

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

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**In the Matter of** )  
 )  
**Altria Group, Inc.** ) **DOCKET NO. 9393**  
**a corporation;** )  
  
**and**  
  
**JUUL Labs, Inc.** )  
**a corporation.** )  
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**NON-PARTY NJOY, LLC'S UNOPPOSED RENEWED MOTION FOR *IN CAMERA*  
TREATMENT OF DESIGNATED TRIAL EXHIBITS**

Pursuant to Rule 3.45(b) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), NJOY, LLC (“NJOY”) respectfully moves for *in camera* treatment of portions of four trial exhibits. As required under Rule 3.45(b), and consistent with the Court’s May 26, 2021 Order, this motion provides a description of the material for which *in camera* treatment is requested, a statement of the reasons for granting *in camera* treatment, and a statement of the reasons for the date on which *in camera* treatment will expire. NJOY’s renewed unopposed motion for *in camera* treatment is supported by the concurrently filed Declaration of Jeffrey Weiss.<sup>1</sup>

### **INTRODUCTION**

On May 10, 2021, NJOY filed its corrected unopposed motion for *in camera* treatment of certain designated trial exhibits (“May 10, 2021 Motion”). On May 26, 2021, the Court granted NJOY’s May 10, 2021 Motion in part and denied it without prejudice for five documents. In this renewed unopposed motion for *in camera* treatment, NJOY seeks *in camera* treatment for limited portions of four documents<sup>2</sup> that contain confidential information, including NJOY’s post-bankruptcy distribution plans [REDACTED], future product plans, and specific sensitive conversations with retailers. The disclosure of NJOY’s confidential information would unfairly disadvantage NJOY in competition for customers and sales and future negotiations with potential partners.

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<sup>1</sup> NJOY’s counsel has conferred with Complaint and Respondent counsel, who do not oppose this motion. JLI reserves its right to seek relief from exclusion of certain in-house counsel of JLI from *in camera* sessions or filings due to the *in camera* designation. For all the reasons stated in its May 21, 2021 Opposition to Respondents’ Response to Non-Parties’ *In Camera* Motions, NJOY reserves its right to object to that request to the extent it implicates NJOY’s confidential information.

<sup>2</sup> NJOY no longer seeks *in camera* treatment for the declaration of David Graham (PX8005).

**I. NJOY Seeks *In Camera* Treatment for Portions of Four Documents**

NJOY seeks *in camera* treatment for limited portions of four documents, as described below.

**A. PX3002**

NJOY seeks *in camera* treatment for the following pages of PX3002, a 2017 business presentation: 003-004, 006, 008, 009-014, 016-026, 028-032, 034, 037- 043, 045-047. Weiss Decl.

¶ 5. These slides include details about NJOY's [REDACTED]

[REDACTED]

[REDACTED] *Id.* While the document is more than three years old, disclosure of [REDACTED] could materially harm NJOY's *current* relationship with retailers and distributors and disadvantage NJOY in its negotiations with retailers and distributors with whom it is seeking to restore relationships previously held by NJOY, Inc. *Id.*

[REDACTED]

[REDACTED] *Id.* Retail doors are critical to NJOY's continuing competitive success. *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> NJOY and NJOY, Inc. are wholly distinct entities, and NJOY is not a reorganized or successor entity to NJOY, Inc. In February 2017, NJOY acquired assets from NJOY, Inc. as part of a bankruptcy proceeding.

[REDACTED]. *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* NJOY makes significant efforts to protect the confidentiality of these [REDACTED]

[REDACTED], from public disclosure. *Id.* [REDACTED] are

closely held and disclosed only to the company's board, senior executives, and relevant employees

(e.g., those responsible for key accounts). *Id.* In short, the information contained in these

documents is still relevant to current negotiations and sufficiently secret and sufficiently material to

NJOY's current business that disclosure would cause serious competitive injury. *Id.*; *see also In re*

*North Texas Specialty Physicians*, 2004 F.T.C. LEXIS 109, at \*2-3 (Apr. 23, 2004). The Court's

May 26, 2021 Order recognized that *in camera* treatment would be appropriate under these

circumstances. *See* Order at 8.

