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

Robert M. Manley
MCKOOL SMITH, PC.
Texas State Bar No. 00787955
rmanley@mckoolsmith.com
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Tel: 214-978-4226
Fax: 214-978-4044

Lisa Houssiere
MCKOOL SMITH, PC.
Texas Star Bar No. 24056950
lhoussiere@mckoolsmith.com
600 Travis Street, St. 7000
Houston, TX 77002

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:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PX3204</td>
<td></td>
<td></td>
<td>7_ELEVEN_ALTRIA_0013381</td>
<td>7_ELEVEN_ALTRIA_0013383</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------</td>
<td>------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td>[Redacted]</td>
<td>7- ELEVEN_ALTRIA_000 13384</td>
<td>7- ELEVEN_ALTRIA_000 13384</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td>[Redacted]</td>
<td>7- ELEVEN_ALTRIA_000 13385</td>
<td>7- ELEVEN_ALTRIA_000 13385</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3204 Attachment</td>
<td>[Redacted]</td>
<td>7- ELEVEN_ALTRIA_000 13386</td>
<td>7- ELEVEN_ALTRIA_000 13386</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------</td>
<td>------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>ELEVEN_ALTRIA_00005441</td>
<td>7-</td>
<td>ELEVEN_ALTRIA_00005441</td>
<td>7-</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>ELEVEN_ALTRIA_00005442</td>
<td>7-</td>
<td>ELEVEN_ALTRIA_00005442</td>
<td>7-</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>ELEVEN_ALTRIA_00005443</td>
<td>7-</td>
<td>ELEVEN_ALTRIA_00005443</td>
<td>7-</td>
</tr>
<tr>
<td>RX1702</td>
<td>ELEVEN_ALTRIA_00002466</td>
<td>7_ELEVEN_ALTRIA_00002466</td>
<td>7_ELEVEN_ALTRIA_00002468</td>
<td>7_ELEVEN_ALTRIA_00002468</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------</td>
<td>------</td>
<td>--------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>RX1703</td>
<td>7_ELEVEN_ALTRIA_0004632</td>
<td></td>
<td>7_ELEVEN_ALTRIA_0004635</td>
<td></td>
</tr>
<tr>
<td>RX1704</td>
<td>7_ELEVEN_ALTRIA_0004636</td>
<td></td>
<td>7_ELEVEN_ALTRIA_0004641</td>
<td></td>
</tr>
<tr>
<td>RX1205</td>
<td>7_ELEVEN_ALTRIA_00015336</td>
<td></td>
<td>7_ELEVEN_ALTRIA_00015336</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>7_ELEVEN_ALTRIA_0005438</td>
<td></td>
<td>7_ELEVEN_ALTRIA_0005438</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------</td>
<td>------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>RX119/Attachment to PX3205</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00005440</td>
<td>7-ELEVEN_ALTRIA_00005440</td>
</tr>
<tr>
<td>RX 1700</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00000901</td>
<td>7-ELEVEN_ALTRIA_00000901</td>
</tr>
<tr>
<td>RX1701</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00000904</td>
<td>7-ELEVEN_ALTRIA_00000904</td>
</tr>
<tr>
<td>RX1212</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00014311</td>
<td>7-ELEVEN_ALTRIA_00014311</td>
</tr>
<tr>
<td>RX1193</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000</td>
<td>7-ELEVEN_ALTRIA_000</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>RX1194</td>
<td></td>
<td>7-</td>
<td>ELEVEN_ALTRIA_000</td>
<td>08206</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELEVEN_ALTRIA_000</td>
<td>08206</td>
<td></td>
</tr>
<tr>
<td>RX1195</td>
<td></td>
<td>7-</td>
<td>ELEVEN_ALTRIA_000</td>
<td>08207</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELEVEN_ALTRIA_000</td>
<td>08207</td>
<td></td>
</tr>
<tr>
<td>RX1215</td>
<td></td>
<td>7-</td>
<td>ELEVEN_ALTRIA_000</td>
<td>08185</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELEVEN_ALTRIA_000</td>
<td>08185</td>
<td></td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td>7-</td>
<td>ELEVEN_ALTRIA_000</td>
<td>13872</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELEVEN_ALTRIA_000</td>
<td>13872</td>
<td></td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td>7-</td>
<td>ELEVEN_ALTRIA_000</td>
<td>13873</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ELEVEN_ALTRIA_000</td>
<td>13873</td>
<td></td>
</tr>
</tbody>
</table>

4825-2302-0006
## 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 PX7044, Decl. at ¶ 46-48. 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

Robert M. Manley
MCKOOL SMITH, PC
Texas State Bar No. 00787955
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]

[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.

8.

9.

10.

11.

12.

13.

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 **redacted**. 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>PX3204</td>
<td></td>
<td></td>
<td>7_ELEVEN_ALTRIA_0001</td>
<td>7_ELEVEN_ALTRIA_0001</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3381</td>
<td>3383</td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td></td>
<td>7-ELEVEN_ALTRIA_000133</td>
<td>7-ELEVEN_ALTRIA_000133</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>84</td>
<td>84</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>------</td>
<td>---------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td></td>
<td>7- ELEVEN_ALTRIA_000133 85</td>
<td>7- ELEVEN_ALTRIA_000133 85</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td></td>
<td>7- ELEVEN_ALTRIA_000133 86</td>
<td>7- ELEVEN_ALTRIA_000133 86</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td></td>
<td>7- ELEVEN_ALTRIA_000054 41</td>
<td>7- ELEVEN_ALTRIA_000054 41</td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td></td>
<td>7- ELEVEN_ALTRIA_000054 42</td>
<td>7- ELEVEN_ALTRIA_000054 42</td>
<td></td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>-----------------</td>
<td>----------------------------</td>
<td>--------------</td>
<td>-------------------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>ELEVEN_ALTRIA_000054</td>
<td>7-</td>
<td>7-ELEVEN_ALTRIA_000054</td>
<td>43</td>
</tr>
<tr>
<td>RX1702</td>
<td>ELEVEN_ALTRIA_00002466</td>
<td>7</td>
<td>7-Eleven_Altria_00002466</td>
<td>7_Eleven_Altria_00002468</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------</td>
<td>---------</td>
<td>---------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>RX1703</td>
<td></td>
<td></td>
<td>7_ELEVEN_ALTRIA_0000 4632</td>
<td>7_ELEVEN_ALTRIA_0000 4635</td>
</tr>
<tr>
<td>RX1704</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 4636</td>
<td>7-ELEVEN_ALTRIA_0000 4641</td>
</tr>
<tr>
<td>RX1205</td>
<td></td>
<td></td>
<td>7_ELEVEN_ALTRIA_0001 5336</td>
<td>7_ELEVEN_ALTRIA_0001 5336</td>
</tr>
</tbody>
</table>

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 

These spreadsheets contain

This information would be nearly impossible for anyone outside of 7-Eleven to recreate, which would give competitors

This information is also not publicly available and releasing this information 

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 

Attachment to PX3205 7-Eleven Altria 00005443 is 

This information contains 

If this information becomes public, it would allow competitors to know 7-Eleven’s 

It is therefore necessary that this document receive in camera treatment.

