

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

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In the Matter of	)	
	)	
Altria Group, Inc.,	)	
a corporation,	)	Docket No. 9393
	)	
and	)	
	)	
JUUL Labs, Inc.	)	
a corporation,	)	
	)	
Respondents.	)	
_____	)	

**NON-PARTY PHILIP MORRIS INTERNATIONAL INC.'S  
RENEWED MOTION FOR *IN CAMERA* TREATMENT**

On May 26, 2021, this Court issued an order denying without prejudice non-party Philip Morris International Inc.'s ("PMI") motion for *in camera* treatment for portions of the deposition transcript of Martin King (PX7020/RX0111) and for portions of certain PMI documents containing personal sensitive information. The Court permitted PMI (and other non-parties) to refile a motion for *in camera* treatment as to these documents, directing PMI to carefully review its documents and strictly narrow its request to comply with the Commission's strict standards for *in camera* treatment.

Pursuant to the Court's Order, PMI has carefully re-examined its documents and now respectfully moves this Court for *in camera* treatment for significantly narrowed portions of the deposition transcript of Martin King and indefinite *in camera* treatment for five personal email addresses contained in two PMI documents. The parties do not oppose PMI's motion for *in camera*

treatment of the Confidential Documents and the sensitive personal information contained in PMI's documents.

Respectfully submitted,

*/s Peter J. Mucchetti* \_\_\_\_\_

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DATED: June 4, 2021

*Counsel for Non-Party PMI*

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**NON-PARTY PHILIP MORRIS INTERNATIONAL INC.'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS RENEWED MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission, 16 C.F.R. § 3.45(b), the Scheduling Order entered in this matter,<sup>1</sup> and the Order on Non-Parties' Motions for *In Camera* Treatment,<sup>2</sup> non-party Philip Morris International Inc. ("PMI") respectfully submits this Memorandum of Law in support of its renewed motion for *in camera* treatment for:

- Five years for portions of the transcript of Martin King's deposition (the "Transcript") taken in response to third-party *subpoenas ad testificandum* served by the FTC and respondent Altria Group, Inc. ("Altria"); and

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<sup>1</sup> Second Revised Scheduling Order, *In re Altria Group, Inc., and JUUL Labs, Inc.*, Docket No. 9393 (FTC Mar. 4, 2021).

<sup>2</sup> Order on Non-Parties' Motions for *In Camera* Treatment, *In re Altria Group, Inc., and JUUL Labs, Inc.*, Docket No. 9393 (FTC May 26, 2021).

- Permanent *in camera* treatment for five personal email addresses contained in two PMI documents ("Documents") that the FTC and Respondents have notified PMI that they intend to introduce into evidence at the administrative trial in this matter.<sup>3</sup>

The Transcript and PMI's documents containing sensitive personal information (SPI) are attached as Attachment A (and collectively referred to as "Confidential Documents").

The FTC, Altria, and JUUL Labs, Inc. ("JUUL") have notified PMI that they intend to introduce PMI documents into evidence at the administrative trial in this matter, including the Transcript of Martin King, Chief Executive Officer, PMI America. *See* Letter from the FTC dated April 19, 2021, (attached as Attachment B) and Letter from Respondents Altria and JUUL dated April 22, 2021, (attached as Attachment C). The parties do not oppose PMI's renewed motion for *in camera* treatment of the Transcript and the sensitive personal information contained in PMI's documents.

All the Documents were marked at the time of production as "Confidential" and are subject to the Protective Order in this matter. Similarly, all parties stipulated that the Transcript would be treated as "Confidential" and subject to the Protective Order in this matter.

PMI carefully re-reviewed the Transcript, paying close attention to the Judge's Order dated May 26, 2021, and limited its request for *in camera* treatment to only those portions that comply with the Commission's strict standards for *in camera* treatment. These portions contain competitively sensitive, non-public confidential business information that, if they were to become part of the public record, would significantly harm PMI's ability to compete in the smoke-free product industry or otherwise likely cause serious injury to PMI. As to the Documents, PMI also

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<sup>3</sup> This memorandum of law addresses only those documents, or portions thereof, whose *in camera* treatment was previously denied without prejudice by the Order on Non-Parties' Motions for *In Camera* Treatment issued on May 26, 2021. PMI relies on the *in camera* protections that the Court granted for PMI's documents in that Order.

carefully re-reviewed the information to identify only private email addresses and telephone numbers. In support of the motion, PMI relies on the Declaration of Carrie Freed, Assistant General Counsel, PMI Global Services Inc. ("Freed Declaration," attached as Attachment D), which provides additional details regarding the Transcript.

### **I. Portions of the Transcript Merit *In Camera* Treatment**

*In camera* treatment of material is appropriate when, as in this case, the material's "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). *In camera* treatment is appropriate if the "information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at \*10 (Mar. 10, 1980). The FTC and this Court have repeatedly recognized the necessity of granting *in camera* treatment to business records, *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1961 WL 65882, at \*2, \*4 (Mar. 14, 1961) ("[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible"), and that "[t]he likely loss of business advantages is a good example of a clearly defined, serious injury," *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138, at \*6 (Sept. 19, 2000).

Courts may consider the following factors when analyzing the secrecy and materiality standard under *In re General Foods*: (1) the extent to which information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others (Factors 1-3 are referred to as the "Secrecy Factors"; factors 4-6 are referred

to as the "Materiality Factors"). *In re Bristol-Myers Co.*, 1977 WL 189054, at \*2 (Nov. 11, 1977). Each of these factors weighs in favor of *in camera* treatment of portions of the Transcript and SPI in PMI's Documents.

In addition, PMI's status as a third party is relevant to the *in camera* treatment of the materials sought. Non-parties deserve "special solicitude" when requesting *in camera* treatment for confidential information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Here, PMI is a non-party to this matter and produced the Confidential Documents pursuant to third-party subpoenas under the protection of the Protective Order issued by this Court. Therefore, PMI's non-party status weighs in favor of granting *in camera* treatment to its Confidential Documents.

PMI seeks *in camera* treatment for five years for the information set forth in the following portions of the Transcript:

Exhibit No.	Locations Containing Confidential Information
PX7020/RX0111	20:19-21; 25:9-12; 33:14-25; 34:2-3; 34:6-17; 34:24-25; 35:2-3; 35:5-6; 35:9-15; 35:22-23; 36:2-5; 36:9-12; 37:24-25; 38:2-5; 38:14-17; 45:9-15; 47:4-11; 51:21-25; 52:2-4; 52:10-24; 53:12-20; 56:19-25; 57:2-6; 57:8-25; 58:4-10; 58:13-15; 58:17-25; 59:2-6; 59:8-11; 59:19-25; 60:2-25; 61:2-9; 61:11-24; 62:4-7; 62:10-16; 63:3-5; 63:10-17; 63:20-21; 65:18-20; 65:22-25; 66:2-8; 66:13-16; 66:18-25; 67:2-8; 67:12-16; 67:18-19; 67:21-23; 68:2-8; 68:24-25; 69:2-10; 70:12-15; 70:23-25; 71:2-7; 72:3-13; 76:22-25; 77:2; 79:21-23; 80:6-9; 80:17-18; 81:6-22; 82:3-25; 83:2-25; 84:2-4; 84:8-17; 84:19-24; 85:3-11; 85:14-16; 89:20-25; 90:11-12; 91:13; 91:20; 92:24-25; 93:2-10; 93:24-25; 94:2-3; 97:9-12; 100:8-20; 105:6-10; 106:3-5; 106:23-24; 107:10-11; 109:19-21; 110:3-5; 110:9-19; 110:22-25; 111:2-6; 112:5-25; 113:2-5; 116:6-20; 117:3-10; 117:18-20; 118:4-24; 120:25; 121:2-8; 121:11-16; 122:7-13; 123:2; 123:15-25; 124:2-5; 124:10-11; 124:19-25; 125:2-8; 125:13-23; 126:2-13; 126:15-22; 130:10-15; 130:17-25; 131:2-11; 131:13-21; 132:6-9; 132:16-19; 132:21-25; 133:4-5; 133:12-25; 134:2-9; 134:11-25; 135:2; 137:22-25;