**B. PX3003**

NJOY also seeks *in camera* treatment for the following pages of PX3003, a 2017 business presentation: 023, 024, 025, 030, 049, 050. Weiss Decl. ¶ 6. Like PX3002, this document also

details NJOY's [REDACTED] (*see* pages 023 - 025), [REDACTED], if disclosed

could materially harm NJOY's current customer relationships and ongoing business development

efforts. *Id.* Pages 024 and 025 also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* In addition, pages 049 and 050 detail the steps that NJOY, LLC took to build nearly its entire distribution network from the ground up after the bankruptcy of NJOY, Inc. *Id.* It is, in effect, an instruction manual for entering the industry and would make it possible for NJOY's competitors or potential competitors to co-opt NJOY's strategies and business insights to their own advantage. *Id.* Further, competitors intent on harming NJOY in the marketplace would be able to use this information as a roadmap to attack and dismantle NJOY's current distribution network. *Id.*

**C. PX8004**

NJOY also seeks *in camera* treatment for portions of Paragraph 7 and all of Paragraphs 28 and 29 of PX8004, which is a Declaration from Mr. Farrell. Weiss Decl. ¶ 7. NJOY seeks *in camera* treatment for portions of the Declaration that describe [REDACTED] *Id.* As described above, [REDACTED]

[REDACTED]

[REDACTED] *Id.* NJOY also seeks *in camera* treatment of portions of the Declaration that [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**D. PX7029**

Finally, NJOY seeks in camera treatment for discrete excerpts of PX7029 which is the deposition transcript of NJOY’s Chief Revenue Officer Andrew Farrell. Weiss Decl. ¶ 8. The below chart lists the line numbers for which NJOY seeks in camera treatment and its reasons for seeking to protect this confidential information.

Transcript Lines	Description
57:2-25	This testimony details the company’s internal assessment of the differential in sales volume between NJOY’s various product lines. <i>Id.</i> An important part of NJOY’s business strategy is expanding its distribution network and building brand awareness for all its product lines. <i>Id.</i> If this information were publicly disclosed, retailers would use it to: (1) gather competitive intelligence about other retailers’ performance with NJOY’s product lines and

	(2) negotiate a narrow carriage of products, cherry picking one line over another, thereby making it more difficult for NJOY to grow its business. <i>Id.</i>
<p>67:14-24; 68:7-9; 68:16-69:4; 76:17-18; 78:22-25; 79:4-7,11-23; 88:5-6, 8-9, 11-12; 188:7; 189:7; 191:16, 19; 192:3, 24; 194:15-16</p>	<p>The testimony describes the number of stores, or “doors” per retailer that carry NJOY’s products and in two excerpts provides specific details about negotiations with a retailer offering a meaningful number of doors and the conditions under which it would offer those doors. <i>Id.</i> Door quantity and negotiation details provide information about each retailer’s relationship with NJOY, including whether NJOY is well-established with or still proving itself to the retailer and the industry as a whole. <i>Id.</i> Not only would the disclosure of this information allow competitors to create and exploit potential weaknesses in NJOY’s distribution network, competitors could use the information to denigrate NJOY’s brand and disrupt NJOY’s efforts to build its distribution network. <i>Id.</i></p>
<p>78:6-8</p>	<p>[REDACTED]  [REDACTED]  [REDACTED] <i>Id.</i> Licensing agreements are among the types of commercial and financial information regularly afforded <i>in camera</i> protection. <i>Union Oil Co. of California</i>, 2004 F.T.C. LEXIS 198, at *6. [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED]  <i>Id.</i> [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED] <i>Id.</i> [REDACTED]  [REDACTED]  [REDACTED] <i>Id.</i> Indeed, even Mr. Farrell did not know the details of the agreement. <i>See Farrell Tr.</i> 78:4-9.</p>
<p>90:3-91:16; 91:20-22; 92:8-9; 92:17-20; 92:23-93:1; 94:12-95:5</p>	<p>This testimony reveals details about NJOY’s PMTA applications. <i>Id.</i> [REDACTED]  [REDACTED]</p>

	<p>[REDACTED] <i>Id.</i> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] <i>Id.</i> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] <i>Id.</i> [REDACTED] [REDACTED] [REDACTED] <i>Id.</i> [REDACTED] [REDACTED] [REDACTED] [REDACTED] <i>Id.</i> Competitors in this industry are anxious to obtain information about each other's PMTA applications and, accordingly, this information is carefully guarded within NJOY. <i>Id.</i></p>
159:24-160:2	This excerpt reveals the amount of one of NJOY's distribution mark-ups. <i>Id.</i> If publicly disclosed, retailers could use this information to try to demand more favorable terms for the placement of NJOY's product on shelves. <i>Id.</i>
135:4-10, 14, 16, 22, 24; 136:11-13, 21-25; 137:1-25; 138:1, 4-5; 174:12-175:13; 180:1-4, 6-20; 180:24-181:1	This testimony details specific conversations between NJOY employees and individually named retail partners regarding promotions, [REDACTED] [REDACTED] <i>Id.</i> This information was disclosed in confidence to NJOY in the context of distribution negotiations. <i>Id.</i> As noted in Paragraph 7 above [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

