with Mr. Stout. And then we have
our colleague Lisa Houssiere attending
remotely. So, that's who's here on behalf
deponent.

Mr. Snidow: Very good. I'm with
Altria. I'm JJ Snidow on behalf of
Altria, and I'm joined by James Rosenthal,
Adam Sowlati, Hayter Whitman, and Alison
Zoschak.

Mr. Manley: All outside counsel?

Mr. Snidow: Yes.

Mr. Manley: Very good. Thank you.

On behalf of the FTC?

Mr. Lee: This is Joonsuk Lee. I am
an attorney with the FTC, complaint
counsel in this proceeding. And here with
me is another attorney from the FTC,
Michael Lovinger.

Ms. Chukwuogo: For JLI, Chinwe
Chukwuogo from Cleary Gottlieb.

Mr. Manley: And everyone is outside
counsel, other than the FTC group, true?

Mr. Snidow: That's true.
Q. Mr. Stout, do you understand that you are under oath today, just as if you were testifying in a courtroom?
A. Yes, I do understand that.
Q. If at any time you do not understand a question of mine, please do ask me to rephrase it. I'm happy to do so.
A. That's okay.
Q. And then the flip side of that is, if you do answer my question, I'll assume that you did understand it.
A. I got it.
Q. While I'm asking questions, the other attorneys present are allowed to lodge objections. They'll say "objection." Even when they do that, though, in every case except one, you'll still need to answer my question.
A. Makes sense, yes.
Q. And the one exception to that is, if your attorney thinks that I'm trying to get into attorney/client privilege, they'll lodge an objection of privilege, and you won't answer the question. I'm not going to try to do that, but that's the one situation where you won't actually answer.
A. Yes.
Q. We will try to take a break every hour or hour-and-a-half, but if you want a break, you can call for one at any time; bathroom, food, just taking a break, anything you want. Okay?
A. Great. Thank you.
Q. Is there any reason why you're unable to give accurate testimony today?
A. Not to my knowledge.
Q. Any other procedural questions for you, before we go on?
A. I don't think so.
Q. Do you understand that you're here today to give testimony in a legal case between the FTC and Altria and JUUL?
A. Yes, I do.
Q. Are you aware of the nature of the FTC's allegations?
A. Yes. I am now.
Q. Mr. Stout, you have a binder in front of you which contains courtesy copies of some of the documents that I might want to use with you today. You can go ahead and bring that over to you, if you want.
A. Sure.
Q. You prepared a declaration in connection with this matter; is that right?
A. That is correct.
Q. I want to ask you a couple of questions about it. So, if you'll open to tab 1 of the binder, which is DX 1190.
A. I am here.
Q. Does this appear to be your declaration?
A. It does appear to be my declaration.
Q. And that's your signature on the last page there? It looks like you signed it March 11th?
A. Yes, it is.
Q. How did you come to prepare this declaration?
A. So I had a, I guess, two interviews with the FTC, and they actually prepared the declaration from their notes. My team and I reviewed the declaration for factual accuracy, had my team make any changes they felt necessary, and communicated those back to the FTC, and then we signed it.
Q. Who did you speak with at the FTC, do you remember?
A. I actually don't recall the names. It was about a year ago.
Q. That's fine. But fair to say the FTC actually wrote the words that are in this declaration?
A. That's correct.
Q. Fair to say that you provided input but only minimal changes were made after that?
1. J. STOUT - OUTSIDE COUNSEL EYES ONLY

A. To be honest, I don't know specific
changes that were made. I know that, you
know, my team reviewed it for factual
accuracy, made any changes that they felt
necessary, but I didn't review the changes one
by one.

Q. By that, you mean you personally
didn't review the changes that your team made?
A. Correct. I did not review the
individual changes one by one; I just reviewed
the final document.

Q. Did you have a chance, in preparing
for this deposition, to take a look at your
declaration again?
A. Yes, I did, on Friday.
Q. Anything in the declaration that you
saw that you thought was not accurate, as of
now?
A. Not to my knowledge.
Q. Anything in the declaration that you
thought needed to be updated, based on events
that have occurred since March 2020?
A. I don't believe the events since
then would change anything factually about

Q. When you spoke to the FTC, did you
talk to them about the state of the e-vapor
market in March 2020?
A. Yes.
Q. Do you remember what you told them?
A. Not specifically, beyond what's in
the declaration.
Q. Do you have a view as to whether or
not the e-vapor market in March 2020 was
competitive?
MR. LEE: Objection to form. Vague.
Q. You could answer.
A. Could you repeat the question?
Q. Sure. Do you have a view as to
whether or not the e-vapor market in
March 2020 was competitive?
A. I believe the market was
competitive.
Q. And do you believe the market today
is competitive?
MR. LEE: Objection to form.
A. Yes.
Q. Could you just repeat that again,
Q. Okay. All right. So, based on that definition, I'm probably going to use the term e-cigarette, if that's okay with you.
A. Sure.
Q. Are you familiar with the company known as JUUL Labs Incorporated?
A. I am.
Q. If I refer to JUUL, would you know I'm referring to that company?
A. Yes, I will.
Q. In the documents that we looked at, I noticed the abbreviation SE. I assume that refers to 7-Eleven Incorporated?
A. That's correct.
Q. If I refer to pod-based e-cigarettes, do you know what that means?
A. Yes, I do.

Q. How do you understand that term?
A. I would assume that to mean a prefilled pod, some form of nicotine liquid in the pod that's interchangeable with a device that's typically powered by a battery.
Q. Do you understand JUUL's product to be a pod-based product?
A. Yes, I do.
Q. Do you understand MarkTen Elite to have been a pod-based product?
A. Yes, I do.
Q. Are there any other pod-based products that you're familiar with in the e-vapor market?
A. There are other ones. I think the NJOY Ace is an example, and there are probably some others. I'd have to think through that, but yes, I'm aware there are other pod-based products on the marketplace -- in the market.
Q. Are you aware of whether Vuse Alto is a pod-based product?
A. I believe it is.
Q. If I refer to Cigalike products, do you know what that term refers to?
A. That's my understanding; though admittedly, I don't have detailed knowledge of those products.
Q. That's fair. I refer to nicotine salts, is that a concept you're familiar with?
A. I've heard the term. I don't have very much knowledge in this area.
Q. Can you tell me what your understanding of the term is?
A. My understanding is that it's an ingredient sometimes found in some of these products. I don't know the kind of chemistry of it or even the exact purpose of it.
Q. I was not going to ask you about the chemistry, but do you know what the purpose of nicotine salts in an e-cigarette is?
A. Not precisely, no.
Q. If I refer to flavors for e-cigarette product, do you know what that refers to?
A. Well, I can tell you what I will assume for this, is that it would be, essentially, flavors of these devices, other than those that attempt to be specifically

Q. In your view, JUUL is not a Cigalike product, true?
A. Sure.
Q. In your view, MarkTen Elite is not, was not a Cigalike product, true?
A. I would agree with that.
Q. And are you familiar with the product that was called MarkTen XL or MarkTen Bold or sometimes just MarkTen?
A. I am familiar with the brand MarkTen prior to the introduction of MarkTen Elite, but those other specific variants of MarkTen, I don't recollect.
Q. Are you aware that, like you said, other than MarkTen Elite, that those were Cigalike products?
A. That's my understanding; though
tobacco, replicate the flavor of natural tobacco.