166:11-15; 172:25; 173:2-20; 174:14-16; 179:10-14; 180:20-25; 181:2-18; 183:14; 186:12-15; 186:18-21; 186:23-25; 189:9-13; 189:24-25; 190:2-5; 190:10-17; 197:23-25; 198:2-4; 201:11-17; 201:19-23; 202:5-7; 202:18-25; 203:2-3; 203:6-19; 210:17-20; 210:23-25; 216: 25; 217:2-7; 220:16-22; 223:2-8; 229:3-5; 231:8-25; 232:2-19; 232:21-22; 232:24-25; 233:2-3; 233:6-12; 233:14-25; 234:2-22; 235:19-20; 235:22-25; 236:2-5; 236:8-25; 237:2-3; 237:10-17; 237:19-25; 238:2-18; 238:20-25; 239:2-3; 239:5-25; 240:2-12; 240:17-25; 241:2-3; 242:8-12; 243:17-24; 248:23-25; 249:2-9; 249:11-25; 250:2; 251:10-16.
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In his deposition, Mr. King discussed highly confidential and sensitive business topics, including PMI's strategic plans, business relationships and the terms thereof, sensitive market analysis, and on-going research and development efforts.

**A. The Secrecy Factors Support *In Camera* Treatment for Portions of the Transcript**

PMI has taken all reasonable steps to protect the confidential information contained in the Transcript for which PMI is seeking *in camera* treatment, which was produced pursuant to compulsory process and under the terms of the Protective Order in this matter. PMI requested that the Transcript and its exhibits be treated as "Confidential" and provided the FTC and Respondents with a final copy of the Transcript designated as such. Furthermore, when PMI produced the documents discussed in Mr. King's deposition, it took steps to ensure and maintain confidentiality by conducting a confidentiality review of each document and designating, as appropriate, documents it produced as "Confidential" pursuant to the Protective Order in this matter. This Court has now granted *in camera* treatment to a number of the documents used as exhibits during the deposition. PMI produced the Transcript and underlying documents with the understanding that they would be kept confidential pursuant to the Protective Order entered in this matter.

Furthermore, PMI takes substantial measures to guard the secrecy of the sensitive information contained in the Transcript by limiting the information's dissemination and taking every reasonable step to protect its confidentiality. As described in the Freed Declaration, PMI has

a comprehensive information security policy protecting the information contained in the Transcript, which includes policies regarding passwords, physical access, and network security.

With one exception, the information reflected in the Transcript for which *in camera* treatment is being sought is known only to PMI's senior management and select employees. The limited exception is that certain information discussed in the Transcript concerns business relations between PMI and Altria and were exchanged between those two companies in the context of a possible merger and in conjunction with business agreements. The relationship between PMI and Altria includes, but is not limited to, an on-going licensing agreement permitting Altria to commercialize a PMI heated tobacco product, marketed as IQOS and HeatSticks in the United States, and a prior agreement to jointly research and develop electronic cigarettes. This prior agreement also provided for exclusive technology cross licenses, technical information sharing and cooperation on scientific assessment, regulatory engagement and approval related to e-vapor products. While the existence of this agreement and general purpose are publicly known, details regarding the specific terms and conditions are highly confidential and competitively sensitive, as are other business discussions pertaining to potential business arrangements.

Businesses frequently must share confidential secret information between themselves in the course of their business relationships, but do so with the understanding that the information will be kept confidential. These discussions and details are not known to competitors or the general public and remain confidential within PMI and Altria. Public disclosure of this information would cause PMI serious injury.

**B. The Materiality Factors Also Support *In Camera* Treatment for Portions of the Transcript**

As to the materiality-related factors enumerated in *Bristol-Myers*, the information PMI is seeking *in camera* treatment for contained in the Transcript is valuable, secret, and of competitive

significance to PMI's business. PMI has invested significant resources into developing and commercializing smoke-free products. PMI has publicly announced its goal "to deliver a smoke-free future by focusing its resources on developing, scientifically substantiating and responsibly commercializing smoke-free products that are less harmful than smoking, with the aim of completely replacing cigarettes as soon as possible."<sup>4</sup> To achieve this goal, PMI has invested in researching and developing innovative products and analyzing how to commercialize these products. Portions of the Transcript include proprietary and highly confidential information about these products; PMI's strategic plans; potential business transactions to help PMI achieve and advance its strategic plans; PMI's business relationships, including confidential contractual terms; negotiations; and sensitive information exchanged between business partners in furtherance of their commercial goals. The disclosure of this information would adversely affect PMI's competitive position by unfairly equipping competitors and other third parties with the competitively sensitive information reflected in the Transcript.

In addition, statements in the Transcript regarding on-going discussions and strategies, if made public, would result in significant competitive injury to PMI, including losing significant business advantages. As this Court has recognized, "the likely loss of business advantages is a good example of a 'clearly defined, serious injury.'" *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at \*7 (Dec. 23, 1999). If this information is made public, competitors would learn PMI's future commercialization plans and market strategies, including self-assessed strengths and weaknesses, allowing competitors to unfairly compete against PMI. Specifically, portions of the Transcript contain specific details regarding PMI's negotiation tactics and contract terms, or proposed terms,

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<sup>4</sup> See PMI's Statement of Purpose, Excerpt from 2020 Proxy Statement, available at: <https://www.pmi.com/statement-of-purpose>.

and efforts to commercialize PMI's products, which, if made public, would create a loss of business advantage to PMI.

**C. *In Camera* Protection for Portions of the Transcript Should Extend for Five Years**

Given the highly sensitive and technical nature of the information reflected in the Transcript, including competitively significant information that PMI continues to use today, PMI requests that the highlighted portions of the Transcript be given *in camera* treatment for five years. As discussed in the Freed Declaration, the information contained in the Confidential Documents is highly sensitive and will remain so for the foreseeable future. Protection for five years is appropriate to ensure that PMI is not competitively injured. *See In re Otto Bock Healthcare N. Am., Inc.*, No. 9378, 2018 FTC LEXIS 111, at \*11 (July 6, 2018) (granting *in camera* treatment for five years from time of order to non-party's ordinary course business documents). *In camera* treatment for five years is also consistent with the duration that this Court has already granted for other materials receiving *in camera* treatment pursuant to the May 26, 2021 Order on Non-Parties' Motions for *In Camera* Treatment.

The Court should grant *in camera* treatment for portions of the Transcript as highlighted in Attachment A. The disclosure of this information would adversely affect PMI's competitive position with respect to third parties, including distributors, licensees, and competitors, by unfairly equipping them with the confidential and sensitive information reflected in Mr. King's statements.

**II. The Court Should Allow *in Camera* Treatment of Sensitive Personal Information**

PMI requests permanent *in camera* treatment for five personal email addresses contained in two PMI documents designated by the parties as proposed trial exhibits, as set forth in the following chart:

Exhibit No.	Document Description	Location of SPI
PX3028	Email from Nicholas Rolli to Martin King re: Board Materials - Investor Reaction to Merger Announcement w/Attach: Coronation Board Letter_28August2019 pdf; R Presentation to BoD [DRAFT 01-Sep-19 8.30 am LSN] pptx	PMI-FTC-000000517
PX3029	Email from Patricia Ahrens to Massimo Ferragamo, Werner Geissler, Lisa Hook, et al. re: Conference Call - Tuesday, September 24, 2019 w/Attach: 2019-09-23 Media Update pdf	PMI-FTC-000000523

Pursuant to the May 26, 2021 Order on Non-Parties' Motions for *In Camera* Treatment, PMI has revised its list of documents containing SPI and is not seeking to protect work or business email addresses or telephone numbers in this renewed motion and memorandum of law in support. Redacting private email addresses will not undermine the full and fair resolution of this case because that information is not relevant or material to any of the issues presented by this matter. Further, confidential treatment of this personal information is consistent with Commission Rule of Practice 3.45(b), which provides that the Court can order permanent *in camera* treatment for "sensitive personal information." 16 C.F.R. § 3.45(b).<sup>5</sup> Because email addresses and phone numbers can identify an individual, they may expose the individual to increased, unnecessary risk of harassment, identity theft, fraud, and other harm. For these reasons, the Court should grant

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<sup>5</sup> "Sensitive personal information" shall include, **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." 16 C.F.R. § 3.45(b) (emphasis added).

permanent *in camera* treatment for the sensitive personal information, specifically private email addresses contained in PMI's documents.