	<p><i>Id.</i> [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED]  [REDACTED] <i>Id.</i></p>
<p>70:7-11, 13-14; 72:24-73:2; 73:4-7; 73:23-74:1; 183:9-17</p>	<p>This testimony reveals the names of NJOY’s high-velocity retailers, i.e., those retailers with the highest growth trajectory for NJOY products, and the impact of NJOY’s expansion efforts related to those retailers on run-rate revenue and product volume. <i>Id.</i> It also provides information about NJOY’s strategies for supporting those retailers. <i>Id.</i> If publicly disclosed, competitors could use these details to target NJOY’s most valuable retailers, undermine those relationships, and capitalize on the growth potential that NJOY identified and was able to amplify. <i>Id.</i></p>
<p>175:24-176:1; 176:13-25; 177:8-9, 11-25; 178:1-2, 4-14; 179:4-6, 10-13</p>	<p>This testimony reveals specific details and results from a proprietary survey that NJOY conducted to obtain additional customer insights related to its products. <i>Id.</i> This Court previously granted <i>in camera</i> treatment for the proprietary survey itself. <i>See</i> May 26, 2021 Order on Non-Parties’ Motion for In Camera Treatment (granting <i>in camera</i> treatment to PX3152).</p>

The information identified in this chart is closely held and not disclosed outside of NJOY or is only disclosed in the context of confidential communications with retailers or distributors. *Id.*

**II. Requested In Camera Treatment Must be of Sufficient Duration to Minimize Potential Harm Resulting from Possible Disclosure**

The materials listed in Section I, above, are highly sensitive. Premature release of these exhibits would result in clear and serious harm to NJOY. NJOY therefore requests *in camera* treatment for 5 years.

## CONCLUSION

For the reasons detailed in this motion and in the Declaration of Jeffrey Weiss, NJOY respectfully requests that this Court grant *in camera* treatment to the confidential information identified in Section I.

Dated: June 4, 2021

By: /s/ Katrina M. Robson

Katrina M. Robson

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*Counsel for NJOY, LLC*

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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Altria Group, Inc. ) DOCKET NO. 9393  
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JUUL Labs, Inc. )  
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**[PROPOSED] ORDER GRANTING UNOPPOSED RENEWED MOTION OF  
NJOY, LLC *IN CAMERA* TREATMENT  
OF DESIGNATED TRIAL EXHIBITS**

Upon consideration of NJOY, LLC’s (“NJOY”) Unopposed Renewed Motion for *In Camera* Treatment of Designated Trial Exhibits (“Motion”), it is HEREBY ORDERED that the documents listed in NJOY’s Motion are to be provided *in camera* treatment to the extent described in its Motion.

**ORDERED:**

**D. Michael Chappell  
Chief Administrative Law Judge**

Date: \_\_\_\_\_

\_\_\_\_\_

## CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, I served the foregoing document via e-mail to:

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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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I also certify that I delivered via e-mail a copy of the foregoing document to:

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*Complaint Counsel*

By: /s/ Monsura A. Sirajee  
 Monsura A. Sirajee

*Counsel for Third Party NJOY, LLC*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 4, 2021

By: /s/ Monsura A. Sirajee  
Monsura A. Sirajee

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

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JUUL Labs, Inc. )  
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**DECLARATION OF JEFFREY WEISS SUPPORTING  
NON-PARTY NJOY, LLC’S UNOPPOSED RENEWED MOTION FOR *IN CAMERA*  
TREATMENT OF DESIGNATED TRIAL EXHIBITS**

I, Jeffrey Weiss, declare as follows:

1. I am over 18 years of age and have personal knowledge of the facts set forth in this declaration.
2. I am currently the Chief Engagement Officer and Deputy General Counsel for NJOY, LLC (“NJOY”), a non-party in the above-captioned matter. I have been employed by NJOY since it began operations in February of 2017.
3. I am familiar with the documents listed in NJOY’s Unopposed Renewed Motion for *In Camera* Treatment of Designated Trial Exhibits (“NJOY’s Motion”).
4. Given my position at NJOY, I am familiar with the type of information contained in the materials at issue and their competitive significance to NJOY. I am also familiar with the measures NJOY takes to protect the confidentiality of these materials. I believe that public disclosure of the documents listed in NJOY’s

Motion would seriously risk injury to NJOY's ability to compete and interference with NJOY's retailer relationships.