18. RX1702 marked 7-ELEVEN_ALTRIA_00002466 is 

This was intended to remain confidential to the recipients only. This includes 

Disclosing information regarding 7-Eleven 

would be detrimental to 7-Eleven as it 

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

19. RX 1703 marked 7_ELEVEN_ALTRIA_00004632 

This information relates to
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>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000 05438</td>
<td>7-ELEVEN_ALTRIA_000 05438</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000 05439</td>
<td>7-ELEVEN_ALTRIA_000 05439</td>
</tr>
<tr>
<td>RX119/Attachment to PX3205</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000 05440</td>
<td>7-ELEVEN_ALTRIA_000 05440</td>
</tr>
<tr>
<td>RX 1700</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000 00901</td>
<td>7-ELEVEN_ALTRIA_000 00901</td>
</tr>
<tr>
<td>RX1701</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_000 00904</td>
<td>7-ELEVEN_ALTRIA_000 00904</td>
</tr>
</tbody>
</table>
24. Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005438 is Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005439 is Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005440 is This document contains If this were to be made public, Thus, it is appropriate for these documents to be given in camera treatment.

25. RX119 marked 7-ELEVEN_ALTRIA_00005440 is This document contains

26. RX1200 marked 7-ELEVEN_ALTRIA_00000901 and RX1201 marked 7-ELEVEN_ALTRIA_0000904 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
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>
</tr>
</thead>
<tbody>
<tr>
<td>RX1193</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 8205</td>
<td>7-ELEVEN_ALTRIA_0000 8205</td>
</tr>
<tr>
<td>RX1194</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00008206</td>
<td>7-ELEVEN_ALTRIA_00008206</td>
</tr>
<tr>
<td>RX1195</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00008207</td>
<td>7-ELEVEN_ALTRIA_00008207</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>RX1215</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 8185</td>
<td>7-ELEVEN_ALTRIA_0000 8185</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13872</td>
<td>7-ELEVEN_ALTRIA_0000 13873</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13874</td>
<td>7-ELEVEN_ALTRIA_0000 13874</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13875</td>
<td>7-ELEVEN_ALTRIA_0000 13875</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13876</td>
<td>7-ELEVEN_ALTRIA_0000 13876</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13877</td>
<td>7-ELEVEN_ALTRIA_0000 13877</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_0000 13878</td>
<td>7-ELEVEN_ALTRIA_0000 13878</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013879</td>
<td>7-ELEVEN_ALTRIA_00013879</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013880</td>
<td>7-ELEVEN_ALTRIA_00013880</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013881</td>
<td>7-ELEVEN_ALTRIA_00013881</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013882</td>
<td>7-ELEVEN_ALTRIA_00013882</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013883</td>
<td>7-ELEVEN_ALTRIA_00013883</td>
</tr>
<tr>
<td>RX1706</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00013884</td>
<td>7-ELEVEN_ALTRIA_00013884</td>
</tr>
<tr>
<td>RX1708</td>
<td></td>
<td></td>
<td>7-ELEVEN_ALTRIA_00018194</td>
<td>7-ELEVEN_ALTRIA_00018194</td>
</tr>
<tr>
<td>RX1708</td>
<td></td>
<td></td>
<td>7-</td>
<td>7-</td>
</tr>
</tbody>
</table>
31. RX1193 marked 7-ELEVEN_ALTRIA_0008205 is

RX1194 marked 7-ELEVEN_ALTRIA_008206 is

Similarly, RX1195 marked 7-ELEVEN_ALTRIA_008207 is

These documents

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 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
is appropriate. 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
Therefore, *in camera* treatment is appropriate.

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. 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, in camera treatment is appropriate.

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

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

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

66. Deposition lines 166:4-23 discuss Therefore, 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]
PUBLIC

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/O=EXCHANGE ADMINISTRATIVE GROUP/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 75083
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. [Redacted]

5. [Redacted]

6. [Redacted]
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.

* * * H I G H L Y C O N F I D E N T I A L * *

(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.
### APPEARANCES: (All appearing remotely)

<table>
<thead>
<tr>
<th>APPEARANCES: (Cont'd)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>WACHTELL LIPTON ROSEN &amp; KATZ</td>
<td></td>
</tr>
<tr>
<td>Attorneys for Respondent Altria Group, Inc.</td>
<td></td>
</tr>
<tr>
<td>51 West 52nd Street</td>
<td></td>
</tr>
<tr>
<td>New York, New York 10019</td>
<td></td>
</tr>
<tr>
<td>BY: ADAM SOWLATI, ESQ.</td>
<td></td>
</tr>
<tr>
<td>212.403.1062</td>
<td></td>
</tr>
<tr>
<td><a href="mailto:asowlati@wlrk.com">asowlati@wlrk.com</a></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>CLEARY GOTTLIEB STEEN &amp; HAMILTON LLP</td>
<td></td>
</tr>
<tr>
<td>Attorneys for Respondent JUUL Labs, Inc.</td>
<td></td>
</tr>
<tr>
<td>2112 Pennsylvania Avenue, NW</td>
<td></td>
</tr>
<tr>
<td>Washington, D.C. 20037</td>
<td></td>
</tr>
<tr>
<td>BY: CHINWE CHUKWUGO, ESQ.</td>
<td></td>
</tr>
<tr>
<td>202.974.1500</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
</tbody>
</table>

### INDEX

<table>
<thead>
<tr>
<th>WITNESS EXAMINATION BY PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>JACK STOUT</td>
</tr>
<tr>
<td>5, 167</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXHIBITS PREVIOUSLY MARKED/REFERRED TO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DX 1190 - page 12</td>
</tr>
<tr>
<td>DX 1194 - page 35</td>
</tr>
<tr>
<td>DX 1196 - page 53</td>
</tr>
<tr>
<td>DX 1198 - page 64</td>
</tr>
<tr>
<td>DX 1202 - page 76</td>
</tr>
<tr>
<td>DX 1205 - page 105</td>
</tr>
<tr>
<td>DX 1211 - page 115</td>
</tr>
<tr>
<td>DX 1215 - page 121</td>
</tr>
<tr>
<td>PX 4215 - page 125</td>
</tr>
</tbody>
</table>
JACK STOUT,
called as a witness, having been duly
sworn by a Notary Public, was examined
and testified as follows:

EXAMINATION BY

MR. SNIDOW:

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

MR. SNIDOW: Before we begin, I do
want to tell the rest of the deposition to be outside counsel only, at
least for the present time.