### **III. Conclusion**

For the reasons set forth above and in the accompanying Freed Declaration, PMI respectfully requests that this Court grant *in camera* treatment for five years for designated portions of the Transcript and permanent *in camera* treatment for sensitive personal information contained in PMI's documents that the FTC and Respondents may use at trial.

Respectfully submitted,

/s Peter J. Mucchetti

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*Counsel for Non-Party PMI*

**Attachment A**

**(Transcript and PMI Documents Containing SPI - Withheld In Their Entirety From Public  
Version)**

**Attachment B**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

PUBLIC

WASHINGTON, D.C. 20580

Bureau of Competition  
Mergers II Division

April 19, 2021

**VIA EMAIL TRANSMISSION**Peter J. Mucchetti  
Clifford Chance US LLP  
2001 K Street NW  
Washington, DC 20006RE: *In the Matter of Altria Group Inc. and JUUL Labs, Inc., Docket No. 9393*

Dear Peter:

This letter provides formal notice pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on June 2, 2021. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or

your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/about-ftc/bureaus-offices/office-secretary/document-filing>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is May 7, 2021**. A copy of the March 4, 2021 Scheduling Order can be found at <https://www.ftc.gov/enforcement/cases-proceedings/191-0075/altria-groupjuul-labs-matter>.

If you have any questions, please feel free to contact me at 202-326-2539.

