

**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 UNOPPOSED RENEWED
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 to renew its motion for *in camera* treatment of Exhibits RX1193, RX1195, PX7044 and RX1190/PX8001 for up to five years, as these documents contain 7-Eleven’s competitively-sensitive, confidential business information (“Confidential Documents”). 7-Eleven’s Renewed Motion for *In Camera* Treatment is based on this Motion, the attached Memorandum of Law in Support of 7-Eleven’s Renewed Motion for *In Camera* Treatment, the Renewed Declaration of Shazad Hooda (Exhibit 1), and four (4) selected documents (Exhibits 2-5); and any other matter properly considered.

Dated: June 11, 2021

Respectfully submitted,

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**ATTORNEYS FOR NON-PARTY 7-
ELEVEN, INC.**

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**MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY 7-ELEVEN'S UNOPPOSED
RENEWED 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 to renew its motion for *in camera* treatment of four 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”).

7-Eleven previously sought *in camera* treatment for thirty-six (36) documents as confidential business documents in its original Motion for *In Camera* Treatment it filed on May 7, 2021 (the “7-Eleven *In Camera* Motion”). On May 26, 2021, the Office of the Administrative Law Judge granted *in camera* treatment for eighteen (18) of the documents for which 7-Eleven

sought *in camera* review.¹ 7-Eleven now submits a renewed motion for *in camera treatment* for four documents because, if the information in these documents became 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 for five years. In support of its renewed motion, 7-Eleven relies on the Renewed Declaration of Shazad Hooda (the “Hooda Declaration”). *See Gen. 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 *In Camera* Treatment is Requested

7-Eleven renews its request for *in camera* treatment for the following Confidential Documents, copies of which are attached as sealed Exhibits 2-5:

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
RX1193	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div>	08/20/2018	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_00008205

¹ See *Administrative Law Judge's May 26, 2021 Order on Non-Parties' Motion for In Camera Treatment* at 4-6.

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Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
RX1195	[REDACTED]	08/2018	7-ELEVEN_ALTRIA_00008207	7-ELEVEN_ALTRIA_00008207
PX8001	[REDACTED]	03/11/2020	PX7044-001	PX7044-088
PX7044	[REDACTED]	03/10/2021	PX8001-001	PX8001-004

III. The FTC's May 26 Order

On May 26, 2021, the FTC issued an Order ruling on all of the non-parties' motions for *in camera* treatment. With respect to 7-Eleven's Exhibit PX7044, the Deposition Transcript of Jack Stout, the Order described 7-Eleven's initial designation of testimony as "overbroad." In accordance with the guidance provided in the Order, 7-Eleven has narrowed the scope of redactions to identify specific, rather than vague statements, and has identified the specific harm that would result if information within this deposition were to be disclosed. For example, deposition lines [REDACTED]

[REDACTED]

[REDACTED] Hooda Decl. at ¶ 32. The redacted portions of the deposition transcript reference documents 7-Eleven intends to keep confidential, and several documents which the Court has already granted *in camera* treatment. *See In re Basic Research*, 2006 FTC LEXIS 14, at *4 (Jan. 25, 2006) *citing In re Aspen Tech., Inc.*, 2004 FTC LEXIS 56, at *5-6 (May 5, 2004) ("Respondent's request for *in camera*

treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the in camera standard.”); *In re Union Oil Co. of Calif.*, 2005 FTC LEXIS 9, at *1 (Jan. 19, 2005) (granting in camera treatment where parties sought it only “for narrowly tailored portions of deposition testimony”).

In its Order denying *in camera* review for Exhibits RX1193 and RX1195, the FTC stated that 7-Eleven’s *In Camera* Motion “fails to provide the necessary justification for granting *in camera* treatment to the following documents that are more than three years old.” However, Exhibits RX1193 and RX1195 are each less than three years old. In 7-Eleven’s *In Camera* Motion, the date of Exhibit RX1193 was incorrectly listed as February 8, 2018. The correct date is August 20, 2020, as stated in this renewed motion. In addition, Exhibit RX1195 is dated August 2018, which is less than three years old. These documents are less than three years old, and are thus not held to the heightened standard required to obtain *in camera* review for stale documents. In the Order, the Court initially denied *in camera* treatment for Exhibits RX1193 and RX1195 given the date of these documents, but later in the Order, the Court granted *in camera* treatment for a period of five years for Exhibits RX1193 and RX1195. 7-Eleven respectfully asks the Court to enter an order granting *in camera* treatment for a period of five years for Exhibits RX1193 and RX1195 for clarity.

With respect to PX8001, the Declaration of Jack Stout, 7-Eleven also heeded the Court’s guidance on the proposed redactions of Jack Stout’s Declaration and pared down the redactions to portions of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17. 7-Eleven additionally describes why the information is confidential and why it will explicitly result in harm if made public. *See generally* Hooda Decl. at ¶¶ 19-27.

IV. The 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. 16 C.F.R. § 3.45(b). 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.” *Gen. 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.

Bristol-Myers Co., 90 F.T.C. 455, 456-57 (1977).

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

As set forth fully in its original Motion, 7-Eleven’s Confidential Documents contain information regarding 7-Eleven’s sales revenue, marketing strategies, and negotiation strategies and practices. RX1193 and RX1195 are both less than three years old [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hooda Decl. at ¶¶ 16-17. Because 7-Eleven is privately owned and keeps its sales information confidential, 7-Eleven would face serious harm if its competitors became aware of the internal process it uses to track this information. *Id.*

RX1193 and RX1195 [REDACTED]

[REDACTED]

[REDACTED] *Id.* RX1195 [REDACTED]

[REDACTED] Public disclosure of this information would harm 7-Eleven [REDACTED] All the information above constitutes the type of “process” and “secret technical information” that the FTC has found warrants *in camera* treatment. *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977).

PX7044, the Deposition Transcript of Jack Stout, and PX8001/RX1190, the Declaration of Jack Stout, [REDACTED]

[REDACTED]

[REDACTED] These statements are far from mere “references to, or general statements derived from, the content of information that has been granted *in camera* treatment.” *In the Matter of Otto Bock Healthcare N. Am., Inc., A Corp., Respondent.*, No. 9378, 2018 WL 3373830, at *15 (MSNET July 6, 2018). (noting that general statements do not receive *in*

camera treatment). 7-Eleven has limited its request to primarily those portions of the testimony which quote, recite, or summarize 7-Eleven confidential documents that have already been granted *in camera* protection by this Court. [REDACTED]

[REDACTED]. This type of deposition testimony is routinely afforded *in camera* treatment by courts. *See, e.g., In re Otto Bock Healthcare N. Am., Inc.*, No. 9378, 2018 WL 3569441, at *2 (July 17, 2018) (granting motion for *in camera* treatment of certain deposition testimony detailing non-party's "future strategic business plans in the United States, pricing information related to sales of [non-party] products to customers, and past, current, and anticipated profits").

Furthermore, as discussed in the Hooda Declaration, PX7044 and PX8001/RX1190 [REDACTED] Hooda Decl. at ¶¶ 19-20, 22, 24, 31, 33-35, 39, 41-42, 46-47. The FTC has recognized the importance of *in camera* treatment for documents that contain product sales data and pricing information. *In re Otto Bock Healthcare N. Am., Inc.*, No. 9378, 2018 WL 3569441, at *11 (July 17, 2018); *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.

PX7044 and PX8001/RX1190 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hooda Decl. at ¶ 25-27, 30, 32, 36-38, 40, 43, 45, 48-50.

[REDACTED]

[REDACTED]. 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”).

[REDACTED]. 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 [REDACTED]

[REDACTED]. 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 6). 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 company policies surrounding the transmission of confidential information, and the use of non-disclosure agreements during negotiations are also significant protections of confidential information. Hooda Decl. at ¶¶ 7-13.

C. 7-Eleven’s Status As A Non-Party Weighs In Favor Of *In Camera* Treatment

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. To that end, courts should give “special solicitude” to third parties seeking *in camera* treatment, as doing so “encourages cooperation with future adjudicative discovery requests.” *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (May 25, 1984). Thus, 7-Eleven’s status as a non-party weighs in favor of granting *in camera* treatment of the Confidential Documents.

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

Given the sensitive nature of the 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, 7-Eleven's competitors will have access, which will put 7-Eleven at a competitive disadvantage. 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.

V. Conclusion

For the reasons set forth above, and those set forth in the accompanying Renewed Hooda Declaration, non-party 7-Eleven respectfully requests that this Court grant its renewed motion for *in camera* treatment of the Confidential Documents for five years.

Dated: June 11, 2021

Respectfully submitted,

/s/ Robert Manley

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ATTORNEYS FOR NON-PARTY 7-ELEVEN, INC.