Q. Could you please state your name for
the record?
A. Yes. It's John Logan Stout.

Q. Mr. Stout, could you please state
your name for the record?
A. John Logan Stout.

Q. Have you ever been deposed before?
A. No, actually.

Q. So before we go on, I guess I'll
just lay a few ground rules of how the
deposition is going to go. It's extremely
important, especially over Zoom, that one
person speaks at a time so that the court
reporter can take down every word.

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.

MR. MANLEY: Excellent. Thanks so
much.

MR. SNIDOW: Of course. I'm happy
to take all the steps on that.

Q. Mr. Stout, could you please state
your name for the record?
A. Yes. It's John Logan Stout.

Q. Mr. Stout, before we go on, I just
want to say thank you for making yourself
available, and we certainly appreciate you
taking the time today.
A. No problem. And just to, I guess,
clarify, I also informally and most of the
time go by Jack, but John Logan Stout is the
official.

Q. Have you ever been deposed before?
A. I have not, actually.

Q. So before we go on, I guess I'll
just lay a few ground rules of how the
deposition is going to go. It's extremely
important, especially over Zoom, that one
person speaks at a time so that the court
reporter can take down every word.

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.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

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. Does that make sense?
Q. Makes sense, yes.
A. 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.
Q. Does that work?
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. 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.
MR. SNIDOW: And, Alison, if you wouldn't mind putting that in the folder.
MS. ZOSCHAK: That should be in Box now.
Q. Are you there?
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
2 A. To be honest, I don't know specific
3 changes that were made. I know that, you
4 know, my team reviewed it for factual
5 accuracy, made any changes that they felt
6 necessary, but I didn't review the changes one
7 by one.
8 Q. By that, you mean you personally
9 didn't review the changes that your team made?
10 A. Correct. I did not review the
11 individual changes one by one; I just reviewed
12 the final document.
13 Q. Did you have a chance, in preparing
14 for this deposition, to take a look at your
15 declaration again?
16 A. Yes, I did, on Friday.
17 Q. Anything in the declaration that you
18 saw that you thought was not accurate, as of
19 now?
20 A. Not to my knowledge.
21 Q. Anything in the declaration that you
22 thought needed to be updated, based on events
23 that have occurred since March 2020?
24 A. I don't believe the events since
25 then would change anything factually about

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
2 this at the time the declaration was made.
3 Q. When you spoke to the FTC, did you
4 talk to them about the state of the e-cigarette
5 market in March 2020?
6 A. Yes.
7 Q. Do you remember what you told them?
8 A. Not specifically, beyond what's in
9 the declaration.
10 Q. Do you have a view as to whether or
11 not the e-cigarette market in March 2020 was
12 competitive?
13 MR. LEE: Objection to form. Vague.
14 Q. You could answer.
15 A. Could you repeat the question?
16 Q. Sure. Do you have a view as to whether or
17 not the e-cigarette market in
18 March 2020 was competitive?
19 A. I believe the market was
20 competitive.
21 Q. And do you believe the market today
22 is competitive?
23 MR. LEE: Objection to form.
24 A. Yes.
25 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. 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.

A. I am assuming that you mean non-pod-based e-cigarettes that look, like, in the form of cigarette-stick-shape device.

Q. I couldn't have said it better myself. That's exactly how I will use that term, if that's okay with you.

Q. And I think this is implied, but I'll ask it: In your view, JUUL is not a Cigalike product, true?

A. Sure. I would agree with that.

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
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?
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.
1. 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?
2. A. It's basically because my job is at a fairly higher level than tracking any individual category's market share.

14. Q. How about pricing? Do you have a role in pricing e-vapor products?
15. 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.
16. Q. What factors do you consider when doing that, besides the manufacturer's suggested retail price?
17. 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.
18. Q. Do you track prices of e-vapor products?
19. A. Not personally, no.
20. Q. Does someone on your team?
21. 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?
MR. LEE: Objection to form.
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.
MR. MANLEY: JJ, this is Robert Manley. I apologize for interrupting. Did the court reporter place the document in our Box?

MS. ZOSCHAK: 1193 should be in the Box. Have you tried refreshing?

(Discussion held off the record.)

BY MR. SNIDOW:

Q. attachments line at the top?

A. Yes.

Q. That's referring to the fact, of course, that 7-Eleven is a major retailer, right?

A. I didn't hear you. Did you say yes, Mr. Stout?

A. Yes, correct.

Q. And it's fair to say that 7-Eleven is, of course, a major player in the convenience store space, true?

A. Very true.

Q. It's fair to say what 7-Eleven does has an impact on the broader convenience store market, true?

A. I don't know that I would necessarily, you know, say that I understand that what we do has an impact on what other retailers do, but I suppose that's possible.
Q. In the right-hand part of this slide, do you see that there are two bar charts?
A. Yes.
Q. I want to talk about both of them. So, taking the one that's at the top right, this bar chart is showing the number of stores, in thousands, who were carrying Juul from July 2017 to August 2018; is that right?
A. That's what it appears to be, yes.
Q. And fair to say that this bar chart is showing that that number increased a lot over that year, right?
A. Yes.
Q. Juul went from being in zero 7-Eleven stores in July 2017 to being in 8,500 7-Eleven stores in August 2018, true?
A. That's what this chart appears to say, yes.