Q. So, that's almost exactly right. I'm going to use it to refer to what you said, flavors of e-cigarette products, other than tobacco or menthol or mint flavors, if that works?

A. Okay. I can agree, and then I'll understand what you mean.

Q. If I refer to smoker conversion, is that a concept that you're familiar with?

A. I'd say potentially. Again, I'll throw my definition out. If you mean converting from combustible cigarettes to some electronic cigarette or vapor form as an alternate source of nicotine, that's how I would use the term.

Q. That's great. That's exactly how I use it.

In your view, is it important for an e-cigarette to be able to convert smokers?

A. I don't have an opinion on that.

Q. Do you have an opinion as to whether or not an e-cigarette product would be more successful if it can convert smokers?

Mr. Lee: Objection to form.

Q. If I refer to smoker conversion, is that a concept that you're familiar with?

A. I think it's reasonable to assume there's a marketplace for people that would like to move away from combustible cigarettes, and that that might provide some sales benefit, sure.

Q. Let's look a little more at your declaration, if I could turn your attention to paragraph 2, which has part of your bio. Am I correct that you came to work at 7-Eleven in 2003?

A. That's correct.

Q. And right now, you're the senior vice president for merchandising and device chain; is that right?

A. Demand chain; not device chain.

Q. Yeah, I mispoke.

A. It's essentially the way we phrase supply chain.

Q. You've been in that role since 2017?

A. I was promoted to senior vice president in 2017. The form of that job has changed slightly, what I'm responsible for over the last few years. But yes, effectively been in the senior vice president of merchandising and some-other-stuff role since 2017, and my current title is senior vice president of merchandising and demand chain.

Q. What are your responsibilities in that role, at a high level?

A. So, we're responsible, essentially, for the product assortment in the stores; deciding which products our stores will carry, and, frankly, which ones we will recommend for franchise stores to carry.

In some cases, we're responsible for product development of things like fresh food and private brands.

We're also responsible for negotiating the terms under which we will purchase products from national-brand suppliers and providing those terms to our stores so that the stores actually make the purchases, but we negotiate those terms. And finally, we're responsible for maintaining the relationships with our third-party distribution partners to get products from the manufacturers to the stores themselves.

Q. What portion of your time do you spend on the tobacco space, generally?

A. I'd say it varies. If I look over the course of the year, focus specifically on that, less than 5 percent of my time.

Q. And e-vapor, would you consider that to be a subset of the tobacco category?

A. Yes.

Q. Do you track market shares of companies in the e-vapor space?

A. Personally, I do not track on an ongoing basis, no.

Q. Does someone on your team, do you know?

A. I think it's likely that my tobacco category team would be familiar, at least in broad terms, with market share.

Q. Do you know which four or five companies had the highest market share in the e-vapor space?

A. If you ask me to name the top five, I don't know that I would go five for five.
Q. Is it fair to say that one reason for that is because the exact ordering has kind of changed around over the past few years?

A. It's basically because my job is at a fairly higher level than tracking any individual category's market share.

Q. How about pricing? Do you have a role in pricing e-vapor products?

A. So, I don't personally get involved in the pricing decisions for e-vapor products. I do have a team of people that make pricing-recommendation decisions. Our stores, again, are empowered to make changes to our recommendations, but we provide a recommendation to the store on how they should price those products, as we do for any product in any category.

Q. What factors do you consider when doing that, besides the manufacturer's suggested retail price?

A. So, again, any individual category manager, and with support of the pricing team, may prioritize different factors. In general terms, again, the idea is to balance unit velocity and profit per unit to try and maximize profit for the store.

Q. Do you track prices of e-vapor products?

A. Not personally, no.

Q. Does someone on your team?

A. I'm sure they do, yes.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

Q. And is it fair to say that the e-cigarette category is expanding today?
   A. I actually don't know that to be the case.

Q. Do you have any reason to think that the e-cigarette category is contracting today?
   A. I haven't reviewed the data recently. I know that we saw a flattening of sales in late 2019. As you might imagine, in 2020 we've been focused on a lot of COVID-related product categories. I haven't really reviewed the sales trends of e-cigarettes in recent times in any detail that would let me comment on your question with certainty.

Q. And that's fair. I'm just asking if you have any affirmative reason to think that the category has contracted in 2020.
   A. No.

Q. And do you have any affirmative reason to think that the category has become less competitive in 2020?
   A. No.

Q. Thanks for clarifying that. Is it fair to say that 7-Eleven is an important player in the retail space for e-cigarettes?
   A. Yes.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

1 attachments line at the top?
2 A. Yes.
3 MR. MANLEY: JJ, this is Robert Manley. I apologize for interrupting.
4 Did the court reporter place the document in our Box?
5 MS. ZOSCHAK: 1193 should be in the Box. Have you tried refreshing?
6 (Discussion held off the record.)
7 BY MR. SNIDOW:
8 Q. 1194. And I will represent to you, this is one of the attachments to the email we just
9 looked at. If you could turn to slide 2, and the top says, "7E is winning in the market."
10 A. I'm there.
11 Q. Okay. The first actual bullet down says, "Largest retail footprint in the world."
12 Do you see that?
13 A. Yes.
14 Q. That's referring to the fact, of course, that 7-Eleven is a major retailer, right?
15 I didn't hear you. Did you say yes, Mr. Stout?
16 A. Yes, correct.
17 Q. And it's fair to say that 7-Eleven is, of course, a major player in the convenience store space, true?
18 A. Very true.
19 Q. It's fair to say what 7-Eleven does has an impact on the broader convenience store market, true?
20 MR. LEE: Objection to form.
21 A. I don't know that I would
MR. LEE: Objection to form.

Q. If you look at slide 4 of this, at the top it says, "Over the past year." Do you see that?
A. Yes.
Q. That says, "Over the past year, JUUL has seen exponential growth with a current run rate of over $280 million"; is that right?
A. That's what it says.
Q. And feel free to look back at the date, but when it says "Over the past year" there, it's referring to the period from August 2017 to August 2018?
A. Correct.
Q. And that is before Altria's investment in December 2018, right?
A. That's correct.

Q. I'm happy to rephrase it. It's fair to say that before Altria invested in JUUL, JUUL's sales rose substantially, fair?
A. Yes.
Q. Let's turn to slide 5, and it's the one that says "Revenue growth for JUUL."
A. Yes.
Q. What the two graphs are doing here is, it's showing growth in starter kits and then the growth in pods; is that right?
A. That's what these two graphs appear to show, yes.
Q. Do you know what I mean, when I say razor blade model for sales?
A. I would assume you mean the device that's permanent and reusable cartridges or similar that are to be used with that permanent device.
Q. That's right.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

Q. And the chart on the left is showing that from the period from July 2017 to August 2018, the sale of JUUL starter kits rose substantially, right?
A. Yes.
Q. And the chart on the right shows that the sale of JUUL pods rose substantially over that same period, right?
A. I guess I would just say, from my perspective, when sales go up, as long as profit follows, that’s a good thing. So, sure.

Q. It would be a bad sign if you didn’t see strong sales in the pods, right?
MR. LEE: Objection to form.
A. If that was your strategy, sure. Any time you miss your own goals, that’s a bad thing.
Q. That's fair.

A. Again, I don't know what the rate of decline in 2015 was, so I'm not certain. I don't remember it being a disruptive force in 2016.