PUBLIC**STATEMENT REGARDING MEET 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 June 10, 2021, that 7-Eleven would be seeking renewed *in camera* treatment of certain Confidential Documents. Counsel for Complainant, the Federal Trade Commission, indicated via email on June 10, 2021 that they do not oppose 7-Eleven’s renewed motion for *in camera* treatment of its Confidential Documents. Counsel for Respondents, Altria Group, Inc. and JUUL Labs, Inc. indicated via email on June 10, 2021 that they do not oppose 7-Eleven’s renewed motion for *in camera* treatment of its Confidential Documents.

/s/ Lisa Houssiere
Lisa Houssiere

PUBLIC

**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 Renewed Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment for five years:

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
RX1193	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	8/20/2018	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_00008205
RX1195	JUUL VENDOR PLAYBOOK	08/2018	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_00008205

PUBLIC

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
			A_00008207	07
PX8001/R X1190	Declaration of Jack Stout	03/11/2020	PX7044-001	PX7044-088
PX7044	Deposition Transcript of Jack Stout	03/10/2021	PX8001-001	PX8001-004

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2021.

THE HONORABLE D. MICHAEL CHAPPELL
CHIEF ADMINISTRATIVE LAW JUDGE

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EXHIBIT 1 DECLARATION OF

SHAZAD HOODA

[REDACTED]

**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 Renewed Motion For *In Camera* Treatment for certain confidential documents (the “Renewed 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 Renewed Motion, 7-Eleven seeks *in camera* treatment for Confidential Documents identified below [REDACTED]

[REDACTED]

[REDACTED] as further described below.

Confidentiality Measures

7. 7-Eleven is 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. [REDACTED]

[REDACTED]

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. When 7-Eleven negotiates supply agreements or marketing promotions with external vendors, distributors, or manufacturers, the parties sign a non-disclosure agreement at the outset of negotiations. This non-disclosure agreement stipulates that any communications regarding the proposed supply agreement or promotion will remain confidential.

13. The mutual relationship between parties is reflected in their non-disclosure agreement. The agreement covers both communications from 7-Eleven and from the prospective contracting party. This is because the public release of either company's confidential information hurts both companies' bargaining position in future negotiations by giving competitors an anchoring point in negotiating similar agreements.

14. Even after negotiations have ceased, any marketing promotions that are still being drafted for release to stores and vendors remain confidential, and remain internal, until the proper responsible parties have signed off on the public version of the marketing officer for customers.

Declaration of Jack Stout

18. PX8001 is [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] specific potential disadvantages 7-
Eleven faces if these statements are publicly disclosed are as follows:

19. Paragraph 4 of PX8001 contains [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, this testimony should receive *in camera* treatment.

20. Paragraphs 5 and 6 of PX8001 contain [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Thus, it is appropriate for this testimony to be given *in camera* treatment.

21. Paragraph 8 of PX8001 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

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

22. Paragraph 9 of PX8001 contains [REDACTED]

This testimony should therefore receive *in camera* treatment.

23. Paragraphs 10 and 11 of PX8001 contain [REDACTED]

[REDACTED] This testimony therefore should receive *in camera* treatment.

24. Paragraphs 7 and 16 of PX8001 contain [REDACTED]

[REDACTED] Thus, *in camera* treatment is appropriate.

25. Paragraphs 11 and 14 of PX8001 contain [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

29. In addition, the Deposition contains [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

30. Deposition lines 26:9-28:13 [REDACTED]
[REDACTED] Deposition lines 29:15-30:3 discuss [REDACTED]
[REDACTED] Deposition lines 34:12-25 discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Therefore, *in camera* treatment is appropriate.

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

32. Deposition lines 34:12-25 [REDACTED]
[REDACTED]
[REDACTED] Deposition lines 42:21-44:2 discuss [REDACTED]
[REDACTED] Deposition lines 47:11-24 [REDACTED]
[REDACTED] As noted, 7-Eleven [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. If this information became public, [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

33. Deposition lines 44:19-45:4 refer to RX1194, a Confidential Document referenced above. This Court previously granted *in camera* treatment for RX1194 for up to five years on May 26, 2021. In addition, these lines contain information that is pulled directly from 7-Eleven's confidential sales information. If this information was made public, [REDACTED]
[REDACTED] Therefore, *in camera* treatment for deposition testimony related to RX1194 is appropriate.

34. Deposition lines 48:7-16 and 48:20-49:7 refer to PX8001, a Confidential Document referenced above, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Furthermore, deposition lines 50:3-51:7 and 52:5-25 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

35. Deposition lines 31:4-20 discuss [REDACTED]
Therefore, *in camera* treatment is appropriate.

36. Deposition lines 36:5-37:18 and 46:2-18 directly quote and describe, RX1194 and [REDACTED]
[REDACTED]
[REDACTED] This Court previously granted *in camera* treatment for RX1194 for up to five years on May 26, 2021. This Court previously granted *in camera* treatment for RX1194 for up to five years. As noted, RX1194 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Therefore, *in camera* treatment is appropriate.

37. Deposition lines 38:22-39:13; 39:19-23; 40:4-41:7; and 41:24-42:21 also refer to RX1194. This Court previously granted *in camera* treatment for RX1194 for up to five years on May 26, 2021.

[REDACTED]

Even outside of its direct quotations and elaborations on a Confidential Document, these lines would still warrant *in camera* treatment, because

[REDACTED]

Therefore, *in camera* treatment is appropriate.

38. Deposition lines 44:2 and 47:11-24 quote RX1194. This Court previously granted *in camera* treatment for RX1194 for up to five years on May 26, 2021.

[REDACTED]

Therefore, *in camera* treatment is appropriate.

39. Deposition lines 48:7-16 and 48:20-49:7 refer to PX8001, a Confidential Document referenced above.

[REDACTED] lines 48:7-16 and 48:20-49:7. Deposition lines 50:3-51:7 and 52:5-25 also

discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] the statements in the above lines contain information that, on its own, merits *in camera* treatment.

40. Deposition lines 63:13-64:10 discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Therefore, *in camera* treatment is appropriate.

41. Deposition lines 67:6-16 refers to RX119/Attachment to PX3205 at 5440 which this Court previously granted *in camera* treatment for up to five years on May 26, 2021. [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

42. Deposition lines 68:7-74:13 refers to RX119/Attachment to PX3205 at 5440 which this Court previously granted *in camera* treatment for up to five years on May 26, 2021. [REDACTED]
[REDACTED] Thus, *in camera* treatment is appropriate.

43. Deposition lines 106:11-22 directly quote RX1205, a document which was already deemed to merit *in camera* treatment on May 26, 2021. If these lines were to be shared publicly, it would defeat the purpose of granting *in camera* treatment for up to five years for RX1205. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

44. Deposition lines 113:24-115:2 reference RX1195, [REDACTED] which is an above referenced Confidential Document, [REDACTED]

[REDACTED]

[REDACTED] Therefore, *in camera* treatment is appropriate.

45. Deposition lines 127:6-128:14; 128:17-133:10; and 133:22-140:8 discuss [REDACTED]

[REDACTED]

[REDACTED] Therefore, *in camera* treatment is appropriate.

46. Deposition lines 143:15-144:9; and 149:23-150:11 directly quote Paragraph 7 of PX8001, which an above referenced Confidential Document. [REDACTED]

[REDACTED]

[REDACTED] Therefore, *in camera* treatment is appropriate.

47. Deposition lines 152:5-153:14; 153:20-154:4; 154:9-155:25; 156:7-156:25; and 157:8-24

[REDACTED]. Furthermore, the above referenced lines

directly quote and further elaborate on PX8001 at Paragraph 11, which is an above referenced Confidential Document. [REDACTED]

[REDACTED]

[REDACTED] If this information is shared publicly, 7- [REDACTED]

[REDACTED] In addition sharing the Deposition, even in absence of PX8001 causes the same disadvantages because [REDACTED]

Consequently, *in camera* treatment is appropriate.

48. Deposition lines 158:12-160:9; 167:20-171:12 discuss paragraph 17 of PX8001, an above referenced Confidential Document. [REDACTED]

[REDACTED]

[REDACTED] Therefore, *in camera* treatment is appropriate.