Q. Are you aware that Altria and Juul entered into a transaction in December of 2018?
A. I don't recall the exact date, but I am aware they entered into a transaction, yes.
Q. And despite that, during this period, Juul grew from being in zero 7-Eleven stores to being in 8,500, true?
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." Do you see that?
   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.
<table>
<thead>
<tr>
<th>Page 50</th>
<th>Page 51</th>
<th>Page 52</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
</tr>
<tr>
<td>2 Q. That's fair.</td>
<td>2 were even attempting to convert smokers. So,</td>
<td>2 MR. LEE: Objection to form.</td>
</tr>
<tr>
<td>3</td>
<td>3 I don't know if they were unsuccessful at</td>
<td>A. That's a conclusion that I think is</td>
</tr>
<tr>
<td>7 But the rate of decline had not</td>
<td>4 something -- you know, I just don't know.</td>
<td>hard for me to make definitively. Certainly,</td>
</tr>
<tr>
<td>changed in 2016, right?</td>
<td>Q.</td>
<td>they coincided in time, and I think the</td>
</tr>
<tr>
<td>A. Again, I don't know what the rate of</td>
<td></td>
<td>interpretation of whether that's just</td>
</tr>
<tr>
<td>decline in 2015 was, so I'm not certain. I</td>
<td></td>
<td>coincidence in time or causal is left to the</td>
</tr>
<tr>
<td>don't remember it being a disruptive force in</td>
<td></td>
<td>interpreter, and I don't have a strong opinion</td>
</tr>
<tr>
<td>2016.</td>
<td></td>
<td>of that. Certainly, they occurred around the</td>
</tr>
<tr>
<td>Q. And that's exactly what I'm getting</td>
<td>10 same time.</td>
<td></td>
</tr>
<tr>
<td>at.</td>
<td>11 Q. Can you think of any other</td>
<td></td>
</tr>
<tr>
<td>You don't remember combustible sales</td>
<td>explanation for the change in the rate of</td>
<td></td>
</tr>
<tr>
<td>declining sharply as a result of e-cigarettes</td>
<td>combustible cigarette decline at the time when</td>
<td></td>
</tr>
<tr>
<td>in 2016?</td>
<td>JUL was taking over?</td>
<td></td>
</tr>
<tr>
<td>A. Correct.</td>
<td>15 A. I wouldn't want to speculate, and I</td>
<td></td>
</tr>
<tr>
<td>Q. Is that fair to say because those</td>
<td>16 can't think of anything immediately, off the</td>
<td></td>
</tr>
<tr>
<td>products were not successful enough at</td>
<td>top of my head.</td>
<td></td>
</tr>
<tr>
<td>converting smokers?</td>
<td>18 Q. Turn your attention now to tab 7 in</td>
<td></td>
</tr>
<tr>
<td>MR. LEE: Objection to form.</td>
<td>your binder, which is DX 1196.</td>
<td></td>
</tr>
<tr>
<td>A. I have no idea. I mean, I really --</td>
<td>20 A. I'm there.</td>
<td></td>
</tr>
<tr>
<td>and I'm not trying to be difficult here. I</td>
<td>21 Q. Do you see this is an email from</td>
<td></td>
</tr>
<tr>
<td>truly don't know whether those e-cigarettes</td>
<td>Marty Young?</td>
<td></td>
</tr>
<tr>
<td>23 Q. He's got a Pax.com email address.</td>
<td>24 A. Yes.</td>
<td></td>
</tr>
<tr>
<td>25 Do you understand that to be a kind</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PX7044-014
of predecessor to JUUL? Do you see that?

Q. And he attaches an attachment called "JUUL IRI ending 11/29/15."

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.

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? 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. Yes.
Q. The next one is NuMark, correct?
A. Correct.
Q. And then VMR Prods. Do you see that?
A. Yes.
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 know 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.
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 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

You
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 DX 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?

A. Well, certainly at this time point, we were seeing stronger growth in pods than Cigalike devices.

15 Q. Has that trend continued, do you know?

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.

21 Q. Has that trend continued, do you know?

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.

17 Q. By "form factor," do you mean the Cigalike form versus the pod form?

A. That's my understanding.

18 MR. LEE: Same objection.


A. I'm there.

20 Q. This is an email from March 20th of 2018?

A. Correct.

21 A. That's my understanding.

22 Q. This is an email from March 20th of 2018?

A. Correct.

23 Q. This is an email from March 20th of 2018?

A. Correct.

24 Q. This is an email from March 20th of 2018?

A. Correct.

25 Q. This is an email from March 20th of 2018?

A. Correct.
J. Stout - Outside Counsel Eyes Only

Q. So judging from context, this email is something that? 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 Juul 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 the next line says, "You have seen in previous MIP packages other pod systems like MarkTen Elite and myblu." Do you see that?
A. Yes.
Q. And like you said before, you're familiar with the fact that MarkTen Elite and myblu are pod-based systems?
A. Yes.
Q. And the further bullet down says, "Juul 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 Juul was a premium product?
A. No, I don't have any reason to dispute that.
Q. Any reason to dispute the fact that Juul was attracting high-income consumers?
A. No reason to dispute that, no. But I guess I would note that we saw Juul 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.

Q. 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

is going to the stores from us. You know,
what's unclear here is whether that is the
actual kind of average retail, but the
suggested retail does appear to be the same,
yes.

Q. The same as it was in 2016, right?

A. Right.

Q. And this document is March 2018, so
that's several months before Altria's
investment in December 2018; is that right?

A. Again, please? I'm sorry.

Q. This is March 2018, so that's
several months before Altria's investment in
December 2018?

A. Correct.

Q. Let's move on to tab 14.

A. I'm there.

Q. I think it's actually a little
easier if we skip down to the second email
because you're on it. This is an email from
Ryan Nivakoff to Joe DePinto and myself on
Thursday, June 20, 2019..

Q. Thank you. And I forgot to identify
the document except by tab number. This is
DX 1203.

A. Yes.

Q. And what Ryan says is, "I am looking
forward to our July 2nd meeting. I appreciate
you both taking the time from your busy
schedules."

Do you see that?

A. Yes.

Q. He says in advance of the meeting,

he wants to pass along a research report from
Morgan Stanley, right?

A. Yes.

Q. In the next sentence, he says, that
it outlines that NJOY is going faster than
JUUL ever has; is that true?

A. That's what it says.

Q. And this is from June 2019, right?

A. That's correct.
1. 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 had, 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.

2. 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 in the market, fair?
   A. Fair.
   Q. Do you see the first sentence in the next paragraph says, "JUUL's success in attracting competitors and capital into the e-cig category"?
   A. I see that.
   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.
Page 90

1. J. STOUT - OUTSIDE COUNSEL EYES ONLY
2. how did you phrase that again?
3. Q. Given JUUL being successful in the
4. market, if that prompted other people to want
5. to get involved, as well.
6. A. Sure, yeah, I think that's right.
7. Q. Then in the last sentence there, "It
8. says JUUL's sales growth has been
9. resilient despite pulling those flavors from
10. retail distribution, but recent Nielsen data
11. and anecdotal evidence suggests that new
12. entrants are starting to gain traction."
13. Do you see that?
14. A. I do.
15. Q. Do you agree with that, that new
16. entrants were starting to gain traction in the
17. market?
18. A. Maybe a modest amount of traction.
19. Q. The next sentence in the next
20. paragraph says, "NJOY's comeback underscores
21. the opportunity. NJOY's recent return to the
22. market early this year after a brief period of
23. success in 2012, 2013 and then fall into
24. bankruptcy in 2016 underscores the opportunity
25. for greater competition."