Sincerely,

/s/ Michael Lovinger

Michael Lovinger

Counsel Supporting the Complaint

Attachment

# Attachment A

PUBLIC

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX3009	PMI-FTC-000000001	PMI-FTC-000000001	3/8/2018	PMI Presentation: RRP Progress Update
PX3010	PMI-FTC-000000081	PMI-FTC-000000111	9/23/2019	PMI Document: Media Update September 2019
PX3011	PMI-FTC-000000112	PMI-FTC-000000112	9/9/2019	PMI: Presentation: Project Universe: Communications Approach
PX3012	PMI-FTC-000000113	PMI-FTC-000000113	9/4/2019	Letter from Jerry Whitson to the Board of Directors of Philip Morris International Inc. re: Project Universe
PX3013	PMI-FTC-000000139	PMI-FTC-000000139	3/4/2020	PMI Document: Product Innovation and Regulatory Affairs Committee Meeting Agenda
PX3027	PMI-FTC-000000333	PMI-FTC-000000427	11/25/2019	Email from Isil Acikgoz Erdal to Martin King, Andreas Kurali, Frank de Rooji, Jerry Whitson, et al. re: BOD Dec'19 - Finance Committee Report - DRAFT w/Attach: BOD Dec 2019_DRAFT_25112019.pdf
PX3028	PMI-FTC-000000508	PMI-FTC-000000517	9/6/2019	Email from Nicholas Rolli to Martin King re: Board Materials - Investor Reaction to Merger Announcement w/Attach: Coronation_BoardLetter_28August2019.pdf; R Presentation to BoD [DRAFT 01-Sep-19 8.30 am LSN] pptx
PX3029	PMI-FTC-000000523	PMI-FTC-000000554	9/23/2019	Email from Patricia Ahrens to Massimo Ferragamo, Redacted @gmail.com, Lisa Hook, et al. re: Conference Call - Tuesday, September 24, 2019 w/Attach: 2019-09-23 Media Update pdf
PX3030	PMI-FTC-000000555	PMI-FTC-000000555	9/25/2019	Email from Frank de Rooji to Devin Carey, Andreas Kurali, Werner Schuster, et al. re: Project Universe - Draft JV Presentation
PX3031	PMI-FTC-000000556	PMI-FTC-000000558	9/24/2019	Email from Alex Williams to Angela Capito, Nicholas Rolli, Martin King, et al. re: Press Release - FINAL Business Wire version w/Attach: Project Universe Announcement 25-Sep-19 [FINAL].doc
PX3032	PMI-FTC-000000559	PMI-FTC-000000559	8/20/2019	Email from Murray Garnick to Marian Salzman, Andre Calantzopoulos, Martin King, et al. re: Please Use this version of the Universe LEAK document
PX3033	PMI-FTC-000000560	PMI-FTC-000000574	8/20/2019	Email from Marian Salzman to Andre Calantzopoulos, Martin King, Murray Garnick, et al. re: Please use this version of the Universe LEAK document w/Attach: d2PROJECT UNIVERSE LEAK STRATEGY_v5[2].docx
PX3034	PMI-FTC-000000586	PMI-FTC-000000601	9/24/2019	Email from Devin Carey to Andreas Kurali, Frank de Rooji, Werner Schuster, et al. re: Project Universe - Draft JV Presentation w/Attach: 2019-09-24-JV Announcement Call Slides [DRAFT 6pm].pdf
PX3035	PMI-FTC-000000620	PMI-FTC-000000673	8/9/2019	Email from Deepak Mishra to Andre Calantzopoulos, Martin King, Marc Firestone, et al. re: Total U.S. Nicotine Market - Slide Deck.pdf w/Attach: Total U.S. Nicotine Market - Slide Deck.pdf
PX3036	PMI-FTC-000000674	PMI-FTC-000000696	9/15/2019	Email from Nicholas Rolli to Martin King re: Latest IR deck w/Attach: 2019-09-15-Project Universe_Draft 6pm.pptx
PX3037	PMI-FTC-000000697	PMI-FTC-000000698	8/1/2019	Email from Luca Malesci to Andre Calantzopoulos, Jacek Olczak, Marc Firestone, et al. re: Universe Work-plan w/Attach: Project Universe - Workplan.pdf
PX3038	PMI-FTC-000000829	PMI-FTC-000000851	5/16/2018	Email from Simon Taurins to Martin King, Paul Janelle, Cathal Deasy, et al. re: Tobacco: JUUL's impact has been less than it seems w/Attach: CS JUUL_160518.pdf
PX3039	PMI-FTC-000001084	PMI-FTC-000001092	9/2/2019	Email from Marian Salzman to Andre Calantzopoulos, Jacek Olczak, Deepak Mishra, et al. re: d32B_Highly Confidential_Project Universe Release w/Attach: d32B_HighlyConfidential_Project Universe Release.docx
PX3040	PMI-FTC-000001093	PMI-FTC-000001093	11/27/2019	Email from James Bushnell to Martin King, Devin Carey, Alex Williams, et al. re: BAT conf call key points
PX3041	PMI-FTC-000001113	PMI-FTC-000001180	8/22/2019	Email from Marian Salzman to Luca Malesci, James Bushnell, Jason Mills, et al. re: Attached please find the updated materials I am sending to the meeting ANC will have this weekend w/Attach: d21ANC_HighlyConfidential_Project Universe Release.docx; etc.
PX3042	PMI-FTC-000001183	PMI-FTC-000001236	8/21/2019	Email from Marian Salzman to Luca Malesci, Nicholas Rolli, Kevin Corsthwaite, et al. re: Here is a comprehensive but incomplete working draft of Comms strategy, plan, etc. w/Attach: d2HIGHLY CONFIDENTIAL - Project Universe Source of Truth v2 82019[1].docx
PX3043	PMI-FTC-000001435	PMI-FTC-000001435	1/30/2020	Letter from Michael Fawlk to Theodore Edlich re: E-Vapor Joint Research, Development and Technology Sharing Agreement dated July 15, 2015 (JRDTA)
PX3044	PMI-FTC-000001436	PMI-FTC-000001437	1/7/2020	Letter from Michael Fawlk to Theodore Edlich re: E-Vapor Joint Research, Development and Technology Sharing Agreement dated July 15, 2015 (JRDTA)
PX3045	PMI-FTC-000001438	PMI-FTC-000001439	7/30/2019	Letter from Theodore Edlich to Michael Fawlk re: June 20, 2019 Letter
PX3046	PMI-FTC-000001440	PMI-FTC-000001440	6/20/2019	Letter from Michael Fawlk to Theodore Edlich re: February 27, 2019 Letter
PX3047	PMI-FTC-000001441	PMI-FTC-000001442	4/3/2019	Email from Michael Fawlk to Michele Cattoni and Elisabeth Murray re: Call Today
PX3048	PMI-FTC-000001443	PMI-FTC-000001443	1/31/2020	Letter from Theodore Edlich to Michael Fawlk re: January 30, 2020 Letter
PX3049	PMI-FTC-000001444	PMI-FTC-000001445	1/13/2020	Letter from Theodore Edlich to Michael Fawlk re: January 7, 2020 Letter
PX3050	PMI-FTC-000001446	PMI-FTC-000001530	09/??/20	PMI BoD Presentation: Industry environment and strategy summary
PX3051	PMI-FTC-000001566	PMI-FTC-000001567	9/10/2019	Philip Morris International Inc. Document: Agenda Board of Directors' Meeting
PX3052	PMI-FTC-000001572	PMI-FTC-000001579	12/5/2019	Document: Minutes of a Meeting of the Board of Directors of Philip Morris International Inc.
PX3053	PMI-FTC-000001611	PMI-FTC-000001622	9/11/2019	Document: Minutes of a Meeting of the Board of Directors of Philip Morris International Inc.
PX3054	PMI-FTC-000001651	PMI-FTC-000001727	8/29/2019	Email from Marian Salzman to Richard Livingston, Murray Garnick, Kevin Crosthwaite, et al. re: HIGHLY CONFIDENTIAL - Project Universe Source of Truth v13_82819.docx w/Attach: HIGHLY CONFIDENTIAL - Project Universe Source of Truth v13_82819.docx
PX3055	PMI-FTC-000001742	PMI-FTC-000001894	9/8/2019	Email from Marian Salzman to Paige Magness, Kevin Crosthwaite, Todd Walker, et al. re: Updated Source of Truth w/Attach: PU_version15-work-in-progress_booklet-ALL-revised_Sep7.CLEAN.docx
PX3056	PMI-FTC-000001895	PMI-FTC-000001911	8/6/2020	Email from Sedat Muderrisoglu to Martin King, JB Simko, Corey Henry, et al. re: NATO: Letter to FDA on Bluetooth Technology w/Attach: Letter to FDA-Bluetooth Technology in Tobacco Products 7-16-20.pdf
PX3057	PMI-FTC-000002032	PMI-FTC-000002038	4/22/2018	Email from Germana Barba to Sedat Muderrisoglu re: PMI panel participation at UKVIA event tomorrow - Monday 23rd
PX3058	PMI-FTC-000002046	PMI-FTC-000002047	4/23/2018	Email from Michele Cattoni to Sedat Muderrisoglu, Luca Rossi, Diana Czerwinska, et al. re: MESH/APEX
PX3072	PMI-FTC-000002048	PMI-FTC-000002049	4/24/2018	Email from Filip Tack to Alex Williams, Devin Carey, Nicholas Rolli, et al. re: MESH/APEX launch in the US
PX3073	PMI-FTC-000002093	PMI-FTC-000002094	11/26/2018	Email from Sedat Muderrisoglu to Souleiman Naciri, Luca Nanni and Celine De Lavallaz re: Haver & Boecker Mesh heater line for GEN 1.0
PX3074	PMI-FTC-000002098	PMI-FTC-000002100	12/3/2018	Email from Sedat Muderrisoglu to Margaret Simpson re: Overview of Vulcan II Committees 8-17-15_Draft.pptx w/Attach: Overview of Vulcan II Committees 8-17-15_Draft.pptx
PX3075	PMI-FTC-000002112	PMI-FTC-000002130	9/24/2018	Email from Sedat Muderrisoglu to Charlotte Garraud re: US Vape market w/Attach: E-vapor Overview for 7.30.18.pdf
PX3076	PMI-FTC-000002166	PMI-FTC-000002167	7/13/2018	Email from Sedat Muderrisoglu to Nicholas Rolli re: Flash News: Juul to launch 3% nicotine pods as of August 2018 in the US
PX3077	PMI-FTC-000002216	PMI-FTC-000002217	4/24/2018	Email from Sedat Muderrisoglu to Alex Williams, Luca Rossi and Thomas McGrath re: Annual reports - Form 10K scripts
PX3078	PMI-FTC-000034182	PMI-FTC-000034192	7/11/2019	Email from Sebastian Hoyle to Martin King, Mishra Deepak, Andres Kurali, et al. re: 2019 & 2020 Cost Assumptions and Projects Prioritization meeting - S&L: LIFE SC ENCES w/Attach: Life Sciences CFO CSO - Pre-Read - 11-07-19.pdf
PX3079	PMI-FTC-000034259	PMI-FTC-000034278	11/25/2019	Email from Jacek Olczak to James Bushnell re: 2019 BOD Letter w/Attach: 2019 PMI Performance Review 25Nov2019.pdf
PX3080	PMI-FTC-000034452	PMI-FTC-000034547	9/5/2019	Email from Luca Malesci to Andreas Kurali, James Bushnell, Martin King, et al. re: meeting tomorrow w/Attach: Project Universe BoD Draft Materials.pdf
PX3081	PMI-FTC-000034453	PMI-FTC-000034547	9/11/2019	Philip Morris International Presentation: Project Universe Board of Directors
PX3082	PMI-FTC-000034550	PMI-FTC-000034551	8/12/2019	Email from Luca Malesci to Marc Firestone, Martin King, Marian Salzman; et al. re: Board Agenda w/Attach: Universe_Board Agenda.docx

Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX3083	PMI-FTC-000034565	PMI-FTC-000034582	11/27/2018	Email from James Bushnell to Martin King and Jacek Olczak re: 2018 Performance Review w/Attach: 2018 PMI Performance Review FINAL.docx
PX3084	PMI-FTC-000034583	PMI-FTC-000034584	9/23/2019	Email from Luca Malesci to Nicholas Rolli, Alex Williams, Devin Carey, et al. re: Project Universe_Joint Venture Materials_Draft (002).pptx w/Attach: Project Universe_Joint Venture Materials_Draft (002).pptx
PX3085	PMI-FTC-000034585	PMI-FTC-000034667	9/21/2019	Email from Nicholas Rolli to Deepak Mishra, Martin King, Alex Williams, et al. re: Investor Deck Comparison - MO vs PM w/Attach: 2019-09-20-Project Universe_[DRAFT 3pm].pdf; Project Universe - MO Edits 9.20.19 330PM.pdf
PX3086	PMI-FTC-000034698	PMI-FTC-000034774	8/28/2019	Email from Deepak Mishra to Andre Calantzopoulos and Martin King re: Universe: Apollo BOD Draft w/Attach: Project Universe - 8.20 Strategy Meeting (to Pluto).pdf; Project Universe - 8.21 Innovation Committee (to Pluto).pdf
PX3087	PMI-FTC-000035005	PMI-FTC-000035097	9/4/2019	Email from Luca Malesci to Andre Calantzopoulos, Jacek Olczak, Martin King, et al. re: Board Deck - Draft w/Attach: Project Universe_BoD_Draft_040919.pdf
PX3088	PMI-FTC-000035098	PMI-FTC-000035122	2/6/2018	Email from Paul Janelle to Jacek Olczak and Martin King re: Juul w/Attach: 20180204_JUUL LABS_DRAFT WIP- final draft.pptx
PX3089	PMI-FTC-000035222	PMI-FTC-000035317	8/31/2019	Email from Marian Saltzman to Jerry Whitson, Deepak Mishra, Luca Malesci, et al. re: Attached please find the documents we have created for the board mailing w/Attach: Juul-PU_MediaAnalysis.pdf; Initial Media + Analyst Response.pdf
PX3090	PMI-FTC-000035368	PMI-FTC-000035388	1/29/2019	Email from James Bushnell to Jerry Whitson, Andre Calantzopoulos, Jacek Olczek, et al. re: SMT Zurich offsite - minutes & actions w/Attach: SMT minutes & actions - CONF DENTIAL.pptx
PX3091	PMI-FTC-000035389	PMI-FTC-000035418	8/28/2020	Email from Patrick Picavet to Andre Calantzopoulos, Jacek Olczak, John O'Mullane, et al. re: Quarterly Life Science Report - 2020 - SMT September w/Attach: Quarterly Life Science Report - 2020 - SMT September.pdf
PX3092	PMI-FTC-000035422	PMI-FTC-000035481	7/3/2020	Email from Antonella Rausa to Andre Calantzopoulos, Massimo Andolina, Drago Azinovic, et al. re: June 2020 SMT Strategy - Meeting Summary & Conclusions w/Attach: Project Universe June 2020_key action points.vfinal.pdf
PX3093	PMI-FTC-000035482	PMI-FTC-000035501	6/26/2020	Email from Denis Tikhonov to Andre Calantzopoulos, Jacek Olczek, Deepak Mishra, et al. re: Vulcan_CEOs meeting June 2020 vFinal.pptx w/Attach: Vulcan_CEOs meeting June 2020 vFinal.pptx
PX3094	PMI-FTC-000035502	PMI-FTC-000035519	6/22/2020	Email from Virginio Morra to Deepak Mishra, Martin King and Denis Tikhonov re: Vulcan meeting - Presentation w/Attach: Vulcan_CEOs meeting June 2020 v12.pptx
PX3095	PMI-FTC-000035537	PMI-FTC-000035565	6/24/2020	Email from Denis Tikhonov to Andre Calantzopoulos, Jacek Olczek, Deepak Mishra, et al. re: Vulcan CEOs meeting June 2020 v22.pptx w/Attach: Vulcan_CEOs meeting June 2020 v22.pptx
PX3096	PMI-FTC-000035566	PMI-FTC-000035584	6/18/2020	Email from Denis Tikhonov to Deepak Mishra, Martin King and Virginio Morra re: Altria_Top2Top draft v6.pptx w/Attach: Altria_Top2Top draft v6.pptx
PX3097	PMI-FTC-000035585	PMI-FTC-000035603	6/25/2020	Email from Denis Tikhonov to Martin King and Virginio Morra re: Vulcan_CEOs meeting June 2020 v24.pptx w/Attach: Vulcan_CEOs meeting June 2020 V24.pptx
PX3098	PMI-FTC-000035622	PMI-FTC-000035633	9/1/2020	Email from Martin King to Carrie Freed re: project vulcan - pre-read for tomorrow's meeting w/Attach: Vulcan_CEOs meeting June 2020 vFinal (pre-read).pdf
PX3099	PMI-FTC-000035653	PMI-FTC-000035670	12/16/2019	Email from Martin King to Frank de Rooij re: 2020 Strategy Workshop - Key Questions v12.pptx w/Attach: 2020 Strategy Workshop - Key Questions v12.pdf
PX3100	PMI-FTC-000035687	PMI-FTC-000036014	3/26/2019	Email from Martin King to Frank de Rooij re: Pres + Model w/Attach: Altria Juul Presentation_070219_Final.pdf; Project Vulcan_Merger Model_2019_02_04.xlsx
PX3101	PMI-FTC-000036015	PMI-FTC-000036018	3/26/2019	Email from Martin King to Frank de Rooij re: Follow-up questions from Vulcan w/Attach: Vulcan_Follow-up Materials_vShared.pptx
PX3102	PMI-FTC-000036023	PMI-FTC-000036028	7/27/2020	Email from Martin King to Sedat Muderrisoglu re: Bloomberg: Juul Quietly Revamped Its E-Cigarette, Risking the FDA's Rebuke
PX3106	PMI-FTC-000064646	PMI-FTC-000064648	12/3/2020	Letter from Andre Calantzopoulos to Billy Gifford re: Joint Research, Development and Technology Sharing Agreement Dated July 15, 2015
PX3107	PMI-FTC-000036942	PMI-FTC-000036980	9/10/2019	PMI Board of Directors Presentation: Project Universe
PX3108	PMI-FTC-000036777	PMI-FTC-000036777	6/6/2019	PMI Board of Directors Presentation: Project Universe
PX3109	PMI-FTC-000036982	PMI-FTC-000036982	9/10/2019	Presentation: Project Universe Preliminary Valuation Analysis
PX3110	PMI-FTC-000063207	PMI-FTC-000063298	4/1/2020	Email from Nicole Beaumont-Yazgic re: Analyst Coverage w/Attach: Barclays-JTI faces IQOS Pressure.pdf; Goldman Sachs - US Retailer Survey on Nicotine Category.pdf; Goldman Sachs Resumes Coverage on Tobacco Sector.pdf
PX3111	PMI-FTC-000069733	PMI-FTC-000069735	11/12/2018	PMI Document: Vulcan II - Interim Assessment
PX3112	PMI-FTC-000099170	PMI-FTC-000099171	12/15/2018	Letter from Billy Gifford to Andre Calantzopoulos, Jacek Olczak and Martin King
PX3210	PMI-FTC-000099172	PMI-FTC-000099173	3/17/2021	Letter from Andre Calantzopoulos to Billy Gifford re: Joint Research, Development and Technology Sharing Agreement Dated July 15, 2015
PX3221	PMI-FTC-000070007	PMI-FTC-000070016	8/30/2017	Meeting Minutes PMI Visit to ALCS - August 2017
PX3222	PMI-FTC-000069960	PMI-FTC-000069960	9/17/2018	Altria Presentation: ALCS Flavor Portfolio Current Status
PX7020	PX7020-001	PX7020-099	1/11/2021	Deposition Transcript of Martin King Depo (January 11, 2021)

**From:** [Lovinger, Michael](#)  
**To:** [Mucchetti, Peter \(Litigation-WAS\)](#); [Concklin, Brian \(Antitrust-WAS\)](#)  
**Cc:** [Oberschmied, Simone](#); [Draper, Julia](#); [Wint, Corene](#); [Martin, Teresa](#)  
**Subject:** [EXT] RE: In re Altria/JUUL (FTC Docket 9393) Complaint Counsel's Rule 3.45(b) Notice  
**Date:** Monday, April 19, 2021 4:28:58 PM

---

Peter/Brian,

We had a small correction to Attachment A. The documents marked PX3095, PX3096, and PX3097 are not actually on our exhibit list and were included in error. You can disregard those documents for the purposes of your *in camera* motion.

Best regards,

Michael

---

**From:** Lovinger, Michael  
**Sent:** Monday, April 19, 2021 3:44 PM  
**To:** Peter.Mucchetti@CliffordChance.com; Brian.Concklin@CliffordChance.com  
**Cc:** Oberschmied, Simone <soerschmied@ftc.gov>; Draper, Julia <jdraper@ftc.gov>; Wint, Corene <cwint@ftc.gov>; Martin, Teresa <TMARTIN@ftc.gov>  
**Subject:** In re Altria/JUUL (FTC Docket 9393) Complaint Counsel's Rule 3.45(b) Notice

Dear Peter and Brian,

Attached please find a letter and exhibit notifying you of the FTC's intent to offer certain materials produced by your client at trial in the Altria/JUUL administrative litigation (FTC Docket 9393). Our paralegals will email you a link to download the materials referenced in the letter.