Q. And that's exactly what I'm getting at.

A. Correct.

Q. Is that fair to say because those products were not successful enough at converting smokers?

A. I have no idea. I mean, I really -- and I'm not trying to be difficult here. I truly don't know whether those e-cigarettes were even attempting to convert smokers. So, I don't know if they were unsuccessful at something -- you know, I just don't know.

Q. But the rate of decline had not changed in 2016, right?

A. Again, I don't know what the rate of decline in 2015 was, so I'm not certain. I don't remember it being a disruptive force in 2016.

Q. And that's exactly what I'm getting at.

A. I wouldn't want to speculate, and I can't think of anything immediately, off the top of my head.

Q. Turn your attention now to tab 7 in your binder, which is DX 1196.

A. I'm there.

Q. Do you see this is an email from Marty Young?

A. Yes.

Q. He's got a Pax.com email address.

A. That's a conclusion that I think is hard for me to make definitively. Certainly, they coincided in time, and I think the interpretation of whether that's just coincidence in time or causal is left to the interpreter, and I don't have a strong opinion of that. Certainly, they occurred around the same time.

Q. Can you think of any other explanation for the change in the rate of combustible cigarette decline at the time when JUUL was taking over?

A. That's a conclusion that I think is hard for me to make definitively. Certainly, they coincided in time, and I think the interpretation of whether that's just coincidence in time or causal is left to the interpreter, and I don't have a strong opinion of that. Certainly, they occurred around the same time.
2 of predecessor to JUUL? 2 for the universe of smokers and how easy the product was to use.

Q. And he attaches an attachment called "JUUL IRI ending 11/29/15." Do you see that?
A. I do.
Q. I'll turn your attention, then, to that attachment, which is tab 8, and DX 1197.
A. I'm there.
Q. Let's pause a second so it can get loaded up. I guess I should have confirmed the date.
Q. Do you see on the email this is from January of 2016?
A. Let me turn back to the email.
January 7, 2016 is the date. The attachment appears to be from November 29, 2015, at least in the title of the attachment.
Q. You see at the top, it says, "The fastest growing top ten vapor brand in U.S. convenience"?
A. Yes.
Q. Do you see the third bullet down, it says, "JUUL is the first e-cig that can match satisfaction of a cigarette"? Do you see where it says that?
A. I do.
Q. Is it your understanding that JUUL was particularly good at providing smokers with the satisfaction that a cigarette did?
A. Honestly, I don't know. I'm personally not a consumer of any of this category, so I don't know. But certainly this sell sheet shows them making that claim.
Q. Do you have any reason to doubt it?
MR. LEE: Objection to form.
A. No specific reason to doubt it, but I also don't really have any specific reason to support it.
Q. Do you see where it says, "Easy to use for transitioning smokers," in the fourth bullet there?
A. Yes.
Q. Is it your understanding that JUUL was a product that smokers found easy to transition to?
MR. LEE: Objection to form.
A. I don't think I could answer broadly for the universe of smokers and how easy the product was to use.
Q. Same question: Any reason to doubt what's stated there about JUUL?
A. No real reason to doubt or to support it. I would just note that manufacturers put a lot of fliers together with a lot of claims. And so, I don't have any reason to doubt this one specifically, but no reason to support it either just because a manufacturer claims it.
Q. If you look at the bottom part of that document, do you see some pricing information listed for JUUL?
A. Yes.
Q. And these are prices as of, like you said, end of 2015 or early 2016?
A. That's what they appear to be, yes.
Q. So, that's well before Altria's investment in JUUL in December 2018, right?
A. Correct.
Q. And it says that the MSRP for JUUL is 49.99, right?
Q. Are you aware that R.J. Reynolds has the Vuse e-cigarette product?
A. I am.
Q. And then the next one is Lorillard, right?
A. Yes.
Q. And are you aware that they used to have the blu or myblu e-cigarette product?
A. I'm aware of the brand. I wasn't aware it was a Lorillard brand at the time.
Q. And the next one is Logic, correct?
A. Correct.
Q. The next one is NuMark, correct?
A. Correct.
Q. Are you aware of what that product is?
A. I am not.
Q. How about JAK cig? Do you see that one?
A. I'm unaware of that product, as well.
Q. Number 7 is NJOY. I assume you're familiar with that one?
A. I am familiar with NJOY as a brand.
Q. The next one is CB Dist. Do you see that?
A. Yes.
Q. Are you aware of what that product is?
A. Not from this abbreviation, no.
Q. All the way down at 9 is Pax Labs, right?
A. Right.
Q. You can probably tell from context, but I'll represent to you that they were a predecessor to JUUL.
A. Yes.
Q. My question is: You provided a list of the market leaders in your declaration, and we can look at it, but is it fair to say that the list now looks a lot different than it did at the time?
A. I would say that there has definitely been a change in the order at the top and that JUUL or Pax Labs at the time has moved up. So, if you want to characterize that as substantial change, I guess, yes, I would agree with that.
Q. What you're saying is that the identity of the market leader in e-cigarettes has changed over the years, right?
A. Yes.
Q. And the identity of the number two and the number three slots, that has changed over the years?
A. Yes.
Q. And the market shares of the various companies, that has fluctuated over the years, right?
A. Correct.
Q. Fluctuated substantially, even over a short period of time, right?
MR. LEE: Objection to form.
A. Could you define what you mean by, "short period of time"?
Q. Let's start with this: The market shares have fluctuated substantially, right?
A. Correct.
Q. This is a 2016 document.

MR. LEE: Objection to form.
A. I think they're not perfectly predictive, correct. But there is, certainly -- knowing who the market share's leader are four or five years out is probably at least indicative of the more likely people to be market share leaders in four or five years later. So -- but certainly, it's not perfectly predictive, and this is an example of that.
Q. And what you mean is, for example, JUUL's number nine here, and they're not number nine anymore, right?
A. Correct.
Q. And the other companies, you know, they've had market shares that have...
fluctuated, right?
A. Correct.
Q. If you look at the bottom half of this page, do you see -- not really a bullet, but do you see the point where it says "All about the repeat purchases"?
A. Yes.
Q. And the bullet says that "JUUL starter kits versus JUUL refill pod sold ratio is 1 to 5.40 nationally per store," right?
A. I see that bullet.
Q. And the bullet says that "JUUL starter kits versus JUUL refill pod sold ratio is 1 to 5.40 nationally per store," right?
A. I see that bullet.
Q. Is there a name for that ratio, in your field?
A. I don't have a term for that that I'm familiar with.
Q. But what it's saying is that, you know, on average, a person who purchases the JUUL device is likely to buy 5.4 refill products, right?
A. Well, I think it's hard to conclude that with certainty. That seems like a potentially reasonable assumption. I think it's really just the overall sales ratio. So, you know, the same person could buy multiple...
J. STOUT - OUTSIDE COUNSEL EYES ONLY

Q. And am I right, that's the document he's describing in the text when he says, "Attached is our overall plan for 2019 we presented to the VPs in October."

A. That seems to be the most likely of these attachments. And he has also attached what looks to be a couple of spreadsheets with team goals. But the overall plan, I would infer from this email that it's likely to be the plan that he intended to present in October.