49. Deposition lines 161:2-6 and 161:17-32 discuss DX1198, a [REDACTED]

[REDACTED] Deposition lines 162:3-164:20 describe DX1199, [REDACTED]

[REDACTED] This refers to RX1199/Attachment to PX3205 at 5440, which this Court previously granted *in camera* treatment for up to five years on May 26, 2021. [REDACTED]

[REDACTED]

PUBLIC

[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

50. Deposition lines 166:4-23 [REDACTED]
[REDACTED] This refers to RX1199/Attachment to PX3205 at 5440, which this Court previously granted *in camera* treatment for up to five years on May 26, 2021.
[REDACTED] 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 June 11, 2021



Shazad Hooda

Sr. Category Manager
Title

PUBLIC

PUBLIC

EXHIBIT 2 DECLARATION OF JACK

STOUT PX8001

[REDACTED]

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]
[REDACTED]
[REDACTED] Although 7-Eleven is focused on growing other product categories, [REDACTED]
[REDACTED]
[REDACTED]
6. [REDACTED]
[REDACTED]

7. [REDACTED]
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. Altria typically leads with the price increase, and Reynolds and Imperial usually follow within 48 hours. [REDACTED]
9. 7-Eleven has regional pricing zones for combustible cigarettes, [REDACTED]
10. [REDACTED] I attribute the turnaround in the vaping category at least in part to the decline in SKUs following the voluntary removal of flavors by suppliers like JUUL, and new regulations and flavor bans imposed by the FDA, states, and localities. [REDACTED]
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. Although those competitors experienced a slight bump in sales, [REDACTED]
- [REDACTED] However, NJOY ended its 99-cent promotion in late 2019, and it no longer sells flavored electronic cigarettes.
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. [REDACTED]
[REDACTED]
[REDACTED]. 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. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16. [REDACTED]
However, in December of 2018, Altria announced that it would be discontinuing MarkTen and shutting down its NuMark division. Shortly after announcing its exit from the vapor category, [REDACTED]
[REDACTED]

17. In early 2020, Altria announced that it was terminating its services agreement with JUUL. [REDACTED]
[REDACTED]
[REDACTED]

* * *

PUBLIC

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:



Jack Stout
Senior VP – Merchandising & Demand Chain
7-Eleven Inc.

PUBLIC

PUBLIC

EXHIBIT 3 DEPOSITION OF JACK

STOUT PX7044

[REDACTED]

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

-----x

In the Matter of
ALTRIA GROUP, INC.,
a corporation,
-and- Docket No. 9393
JUUL LABS, INC.,
a corporation,
Respondents.

-----x

* * 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.

Page 2

1
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 18 Washington, D.C. 20036
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 20 ALISON ZOSCHAK, ESQ.
 21 JAMES ROSENTHAL, ESQ.
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Page 4

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 12
 13
 14 ALSO PRESENT:
 15 AMANDA CHILDS, ESQ., House Counsel, 7-Eleven
 16
 17
 18
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 21
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 24
 25

Page 3

1
 2 A P P E A R A N C E S: (Cont'd)
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Page 5

1
 2 -----I N D E X-----
 3 WITNESS EXAMINATION BY PAGE
 4 JACK STOUT MR. SNIDOW 6, 167
 5 MR. LEE 142
 6
 7 EXHIBITS PREVIOUSLY MARKED/REFERRED TO:
 8 DX 1190 - page 12
 9 DX 1193 - page 33
 10 DX 1194 - page 35
 11 DX 1195 - page 41
 12 DX 1196 - page 53
 13 DX 1197 - page 54
 14 DX 1198 - page 64
 15 DX 1199 - page 66
 16 DX 1202 - page 76
 17 DX 1203 - page 85
 18 DX 1205 - page 105
 19 DX 1206 - page 105
 20 DX 1211 - page 115
 21 DX 1212 - page 119
 22 DX 1215 - page 121
 23 PX 4214 - page 125
 24
 25

Page 6

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 J A C K S T O U T,
 3 called as a witness, having been duly
 4 sworn by a Notary Public, was examined
 5 and testified as follows:
 6 EXAMINATION BY
 7 MR. SNIDOW:
 8 Q. Good morning, Mr. Stout.
 9 A. Good morning.
 10 MR. SNIDOW: Before we begin, I do
 11 want to designate the transcript of this
 12 deposition to be outside counsel only, at
 13 least for the present time.
 14 Q. Could you please state your name for
 15 the record?
 16 MR. MANLEY: JJ, this is Robert
 17 Manley. I apologize for interrupting.
 18 Given that we're on Zoom and I'm not sure
 19 I can see everybody, can we make
 20 announcements of who's on the record
 21 [inaudible].
 22 And I'm happy to start because
 23 Amanda Childs of 7-Eleven's Legal
 24 Department is here with us in the room.
 25 This is Robert Manley. I'm with outside

Page 7

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Counsel McKool Smith, I'm also present in
 3 the room with Mr. Stout. And then we have
 4 our colleague Lisa Houssiere attending
 5 remotely. So, that's who's here on behalf
 6 of deponent.
 7 MR. SNIDOW: Very good. I'm with
 8 Altria. I'm JJ Snidow on behalf of
 9 Altria, and I'm joined by James Rosenthal,
 10 Adam Sowlati, Hayter Whitman, and Alison
 11 Zoschak.
 12 MR. MANLEY: All outside counsel?
 13 MR. SNIDOW: Yes.
 14 MR. MANLEY: Very good. Thank you.
 15 On behalf of the FTC?
 16 MR. LEE: This is Joonsuk Lee. I am
 17 an attorney with the FTC, complaint
 18 counsel in this proceeding. And here with
 19 me is another attorney from the FTC,
 20 Michael Lovinger.
 21 MS. CHUKWUOGO: For JLI, Chinwe
 22 Chukwuogo from Cleary Gottlieb.
 23 MR. MANLEY: And everyone is outside
 24 counsel, other than the FTC group, true?
 25 MR. SNIDOW: That's true.

Page 8

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 MR. MANLEY: Excellent. Thanks so
 3 much.
 4 MR. SNIDOW: Of course. I'm happy
 5 to take all the steps on that.
 6 Q. Mr. Stout, could you please state
 7 your name for the record?
 8 A. Yes. It's John Logan Stout.
 9 Q. Mr. Stout, before we go on, I just
 10 want to say thank you for making yourself
 11 available, and we certainly appreciate you
 12 taking the time today.
 13 A. No problem. And just to, I guess,
 14 clarify, I also informally and most of the
 15 time go by Jack, but John Logan Stout is the
 16 official.
 17 Q. Have you ever been deposed before?
 18 A. I have not, actually.
 19 Q. So before we go on, I guess I'll
 20 just lay a few ground rules of how the
 21 deposition is going to go. It's extremely
 22 important, especially over Zoom, that one
 23 person speaks at a time so that the court
 24 reporter can take down every word.
 25 Does that make sense? Did you say

Page 9

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 yes? Mr. Stout, can you hear me?
 3 A. You are appearing to break up on our
 4 end. I don't know if that's true for other
 5 listeners or not.
 6 Q. What I said was, it's important that
 7 one person speaks at a time so the court
 8 reporter can take down every word.
 9 Does that make sense?
 10 A. That makes sense.
 11 Q. Next one is, you have to make sure
 12 to verbalize your answers, because the court
 13 reporter can't take down nodding of the head
 14 or any other nonverbal gestures.
 15 Does that make sense?
 16 A. We appear to be having --
 17 MR. MANLEY: I apologize. This is
 18 Robert Manley. I apologize. You're
 19 freezing up, and if no one else is
 20 experiencing this, it may be a problem on
 21 our end. But it's happening with such
 22 frequency, it's going to cause a problem
 23 for us.
 24 (Discussion held off the record.)
 25 BY MR. SNIDOW:

Page 10

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. Mr. Stout, do you understand that

3 you are under oath today, just as if you were

4 testifying in a courtroom?

5 A. Yes, I do understand that.

6 Q. If at any time you do not understand

7 a question of mine, please do ask me to

8 rephrase it. I'm happy to do so.

9 Is that okay?

10 A. That's okay.

11 Q. And then the flip side of that is,

12 if you do answer my question, I'll assume that

13 you did understand it.

14 A. I got it.

15 Q. While I'm asking questions, the

16 other attorneys present are allowed to lodge

17 objections. They'll say "objection." Even

18 when they do that, though, in every case

19 except one, you'll still need to answer my

20 question.

21 Does that make sense?

22 A. Makes sense, yes.

23 Q. And the one exception to that is, if

24 your attorney thinks that I'm trying to get

25 into attorney/client privilege, they'll lodge

Page 11

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 an objection of privilege, and you won't

3 answer the question. I'm not going to try to

4 do that, but that's the one situation where

5 you won't actually answer.

6 Does that work?

7 A. Yes.

8 Q. We will try to take a break every

9 hour or hour-and-a-half, but if you want a

10 break, you can call for one at any time;

11 bathroom, food, just taking a break, anything

12 you want. Okay?

13 A. Great. Thank you.

14 Q. Is there any reason why you're

15 unable to give accurate testimony today?

16 A. Not to my knowledge.

17 Q. Any other procedural questions for

18 you, before we go on?

19 A. I don't think so.

20 Q. Do you understand that you're here

21 today to give testimony in a legal case

22 between the FTC and Altria and JUUL?

23 A. Yes, I do.

24 Q. Are you aware of the nature of the

25 FTC's allegations?

Page 12

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. In broad terms, yes.

3 Q. And are you aware that this case is

4 set to go to trial in June of 2021?

5 A. I am now.

6 Q. Mr. Stout, you have a binder in

7 front of you which contains courtesy copies of

8 some of the documents that I might want to use

9 with you today. You can go ahead and bring

10 that over to you, if you want.

11 A. Sure.

12 Q. You prepared a declaration in

13 connection with this matter; is that right?