Page 91

1. J. STOUT - OUTSIDE COUNSEL EYES ONLY
2. Did I read that right?
3. A. You read it correctly.
4. Q. What's that's saying is, to break it
5. down, first of all, that NJOY had suggest in
6. 2012 and 2013, true?
7. A. A brief period of success. I mean, 8.
8. sure, I guess I would characterize it that
9. way.
10. Q. And then they went bankrupt in 2016, 11.
12. A. Yes.
13. Q. And then six months after Altria's
14. investment, it sounds like they were gaining
15. traction again; is that fair?
16. A. They were certainly trying to, you
17. know, certainly trying to.
18. Q. Midway through the paragraph, do you
19. see the sentence that says, "The NJOY Ace
20. contains a 5 percent nicotine salt
21. concentration, similar to JUUL"?
22. A. I do see that.
23. Q. I think you said this, but it's your
24. understanding that NJOY Ace is a pods product?
25. A. That's my understanding, yes.

Page 92

1. J. STOUT - OUTSIDE COUNSEL EYES ONLY
2. Q. And this report is specifically
3. noting that it has nicotine salts, true?
4. A. This report says that, yes, it does.
5. It says it "contains a 5 percent nicotine salt
6. concentration, similar to JUUL."
7. Q. Like I said, it notes also that its
8. concentration was similar to JUUL's
9. concentration of nicotine salts, right?
10. A. Right.
11. Q. Why, in your view, that was an
12. important feature of the NJOY Ace product?
13. A. Well, I think your question implies
14. that's my view.
15. Q. I didn't mean to --
16. A. I know, but I don't have a view that
17. nicotine salt was or was not important. This
18. is someone else's view. I mean, I really
19. truly don't know anything about nicotine salt.
20. Q. That's fair. Fair enough.
21. A. Was it important or not? I don't
22. know. Apparently this Morgan Stanley author
23. felt that it was. But you're asking my view
24. on this; I don't have a view on this.
25. Q. That's a good way of phrasing this.

Page 93

1. J. STOUT - OUTSIDE COUNSEL EYES ONLY
2. It was important enough for the
3. Morgan Stanley author to note that NJOY Ace
4. had a nicotine salt concentration that was
5. similar to JUUL's, right?
6. MR. LEE: Objection to form.
7. A. The author apparently felt that was
8. important. I don't have any opinion, beyond
9. that.
10. Q. I assume -- I know the answer to
11. this question, Mr. Stout, but do you know
12. whether or not MarkTen Elite had nicotine
13. salts?
14. A. I do not.
15. Q. If you look down at the next
16. paragraph, do you see where it says, "NJOY is
17. experiencing rapid sales growth"?
18. A. I do see that paragraph.
19. Q. It says, "NJOY is experiencing rapid
20. sales growth in measured channels 235 percent
21. year over year in the L12W"?
22. A. Yes, I see that.
23. Q. And I assume "YOY" means year over
24. year?
25. A. At 7-Eleven, we would use that as
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 know 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 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's 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. 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. 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.
J. STOUT - OUTSIDE COUNSEL EYES ONLY

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 of

Q. If you look at the previous page,
the paragraph that begins "NJOY's comeback
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.

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

MR. LEE: Objection to form.

A. So, those seem to imply that we

Q. You believe 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
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. 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
1. underscores the opportunity," and you look at  
2. the second sentence that says, "NJOY's  
3. recent return to the market earlier this  
4. year," do you see that?  
5. A. *Recent return to the market earlier  
6. this year after* -- yes.  
7. Q. Okay.  
8. A. Yes.  
9. Q. Okay. So this is a June 2019  
10. document. "This year" refers to earlier 2019?  
11. A. Provided these first six months in  
12. that sentence are both referring to the same  
13. period, if this is in 2019, then yes, this  
14. chart would show this being post Altria's  
15. investment in JUUL.  
16. Q. Just to get it on the record, what  
17. you're saying is that this chart is showing  
18. NJOY to have grown faster than JUUL did after  
19. Altria's investment in JUUL, right?  
20. MR. LEE: Objection to form.  
21. A. So I'll characterize it in my own  
22. words. This chart shows that in the first six  
23. months of each relative brand's launch, that  
24. NJOY grew faster than JUUL in their first  
25. six months, and that NJOY's first six months'  
26. performance did come after the investment by  
27. Altria in JUUL.  

1. MR. SNIDOW: We have been on the  
2. record I think for --  
3. THE WITNESS: Yeah, let's take a  
4. break.  
5. MR. SNIDOW: -- an hour and  
6. 50 minutes. Let's go off the record.  
7. (Recess was taken.)  
8. BY MR. SNIDOW:  
9. Q. Mr. Stout, next I'm going to show  
10. you tab 16 in the binder, which is DX 1205.  
11. A. Yes.  
12. Q. This is an email from January of  
13. 2020, right?  
15. Q. It's an email from Phil Wilhelm to  
16. Jill Cortabitarte?  
17. A. Yes.  
18. Q. And does she work at 7-Eleven?  
19. A. She does.  
20. Q. Do you see he's attaching a  
21. presentation called "JUUL 7-Eleven Category  
22. Review January 2020"?  
23. A. Yes.  
24. Q. If you turn to tab 17, which is  
25. DX 1206, that is the attachment.  
26. A. I'm there.  
27. Q. If you turn to the next page, you'll  
28. see the title slide for the deck, and it says,  
29. "JUUL Labs, 7-Eleven, 7-Eleven Business  
30. Review." Do you see that?  
31. A. I do.  
32. Q. Do you know if this is a 7-Eleven  
33. created document or a JUUL created document?
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.

Q. And like you said, not apples to apples, but 80 percent off, right?

A. Well, 80 percent off of that former price. I would note that in this graph, this looks like the average price of that kit has hovered around $35 and sometimes below.

Q. So, that's where I wanted to go next.

A. 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?
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. "February 9th device list price drops to $13.40"?
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
Q. "It's going to be up to $5 for these 375 promo funding to match retailers BDF rate, MSRP 14.99."
A. Yes.
1. J. STOUT - OUTSIDE COUNSEL EYES ONLY

2. Q. Thank you for the clarification.

Page 121

1. J. STOUT - OUTSIDE COUNSEL EYES ONLY

2. Q. Let's look at tab 26, which is

DX 1215.