Q. Turning to tab 10, which is the attachment to that email and in EX 1199.

A. I'm there.

Q. I guess if you'll just turn the page, you'll see this is the 2019 Tobacco Business Unit Plan?

A. That's correct.

Q. And it looks like it was put together by Phil Wilhelm and Shazad Hooda?

A. Correct.

Q. Who is Shazad Hooda?

A. In our tobacco business at the time, we had two senior category managers; one for cigarettes, and one for other tobacco products. Shazad was the senior category manager of cigarettes, and Phil was senior category manager of other tobacco products.

A. I would want to review it in more detail, but off the top of my head, correct, I don't have any reason to believe this is inaccurate. I would note that it was prepared for an internal audience, not sort of fact checked for sending it to convince anybody, other than their own bosses, of something. So, while I don't have any reason to believe it's inaccurate, it's a dif- -- my point is,
14 Q. Taking a step back from the document for a second, Mr. Stout, is it your understanding that the market has shifted towards pods over the last few years?
15 A. Well, certainly at this time point, we were seeing stronger growth in pods than Cigalike devices.
16 Q. Has that trend continued, do you know?
17 A. I think it has, but again, I don't spend a lot of time in the detailed data on this in the vape category, vapor, e-cig, all that category. But my broad understanding is yes, that pod-based systems would continue to outperform Cigalikes.
18 Q. Has that trend continued, do you know?
19 A. I think it has, but again, I don't spend a lot of time in the detailed data on this in the vape category, vapor, e-cig, all that category. But my broad understanding is yes, that pod-based systems would continue to outperform Cigalikes.
20 Q. Is it your understanding that consumers tend to prefer one or another, as between pods and Cigalikes?
21 A. I actually don't know. I think in most categories, consumers have a preference for certain form factor. I presume that's likely to be the case in this one. I would assume our category managers actually do get into that level of knowledge of consumer insight. Again, the level of detail that I get into in this business, I wouldn't want to characterize that as true. I just don't know.
22 Q. By "form factor," do you mean the Cigalike form versus the pod form?
23 A. That's my understanding.
24 Q. Let's look at tab 13. It's DX 1202. A. I'm there.
25 Q. This is an email from March 20th of 2018?
26 A. It does appear to be that.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

Q. So judging from context, this email is something that 7-Eleven corporate wanted various stores to be aware of?
A. Various stores and then the operational leadership that helps kind of provide support to those stores because of the cc line, right, that we wanted our operations team and our store operators to have this information, at least for some portion of stores. I don't know which stores were in select.
Q. In the text of the email, it says, "The hot new item in the tobacco industry is pod-based electronic cigarettes." Do you see that?
A. I do.
Q. And is that consistent with your understanding?
A. Again, at the time, seeing the growth in JUL and, you know, this time period is right in the middle of that graph that we talked about earlier, it's not surprising that you might make such a statement.

Q. And that's true, even as compared to MarkTen Elite and myblu, right?
A. Correct.
Q. And down a little bit later on the page, it says key points about JUL and then has a number of bullet points.
A. Yes.
Q. And the further bullet down says, "JUL is a premium vapor product attracting high-income consumers, a true traffic driver," right?
A. It does say that, yes.
Q. Any reason to disagree with that statement, that JUL was a premium product?
A. No, I don't have any reason to dispute that.
Q. Any reason to dispute the fact that JUL was attracting high-income consumers?
A. No reason to dispute that, no. But I guess I would note that we saw JUL sell to a lot of consumers. At this point in time, I don't have specific knowledge about what the income level was. But no, no reason to
dispute it.

Q. Fair to say, then, that JUUL was a differentiated product in this market?

MR. LEE: Objection to form.

A. Again, I don't know enough about the things that differentiated JUUL versus other pod-based systems. I would say that it was more successful than other products, and at least a lot of customers appeared from a sales perspective to [inaudible]. So, if that's what you mean by "differentiated," sure. I usually start talking about the product features that distinguish it. I don't have real knowledge of whether those features -- what those features would be to differentiate it.

Q. Do you know whether JUUL was differentiated because it had a better design?

A. You know, I heard some discussion about slick design, but I don't have any real knowledge of what made it slick.

Q. Do you have any knowledge of whether JUUL is differentiated because --

A. Slick is a really technical term here. Sorry.

Q. What about nicotine satisfaction?

Do you know whether JUUL was considered to be a premium product because it had better nicotine satisfaction?

A. I actually have no idea.

Q. Below that, it has some prices for JUUL.

A. Yes.

Q. And the first one there is a starter kit. Do you see that it's priced at 49.99?

A. Yes. And that is the same price that we saw from the 2016 document before, right?

A. That is correct.

Q. So from 2016 to March of 2018, at least at the end points, JUUL's price remained the same, right?

A. At least the suggested retail. It appears that this is the suggested retail that we are recommending to the stores because it
Q. So, roughly six months after Altria's investment in JUUL in December 2018?
A. That's what it appears to be, yes.
Q. What he's saying is, six months after that judgment, NJOY is growing faster than JUUL ever has, right?
A. That's what he's claiming here, yes.
Q. And --
A. That's basically what the report from Morgan Stanley -- he's saying the report from Morgan Stanley points out that NJOY is growing faster than JUUL ever has.
Q. In the last sentence of that paragraph he says, "Our unit sales have been entirely incremental to that category." Do you see that?
A. Yes.
Q. That's suggesting that NJOY is expanding the e-vapor market rather than gamblizing sales, right?
A. That's his assertion here, yes.
Q. In other words, he's saying that NJOY's output in the market is going up, right?
A. He's saying their sales are going up and that it is not taking sales away from other, I guess, e-vapor products.
Q. And doesn't that imply that sales in the broader market are going up?
A. Yes, that's his assertion, yes.
Q. If you'll turn the page, you'll actually see the Morgan Stanley report that he sent you.
A. Yes.
Q. The first sentence says, "JUUL's success has paved the way for new entrants"; is that right?
A. It does say that, yes.
Q. And do you agree that six months after Altria invested in JUUL, that new entrants were coming online?
A. Yes.
MR. LEE: Objection. Calls for speculation.
Q. I'm sorry, Mr. Stout. Did you say no?
A. No reason to think it was decreasing.
Q. So no reason to think that six months after Altria's investment in JUUL, competition was decreasing at this time?
A. I haven't read this Morgan Stanley research report. Repeat your question again, I'm sorry.
Q. If I could put that in layman's terms, is that saying people saw how well JUUL was doing and wanted to get involved, as well?
A. I haven't read this Morgan Stanley research report. Repeat your question again, I'm sorry.
Q. I was going to say, in layman's terms, was it saying that JUUL was successful, which prompted other people to get involved in the market, as well?
A. I mean, I'd want to read it in more detail to see if I agree with that.
Q. Do you mind if I take some time to read the paragraph?
A. Not at all.
Q. So, you said in layman's terms --
how did you phrase that again?  
Q. Given JUUL being successful in the market, if that prompted other people to want to get involved, as well.  
A. Sure, yeah, I think that's right.  
Q. Then in the last sentence there, "It says JUUL's sales growth has been resilient despite pulling those flavors from retail distribution, but recent Nielsen data and anecdotal evidence suggests that new entrants are starting to gain traction." Do you see that?  
A. I do.  
Q. Do you agree with that, that new entrants were starting to gain traction in the market?  
A. Maybe a modest amount of traction.  
Q. The next sentence in the next paragraph says, "NJOY's comeback underscores the opportunity. NJOY's recent return to the market early this year after a brief period of success in 2012, 2013 and then fall into bankruptcy in 2016 underscores the opportunity for greater competition."