14 A. That is correct.

15 Q. I want to ask you a couple of

16 questions about it. So, if you'll open to

17 tab 1 of the binder, which is DX 1190.

18 MR. SNIDOW: And, Alison, if you

19 wouldn't mind putting that in the folder.

20 MS. ZOSCHAK: That should be in Box

21 now.

22 Q. Are you there?

23 A. I am here.

24 Q. Does this appear to be your

25 declaration?

Page 13

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. It does appear to be my declaration.

3 Q. And that's your signature on the

4 last page there? It looks like you signed it

5 March 11th?

6 A. Yes, it is.

7 Q. How did you come to prepare this

8 declaration?

9 A. So I had a, I guess, two interviews

10 with the FTC, and they actually prepared the

11 declaration from their notes. My team and I

12 reviewed the declaration for factual accuracy,

13 had my team make any changes they felt

14 necessary, and communicated those back to the

15 FTC, and then we signed it.

16 Q. Who did you speak with at the FTC,

17 do you remember?

18 A. I actually don't recall the names.

19 It was about a year ago.

20 Q. That's fine. But fair to say the

21 FTC actually wrote the words that are in this

22 declaration?

23 A. That's correct.

24 Q. Fair to say that you provided input

25 but only minimal changes were made after that?

Page 14

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

Page 15

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-vapor

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-vapor 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

17 whether or not the e-vapor 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,

Page 16

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Mr. Stout?

3 A. Yes, I believe it's competitive

4 today.

5 Q. Do you think that the market today

6 is more or less competitive than it was in

7 March 2020?

8 MR. LEE: Objection to form. Vague.

9 A. I don't know that I actually have an

10 opinion on that.

11 Q. Is it fair to say that, versus 2020,

12 companies in the e-vapor market today are

13 doing more discounting of their products?

14 MR. LEE: Objection to form.

15 A. I would have to review the data. I

16 don't have a clear view of that, just off the

17 top of my head.

18 Q. That's fair. How about, going back

19 a little more in time, do you think the

20 e-vapor market has become more competitive

21 since 2015?

22 MR. LEE: Objection to form.

23 A. Could you clarify what you mean by

24 "more competitive"?

25 Q. Sure. Do you think that, versus

Page 17

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 2015, there are more companies in the e-vapor

3 market?

4 A. I would have to review the data. I

5 don't know.

6 Q. That's fair. Before we go any

7 further, I want to talk about some terminology

8 that I'm going to use today.

9 If I say the word C stores, I assume

10 you know what that means?

11 A. I would assume you mean convenience

12 stores, yes.

13 Q. I do. And is 7-Eleven a C store, or

14 convenience store, in your view?

15 A. Absolutely.

16 Q. If I say e-vapor or e-cigarette, do

17 you know what those terms refer to?

18 A. I know how I would use them. I

19 would like you to clarify what your usage is,

20 if you don't mind.

21 Q. That's actually what I was going to

22 ask you. What's your preferred terminology,

23 and what do you view it to mean?

24 A. So, I think with respect to

25 e-cigarettes -- you know, I use the term

Page 18

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 e-cigarette somewhat broadly to mean any
 3 electronic device that's a nicotine delivery.
 4 And I suppose in the case of vapor, I would
 5 have virtually the same specific designation;
 6 that it would be based on some water-based
 7 vapor.
 8 Q. Okay. All right. So, based on that
 9 definition, I'm probably going to use the term
 10 e-cigarette, if that's okay with you.
 11 A. Sure.
 12 Q. Are you familiar with the company
 13 known as JUUL Labs Incorporated?
 14 A. I am.
 15 Q. If I refer to JUUL, would you know
 16 I'm referring to that company?
 17 A. Yes, I will.
 18 Q. In the documents that we looked at,
 19 I noticed the abbreviation SE I.
 20 I assume that refers to 7-Eleven
 21 Incorporated?
 22 A. That's correct.
 23 Q. If I refer to pod-based
 24 e-cigarettes, do you know what that means?
 25 A. Yes, I do.

Page 19

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. How do you understand that term?
 3 A. I would assume that to mean a
 4 prefilled pod, some form of nicotine liquid in
 5 the pod that's interchangeable with a device
 6 that's typically powered by a battery.
 7 Q. Do you understand JUUL's product to
 8 be a pod-based product?
 9 A. Yes, I do.
 10 Q. Do you understand MarkTen Elite to
 11 have been a pod-based product?
 12 A. Yes, I do.
 13 Q. Are there any other pod-based
 14 products that you're familiar with in the
 15 e-vapor market?
 16 A. There are other ones. I think the
 17 NJOY Ace is an example, and there are probably
 18 some others. I'd have to think through that,
 19 but yes, I'm aware there are other pod-based
 20 products on the marketplace -- in the market.
 21 Q. Are you aware of whether Vuse Alto
 22 is a pod-based product?
 23 A. I believe it is.
 24 Q. If I refer to Cigalike products, do
 25 you know what that term refers to?

Page 20

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 A. I am assuming that you mean
 3 non-pod-based e-cigarettes that look, like, in
 4 the form of cigarette-stick-shape device.
 5 Q. I couldn't have said it better
 6 myself. That's exactly how I will use that
 7 term, if that's okay with you.
 8 And I think this is implied, but
 9 I'll ask it: In your view, JUUL is not a
 10 Cigalike product, true?
 11 A. I would agree with that.
 12 Q. In your view, MarkTen Elite is not,
 13 was not a Cigalike product, true?
 14 A. I would agree with that.
 15 Q. And are you familiar with the
 16 product that was called MarkTen XL or MarkTen
 17 Bold or sometimes just MarkTen?
 18 A. I am familiar with the brand MarkTen
 19 prior to the introduction of MarkTen Elite,
 20 but those other specific variants of MarkTen,
 21 I don't recollect.
 22 Q. Are you aware that, like you said,
 23 other than MarkTen Elite, that those were
 24 Cigalike products?
 25 A. That's my understanding; though

Page 21

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 admittedly, I don't have detailed knowledge of
 3 those products.
 4 Q. That's fair.
 5 I refer to nicotine salts, is that a
 6 concept you're familiar with?
 7 A. I've heard the term. I don't have
 8 very much knowledge in this area.
 9 Q. Can you tell me what your
 10 understanding of the term is?
 11 A. My understanding is that it's an
 12 ingredient sometimes found in some of these
 13 products. I don't know the kind of chemistry
 14 of it or even the exact purpose of it.
 15 Q. I was not going to ask you about the
 16 chemistry, but do you know what the purpose of
 17 nicotine salts in an e-cigarette is?
 18 A. Not precisely, no.
 19 Q. If I refer to flavors for
 20 e-cigarette product, do you know what that
 21 refers to?
 22 A. Well, I can tell you what I will
 23 assume for this, is that it would be,
 24 essentially, flavors of these devices, other
 25 than those that attempt to be specifically

Page 22

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 tobacco, replicate the flavor of natural
 3 tobacco.
 4 Q. So, that's almost exactly right.
 5 I'm going to use it to refer to what
 6 you said, flavors of e-cigarette products,
 7 other than tobacco or menthol or mint flavors,
 8 if that works?
 9 A. Okay. I can agree, and then I'll
 10 understand what you mean.
 11 Q. If I refer to smoker conversion, is
 12 that a concept that you're familiar with?
 13 A. I'd say potentially. Again, I'll
 14 throw my definition out. If you mean
 15 converting from combustible cigarettes to some
 16 electronic cigarette or vapor form as an
 17 alternate source of nicotine, that's how I
 18 would use the term.
 19 Q. That's great. That's exactly how I
 20 use it.
 21 In your view, is it important for an
 22 e-cigarette to be able to convert smokers?
 23 A. I don't have an opinion on that.
 24 Q. Do you have an opinion as to whether
 25 or not an e-cigarette product would be more

Page 23

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 successful if it can convert smokers?
 3 MR. LEE: Objection to form.
 4 A. I think it's reasonable to assume
 5 there's a marketplace for people that would
 6 like to move away from combustible cigarettes,
 7 and that that might provide some sales
 8 benefit, sure.
 9 Q. Let's look a little more at your
 10 declaration, if I could turn your attention to
 11 paragraph 2, which has part of your bio.
 12 Am I correct that you came to work
 13 at 7-Eleven in 2003?
 14 A. That's correct.
 15 Q. And right now, you're the senior
 16 vice president for merchandising and device
 17 chain; is that right?
 18 A. Demand chain; not device chain.
 19 Q. Yeah, I misspoke.
 20 A. It's essentially the way we phrase
 21 supply chain.
 22 Q. You've been in that role since 2017?
 23 A. I was promoted to senior vice
 24 president in 2017. The form of that job has
 25 changed slightly, what I'm responsible for