A. Yes.
Q. Let's look at tab 27, which is --
A. It's actually a PX 4214.
Q. This is from Fred Myers on Monday, June 25, 2018, right?
A. That is correct.
Q. And he's forwarding an email from it looks like Dave Mannon in to Fred Myers on June 20, 2018, right?
A. That is correct.
Q. Who is Dave Mannon, if you know.
A. So Dave Mannon I think at this time was the primary Altria kind of person on the leading 7-Eleven account team who calls on 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.

Q. 

Page 130
MR. SNIDOW: I'll reserve the
remainder of my time, as I understand it,
it's a cumulative thing. And so, I may
have some follow-up questions for you
after Mr. Lee's questioning. But in the
meantime, thank you, Mr. Stout.

MR. MANLEY: Joonsuk, this is Robert
Manley. Had you all scheduled some time
to maybe get a quick bite for lunch, and
would this be a good time to do it?

MR. LEE: That would be great.

MR. LEE: How much time would Mr. Stout like?

MR. LEE: 30 minutes would be enough or 45?

THE WITNESS: 30 is plenty.

MR. LEE: Let's go off the record,
then, and we come back at 2:40.

MR. MANLEY: Perfect.

(Luncheon recess taken at 2:10 p.m.)
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. But just let me confirm that the document marked as DX 1190, is this your signed declaration given to the Federal Trade Commission relating to the transaction between Altria and JUUL?

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.

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.

Since you became Senior Vice President Merchandising at 7-Eleven, who was your primarily counterpart at AGDC?
<table>
<thead>
<tr>
<th>Page 146</th>
<th>Page 148</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
</tr>
<tr>
<td>A. I think it's changed a bit over time, and it depends on what you mean by, &quot;primary counterpart.&quot; 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. We've talked to a variety of representatives over there. I don't know who I would call my direct counterpart.</td>
<td></td>
</tr>
<tr>
<td>Q. Thank you.</td>
<td></td>
</tr>
<tr>
<td>A. Do you recall there was a gentleman named Mr. Craig Johnson at AGDC?</td>
<td></td>
</tr>
<tr>
<td>A. Craig Johnson, yes, I think he was president of AGDC prior to Scott Myers assuming that role.</td>
<td></td>
</tr>
<tr>
<td>Q. Have you met Mr. Johnson personally?</td>
<td></td>
</tr>
<tr>
<td>A. Yes, I have.</td>
<td></td>
</tr>
<tr>
<td>Q. Thank you.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 147</th>
<th>Page 149</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
<td>1 J. STOUT - OUTSIDE COUNSEL EYES ONLY</td>
</tr>
<tr>
<td>Now the President of AGDC is Mr. Scott Myers, correct?</td>
<td></td>
</tr>
<tr>
<td>A. That's my -- I might have titles wrong, but he essentially leads their sales group over there, yes.</td>
<td></td>
</tr>
<tr>
<td>Q. So, Mr. Myers took it over from Mr. Johnson; that's your understandings?</td>
<td></td>
</tr>
<tr>
<td>A. That's my understanding; although, I don't know if they had precisely the same titles and roles. From my perspective, Scott has taken over the role that Craig had with respect to our business.</td>
<td></td>
</tr>
<tr>
<td>Q. So if we go back to 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.</td>
<td></td>
</tr>
</tbody>
</table>
12 Q. Do you know what e-cigarette brands Reynolds is selling at 7-Eleven today?
13 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.
14 Q. Thank you.
15 A. And the next one is Imperial. Imperial is number three player at 7-Eleven for combustible cigarettes; is that correct understanding?
16 Q. That's my understanding, yes. The they sell the Winston and Kool brands.
17 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.
18 Q. Understand. Thanks very much for your patience here.
19 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.
20 Q. Understood. Thanks very much for your patience here.
21 A. I don't know. But I know that we would not be selling any flavored electronic cigarettes, and that would remain true, as that remains against FDA regulations.
Q. Thank you.

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. Yes, I have.

Q. So you mentioned on the deposition that you believe that there are other companies out there that are doing something similar to this. Is that correct?

A. Yes, I believe so.

Q. And could you tell the people here what you mean by that?

A. I believe that there are other companies out there that are not only providing funds to 7-Eleven, but they are also providing them with display shelves.

Q. And could you please clarify? What are these other companies that you think are providing such funds and display shelves? Are there any names in particular?

A. I think there are several companies that are doing this, but I don't have specific names.

Q. Okay, well, could you please tell us who some of these companies are?

A. I think there are several companies in the industry that are doing this, but I don't have specific names.

Q. And do you know if these companies are providing funds and display shelves to multiple 7-Eleven locations, or is it just one location?

A. I think they are providing funds and display shelves to multiple locations, but I don't have specific statistics.

Q. Okay. And are any of these companies providing funds and display shelves to 7-Eleven stores in different states?

A. I think so. I believe they are providing funds and display shelves to 7-Eleven stores in different states.

Q. Okay. And do you know if any of these companies are providing funds and display shelves to 7-Eleven stores in different countries?

A. I think some companies are providing funds and display shelves to 7-Eleven stores in different countries.

Q. Okay. And do you know if any of these companies are providing funds and display shelves to 7-Eleven stores in different continents?

A. I think some companies are providing funds and display shelves to 7-Eleven stores in different continents.

Q. Okay. And do you know if any of these companies are providing funds and display shelves to 7-Eleven stores in different hemispheres?

A. I think some companies are providing funds and display shelves to 7-Eleven stores in different hemispheres.
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.

J. STOUT - OUTSIDE COUNSEL EYES ONLY

MR. SNIDOW: Objection to form.

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.

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?

My recollection is that we were discussing the services agreement with JUUL.
Q. Do you see those?
A. Yes.

Q. Thank you. So, Mr. Stout, have you heard about the term 7REWARDS?
A. Yes, that's our loyalty program at 7-Eleven. So yes, definitely heard of it.

Q. Can you please explain how that 7REWARDS loyalty program works?
A. Yes. 7REWARDS is our loyalty program. It's smart phone-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 smart phone 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.

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 smart phone based, but it doesn't actually require a smart phone 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.
Q. All right. Let's start at a high level.

MR. SNIDOW: With that, I think I have no further questions.

Mr. Stout, thank you so much for your time. We truly appreciate it.