5. NJOY seeks *in camera* treatment for the following pages of PX3002, a 2017 business presentation: 003-004, 006, 008, 009-014, 016-026, 028-032, 034, 037-043, 045-047. These slides include details about NJOY's [REDACTED]

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[REDACTED] While the document is more than three years old, disclosure of [REDACTED] could materially harm NJOY's *current* relationship with retailers and distributors and disadvantage NJOY in its negotiations with retailers and distributors with whom it is seeking to restore relationships previously held by NJOY, Inc. [REDACTED]

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[REDACTED] Retail doors are critical to NJOY's continuing competitive success.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> NJOY and NJOY, Inc. are wholly distinct entities, and NJOY is not a reorganized or successor entity to NJOY, Inc. In February 2017, NJOY acquired assets from NJOY, Inc. as part of a bankruptcy proceeding.

[REDACTED]

[REDACTED] NJOY makes significant efforts to protect the confidentiality of these [REDACTED] from public disclosure. [REDACTED] are closely held and disclosed only to the company's board, senior executives, and relevant employees (e.g., those responsible for key accounts). In short, the information contained in these documents is still relevant to current negotiations and sufficiently secret and sufficiently material to NJOY's current business that disclosure would cause serious competitive injury.

6. NJOY also seeks *in camera* treatment for the following pages of PX3003, a 2017 business presentation: 023, 024, 025, 030, 049, 050. Like PX3002, this document also details NJOY's [REDACTED] (*see* pages 023 - 025), [REDACTED] [REDACTED] if disclosed could materially harm NJOY's current customer relationships and ongoing business development efforts. Pages 024 and 025 also [REDACTED]

[REDACTED]



[REDACTED] NJOY also seeks *in camera* treatment of portions of the Declaration that [REDACTED]

8. Finally, NJOY seeks *in camera* treatment for discrete excerpts of PX7029 which is the deposition transcript of NJOY’s Chief Revenue Officer Andrew Farrell. The below chart lists the line numbers for which NJOY seeks *in camera* treatment and its reasons for seeking to protect this confidential information.

57:2-25	<p>This testimony details the company’s internal assessment of the differential in sales volume between NJOY’s various product lines. An important part of NJOY’s business strategy is expanding its distribution network and building brand awareness for all its product lines. If this information were publicly disclosed, retailers would use it to: (1) gather competitive intelligence about other retailers’ performance with NJOY’s product lines and (2) negotiate a narrow carriage of products, cherry picking one line over another, thereby making it more difficult for NJOY to grow its business.</p>
67:14-24; 68:7-9; 68:16-69:4; 76:17-18; 78:22-25; 79:4-7, 11-23; 88:5-6, 8-9, 11-12; 188:7; 189:7; 191:16, 19; 192:3, 24; 194:15-16	<p>The testimony describes the number of stores, or “doors” per retailer that carry NJOY’s products and in two excerpts provides specific details about negotiations with a retailer offering a meaningful number of doors and the conditions under which it would offer those doors. Door quantity and negotiation details provide information about each retailer’s relationship with NJOY, including whether the NJOY is well-established with or still proving itself to the retailer and the industry as a whole. Not only would the disclosure of this information allow competitors to create and exploit potential weaknesses in NJOY’s distribution network, competitors could use the information to denigrate NJOY’s brand and disrupt NJOY’s efforts to build its distribution network.</p>
78:6-8	<p>[REDACTED]</p>



	<p>[REDACTED]</p>
<p>70:7-11, 13-14; 72:24-73:2; 73:4-7; 73:23-74:1; 183:9-17</p>	<p>This testimony reveals the names of NJOY’s high-velocity retailers, i.e., those retailers with the highest growth trajectory for NJOY products and the impact of NJOY’s expansion efforts related to those retailers on run-rate revenue and product volume. It also provides information about NJOY’s strategies for supporting those retailers. If publicly disclosed, competitors could use these details to target NJOY’s most valuable retailers, undermine those relationships, and capitalize on the growth potential that NJOY identified and was able to amplify.</p>
<p>175:24-176:1; 176:13-25; 177:8-9, 11-25; 178:1-2, 4-14; 179:4-6, 10-13</p>	<p>This testimony reveals specific details and results from a proprietary survey that NJOY conducted to obtain additional customer insights related to its products. This Court previously granted <i>in camera</i> treatment for the proprietary survey itself. See May 26, 2021 Order on Non-Parties’ Motion for In Camera Treatment (granting in camera treatment to PX3152).</p>

9. The information identified in the above chart is closely held and not disclosed outside of NJOY or is only disclosed in the context of confidential communications with retailers or distributors.

I hereby declare that the above statement is true to the best of my knowledge, information, and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury. Executed this 4th day of June in Hollywood, Florida.

Dated: June 4, 2021

By: \_\_\_\_\_



Jeffrey Weiss

DOCUMENTS WITHHELD  
PENDING ORDER