Page 24

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 over the last few years. But yes, effectively
 3 been in the senior vice president of
 4 merchandising and some-other-stuff role since
 5 2017, and my current title is senior vice
 6 president of merchandising and demand chain.
 7 Q. What are your responsibilities in
 8 that role, at a high level?
 9 A. So, we're responsible, essentially,
 10 for the product assortment in the stores;
 11 deciding which products our stores will carry,
 12 and, frankly, which ones we will recommend for
 13 franchise stores to carry.
 14 In some cases, we're responsible for
 15 product development of things like fresh food
 16 and private brands.
 17 We're also responsible for
 18 negotiating the terms under which we will
 19 purchase products from national-brand
 20 suppliers and providing those terms to our
 21 stores so that the stores actually make the
 22 purchases, but we negotiate those terms.
 23 And finally, we're responsible for
 24 maintaining the relationships with our
 25 third-party distribution partners to get

Page 25

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 products from the manufacturers to the stores
 3 themselves.
 4 Q. What portion of your time do you
 5 spend on the tobacco space, generally?
 6 A. I'd say it varies. If I look over
 7 the course of the year, focus specifically on
 8 that, less than 5 percent of my time.
 9 Q. And e-vapor, would you consider that
 10 to be a subset of the tobacco category?
 11 A. Yes.
 12 Q. Do you track market shares of
 13 companies in the e-vapor space?
 14 A. Personally, I do not track on an
 15 ongoing basis, no.
 16 Q. Does someone on your team, do you
 17 know?
 18 A. I think it's likely that my tobacco
 19 category team would be familiar, at least in
 20 broad terms, with market share.
 21 Q. Do you know which four or five
 22 companies had the highest market share in the
 23 e-vapor space?
 24 A. If you ask me to name the top five,
 25 I don't know that I would go five for five.

Page 30

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. And is it fair to say that the

3 e-cigarette category is expanding today?

4 A. I actually don't know that to be the

5 case.

6 Q. Do you have any reason to think that

7 the e-cigarette category is contracting today?

8 A. I haven't reviewed the data

9 recently. I know that we saw a flattening of

10 sales in late 2019. As you might imagine, in

11 2020 we've been focused on a lot of

12 COVID-related product categories. I haven't

13 really reviewed the sales trends of

14 e-cigarettes in recent times in any detail

15 that would let me comment on your question

16 with certainty.

17 Q. And that's fair. I'm just asking if

18 you have any affirmative reason to think that

19 the category has contracted in 2020.

20 A. No.

21 Q. And do you have any affirmative

22 reason to think that the category has become

23 less competitive in 2020?

24 MR. LEE: Objection to form.

25 A. No.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 Q. Within the tobacco category, about

5 20 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. Thanks for clarifying that.

22 Is it fair to say that 7-Eleven is

23 an important player in the retail space for

24 e-cigarettes?

25 A. Yes.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. And do you have any affirmative

3 reason to think that the category has become

4 less competitive than it was in 2018?

5 MR. LEE: Objection to form.

6 A. No.

7 Q. I'm going to show you a document

8 that is tab 4 in your binder, and DX 1193.

9 Just let me know when you get there.

10 A. I am there in tab 4.

11 Q. Okay. So, this is an email dated

12 August 20th of 2018.

13 Do you see that?

14 A. I do.

15 Q. And it's from Rusty Cowher.

16 Do you see that name there?

17 A. I do.

18 Q. And he appears to be a consultant

19 from BCG; is that right?

20 A. That appears to be the case;

21 although, I don't know Rusty personally.

22 Q. He's attached, it looks like, two

23 documents.

24 Do you see it says "JUUL vendor

25 playbook" and "JUUL script," in the

Page 42

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 Q. If you look at slide 4 of this, at

4 the top it says, "Over the past year."

5 Do you see that?

6 A. Yes.

7 Q. That says, "Over the past year, JUUL

8 has seen exponential growth with a current run

9 rate of over \$280 million"; is that right?

10 A. That's what it says.

11 Q. And feel free to look back at the

12 date, but when it says "Over the past year"

13 there, it's referring to the period from

14 August 2017 to August 2018?

15 A. Correct.

16 Q. And that is before Altria's

17 investment in December 2018, right?

18 A. That's correct.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MR. LEE: Objection to form.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. I'm happy to rephrase it.

6 It's fair to say that before Altria

7 invested in JUUL, JUUL's sales rose

8 substantially, fair?

9 A. Yes.

10 Q. Let's turn to slide 5, and it's the

11 one that says "Revenue growth for JUUL."

12 Do you see that?

13 A. Yes.

14 Q. What the two graphs are doing here

15 is, it's showing growth in starter kits and

16 then the growth in pods; is that right?

17 A. That's what these two graphs appear

18 to show, yes.

19 Q. Do you know what I mean, when I say

20 razor blade model for sales?

21 A. I would assume you mean the device

22 that's permanent and reusable cartridges or

23 similar that are to be used with that

24 permanent device.

25 Q. That's right.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. That's fair.

3 In 2015, the cigarette industry was

4 declining at approximately 3 to 4 percent,

5 right?

6 A. That's an interesting question of

7 whether this time goes back to 2015. I don't

8 know. I know that there were some significant

9 changes around that time, as we had some major

10 retailers, in particular CVS, exit the

11 marketplace. And around that time, we

12 actually saw unit growth. Whether the market

13 was contracting at the same 3 to 4 percent

14 back then, I can't recall.

15 Q. How about 2016? Is 3 to 4 percent

16 accurate for 2016?

17 A. I think that's -- I would infer

18 that's probably likely, given that we quoted

19 this as had been declining 3 to 4 percent for

20 years, and this was prior to 2018. So I would

21 infer, yes, that 2016 is likely included in

22 that.

23 Q. So, let's stick with 2016, then.

24 So, in that year, the sale of

25 e-cigarettes was not making a dent in the rate

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 But the rate of decline had not

8 changed in 2016, right?

9 A. Again, I don't know what the rate of

10 decline in 2015 was, so I'm not certain. I

11 don't remember it being a disruptive force in

12 2016.

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

14 at.

15 You don't remember combustible sales

16 declining sharply as a result of e-cigarettes

17 in 2016?

18 A. Correct.

19 Q. Is that fair to say because those

20 products were not successful enough at

21 converting smokers?

22 MR. LEE: Objection to form.

23 A. I have no idea. I mean, I really --

24 and I'm not trying to be difficult here. I

25 truly don't know whether those e-cigarettes

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 were even attempting to convert smokers. So,

3 I don't know if they were unsuccessful at

4 something -- you know, I just don't know.

5 Q. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 MR. LEE: Objection to form.

3 A. That's a conclusion that I think is

4 hard for me to make definitively. Certainly,

5 they coincided in time, and I think the

6 interpretation of whether that's just

7 coincidence in time or causal is left to the

8 interpreter, and I don't have a strong opinion

9 of that. Certainly, they occurred around the

10 same time.

11 Q. Can you think of any other

12 explanation for the change in the rate of

13 combustible cigarette decline at the time when

14 JUUL was taking over?

15 A. I wouldn't want to speculate, and I

16 can't think of anything immediately, off the

17 top of my head.

18 Q. Turn your attention now to tab 7 in

19 your binder, which is DX 1196.

20 A. I'm there.

21 Q. Do you see this is an email from

22 Marty Young?

23 A. Yes.

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

25 Do you understand that to be a kind

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 of predecessor to JUUL?
 3 A. I actually did not.
 4 Q. And he attaches an attachment called
 5 "JUUL IRI ending 11/29/15."
 6 Do you see that?
 7 A. I do.
 8 Q. I'll turn your attention, then, to
 9 that attachment, which is tab 8, and DX 1197.
 10 A. I'm there.
 11 Q. Let's pause a second so it can get
 12 loaded up. I guess I should have confirmed
 13 the date.
 14 Do you see on the email this is from
 15 January of 2016?
 16 A. Let me turn back to the email.
 17 January 7, 2016 is the date. The attachment
 18 appears to be from November 29, 2015, at least
 19 in the title of the attachment.
 20 Q. You see at the top, it says, "The
 21 fastest growing top ten vapor brand in U.S.
 22 convenience"?
 23 A. Yes.
 24 Q. Do you see the third bullet down, it
 25 says, "JUUL is the first e-cig that can match

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 satisfaction of a cigarette"? Do you see
 3 where it says that?
 4 A. I do.
 5 Q. Is it your understanding that JUUL
 6 was particularly good at providing smokers
 7 with the satisfaction that a cigarette did?
 8 A. Honestly, I don't know. I'm
 9 personally not a consumer of any of this
 10 category, so I don't know. But certainly this
 11 sell sheet shows them making that claim.
 12 Q. Do you have any reason to doubt it?
 13 MR. LEE: Objection to form.
 14 A. No specific reason to doubt it, but
 15 I also don't really have any specific reason
 16 to support it.
 17 Q. Do you see where it says, "Easy to
 18 use for transitioning smokers," in the fourth
 19 bullet there?
 20 A. Yes.
 21 Q. Is it your understanding that JUUL
 22 was a product that smokers found easy to
 23 transition to?
 24 MR. LEE: Objection to form.
 25 A. I don't think I could answer broadly