MR. LEE: I don't have any question either. Thank you.

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.

MR. SNIDOW: Thank you, Mr. Stout.

MR. LEE: Thank you, Mr. Stout.

Have a great year at the stores.

(Time noted: 3:34 p.m.)

ACKNOWLEDGMENT

STATE OF NEW YORK )

:SS

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 hereunto 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

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

PAGE | LINE | FROM | TO | REASON
--- | --- | --- | --- | ---

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

Notary Public My Commission Expires:
PUBLIC

EXHIBIT 39

PROTECTIVE ORDER
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)

Altria Group, Inc.)
    a corporation,

and

JUUL Labs, Inc.
    a corporation,

Respondents.

Docket No. 9393

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>
<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</td>
<td>Spreadsheet</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRIA_000</td>
<td>7-ELEVEN_ALTRIA_000</td>
</tr>
<tr>
<td>PX3204</td>
<td>of product analysis focus item ranking</td>
<td></td>
<td>13385</td>
<td>13385</td>
</tr>
<tr>
<td>Attachment</td>
<td>Spreadsheet</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRIA_000</td>
<td>7-ELEVEN_ALTRIA_000</td>
</tr>
<tr>
<td>PX3204</td>
<td>of product analysis focus item ranking from 03/05/2018 to 03/12/2018</td>
<td></td>
<td>13386</td>
<td>13386</td>
</tr>
<tr>
<td>RX119/Attach-</td>
<td>2019 Tobacco Business Unit Plan by Shazad Hooda / Phil</td>
<td>10/02/2018</td>
<td>7-ELEVEN_ALTRIA_000</td>
<td>7-ELEVEN_ALTRIA_000</td>
</tr>
<tr>
<td>ment to PX3205</td>
<td></td>
<td></td>
<td>05440</td>
<td>05440</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>------------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<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>
<td>7-ELEVEN_ALTRIA_00008205</td>
<td>7-ELEVEN_ALTRIA_00008205</td>
</tr>
<tr>
<td>RX1194</td>
<td>JUUL Partnership Discussion</td>
<td>08/23/2018</td>
<td>7-ELEVEN_ALTRIA_00008206</td>
<td>7-ELEVEN_ALTRIA_00008206</td>
</tr>
<tr>
<td>RX1195</td>
<td>JUUL Vendor Playbook</td>
<td>08/2018</td>
<td>7-ELEVEN_ALTRIA_00008207</td>
<td>7-ELEVEN_ALTRIA_00008207</td>
</tr>
</tbody>
</table>

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>
<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>PX3204</td>
<td>Email from Phil Wilhelm to Michael Abernathy, Danielle Houman, Michael Jester,</td>
<td>03/15/2018</td>
<td>7_ELEVEN_ALTRIA_00013381</td>
<td>7_ELEVEN_ALTRIA_00013383</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td></td>
<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>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attachment to PX3204</td>
<td>Spreadsheet of order units from 2/19/2018 through 3/12/2018</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRI_A_00013384</td>
<td>7-ELEVEN_ALTRIA_00013384</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>Spreadsheet of order units from February-March 2018 of the MyBLU pods</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRI_A_00005441</td>
<td>7-ELEVEN_ALTRIA_00005441</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>Spreadsheet of packaged foods total per year sales from 2015-2018</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRI_A_00005442</td>
<td>7-ELEVEN_ALTRIA_00005442</td>
</tr>
<tr>
<td>Attachment to PX3205</td>
<td>Spreadsheet of categories on changes in sales of different products</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRI_A_00005443</td>
<td>7-ELEVEN_ALTRIA_00005443</td>
</tr>
<tr>
<td>RX1702</td>
<td>Email from G. Preston to P.</td>
<td>04/22/2020</td>
<td>7_ELEVEN_ALTRI</td>
<td>7_ELEVEN_ALTRIA_0000</td>
</tr>
</tbody>
</table>