If you wish to file a motion for *in camera* treatment, you may find it helpful to consult non-party Stripe, Inc.'s [successful motion](#) and the [associated order](#) in the matter *In re Jerk*. The attached letter also contains citations to a number of opinions Judge Chappell has specifically asked be called to your attention where *in camera* treatment was granted or denied—you may find those instructive examples of what to do and what not to do.

Please feel free to contact me if you have any questions.

Best regards,

Michael

Michael Lovinger  
Attorney – Federal Trade Commission  
Bureau of Competition  
400 7th Street, SW, Washington DC, 20024  
Tel: 202.326.2539

**Attachment C**

GEORGE S. CARY  
MITCHELL S. DUPLER  
GIOVANNI P. PREZIOSO  
MATTHEW D. SLATER  
DAVID I. GELFAND  
MICHAEL A. MAZZUCHI  
MARK W. NELSON  
D. BRUCE HOFFMAN  
ROBIN M. BERGEN  
DEREK M. BUSH  
BRIAN BYRNE  
PAUL D. MARGUARDT  
JEREMY CALSYN  
LEAH BRANNON  
MATTHEW C. SOLOMON  
ELAINE EWING  
NOWELL D. BAMBERGER  
DANIEL P. CULLEY  
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STEPHEN J. HOUCK  
RICHARD HUBER  
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MAIA LIVENGOOD  
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BEN ROSENBLUM  
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\* Admitted only to a bar other than that of the District of Columbia. Working under the supervision of principals of the Washington office.  
\*\* Special Legal Consultant, qualified in the People's Republic of China.

CONFIDENTIAL

April 22, 2021

**VIA EMAIL**

Peter J. Mucchetti  
Clifford Chance US LLP  
2001 K Street, NW  
Washington, DC 20006

Re: Use of Information of Philip Morris International, Inc. in Upcoming Evidentiary Hearing in *In re Altria Group, Inc. and Juul Labs, Inc.* (FTC Docket No. 9393)

Dear Counsel:

We are writing regarding the use of documents and information provided and designated confidential by your client Philip Morris International, Inc., in the upcoming FTC evidentiary hearing in the above-referenced matter, which is currently scheduled to commence June 2, 2021.

In particular, this letter serves as notice, per the Second Revised Scheduling Order entered March 4, 2021 and Paragraph 11 of the Protective Order Governing Confidential Material entered April 2, 2020, that Respondents Altria Group, Inc. and JUUL Labs, Inc. intend to offer documents or transcripts designated confidential by Philip Morris International, Inc. identified on the enclosed Appendix A, and/or documents or transcripts containing or deriving from such information, as evidence at the upcoming hearing. The purpose of this notice is to

Peter J. Mucchetti

PUBLIC

April 22, 2021

Page 2

provide Philip Morris International, Inc. an opportunity to file a motion for *in camera* treatment of its material, which any such motions must be filed by May 7, 2021 under the Second Revised Scheduling Order. See FTC Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (a “third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge”).

Under Additional Provision No. 14 of the original Scheduling Order entered August 4, 2020 in this matter, this notice is required to and we so inform you “of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at \*1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each [] non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.” See also FTC Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (requiring for confidential treatment (a) that “public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment” or (b) that “the material constitutes sensitive personal information”).

Sincerely,

/s/ Jessica Hollis

Jessica Hollis

## Appendix A -- Philip Morris International, Inc.

RX #	Bates Begin	Bates End	Description	Date
RX0111	RX0111-001	RX0111-260	King PMI Deposition	2021-01-08
RX1016	PMI-FTC-000000220	PMI-FTC-000000332	Email from PMI Corporate Financial Planning and Reporting to M. King and J. Olczak attaching PMI Financial Management Report - Product Contribution Analysis - 2018 Original Budget	2018-02-19
RX1018	PMI-FTC-000001315	PMI-FTC-000001315	Email from M. King to L. Cohen, M. Salzman, and C. Henry re: Barron's - What Altria's Juul Investment Says About Tobacco's Future	2018-12-20
RX1020	PMI-FTC-000035368	PMI-FTC-000035388	Email from J. Bushnell to K. Martin and others re: SMT Zurich offsite - minutes & actions	2019-01-29
RX1021	PMI-FTC-000035687	PMI-FTC-000035726	Email from M. King to F. de Rooji re: Board Presentation attaching Board Presentation	2019-03-26
RX1029	PMI-FTC-000063173	PMI-FTC-000063191	Email from V. Sridhar to M. King and others attaching PMI RRP Portfolio Presentation	2020-06-05
	PMI-FTC-000035622	PMI-FTC-000035633	Email from m. King to C. Freed attaching pre-read presentation for Vulcan CEO meeting	2020-09-01
RX1035	PMI-FTC-000039906	PMI-FTC-000039911	Email from M. King to S. Muderrisoglu re: Bloomberg on Juul Quietly Revamped Its E-Cigarette, Risking The FDA's Rebuke	2020-07-27
RX1036	PMI-FTC-000069733	PMI-FTC-000069735	Vulcan II - Interim Assessment	2021-01-11
RX1049	PMI-FTC-000099170	PMI-FTC-000099171	Altria Letter from B. Gifford to PMI re Dec. 3 letter re companies E-Vapor Joint Research, Developent and Technology Sharing Agreement	2021-01-11
RX1029	PMI-FTC-000063173	PMI-FTC-000063191	Email from V. Sridhar to M. King and others attaching PMI RRP Portfolio Presentation	2020-06-05
RX1762	PMI-FTC-000067671	PMI-FTC-000067716	RRP Competitive Intelligence NCP Focus Presentation dated January 2018	
RX1763	PMI-FTC-000069149	PMI-FTC-000069176	Sizing the E-Cigarette Category Juul Profiling/Usage and Attitude Presentation dated March 2019	

RX1764	PMI-FTC-000070548	PMI-FTC-000070549	Email from A. Teichert to F. Tack et. al. re: Altria & PMTA filing for P4 Mesh in US	2017-01-05
RX1765	PMI-FTC-000070691	PMI-FTC-000070691	Imperial Brands myblu - US performance	
RX1061	PMI-FTC-000087914		Email from P. Passalis to V. Sridhar and N. Stalder attaching Presentation re: Competitive Intelligence on Reduced Risk Products	2019-10-02
RX1766	PMI-FTC-000087916	PMI-FTC-000087916	RRP Competitive Intelligence Update - Q3 2019 E-Vapor Deep Dive	2019-09-27
RX1061	PMI-FTC-000087914		Email from P. Passalis to V. Sridhar and N. Stalder attaching Presentation re: Competitive Intelligence on Reduced Risk Products	2019-10-02
RX1055	PMI-FTC-000000556	PMI-FTC-000000558	Email from A. Williams to A. Capito, M. King, and others attaching Press Release re: Project Universe Announcement	2019-09-24
RX1057	Email from m. King to C. Freed attaching pre-read presentation for Vulcan CEO meeting	09/01/2020	PMI-FTC-000035622	PMI-FTC-000035633

**Attachment D**

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

_____	)	
In the Matter of	)	
	)	
Altria Group, Inc.,	)	
a corporation,	)	Docket No. 9393
	)	
and	)	
	)	
JUUL Labs, Inc.	)	
a corporation,	)	
	)	
Respondents.	)	
_____	)	

**DECLARATION OF CARRIE FREED IN SUPPORT OF NON-PARTY PHILIP MORRIS INTERNATIONAL INC.'S RENEWED MOTION FOR *IN CAMERA* TREATMENT**

I, Carrie Freed, hereby declare as follows:

1. I am an Assistant General Counsel for non-party PMI Global Services Inc. ("PMI Global Services"), an affiliate of non-party Philip Morris International Inc. ("PMI"), and I submit this declaration in support of PMI's Renewed Motion for *In Camera* Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.
2. I am familiar with the documents and testimony that PMI produced in the above-captioned matter in response to the subpoenas from the Federal Trade Commission ("FTC") and respondent Altria Group, Inc. ("Altria"), including the documents that are the subject of the Motion (the transcript of Martin King's deposition (the "Transcript") and documents containing private information, together, the "Confidential Documents"). Given my

position at PMI Global Services and my knowledge of PMI's business, I am personally familiar with the contents of the Transcript, the level of confidentiality associated with the information contained therein, and the competitive significance of this information to PMI. Based on my review of the Transcript and my knowledge of PMI's business, I submit that the disclosure of the portions of the Transcript for which PMI is seeking *in camera* treatment to the public, PMI's competitors, and PMI's potential business partners would cause serious injury to PMI.