Did I read that right?  
A. You read it correctly.  
Q. What that's saying is, to break it down, first of all, that NJOY had suggest in 2012 and 2013, true?  
A. A brief period of success. I mean, sure, I guess I would characterize it that way.  
Q. And then they went bankrupt in 2016, right?  
A. Yes.  
Q. And then six months after Altria's investment, it sounds like they were gaining traction again; is that fair?  
A. They were certainly trying to, you know, certainly trying to.  
Q. Midway through the paragraph, do you see the sentence that says, "The NJOY Ace contains a 5 percent nicotine salt concentration, similar to JUUL"?  
A. I do see that.  
Q. I think you said this, but it's your understanding that NJOY Ace is a pods product?  
A. That's my understanding, yes.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

1 year over year. This is a Morgan Stanley report. I assume they probably have the same abbreviations. That would be a common interpretation of that.

Q. And then it says, "in the L12W."

Do you read that to mean last 12 weeks?

A. Again, we don't actually use that type of abbreviation much here, but yes, that would be my kind of educated guess as to what they mean.

Q. And assuming we're right on the abbreviations, you would agree that that's pretty robust growth for NJOY, right?

A. I guess it depends on what you mean by robust. It's a high percent. I don't know what the base was, and I don't know what their expectations were, and I don't know if they mean in units or sales dollars. There's a lot to interpret here. So terming this "robust growth" -- I mean, in theory they could have sold one unit at a really high price the year before and sold 2.35 units, whatever -- you know what I'm saying, right? I just don't know.

Q. And I take all your caveats, but this is saying that that high-percent growth occurred by a competitor other than JUUL six months after the investment, right?

A. Yes.

Q. The end of that paragraph has a sentence that begins, "Its growth has been facilitated by heavy promotion."

Do you see that?

A. Yes.

Q. "Its growth has been facilitated by heavy promotion behind Ace device which is being sold at 99 cents versus 34.99 for JUUL."

Do you see that?

A. Yes.

Q. Assuming that 34.99 there is an MSRP, that number is lower than the JUUL MSRP that we looked at before, right?

A. 34.99 is a lower number than 49.99 that we looked at before. I don't know this 34.99 to be an MSRP. It's lower by precisely $15 than the number we looked at before.

Q. It's about 30 percent lower?

A. That's correct.

Q. Assuming our assumptions are correct, that implies that six months after Altria invested in JUUL, JUUL's price, as an MSRP, is 30 percent lower than it had been in 2018, right?

MR. LEE: Objection to form.

A. I don't know that this is an MSRP or promoted price or what, so I don't know that I can definitively agree with that.

Q. It also notes that the Ace device is being sold for 99 cents.

Do you see that?

A. I do see that.

Q. Do you remember those 99 cents or $1 promotions occurring before this time period?

A. I'm trying to think. I don't have specific recollection prior to this 99 cents device. I would note that there have been other devices that have used really low price points like this. I think we've seen it at least on promotion from Vuse Alto, as well.

Q. That was actually my next question.

Do you remember that more than one e-vapor brand, it doesn't matter if you remember which one, but more than one of them started doing 99 cents promotions?

A. Again, I could be inaccurate, but to the best of my recollection, at least the NJOY device, as well as the Vuse Alto, for some period promoted at a price point around 99 cents.

Q. And you do not remember those promotions occurring before June 20, 2019?

A. I don't have specific recollection. I cannot rule out that they might have.

Q. Do you remember them occurring during this time period, around June 2019?

A. I don't have specific recollection of getting particular -- well, I'll say this: My only specifics around this is that around this time of this meeting that took place, I recall them, NJOY promoting that 99 cents. The only reason I have that specific recollection is because we had a meeting about it.
Q. That's fair.
A. The only reason I remember the time of that meeting is because you put an email in front of me with a date stamp on it.
Q. If you look at the last sentence on this page, it says, "Historically, e-cig success has been volatile with many prior products growing rapidly at first, but ultimately disappointing."
A. I do see that.
Q. Do you agree with that statement?
A. I don't know that I would agree with the statement that any prior products have grown rapidly at first. I don't recall a litany of products that we got really excited about and then ultimately disappointed us. So no, I don't know that I would, you know, affirmatively agree with that statement.
Q. How about the "ultimately disappointing" part? Is it consistent with your recollection that some e-vapor products had initial success and then failed?
A. Again, I don't know that I would really characterize them as having a lot about and then ultimately disappointed us. So no, I don't know that I would, you know, affirmatively agree with that statement.
Q. At the bottom, there's a chart that shows a comparison of NJOY and JUUL X-months post launch.
A. I see the chart.
Q. Are you able to tell which one's NJOY and which one's JUUL?
A. It appears that the kind of thicker tall bars are -- are -- you know, bar chart is NJOY and -- I'm sorry, darker bars are NJOY, and the lighter bars are visible, at first, I didn't catch because they're pretty light on the page, are the JUUL and then -- I'm not sure what "ACV" in this -- how they're using ACV in here. I'm assuming it's some measure of velocity, but I don't know if it's for initial success, but we definitely introduced products that ultimately did not succeed in the marketplace.
Q. Do you see at the top of the next page it says, "Growing e-cig adoption presents incremental headwind to cigarette lines"?
A. I see that.
Q. The next sentence, it notes the popularity of two products, MYLÉ and STIG, which are salt based products.
A. I see that.
Q. Then I guess two sentences later, it says, "These products could also present competition to JUUL, though its growth remains strong?"
A. I see that.
Q. And I know that you personally don't have a lot of nicotine salts expertise, but this seems to be suggesting that those products could be competitive with JUUL, right?
A. So, those seem to imply that we believed these two, I assume, are salt based e-cig products. I'm not familiar with MYLÉ or STIG, but this seems to imply that in June 2019 that they believed that these two particular products you know, through industry contacts and consumers, thought that these two products could represent competition and also note that JUUL's growth remained strong.
Q. At the bottom, there's a chart that shows a comparison of NJOY and JUUL X-months post launch.
A. Do you see that chart?
Q. I see the chart.
Q. Are you able to tell which one's NJOY and which one's JUUL?
A. It appears that the kind of thicker tall bars are -- are -- you know, bar chart is NJOY and -- I'm sorry, darker bars are NJOY, and the lighter bars are visible, at first, I didn't catch because they're pretty light on the page, are the JUUL and then -- I'm not sure what "ACV" in this -- how they're using ACV in here. I'm assuming it's some measure of velocity, but I don't know if it's for refill or for pod -- for devices. I see the line charts. The darker line is NJOY, and the lighter line is JUUL.
Q. That's my understanding, too.
A. It absolutely is fair to assume that this chart is attempting to show that NJOY grew faster post launch than JUUL did?
Q. And that is occurring in 2019, right, for NJOY?
A. That is correct.
Q. And because it's occurring in 2019, that growth is occurring after Altria's investment in JUUL, right?
A. The -- I don't -- well, that's hard to say. I don't know when the launch was. NJOY's launch, we'd have to go back to when NJOY launched; not to when this report was written.
Q. If you look at the previous page, the paragraph that begins "NJOY's comeback
underscores the opportunity," and you look at
the second sentence there that says, "NJOY's
recent return to the market earlier this
year," do you see that?
A. "Recent return to the market earlier
this year." -- yes.
Q. Okay.
A. Yes.
Q. Okay. So this is a June 2019
document. "This year" refers to earlier 2019?
A. Provided these first six months in
that sentence are both referring to the same
period, if this is in 2019, then yes, this
chart would show this being post Altria's
investment in JUUL.
Q. Just to get it on the record, what
you're saying is that this chart is showing
NJOY to have grown faster than JUUL did after
Altria's investment in JUUL, right?
MR. LEE: Objection to form.
A. So I'll characterize it in my own
words. This chart shows that in the first six
months of each relative brand's launch, that
NJOY grew faster than JUUL did in their first
six months, and that NJOY's first six months'
performance did come after the investment by
Altria in JUUL.
Q. That's okay.
Putting aside the history, shall we
say, were you excited about NJOY's potential
to generate sales?
A. I would say I was cautiously
optimistic that we might have another winning
product.
MR. SNIDOW: We have been on the
record I think for --
THE WITNESS: Yeah, let's take a
break.
MR. SNIDOW: -- an hour and
50 minutes. Let's go off the record.
(Recess was taken.)
BY MR. SNIDOW:
Q. Mr. Stout, next I'm going to show
you tab 16 in the binder, which is DX 1205.
A. Yes.
Q. This is an email from January of
2020, right?
Q. It's an email from Phil Wilhelm to
Jill Cortabitarte?
A. Yes.
Q. And does she work at 7-Eleven?
A. She does.
Q. Do you see he's attaching a
presentation called "JUUL 7-Eleven Category
Review January 2020"?
A. Yes.
Q. If you turn to tab 17, which is
DX 1206, that is the attachment.
A. I'm there.
Q. If you turn to the next page, you'll
see the title slide for the deck, and it says,
"JUUL Labs, 7-Eleven, 7-Eleven Business
Review." Do you see that?
A. I do.
Q. Do you know if this is a 7-Eleven
created document or a JUUL created document?
J. STOUT - OUTSIDE COUNSEL EYES ONLY
A. It is almost certainly a JUUL created document, though I have not reviewed this document. But just based on the way it's titled, that it came originally in the email from -- it looks like it -- I think came from, I guess his name is Jorge Ortiz, to Phil, and Phil in that email forwarded to Jill. This is almost certainly created by JUUL.