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 for the universe of smokers and how easy the
 3 product was to use.
 4 Q. Same question: Any reason to doubt
 5 what's stated there about JUUL?
 6 MR. LEE: Objection to form.
 7 A. No real reason to doubt or to
 8 support it. I would just note that
 9 manufacturers put a lot of fliers together
 10 with a lot of claims. And so, I don't have
 11 any reason to doubt this one specifically, but
 12 no reason to support it either just because a
 13 manufacturer claims it.
 14 Q. If you look at the bottom part of
 15 that document, do you see some pricing
 16 information listed for JUUL?
 17 A. Yes.
 18 Q. And these are prices as of, like you
 19 said, end of 2015 or early 2016?
 20 A. That's what they appear to be, yes.
 21 Q. So, that's well before Altria's
 22 investment in JUUL in December 2018, right?
 23 A. Correct.
 24 Q. And it says that the MSRP for JUUL
 25 is 49.99, right?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 A. Oh, yes, for the starter kit,
 3 correct.
 4 Q. We'll get to this in a moment, but
 5 do you know whether or not JUUL's prices are
 6 higher or lower now?
 7 A. I do not.
 8 Q. Is it fair to say that at the time,
 9 that JUUL was priced as a premium product?
 10 MR. LEE: Objection to form.
 11 A. Not knowing what other products were
 12 in the marketplace at the end of 2015, I can't
 13 say that with certainty. Certainly, for
 14 products sold in a convenience store, 49.99 is
 15 a high price, but I don't know if it was a
 16 premium to other products or not.
 17 Q. Do you know if JUUL appeared to a
 18 particularly high-income segment of the
 19 market?
 20 A. I do not.
 21 Q. If you turn to the next page, you
 22 will see a rank order listing of the various
 23 e-vapor brands.
 24 A. Yes.
 25 Q. At the top, it's R.J. Reynolds; is

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 that right?
 3 A. It does appear to be R.J. Reynolds,
 4 yes.
 5 Q. Are you aware that R.J. Reynolds has
 6 the Vuse e-cigarette product?
 7 A. I am.
 8 Q. And then the next one is Lorillard,
 9 right?
 10 A. Yes.
 11 Q. And are you aware that they used to
 12 have the blu or myblu e-cigarette product?
 13 A. I'm aware of the brand. I wasn't
 14 aware it was a Lorillard brand at the time.
 15 Q. And the next one is Logic, correct?
 16 A. Yes.
 17 Q. The next one is NuMark, correct?
 18 A. Correct.
 19 Q. And then VMR Prods. Do you see
 20 that?
 21 A. Yes.
 22 Q. Are you aware of what that product
 23 is?
 24 A. I am not.
 25 Q. How about JAK cig? Do you see that

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 one?
 3 A. I'm unaware of that product, as
 4 well.
 5 Q. Number 7 is NJOY. I assume you're
 6 familiar with that one?
 7 A. I am familiar with NJOY as a brand.
 8 Q. The next one is CB Dist. Do you
 9 know what that product is?
 10 A. Not from this abbreviation, no.
 11 Q. All the way down at 9 is Pax Labs,
 12 right?
 13 A. Right.
 14 Q. You can probably tell from context,
 15 but I'll represent to you that they were a
 16 predecessor to JUUL.
 17 A. Yes.
 18 Q. My question is: You provided a list
 19 of the market leaders in your declaration, and
 20 we can look at it, but is it fair to say that
 21 the list now looks a lot different than it did
 22 at the time?
 23 A. I would say that there has
 24 definitely been a change in the order at the
 25 top and that JUUL or Pax Labs at the time has

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 moved up. So, if you want to characterize
 3 that as substantial change, I guess, yes, I
 4 would agree with that.
 5 Q. What you're saying is that the
 6 identity of the market leader in e-cigarettes
 7 has changed over the years, right?
 8 A. Yes.
 9 Q. And the identity of the number two
 10 and the number three slots, that has changed
 11 over the years?
 12 A. Yes.
 13 Q. And the market shares of the various
 14 companies, that has fluctuated over the years,
 15 right?
 16 A. Correct.
 17 Q. Fluctuated substantially, even over
 18 a short period of time, right?
 19 MR. LEE: Objection to form.
 20 A. Could you define what you mean by,
 21 "short period of time"?
 22 Q. Let's start with this: The market
 23 shares have fluctuated substantially, right?
 24 A. Correct.
 25 Q. This is a 2016 document.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 So they fluctuated substantially
 3 over the past, what is it, four years?
 4 A. Call it five, sure.
 5 Q. Another way of putting that is
 6 knowing who has certain market share now, at
 7 least in 2016, doesn't really predict who's
 8 going to have a big market share in the
 9 future. Is that fair?
 10 MR. LEE: Objection to form.
 11 A. I think they're not perfectly
 12 predictive, correct. But there is,
 13 certainly -- knowing who the market share's
 14 leader are four or five years out is probably
 15 at least indicative of the more likely people
 16 to be market share leaders in four or five
 17 years later. So -- but certainly, it's not
 18 perfectly predictive, and this is an example
 19 of that.
 20 Q. And what you mean is, for example,
 21 JUUL's number nine here, and they're not
 22 number nine anymore, right?
 23 A. Correct.
 24 Q. And the other companies, you know,
 25 they've had market shares that have

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. And am I right, that's the document

3 he's describing in the text when he says,

4 "Attached is our overall plan for 2019 we

5 presented to the VPs in October"?

6 A. That seems to be the most likely of

7 these attachments. And he has also attached

8 what looks to be a couple of spreadsheets with

9 team goals. But the overall plan, I would

10 infer from this email that it's likely to be

11 the plan that he intended to present in

12 October.

13 Q. Turning to tab 10, which is the

14 attachment to that email and is DX 1199.

15 A. I'm there.

16 Q. I guess if you'll just turn the

17 page, you'll see this is the 2019 Tobacco

18 Business Unit Plan?

19 A. That's correct.

20 Q. And it looks like it was put

21 together by Phil Wilhelm and Shazad Hooda?

22 A. Correct.

23 Q. Who is Shazad Hooda?

24 A. In our tobacco business at the time,

25 we had two senior category managers; one for

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 cigarettes, and one for other tobacco

3 products. Shazad was the senior category

4 manager of cigarettes, and Phil was senior

5 category manager of other tobacco products.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. I would want to review it in more

18 detail, but off the top of my head, correct, I

19 don't have any reason to believe this is

20 inaccurate. I would note that it was prepared

21 for an internal audience, not sort of fact

22 checked for sending it to convince anybody,

23 other than their own bosses, of something.

24 So, while I don't have any reason to believe

25 it's inaccurate, it's a dif- -- my point is,

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 it's a different level of scrutiny that a

3 document like this is put on than one that

4 we're, for example, sending to our stores.

5 So, there's more of a discussion, so...

6 Q. I take your point.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 MR. LEE: Objection to form.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q. Taking a step back from the document
 15 for a second, Mr. Stout, is it your
 16 understanding that the market has shifted
 17 towards pods over the last few years?
 18 A. Well, certainly at this time point,
 19 we were seeing stronger growth in pods than
 20 Cigalike devices.
 21 Q. Has that trend continued, do you
 22 know?
 23 A. I think it has, but again, I don't
 24 spend a lot of time in the detailed data on
 25 this in the vape category, vapor, e-cig, all

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 I find that most consumers have a preferred
 3 form factor. So, I would assume that's the
 4 case here, but I don't have detailed knowledge
 5 of consumer preferences in this category.
 6 Q. That's fair. And like you said
 7 before, you're aware that JUUL is a pod-based
 8 product and MarkTen Bold and XL were Cigalike
 9 products, right?
 10 MR. LEE: Objection.
 11 Mischaracterizing testimony.
 12 Q. I'm sorry, Mr. Stout, what did you
 13 say?
 14 A. Could you repeat the question?
 15 Q. Sure. You said before that you're
 16 aware that JUUL was a pod-based product and
 17 MarkTen XL and MarkTen Bold were Cigalike
 18 products?
 19 MR. LEE: Same objection.
 20 A. That's my understanding.
 21 Q. Let's look at tab 13. It's DX 1202.
 22 A. I'm there.
 23 Q. This is an email from March 20th of
 24 2018?
 25 A. It does appear to be that.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 that category. But my broad understanding is
 3 yes, that pod-based systems would continue to
 4 outperform Cigalikes.
 5 Q. Is it your understanding that
 6 consumers tend to prefer one or another, as
 7 between pods and Cigalikes?
 8 A. I actually don't know. I think in
 9 most categories, consumers have a preference
 10 for certain form factor. I presume that's
 11 likely to be the case in this one. I would
 12 assume our category managers actually do get
 13 into that level of knowledge of consumer
 14 insight. Again, the level of detail that I
 15 get into in this business, I wouldn't want to
 16 characterize that as true. I just don't know.
 17 Q. By "form factor," do you mean the
 18 Cigalike form versus the pod form?
 19 A. Sure, yes. Most categories have --
 20 you know, soft drinks, you've got customers
 21 that prefer to buy in a 20-ounce bottle, other
 22 people prefer to buy in a fountain, other
 23 people prefer a can. And they have some
 24 preference. That doesn't mean they exclusive
 25 buy the preferred form factor, but generally,