3. PMI is an international tobacco company engaged in the manufacture and sale of cigarettes, as well as non-combusted tobacco products, associated electronic devices and accessories, and other nicotine-containing products. As of 2016, PMI made a public statement that it had shifted its focus and purpose "to deliver a smoke-free future by focusing its resources on developing, scientifically substantiating and responsibly commercializing smoke-free products that are less harmful than smoking, with the aim of completely replacing cigarettes as soon as possible."<sup>6</sup>
4. In September 2019, Altria's subsidiary, Philip Morris USA Inc. ("PM USA"), began commercializing PMI's innovative tobacco heating device, IQOS, and associated consumables (HeatSticks), under a license in the US. IQOS heats, but does not burn, tobacco. PMI's IQOS device and its consumables have received marketing authorization from the US Food and Drug Administration ("FDA") under the premarket tobacco product application ("PMTA") pathway. The FDA has also authorized the marketing of a version of PMI's IQOS device and its consumables as a Modified Risk Tobacco Product ("MRTP"),

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<sup>6</sup> See PMI's Statement of Purpose, Excerpt from 2020 Proxy Statement, available at <https://www.pmi.com/statement-of-purpose>.

finding that an exposure modification order for these products is appropriate to promote the public health. IQOS is the first product of its kind to receive these FDA authorizations. Other than the commercialization of its IQOS devices and consumables through the license with Altria, PMI does not currently have any other products commercialized in the US.

5. In addition to the licensing agreement for the commercialization of IQOS, PMI previously entered into other agreements with Altria, including an agreement to jointly research and develop certain types of e-vapor products also known as electronic cigarettes. This agreement also included exclusive technology cross licenses, technical information sharing and cooperation on scientific assessment, regulatory engagement and approval related to e-vapor products, also known as electronic cigarettes or e-cigarettes.
6. As of 2020, PMI began the international commercialization of the latest version of its electronic cigarette, which is marketed under the brand-name IQOS VEEV. IQOS VEEV uses a proprietary technology known as MESH to heat pre-filled pods containing nicotine. While currently commercialized in select international markets, as part of its aim to deliver a smoke-free future, PMI intends to expand its commercialization efforts, including at some point in the future seeking the necessary US FDA authorizations to commercialize IQOS VEEV in the US.
7. Given PMI's focus on smoke-free tobacco and nicotine-containing products, information pertaining to PMI's smoke-free product development and commercialization is critically important to PMI. Because other firms compete with respect to these or similar products, both internationally and in the US, PMI's strategic information pertaining to PMI's smoke-free products are highly commercially sensitive. Given the time it takes to research, develop, determine a plan for distribution, and receive authorization to commercialize these

products, PMI's confidential information regarding its smoke-free products and the industry will remain sensitive for several years.

8. The FTC and Respondents have informed PMI that they intend to use certain documents that PMI produced in response to a third-party subpoena at the administrative hearing in this matter, as well as the deposition transcript of Martin King, which also was taken pursuant to third-party subpoenas issued in this matter. Portions of the Transcript are particularly sensitive and contain confidential and material business information, the public disclosure of which would cause PMI significant competitive harm. As described in the Motion and Memorandum of Law in Support of the Motion, PMI seeks *in camera* treatment for a period of five years for the portions of the Transcript highlighted in Attachment A, which are located as follows:

Exhibit No.	Locations Containing Confidential Information
PX7020/RX0111	20:19-21; 25:9-12; 33:14-25; 34:2-3; 34:6-17; 34:24-25; 35:2-3; 35:5-6; 35:9-15; 35:22-23; 36:2-5; 36:9-12; 37:24-25; 38:2-5; 38:14-17; 45:9-15; 47:4-11; 51:21-25; 52:2-4; 52:10-24; 53:12-20; 56:19-25; 57:2-6; 57:8-25; 58:4-10; 58:13-15; 58:17-25; 59:2-6; 59:8-11; 59:19-25; 60:2-25; 61:2-9; 61:11-24; 62:4-7; 62:10-16; 63:3-5; 63:10-17; 63:20-21; 65:18-20; 65:22-25; 66:2-8; 66:13-16; 66:18-25; 67:2-8; 67:12-16; 67:18-19; 67:21-23; 68:2-8; 68:24-25; 69:2-10; 70:12-15; 70:23-25; 71:2-7; 72:3-13; 76:22-25; 77:2; 79:21-23; 80:6-9; 80:17-18; 81:6-22; 82:3-25; 83:2-25; 84:2-4; 84:8-17; 84:19-24; 85:3-11; 85:14-16; 89:20-25; 90:11-12; 91:13; 91:20; 92:24-25; 93:2-10; 93:24-25; 94:2-3; 97:9-12; 100:8-20; 105:6-10; 106:3-5; 106:23-24; 107:10-11; 109:19-21; 110:3-5; 110:9-19; 110:22-25; 111:2-6; 112:5-25; 113:2-5; 116:6-20; 117:3-10; 117:18-20; 118:4-24; 120:25; 121:2-8; 121:11-16; 122:7-13; 123:2; 123:15-25; 124:2-5; 124:10-11; 124:19-25; 125:2-8; 125:13-23; 126:2-13; 126:15-22; 130:10-15; 130:17-25; 131:2-11; 131:13-21; 132:6-9; 132:16-19; 132:21-25; 133:4-5; 133:12-25; 134:2-9; 134:11-25; 135:2; 137:22-25; 166:11-15; 172:25; 173:2-20; 174:14-16; 179:10-14; 180:20-25; 181:2-18; 183:14; 186:12-15; 186:18-21; 186:23-25; 189:9-13; 189:24-25; 190:2-5; 190:10-17; 197:23-25; 198:2-4; 201:11-17; 201:19-23; 202:5-7; 202:18-25; 203:2-3; 203:6-19; 210:17-20; 210:23-25; 216: 25; 217:2-7; 220:16-22; 223:2-8; 229:3-5; 231:8-25; 232:2-19; 232:21-22; 232:24-25; 233:2-3; 233:6-12; 233:14-25; 234:2-22; 235:19-20; 235:22-25; 236:2-5;

	236:8-25; 237:2-3; 237:10-17; 237:19-25; 238:2-18; 238:20-25; 239:2-3; 239:5-25; 240:2-12; 240:17-25; 241:2-3; 242:8-12; 243:17-24; 248:23-25; 249:2-9; 249:11-25; 250:2; 251:10-16.
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9. PMI takes significant measures to ensure the secrecy of its confidential information. PMI's document security policies, which govern the Confidential Documents, include, but are not limited to, policies regarding user access to PMI's network; computer passwords; physical controls; and network security. With the exception of two categories of information and documents exchanged with Altria as discussed below, PMI has taken and continues to take steps to limit the commercially sensitive information discussed in the Transcript to PMI senior management and select employees. As to the information and documents exchanged with Altria, those materials and information were shared (1) in furtherance of a contemplated merger between the parties, in which the parties executed a non-disclosure agreement, or (2) as part of, or due to, business relationships between Altria and PMI, including PMI's and Altria's agreements concerning IQOS and the research and development of electronic cigarettes. PMI exchanged this information with Altria on the understanding and belief that the information would remain confidential within the two companies. In addition, both companies took steps to ensure the confidentiality of any shared documents by limiting access to these documents, including the use of secure sharing platforms, which allowed each company to restrict access to a limited set of employees. To the best of my knowledge, the information in the Transcript for which *in camera* treatment is sought is not broadly known throughout each of PMI and Altria, let alone to the public. Moreover, the Transcript was designated Confidential pursuant to the Protective Order.