Q. This is saying that, in January of 2020, JUUL was offering a $9.99 promotional price, right?
A. Yes, that's what it says.
Q. Do you remember that kind of promotion occurring before?
A. I don't recall. We run a lot of promotions, so I don't recall a specific time period where this might have brought earlier.
Q. That's fair. Fair to say you have no affirmative recollection of JUUL doing that kind of promotion, say, in 2017 or 2018?
A. Correct, I don't.
Q. We saw before in the 2018 and 2016 documents that the MSRP for JUUL was 49.99. Do you recall that?
A. Yes.
Q. And I understand these are promotional prices, but fair to say that 9.99 is a lot lower than 49.99, right?
A. Correct.
Q. About one-fifth the price, true?
A. About 80 percent off.
Q. That's a great way of putting it. This is January 2020, so about a year after Altria's investment in 2018, right?
A. Correct. It actually does show the average prices in this photograph, right?
Q. The first one is actually from December 2, 2018?
A. Yes, the first bar is.
Q. I'll represent to you that the investment did not occur until the end of December 2018. So, this is saying that the average price before the investment, at least on this date, was $35.71, true?
A. That's what it appears to be, yes.
Q. If you fast forward to the last three bars, it's showing that the average price for JUUL in November 2019 is $12.32. Do you see that?
A. I do.
Q. And then $12.20, and $12.13, it looks, in the next several weeks, right?
A. Yes.
Q. If you look at what the average price is here, that's a substantial reduction, true?
A. Yes.
Q. That substantial reduction, it looks like it occurred in the approximate 12 months after Altria's investment in December 2018?
A. 11 months.
Q. Do you know why JUUL was discounting its products at this time?
A. I don't. I don't know why they made this decision at this precise time.
Q. Was this occurring around the same time that other manufacturers were offering $1 price promotions?
A. This appears to be significantly later, as I recall, from the earlier discussion. Significantly after that point.
I believe those first six months, right if I'm -- just -- see if I remember correctly, but that Morgan Stanley report had six months' worth of sales, right? And that was around June of 2019, July 2019, so maybe the first six months of January through June-ish, this is November, so this appears to be several months later in time. That's just my recollection.

Q. This is after that discount that we looked at, right?
A. Yes, yes; that's correct. The meeting that we referenced was around summer of 2019. At that time they were, you know, at least in the process of a 99 cent promotion, and this time period after that, correct.

Q. Is it typical in the e-cigarette market for different manufacturers to compete with discounts and price promotions like this?
MR. LEE: Objection to form.
A. I mean, it's common for every manufacturer to run promotions, you know, when they want to increase velocity. We've seen various competitors in the e-cig market run promotions. I suppose, yes, it was common for e-cig manufacturers to compete with each other using promotions.

Q. And that's true today, right?
A. Yes.
Q. If you look at slide 29, the title is, "Device Kit Key Dates for Updated Pricing Strategy."
A. I mean, it's common for every manufacturer to run promotions, you know, when they want to increase velocity. We've seen various competitors in the e-cig market run promotions. I suppose, yes, it was common for e-cig manufacturers to compete with each other using promotions.

Q. It says, "February 9th device list price drops to $13.40"?
A. I see that.
Q. That was on February 9, 2020, right?
A. That was on February 9, 2020, right?
A. I'm assuming this is a forward-looking plan, and assuming it's a forward-looking plan, I would presume that February 9, 2020 would be the implied date, but that's not indicated on the page.
Q. The next one over says March 1st. Do you see that?
A. Yes.
Q. And that says, "Device MSRP change to 19.99"?
A. Yes, you read that correctly.
Q. Is that suggesting that the MSRP was going to go down even further to 19.99?
A. It appears that what this summer promotion is, that at 7-Eleven, that we would recommend a price of 14.99 as opposed to 19.99, and that some funding would be provided to attain that rate. But I'm not super familiar with their promotional-funding program, but that is my interpretation of this. I could be wrong, but that's how I would interpret.

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**Q.** Thank you for the clarification.

---

**Q.** Let's look at tab 26, which is DX 1215.

**A.** Yes.
11 Q. Let's look at tab 27, which is --
12 it's actually a PX 4214.
13 A. I'm there.
14 Q. This is from Fred Myers on Monday,
15 June 25, 2018, right?
16 A. That is correct.
17 Q. And he's forwarding an email from it
18 looks like Dave Mannon in to Fred Myers on
19 June 20, 2018, right?
20 A. Yes.
21 Q. Who is Dave Mannon, if you know.
22 A. So Dave Mannon I think at this time
23 was the primary Altria kind of person on the
24 leading 7-Eleven account team who calls on
25 7-Eleven. My only question here is not
whether he was the lead on the account, it's whether on June 20th he was the lead of 2018. But Dave, for a fairly extended period of time, served as the 7-Eleven account lead for Altria.