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. And the email address is
 3 GM7-Eleven.com.
 4 Do you see that?
 5 A. I do.
 6 Q. Do you know what that email address
 7 is?
 8 A. So, I'm not absolutely certain, but
 9 my best assessment of this is that it's a
 10 generalized mailbox that we use to communicate
 11 to larger portions of the organization when we
 12 don't intend for it -- we intend for it to
 13 come from the company more than from an
 14 individual user.
 15 Q. Okay. This is coming from 7-Eleven
 16 corporate; is that right?
 17 A. It appears to be coming from
 18 somewhere in our store support centers.
 19 Q. And the "to" line says "Select U.S.
 20 stores," right?
 21 A. Correct.
 22 Q. And I assume that's some kind of
 23 distribution list that sends emails out to
 24 various 7-Eleven stores?
 25 A. Yeah, that feels like a reasonable

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 assumption. I don't know that to be the case,
 3 but I think that seems to be a reasonable
 4 assumption.
 5 Q. So judging from context, this email
 6 is something that 7-Eleven corporate wanted
 7 various stores to be aware of?
 8 A. Various stores and then the
 9 operational leadership that helps kind of
 10 provide support to those stores because of the
 11 cc line, right, that we wanted our operations
 12 team and our store operators to have this
 13 information, at least for some portion of
 14 stores. I don't know which stores were in
 15 select.
 16 Q. In the text of the email, it says,
 17 "The hot new item in the tobacco industry is
 18 pod-based electronic cigarettes."
 19 Do you see that?
 20 A. I do.
 21 Q. And is that consistent with your
 22 understanding?
 23 A. Again, at the time, seeing the
 24 growth in JUUL and, you know, this time period
 25 is right in the middle of that graph that we

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 talked about earlier, it's not surprising that
 3 you might make such a statement.
 4 Q. The next sentence says, "7-Eleven's
 5 strategy is to get to a customers want, and
 6 they're saying that pod-based systems are what
 7 they would like to buy."
 8 Did I read that correctly?
 9 A. You did.
 10 Q. Again, as you point out, at the time
 11 that was the situation in the market;
 12 consumers were wanting pods?
 13 A. Well, we were seeing a lot of
 14 growth. Sometimes we word these somewhat
 15 casually. So when we say, and they are saying
 16 that this is what they'd like to buy, we may
 17 just be sort of a euphemism for we're seeing
 18 strong growth in this area, as opposed to
 19 having done actual consumer research.
 20 Q. I appreciate that.
 21 What you're saying is that at a bare
 22 minimum, pods were growing strongly at this
 23 time?
 24 A. Pods seemed to be succeeding in the
 25 marketplace at the time.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. And the next line says, "You have
 3 seen in previous MIP packages other pod
 4 systems like MarkTen Elite and myblu."
 5 Do you see that?
 6 A. I do.
 7 Q. And like you said before, you're
 8 familiar with the fact that MarkTen Elite and
 9 myblu are pod-based systems?
 10 A. Yes.
 11 Q. But then it goes on to say that "The
 12 highest potential item brand is JUUL," true?
 13 A. That's what the sentence says, yes.
 14 Q. I know you can't get into the mind
 15 of the person who wrote this, but do you agree
 16 that suggests that JUUL, as a pod product, had
 17 higher potential than MarkTen Elite and myblu?
 18 A. Yeah, I actually will try and be
 19 helpful here. This is where we were seeing
 20 the most growth at the time, and so we like to
 21 make sure stores know that. This is where
 22 we're seeing the most growth. If you're not
 23 selling this brand today, you probably should
 24 be because it's growing rapidly in other
 25 stores.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. And that's true, even as compared to
 3 MarkTen Elite and myblu, right?
 4 A. Correct.
 5 Q. And down a little bit later on the
 6 page, it says key points about JUUL and then
 7 has a number of bullet points.
 8 Do you see that?
 9 A. Yes.
 10 Q. And the further bullet down says,
 11 "JUUL is a premium vapor product attracting
 12 high-income consumers, a true traffic driver,"
 13 right?
 14 A. It does say that, yes.
 15 Q. Any reason to disagree with that
 16 statement, that JUUL was a premium product?
 17 A. No, I don't have any reason to
 18 dispute that.
 19 Q. Any reason to dispute the fact that
 20 JUUL was attracting high-income consumers?
 21 A. No reason to dispute that, no. But
 22 I guess I would note that we saw JUUL sell to
 23 a lot of consumers. At this point in time, I
 24 don't have specific knowledge about what the
 25 income level was. But no, no reason to

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 dispute it.
 3 Q. Fair to say, then, that JUUL was a
 4 differentiated product in this market?
 5 MR. LEE: Objection to form.
 6 A. Again, I don't know enough about the
 7 things that differentiated JUUL versus other
 8 pod-based systems. I would say that it was
 9 more successful than other products, and at
 10 least a lot of customers appeared from a sales
 11 perspective to [inaudible]. So, if that's
 12 what you mean by "differentiated," sure.
 13 I usually start talking about the
 14 product features that distinguish it. I don't
 15 have real knowledge of whether those
 16 features -- what those features would be to
 17 differentiate it.
 18 Q. Do you know whether JUUL was
 19 differentiated because it had a better design?
 20 A. You know, I heard some discussion
 21 about slick design, but I don't have any real
 22 knowledge of what made it slick.
 23 Q. Do you have any knowledge of whether
 24 JUUL is differentiated because --
 25 A. Slick is a really technical term

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 here. Sorry.
 3 Q. What about nicotine satisfaction?
 4 Do you know whether JUUL was considered to be
 5 a premium product because it had better
 6 nicotine satisfaction?
 7 A. I actually have no idea.
 8 Q. Below that, it has some prices for
 9 JUUL.
 10 Do you see that?
 11 A. Yes.
 12 Q. And the first one there is a starter
 13 kit.
 14 Do you see that it's priced at
 15 49.99?
 16 A. Yes.
 17 Q. And that is the same price that we
 18 saw from the 2016 document before, right?
 19 A. That is correct.
 20 Q. So from 2016 to March of 2018, at
 21 least at the end points, JUUL's price remained
 22 the same, right?
 23 A. At least the suggested retail. It
 24 appears that this is the suggested retail that
 25 we are recommending to the stores because it

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 is going to the stores from us. You know,
 3 what's unclear here is whether that is the
 4 actual kind of average retail, but the
 5 suggested retail does appear to be the same,
 6 yes.
 7 Q. The same as it was in 2016, right?
 8 A. Right.
 9 Q. And this document is March 2018, so
 10 that's several months before Altria's
 11 investment in December 2018; is that right?
 12 A. Again, please? I'm sorry.
 13 Q. This is March 2018, so that's
 14 several months before Altria's investment in
 15 December 2018?
 16 A. Correct.
 17 Q. Let's move on to tab 14.
 18 A. I'm there.
 19 Q. I think it's actually a little
 20 easier if we skip down to the second email
 21 because you're on it. This is an email from
 22 Ryan Nivakoff @enjoy.com to you and Joe
 23 DePinto, right?
 24 A. Yes. It's one that is sent from our
 25 CEO, Joe, to his assistant, and then it asks

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 him to print the email that you're
 3 referencing, which is the one from Ryan
 4 Nivakoff to Joe DePinto and myself on
 5 Thursday, June 20, 2019..
 6 Q. Thank you. And I forgot to identify
 7 the document except by tab number. This is
 8 DX 1203.
 9 A. Yes.
 10 Q. And what Ryan says is, "I am looking
 11 forward to our July 2nd meeting. I appreciate
 12 you both taking the time from your busy
 13 schedules."
 14 Do you see that?
 15 A. I do.
 16 Q. He says in advance of the meeting,
 17 he wants to pass along a research report from
 18 Morgan Stanley, right?
 19 A. Yes.
 20 Q. In the next sentence, he says, that
 21 it outlines that NJOY is going faster than
 22 JUUL ever has; is that true?
 23 A. That's what it says.
 24 Q. And this is from June 2019, right?
 25 A. That's correct.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. So, roughly six months after

3 Altria's investment in JUUL in December 2018?

4 A. That's what it appears to be, yes.

5 Q. What he's saying is, six months

6 after that judgment, NJOY is growing faster

7 than JUUL ever has, right?

8 A. That's what he's claiming here, yes.

9 Q. And --

10 A. That's basically what the report

11 from Morgan Stanley -- he's saying the report

12 from Morgan Stanley points out that NJOY is

13 growing faster than JUUL ever has.

14 Q. In the last sentence of that

15 paragraph he says, "Our unit sales have been

16 entirely incremental to that category."