RX1702
4835-3195-7224
<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></td>
<td>Wilhelm, K. Sonal, D. Calzini, J. Cortabitarte re: Vuse Alto Pods List</td>
<td>04/22/2020</td>
<td>RIA_00002466</td>
<td>2468</td>
</tr>
<tr>
<td></td>
<td>Price Change &amp; Solo, Ciro &amp; Vibe PUK Transition attaching Alto Price Change,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MRMRPS, VUSE List Price Changes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RX1703</td>
<td>Email from P. Wilhelm to S. Ahuja re New Item sheets attaching Info Dispatch -</td>
<td>04/22/2020</td>
<td>7_ELEVEN_ALTRIA_00004632</td>
<td>7_ELEVEN_ALTRIA_00004635</td>
</tr>
<tr>
<td></td>
<td>NJOY Device</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RX1704</td>
<td>NJOY Info Dispatch</td>
<td>04/03/2020</td>
<td>7-ELEVEN_ALTRIA_00004636</td>
<td>7-ELEVEN_ALTRIA_00004641</td>
</tr>
<tr>
<td>RX1205</td>
<td>7-Eleven Business Review</td>
<td>01/29/2020</td>
<td>7_ELEVEN_ALTRIA_00015336</td>
<td>7_ELEVEN_ALTRIA_00015336</td>
</tr>
<tr>
<td>Attachment</td>
<td>Spreadsheet of Tobacco Team 2018 Goals</td>
<td>2018</td>
<td>7-ELEVEN_ALTRIA_00005438</td>
<td>7-ELEVEN_ALTRIA_00005438</td>
</tr>
<tr>
<td>Attachment</td>
<td>Non Foods Team</td>
<td>2018</td>
<td>7-ELEVEN_ALTRIA</td>
<td>7-ELEVEN_ALTRIA_000054</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>-----------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>to PX3205</td>
<td>2018 Goals</td>
<td></td>
<td>A_00005439</td>
<td>39</td>
</tr>
<tr>
<td>RX 1700</td>
<td>Email from K. Arjoonsingh to P. Wilhelm re Follow-up: blu Performance Update</td>
<td>09/06/2019</td>
<td>7-ELEVEN_ALTRIA_0000901</td>
<td>7-ELEVEN_ALTRIA_0000901</td>
</tr>
<tr>
<td>RX1701</td>
<td>Slide titled &quot;$1 device showing high volume growth &amp; supporting pod pack growth&quot; re Follow-up: BLU Performance Update</td>
<td>09/2019</td>
<td>7-ELEVEN_ALTRIA_0000904</td>
<td>7-ELEVEN_ALTRIA_0000904</td>
</tr>
<tr>
<td>RX1212</td>
<td>MarkTen Promo Master Offers</td>
<td>03/16/2018</td>
<td>7-ELEVEN_ALTRIA_00014311</td>
<td>7-ELEVEN_ALTRIA_00014311</td>
</tr>
<tr>
<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>
<td>7-ELEVEN_ALTRIA_00008205</td>
<td>7-ELEVEN_ALTRIA_00008205</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------</td>
<td>------------</td>
<td>-----------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>RX1194</td>
<td>JUUL Partnership Discussion</td>
<td>08/23/2018</td>
<td>7-ELEVEN_ALTRIA_00008206</td>
<td>7-ELEVEN_ALTRIA_00008206</td>
</tr>
<tr>
<td>RX1195</td>
<td>JUUL VENDOR PLAYBOOK</td>
<td>08/2018</td>
<td>7-ELEVEN_ALTRIA_00008207</td>
<td>7-ELEVEN_ALTRIA_00008207</td>
</tr>
<tr>
<td>RX1215</td>
<td>Email from M. Berger to P. Wilhelm re: a few follow-up questions from the Korea team</td>
<td>07/22/2017</td>
<td>7-ELEVEN_ALTRIA_00008208</td>
<td>7-ELEVEN_ALTRIA_00008208</td>
</tr>
<tr>
<td>RX1706</td>
<td>Email extending promotions for Elite</td>
<td>04/26/2018</td>
<td>7-ELEVEN_ALTRIA_00013872</td>
<td>7-ELEVEN_ALTRIA_00013872</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>03/2018-7/2018</td>
<td>7-ELEVEN_ALTRIA_00013874</td>
<td>7-ELEVEN_ALTRIA_00013874</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>03/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013875</td>
<td>7-ELEVEN_ALTRIA_00013875</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>03/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013876</td>
<td>7-ELEVEN_ALTRIA_00013876</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>03/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013877</td>
<td>7-ELEVEN_ALTRIA_00013877</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05-2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013878</td>
<td>7-ELEVEN_ALTRIA_00013878</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------</td>
<td>---------------</td>
<td>---------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td></td>
<td>promotions for Elite</td>
<td></td>
<td>A_00013878</td>
<td>78</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013879</td>
<td>7-ELEVEN_ALTRIA_00013879</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>03/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013880</td>
<td>7-ELEVEN_ALTRIA_00013880</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013881</td>
<td>7-ELEVEN_ALTRIA_00013881</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013882</td>
<td>7-ELEVEN_ALTRIA_00013882</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013883</td>
<td>7-ELEVEN_ALTRIA_00013883</td>
</tr>
<tr>
<td>RX1706</td>
<td>Attachments to Email extending promotions for Elite</td>
<td>05/2018-08/2018</td>
<td>7-ELEVEN_ALTRIA_00013884</td>
<td>7-ELEVEN_ALTRIA_00013884</td>
</tr>
<tr>
<td>RX1708</td>
<td>Attachment to Email re Elite $8.99 Promotional Offer</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRIA_00018194</td>
<td>7-ELEVEN_ALTRIA_00018194</td>
</tr>
<tr>
<td>RX1708</td>
<td>Attachment to Email re Elite 19.99 promotional</td>
<td>03/2018</td>
<td>7-ELEVEN_ALTRIA_00018195</td>
<td>7-ELEVEN_ALTRIA_00018195</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
<td>Date</td>
<td>Beginning Bates No.</td>
<td>Ending Bates No.</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>PX8001/R X1190</td>
<td>Declaration of Jack Stout</td>
<td>03/10/2021</td>
<td>PX7044-001</td>
<td>PX7044-088</td>
</tr>
<tr>
<td>PX7044</td>
<td>Deposition Transcript of Jack Stout</td>
<td>03/11/2020</td>
<td>PX8001-001</td>
<td>PX8001-004</td>
</tr>
</tbody>
</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)
Aaron Ross
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Complaint Counsel (via electronic mail)
James Abell (jabell@ftc.gov)
Dominic Vote (dvote@ftc.gov)
Peggy Bayer Femenella (pbayer@ftc.gov)
Erik Herron (eherron@ftc.gov) Joonsuk Lee (jlee4@ftc.gov)
Meredith Levert (mlevert@ftc.gov) Kristian Rogers (krogers@ftc.gov)
David Morris (dmorris1@ftc.gov)
Michael Blevins (mblevins@ftc.gov)
Michael Lovinger (mlovinger@ftc.gov) Frances Anne Johnson (fjohnson@ftc.gov)
Simone Oberschmied (soberschmied@ftc.gov)
Julia Draper (jdraper@ftc.gov)
Jennifer Milici (jmilici@ftc.gov)
Nicole J. Lindquist (nlindquist@ftc.gov)
Jeanine K. Balbach (jbalbach@ftc.gov)
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580 (202) 326-2289

Counsel for JUUL Labs, Inc. (via electronic mail)
Debbie Feinstein
Robert J. Katerberg
Justin P. Hedge
Francesca M. Pisano
Adam Pergament
Le-Tanya Freeman
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave, NW
Washington, DC 20001
Tel: 202-942-5000
debbie.feinstein@arnoldporter.com
robert.katerberg@arnoldporter.com
justin.hedge@arnoldporter.com
francesca.pisano@arnoldporter.com
Adam.Pergament@arnoldporter.com
tanya.freeman@arnoldporter.com

David Gelfand
Jeremy J. Calsyn
Jessica Hollis
Matthew Bachrack
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Tel: 202-974-1500
dgelfand@cgsh.com
jcalsyn@cgsh.com
jhollis@cgsh.com
mbachrack@cgsh.com

Counsel for Altria Group, Inc. (via electronic mail)
Marc Wolinsky
Jonathan Moses
Kevin Schwartz
Adam Goodman
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Tel: 212-403-1000
MWolinsky@wlrk.com
JMMoses@wlrk.com
KSchwartz@wlrk.com
ALGoodman@wlrk.com

Beth A. Wilkinson
James M. Rosenthal
Hayter Whitman
Wilkinson Stekloff LLP
2001 M Street NW, 10th Floor
Washington, D.C. 20036
Tel: 202-847-4000
bwilkinson@wilkinsonstekloff.com
jrosenthal@wilkinsonstekloff.com
hwhitman@wilkinsonstekloff.com

Moira Penza
Wilkinson Stekloff LLP
130 W 42nd Street, 24th Floor
New York, NY 10036
Tel: 929-264-7773
mpenza@wilkinsonstekloff.com

/s/ Lisa Houssiere
Lisa Houssiere