Q. Is it fair to say that you or members of your team had contact with the Altria folks on a pretty regular basis?

A. Yes, and in particular, people like Phil Wilhelm, which, obviously, if you look further down, this was a message that Dave Mannon chose to forward to -- you call him Fred, we call him Scott -- Scott Myers, that Dave forwarded an email from Phil that Phil had sent to Dave that said, hey boss, you should probably see this, basically.

Q. You mentioned Scott Myers. Fair to say that you or Phil or other members of your team were in contact with Scott Myers?

A. Yeah, from time to time, I also have been in contact with Scott. And yes, members of my team have been in contact with both Dave and Scott, you know, I would say routinely.

Q. And in particular, to talk to them about how Altria's products were doing, I imagine?

A. Absolutely, absolutely.

Q. If you look down at the next email,
Do you recall that 7-Eleven had around 6,000 stores at this time in the U.S.?

A. I believe it probably had more than that, but I don't know specifically how many stores we had in 2018, but I suspect more than 6,000 in the U.S.

Q. More than 10,000?

A. I'm going to guess more in the 8,000 range at that point in time. We've got the data. Off the top of my head, I don't have that graph all the way memorized.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

AFTERNOON SESSION
(Time noted: 2:47 p.m.)
JACK STOUT,
resumed and testified as follows:
EXAMINATION BY
MR. LEE:
Q. Good afternoon, Mr. Stout. Again, my name is Joonsuk Lee, I'm with the Federal Trade Commission, and I'm going to ask you some questions. I may jump around a little bit because Counsel has covered a number of areas that I would otherwise cover. So if you need a frame of reference for any of my questions, just say, back up a second, and tell me what we are talking about here before I jump in. Is that okay?
A. Sure.
Q. Thank you.
Do you have your declaration, I think, marked as DX 1190 handy?
A. Yes, I do.
Q. And I think earlier today, Mr. Snidow asked you a few questions about the declaration, and I'm not going to ask the same question again.
A. Yes.
Q. I think you confirmed this earlier to Mr. Snidow's question, but is everything in this declaration you signed still true and correct, to the best of your knowledge?
A. To the best of my knowledge, yes.
Q. Okay. Thank you.
Q. Do you know any other Altria combustible cigarette brands at 7-Eleven?
A. I mean, we carry some. I'll be honest with you, from time to time, I confuse which brands are sold by which companies, but I know we sell their L&M brand. I think we sell some other brands by Altria, other than Marlboro.
Q. Thank you.
How do you receive your combustible cigarettes products from Altria? Do you get it through a third-party distributor?
A. Yes, we primarily receive cigarettes from Altria through third-party wholesale arrangement. Our two biggest wholesale - basically, almost the entirety of the U.S. is covered by McLane Corporation and Core-Mark.
Q. Okay. Thank you.
And have you heard about Altria's subsidiary called AGDC; Altria Group Distribution Company?
A. Yes.
Q. What is 7-Eleven's relationship with AGDC, the Altria subsidiary?
A. So, the Altria Group Distribution Company -- I mean, I think of them as the commercial-sales arm of Altria, and our relationship with them is that we meet, from time to time, to discuss plans to grow our business together mutually; we discuss problems that one or the other may have with the relationship or execution of our sales plans. So, we maintain a relationship with them, but they essentially are the group with which we negotiate our commercial terms of service and maintain a sales relationship.
Q. Thank you.
Since you became Senior Vice President Merchandising at 7-Eleven, who was your primarily counterpart at AGDC?
A. I think it's changed a bit over
time, and it depends on what you mean by,
"primary counterpart." But our key account
representative at the time that I became
senior vice president, I think, was Dave
Mannon. His boss, though, and now currently I
believe president of AGDC, Scott Myers, has
been heavily involved in our business, as
well. I've talked to both of those gentlemen.
But currently Jessica, I think her last name
is Hendrickson, also calls on our business
frequently.

Q. Thank you.

A. Craig Johnson, yes, I think he was
president of AGDC prior to Scott Myers
assuming that role.

Q. Have you met Mr. Johnson personally?

A. Yes, I have.

Q. Thank you.

A. That's my understanding; although, I
don't know if they had precisely the same
titles and roles. From my perspective, Scott
took over the role that Craig had with
respect to our business.

Q. So if we go back to

A. Antoine or Tony Stapleton was one of those
product directors. He moved into a different
role with the company. He's since left the
company. But as he went into a different role
in our operations team, we put Jill Cortabitarte in the role as product director.
You see both of their names referenced in our
discussion earlier today.

And then at the senior category
manager level, the -- Shazad Hooda has been
our senior category manager of cigarettes, and
Phil Wilhelm at the time was our senior
category manager of other tobacco products. I
actually don't recall who is currently in the
other tobacco products senior category manager
role. I'd have to look at an org chart. But
the reason I remember Shazad and Phil so
clearly is they were in those roles for very
long periods of time, even when I was in
positions less senior than my one today, but
they're easy for me to remember.
Q. Do you know what e-cigarette brands Reynolds is selling at 7-Eleven today?
A. I always run the risk of getting these wrong, but if my recollection is correct, they're the seller of the Vuse brand and related product lines.
Q. Thank you.

And the next one is Imperial.
Imperial is number three player at 7-Eleven for combustible cigarettes; is that correct understanding?
A. That's my understanding, yes. They sell the Winston and Kool brands.
Q. Thank you.

Do you happen to know what electronic cigarette brands Imperial is selling at 7-Eleven today?
A. Again, at the risk of being incorrect, I believe their primary brand is the blu brand. I didn't study all my brands for this deposition.
Q. Thank you. This is not a memory test, but I just wanted to ask about those. If you can trust my representation, I think you are doing great here.
A. Okay. I mean, to be honest, this is a little challenging at times because the level of detail we're getting into sometimes is a level of detail I don't operate at on a day-to-day basis in our business. But I'll do my best.
Q. Understood. Thanks very much for your patience here.

And today, does Altria have any electronic cigarette brand sold at 7-Eleven?
A. I'm actually not sure. I don't know of any, off the top of my head. I know we had pulled the MarkTen and MarkTen Elite off the
Q. Thank you for the clarification.

From your experience, have you seen any of your e-cigarette vendors to provide funds to 7-Eleven to update display shelves, as you just described?

A. Okay.

Q. Thank you.

Just to clarify, when you are discussing these other companies, Reynolds and other smaller companies, are you specifically referring to electronic cigarettes?

A. No, not necessarily.
Just to make sure I understand, when you say "innovative products" you just mentioned, that includes electronic cigarettes, correct?

A. Correct, yes.

Q. Going down to the next paragraph on page 3 of your declaration, paragraph 17, let me read it first and ask you a question. It says, "In early 2020, Altria announced that it was terminating its services agreement with JUUL.

A. Let's see if you have still access to DX 1198. That's on your tab 9, if I am correct.

A. Yes, you are correct, and I do have it in front of me.

Q. Thank you. Because I don't have the binder. Let me actually make sure I have the right document.

Q. Do you recall earlier today you discussed this document with Mr. Snidow?

A. Yes, I do.

Q. Just to refresh my memory here, can you describe what was the first attachment attached to this email from Tony Stapleton on January 22, 2019?

A. My recollection is that we were

Q. Okay. Great.

So, let's go to the next tab, tab number 10, the document marked as DX 1199. Do you have that?

A. Yes.

Q. Thank you.

Q. I have a question on slide -- actually, slide from the cover page. Let's go to the cover page of this presentation attached to the January 2019 email. And this document again is marked as DX 1199.