10. Based on my review, the Transcript contains sensitive confidential information, the disclosure of which would significantly harm PMI. The Transcript contains discussions of strategic issues pertaining to PMI's electronic cigarettes; PMI's non-public commercialization plans and projections; analyses of the smoke-free tobacco and nicotine product segments, including PMI and competitors' strengths and weaknesses; insights into PMI's business relationships and negotiations for the commercialization of its electronic cigarettes; the confidential terms of their business arrangements and potential future relationships; and other discussions related to PMI's plans and efforts to compete in the smoke-free tobacco and nicotine product segments. These discussions about sensitive business arrangements include confidential information about the terms and status of PMI's and Altria's commercial relationship. As described in the memorandum of law in support of the renewed motion, PMI and Altria have entered into various agreements, including agreements related to Altria's commercializing PMI's IQOS device and associated HeatStick consumables in the US, and the research and development of electronic cigarettes. The Transcript also discloses sensitive commercial information pertaining to the contemplated merger between PMI and Altria in September 2019. More specifically, the Transcript contains confidential information regarding PMI's internal analysis of the proposed deal, PMI's view of the market in light of the transaction, and PMI's bargaining position. The Transcript's discussion on this topic also indicates how PMI analyzes potential deals, how it values different business categories, and PMI's strategic analysis of the US and international markets for smoke free products.
11. If this commercial sensitive and secret information contained in the Transcript were disclosed to the public, PMI would face serious competitive injury. Disclosure of PMI's

strategies, business plans, and analysis of the market would undermine and otherwise hinder PMI's ability to fairly compete. Competitors, potential business partners, and other market participants would know of PMI's strengths and weaknesses, plans for commercialization, and the business terms PMI has, or may be, willing to enter into, and how PMI analyzes its business relationships. Other market participants could use this information to their advantage in negotiating with PMI or alter their own business decisions, all to the competitive detriment of PMI.

12. To the best of my knowledge, the competitively sensitive information contained in the Transcript is not known to competitors or the general public and remains confidential within PMI. For the reasons described above, PMI requests that certain portions of the Transcript receive *in camera* treatment. Attachment A shows those portions of the Transcript for which PMI seeks *in camera* treatment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 4, 2021.

  
\_\_\_\_\_  
Carrie Freed

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

In the Matter of	)	
	)	
Altria Group, Inc.,	)	
a corporation,	)	Docket No. 9393
	)	
and	)	
	)	
JUUL Labs, Inc.	)	
a corporation,	)	
	)	
Respondents.	)	

**[PROPOSED] ORDER GRANTING NON-PARTY PHILIP MORRIS  
 INTERNATIONAL INC.'S RENEWED MOTION FOR *IN CAMERA* TREATMENT**

Having considered non-party Philip Morris International Inc.'s ("PMI") Renewed Motion for *in camera* treatment, and the supporting memorandum, PMI's motion is granted. It is hereby **ORDERED** that the following portions of the specified exhibit are to be provided *in camera* treatment for five years from the date of this order:

Exhibit No.	Locations Containing Confidential Information
PX7020/RX0111	20:19-21; 25:9-12; 33:14-25; 34:2-3; 34:6-17; 34:24-25; 35:2-3; 35:5-6; 35:9-15; 35:22-23; 36:2-5; 36:9-12; 37:24-25; 38:2-5; 38:14-17; 45:9-15; 47:4-11; 51:21-25; 52:2-4; 52:10-24; 53:12-20; 56:19-25; 57:2-6; 57:8-25; 58:4-10; 58:13-15; 58:17-25; 59:2-6; 59:8-11; 59:19-25; 60:2-25; 61:2-9; 61:11-24; 62:4-7; 62:10-16; 63:3-5; 63:10-17; 63:20-21; 65:18-20; 65:22-25; 66:2-8; 66:13-16; 66:18-25; 67:2-8; 67:12-16; 67:18-19; 67:21-23; 68:2-8; 68:24-25; 69:2-10; 70:12-15; 70:23-25; 71:2-7; 72:3-13; 76:22-25; 77:2; 79:21-23; 80:6-9; 80:17-18; 81:6-22; 82:3-25; 83:2-25; 84:2-4; 84:8-17; 84:19-24; 85:3-11; 85:14-16; 89:20-25; 90:11-12; 91:13; 91:20; 92:24-25; 93:2-10; 93:24-25; 94:2-3; 97:9-12; 100:8-20; 105:6-10; 106:3-5; 106:23-24; 107:10-11; 109:19-21; 110:3-5; 110:9-19; 110:22-25; 111:2-6; 112:5-25; 113:2-5; 116:6-20; 117:3-10; 117:18-20;

	118:4-24; 120:25; 121:2-8; 121:11-16; 122:7-13; 123:2; 123:15-25; 124:2-5; 124:10-11; 124:19-25; 125:2-8; 125:13-23; 126:2-13; 126:15-22; 130:10-15; 130:17-25; 131:2-11; 131:13-21; 132:6-9; 132:16-19; 132:21-25; 133:4-5; 133:12-25; 134:2-9; 134:11-25; 135:2; 137:22-25; 166:11-15; 172:25; 173:2-20; 174:14-16; 179:10-14; 180:20-25; 181:2-18; 183:14; 186:12-15; 186:18-21; 186:23-25; 189:9-13; 189:24-25; 190:2-5; 190:10-17; 197:23-25; 198:2-4; 201:11-17; 201:19-23; 202:5-7; 202:18-25; 203:2-3; 203:6-19; 210:17-20; 210:23-25; 216: 25; 217:2-7; 220:16-22; 223:2-8; 229:3-5; 231:8-25; 232:2-19; 232:21-22; 232:24-25; 233:2-3; 233:6-12; 233:14-25; 234:2-22; 235:19-20; 235:22-25; 236:2-5; 236:8-25; 237:2-3; 237:10-17; 237:19-25; 238:2-18; 238:20-25; 239:2-3; 239:5-25; 240:2-12; 240:17-25; 241:2-3; 242:8-12; 243:17-24; 248:23-25; 249:2-9; 249:11-25; 250:2; 251:10-16.
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It is also hereby **ORDERED** that the private email addresses contained within the following exhibits be given permanent *in camera* treatment.

Exhibit No.	Document Description	Location of SPI
PX3028	Email from Nicholas Rolli to Martin King re: Board Materials - Investor Reaction to Merger Announcement w/Attach: Coronation Board Letter_28August2019 pdf; R Presentation to BoD [DRAFT 01-Sep-19 8.30 am LSN] pptx	PMI-FTC-000000517
PX3029	Email from Patricia Ahrens to Massimo Ferragamo, Werner Geissler, Lisa Hook, et al. re: Conference Call - Tuesday, September 24, 2019 w/Attach: 2019-09-23 Media Update pdf	PMI-FTC-000000523

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

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

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Office of the Secretary  
Federal Trade Commission  
400 Seventh Street, S.W., Suite 5610  
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The Honorable D. Michael Chappell  
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Washington, DC 20580

I also certify that I caused the foregoing document to be served via email upon the following:

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*Counsel for PMI*

**CERTIFICATE FOR ELECTRONIC FILING**

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

Dated: June 4, 2021

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