Do you see that?

A. Yes, I do.

Q. Let's go to slide 7.
19 Do you see those?
20 A. Yes.
21 Q.  
22 A.  
23 Q.  
24 A.  
25 Q.  

21 Q. Thank you.
22 So, Mr. Stout, have you heard about the term 7REWARDS?
23 A. Yes, that's our loyalty program at 7-Eleven. So yes, definitely heard of it.
24 Q. Can you please explain how that 7REWARDS loyalty program works?
25 A. Yes. 7REWARDS is our loyalty program. It's smartphone-based. You have to download the 7REWARDS app, if you want the full functionality of the rewards program. You can join the program without the full functionality by signing up at the register by just providing your phone number. It's a rewards similar to when you see grocery discount programs or drugstore programs where you provide some information about yourself, and every time you make a purchase, you either scan the barcode on your smartphone or you provide some identifying information, such as your phone number at the register. And then you are eligible for discounts that are not generally available to the rest of the customers.
26 And we have some other functionality in 7REWARDS such as we're testing mobile checkout and some other features. I would say it's a smartphone-based, but it doesn't actually require a smartphone to participate,
as long as you provide some identifying information at the register.

I have one general question outside of any document. This actually asks about your memory, so sorry about that. So to start, do you recall there was a nationwide vape-related health crisis in the second half of 2019?

Mr. Snidow: Object to form.

A. Yes, I do.

Mr. Lee: That's all I have for now.

I reserve my remaining time for any re-questions.

Mr. Snidow: Could we just have a five-minute break?

The Witness: Works for me.

(Recess was taken.)

Further Examination

By Mr. Snidow:

Q. Mr. Stout, I just have a couple of follow-up questions, and I think we might be done.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

1 Q. All right. Let's start at a high level.
2
3 MR. SNIDOW: With that, I think I have no further questions.
4 Mr. Stout, thank you so much for your time. We truly appreciate it.
5 MR. LEE: I don't have any question either. Thank you.
6 THE WITNESS: Happy to help both sides here. You know, I appreciate the thoroughness of the questioning, but also the accommodations you guys have made to provide these documents in paper. I cannot imagine reading and referring to this stuff on screen, and also just the courteousness of which you've conducted this. It's been a good experience for me, being a first-time deponent here, and I was a little bit not sure what to expect, but this has been pretty painless, and I appreciate both of you kind of keeping it that way.
7 MR. SNIDOW: Thank you, Mr. Stout.
8 MR. LEE: Thank you, Mr. Stout.
9 Have a great year at the stores.
10 (Time noted: 3:34 p.m.)

ACKNOWLEDGMENT

STATE OF NEW YORK )
COUNTY OF )

I, JACK STOUT, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of March 10, 2021; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

__________________________
JACK STOUT

Signed and subscribed to before me, this day of ___, 20__.

Notary Public, State of New York
**CERTIFICATE**

STATE OF NEW YORK )
)
) SS.:  

COUNTY OF SUFFOLK )

I, KRISTI CRUZ, a Notary Public within and for the State of New York, do hereby certify:

That JACK STOUT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have heretounto set my hand this 11th day of March 2021.

_______________________
KRISTI CRUZ

---

*****ERRATA SHEET***

U.S. LEGAL SUPPORT
90 Broad Street
New York, New York 10004
212.750.6434

REF: 345102

NAME OF CASE: MATTER OF ALTRIA GROUP AND JUUL LABS
DATE OF DEPOSITION: MARCH 10, 2021

NAME OF WITNESS: JACK STOUT

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Subscribed and Sworn before me this _____ day of ______, 20_.

_______________________
Notary Public

My Commission Expires:
PUBLIC

EXHIBIT 39

PROTECTIVE ORDER
PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: April 2, 2020
ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.
6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9393” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed in camera. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have in camera treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.
10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted in camera treatment. If that party wishes in camera treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where in camera treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter’s efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission’s Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission’s obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Altria Group, Inc.

a corporation;

And

JUUL Labs, Inc.

a corporation.

DOCKET NO. 9393

[PROPOSED] ORDER

Upon consideration of Non-Party 7-Eleven, Inc.’s (“7-Eleven”)’s Motion for In Camera Review, it is HEREBY ORDERED that the following documents are to be provided indefinite in camera treatment:

<table>
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<th>Exhibit No.</th>
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<td>Spreadsheet of product analysis focus item ranking</td>
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<td>7-ELEVEN_ALTRIA_00008207</td>
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Upon consideration of Non-Party 7-Eleven, Inc.‘s (“7-Eleven”)‘s Motion for In Camera Review, it is HEREBY ORDERED that the following documents are to be provided indefinite in camera treatment for five years:

<table>
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<th>Exhibit No.</th>
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<td>PX3204</td>
<td>Email from Phil Wilhelm to Michael Abernathy, Danielle Houman, Michael Jester,</td>
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<td>et al. re: My thought on My BLU and the Edg POD category w/Attach: #8 Penetration Report - Multiple Slins My BLU by Market last week.xls; #8 Penetration Report - Multiple Slins</td>
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<td>Attachment to PX3204</td>
<td>Spreadsheet of order units from 2/19/2018 through 3/12/2018</td>
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<td>Spreadsheet of order units from February-March 2018 of the MyBLU pods</td>
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<td>Spreadsheet of packaged foods total per year sales from 2015-2018</td>
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<td>Email from P. Wilhelm to S. Ahuja re New Item sheets attaching Info Dispatch - NJOY Device</td>
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<td>Spreadsheet of Tobacco Team 2018 Goals</td>
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<td>RX 1700</td>
<td>Email from K. Arjoonsingh to P. Wilhelm re Follow-up: blu Performance Update</td>
<td>09/06/2019</td>
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<td>Slide titled &quot;$1 device showing high volume growth &amp; supporting pod pack growth&quot; re Follow-up: BLU Performance Update</td>
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<td>RX1193</td>
<td>Email from R. Cowher to L. Lyon, P. Wilhelm, et al. re: Juul Script Review attaching August 20, 2018 JUUL Vendor Playbook and JUUL Script</td>
<td>02/08/2018</td>
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<td>PX8001/RX1190</td>
<td>Declaration of Jack Stout</td>
<td>03/10/2021</td>
<td>PX7044-001</td>
<td>PX7044-088</td>
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<td>PX7044</td>
<td>Deposition Transcript of Jack Stout</td>
<td>03/11/2020</td>
<td>PX8001-001</td>
<td>PX8001-004</td>
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</table>

IT IS SO ORDERED.

SIGNED this ____ day of __________________, 2021.

THE HONORABLE D. MICHAEL CHAPPELL
CHIEF ADMINISTRATIVE LAW JUDGE
CERTIFICATE OF SERVICE

I, Lisa Houssiere, declare under penalty of perjury under the laws of the District of Colombia that the following is true and correct. On May 7, 2021, I caused to be served the following documents on the parties listed below by the manner indicated:

- NON-PARTY 7-ELEVEN’S MOTION FOR IN CAMERA TREATMENT
- [PROPOSED] ORDER

The Office of the Secretary: (via electronic mail)
April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Office of the Administrative Law Judge (via electronic mail)
The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

Federal Trade Commission (via electronic mail)
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mpenza@wilkinsonstekloff.com

/s/ Lisa Houssiere
Lisa Houssiere