17 Do you see that?

18 A. Yes.

19 Q. That's suggesting that NJOY is

20 expanding the e-vapor market rather than

21 gamblizing sales, right?

22 A. That's his assertion here, yes.

23 Q. In other words, he's saying that

24 NJOY's output in the market is going up,

25 right?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. He's saying their sales are going up

3 and that it is not taking sales away from

4 other, I guess, e-vapor products.

5 Q. And doesn't that imply that sales in

6 the broader market are going up?

7 A. Yes, that's his assertion, yes.

8 Q. If you'll turn the page, you'll

9 actually see the Morgan Stanley report that he

10 sent you.

11 A. Yes.

12 Q. The first sentence says, "JUUL's

13 success has paved the way for new entrants";

14 is that right?

15 A. It does say that, yes.

16 Q. And do you agree that six months

17 after Altria invested in JUUL, that new

18 entrants were coming online?

19 A. Yes.

20 MR. LEE: Objection.

21 Q. And do you see in the second

22 sentence, it says, "Our meeting with NJOY

23 management reinforces our view that e-cig

24 competition is increasing"? Do you see this?

25 A. Yes, I see that.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. And do you agree with that view,

3 that e-cigarette competition was increasing at

4 this point?

5 A. You know, I don't know.

6 Q. Do you have any reason to disagree

7 with it?

8 A. I guess, to be honest, I hate to

9 answer a question like that, of course, any

10 reason not to disagree. No, I don't have

11 specific facts to dispute it, but I don't have

12 any recollection that we were seeing sort of a

13 heating up of competition at this particular

14 time.

15 Q. And that's fair.

16 Any affirmative reason to think that

17 competition was decreasing at this time?

18 MR. LEE: Objection. Calls for

19 speculation.

20 Q. I'm sorry, Mr. Stout. Did you say

21 no?

22 A. No reason to think it was

23 decreasing.

24 Q. So no reason to think that six

25 months after Altria's investment in JUUL,

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 competition was decreasing in the market,

3 fair?

4 A. Fair.

5 Q. Do you see the first sentence in the

6 next paragraph says, "JUUL's success in

7 attracting competitors and capital into the

8 e-cig category"?

9 A. I see that.

10 Q. If I could put that in layman's

11 terms, is that saying people saw how well JUUL

12 was doing and wanted to get involved, as well?

13 A. I haven't read this Morgan Stanley

14 research report. Repeat your question again,

15 I'm sorry.

16 Q. I was going to say, in layman's

17 terms, was it saying that JUUL was successful,

18 which prompted other people to get involved in

19 the market, as well?

20 A. I mean, I'd want to read it in more

21 detail to see if I agree with that.

22 Do you mind if I take some time to

23 read the paragraph?

24 Q. Not at all.

25 A. So, you said in layman's terms --

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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."

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Did I read that right?
 3 A. You read it correctly.
 4 Q. What 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 sure, I guess I would characterize it that
 9 way.
 10 Q. And then they went bankrupt in 2016,
 11 right?
 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.

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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.

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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

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 year over year. This is a Morgan Stanley
 3 report. I assume they probably have the same
 4 abbreviations. That would be a common
 5 interpretation of that.
 6 Q. And then it says, "in the L12W."
 7 Do you read that to mean last
 8 12 weeks?
 9 A. Again, we don't actually use that
 10 type of abbreviation much here, but yes, that
 11 would be my kind of educated guess as to what
 12 they mean.
 13 Q. And assuming we're right on the
 14 abbreviations, you would agree that that's
 15 pretty robust growth for NJOY, right?
 16 A. I guess it depends on what you mean
 17 by robust. It's a high percent. I don't know
 18 what the base was, and I don't know what their
 19 expectations were, and I don't know if they
 20 mean in units or sales dollars. There's a lot
 21 to interpret here. So terming this "robust
 22 growth" -- I mean, in theory they could have
 23 sold one unit at a really high price the year
 24 before and sold 2.35 units, whatever -- you
 25 know what I'm saying, right? I just don't

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 know. But 235 percent year-over-year growth
 3 depending on the base, yeah, is considered --
 4 would be a high percent.
 5 Q. And I take all your caveats, but
 6 this is saying that that high-percent growth
 7 occurred by a competitor other than JUUL six
 8 months after the investment, right?
 9 A. Yes.
 10 Q. The end of that paragraph has a
 11 sentence that begins, "Its growth has been
 12 facilitated by heavy promotion."
 13 Do you see that?
 14 A. Yes, I see that sentence.
 15 Q. "Its growth has been facilitated by
 16 heavy promotion behind Ace device which is
 17 being sold at 99 cents versus 34.99 for JUUL."
 18 Do you see that?
 19 A. Yes.
 20 Q. Assuming that 34.99 there is an
 21 MSRP, that number is lower than the JUUL MSRPs
 22 that we looked at before, right?
 23 A. 34.99 is a lower number than 49.99
 24 that we looked at before. I don't know this
 25 34.99 to be an MSRP. It's lower by precisely

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 \$15 than the number we looked at before.
 3 Q. It's about 30 percent lower?
 4 A. That's correct.
 5 Q. Assuming our assumptions are
 6 correct, that implies that six months after
 7 Altria invested in JUUL, JUUL's price, as an
 8 MSRP, is 30 percent lower than it had been in
 9 2018, right?
 10 MR. LEE: Objection to form.
 11 A. I don't know that this is an MSRP or
 12 promoted price or what, so I don't know that I
 13 can definitively agree with that.
 14 Q. It also notes that the Ace device is
 15 being sold for 99 cents.
 16 Do you see that?
 17 A. I do see that.
 18 Q. Do you remember those 99 cents or \$1
 19 promotions occurring before this time period?
 20 A. I'm trying to think. I don't have
 21 specific recollection prior to this 99 cents
 22 device. I would note that there have been
 23 other devices that have used really low price
 24 points like this. I think we've seen it at
 25 least on promotion from Vuse Alto, as well.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. That was actually my next question.
 3 Do you remember that more than one
 4 e-vapor brand, it doesn't matter if you
 5 remember which one, but more than one of them
 6 started doing 99 cents promotions?
 7 A. Again, I could be inaccurate, but to
 8 the best of my recollection, at least the NJOY
 9 device, as well as the Vuse Alto, for some
 10 period promoted at a price point around 99
 11 cents.
 12 Q. And you do not remember those
 13 promotions occurring before June 20, 2019?
 14 A. I don't have specific recollection.
 15 I cannot rule out that they might have.
 16 Q. Do you remember them occurring
 17 during this time period, around June 2019?
 18 A. I don't have specific recollection
 19 of getting particular -- well, I'll say this:
 20 My only specifics around this is that around
 21 this time of this meeting that took place, I
 22 recall them, NJOY promoting that 99 cents.
 23 The only reason I have that specific
 24 recollection is because we had a meeting about
 25 it.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. That's fair.

3 A. The only reason I remember the time

4 of that meeting is because you put an email in

5 front of me with a date stamp on it.

6 Q. If you look at the last sentence on

7 this page, it says, "Historically, e-cig

8 success has been volatile with many prior

9 products growing rapidly at first, but

10 ultimately disappointing."

11 A. I do see that.

12 Q. Do you agree with that statement?

13 A. I don't know that I would agree with

14 the statement that any prior products have

15 grown rapidly at first. I don't recall a

16 litany of products that we got really excited

17 about and then ultimately disappointed us. So

18 no, I don't know that I would, you know,

19 affirmatively agree with that statement.

20 Q. How about the "ultimately

21 disappointing" part? Is it consistent with

22 your recollection that some e-vapor products

23 had initial success and then failed?

24 A. Again, I don't know that I would

25 really characterize them as having a lot of

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 initial success, but we definitely introduced

3 products that ultimately did not succeed in

4 the marketplace.

5 Q. Do you see at the top of the next

6 page it says, "Growing e-cig adoption presents

7 incremental headwind to cigarette lines"?

8 A. I see that.

9 Q. The next sentence, it notes the

10 popularity of two products, MYLÉ and STIG,

11 which are salt based products.

12 Do you see that?

13 A. I see that.

14 Q. Then I guess two sentences later, it

15 says, "These products could also present

16 competition to JUUL, though its growth remains

17 strong"?

18 A. I see that.

19 Q. And I know that you personally don't

20 have a lot of nicotine salts expertise, but

21 this seems to be suggesting that those

22 products could be competitive with JUUL,

23 right?

24 MR. LEE: Objection to form.

25 A. So, those seem to imply that we

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 believed these two, I assume, are salt based

3 e-cig products. I'm not familiar with MYLÉ or

4 STIG, but this seems to imply that in

5 June 2019 that they believed that these two

6 particular products you know, through industry

7 contacts and consumers, thought that these two

8 products could represent competition and also

9 note that JUUL's growth remained strong.

10 Q. At the bottom, there's a chart that

11 shows a comparison of NJOY and JUUL X-months

12 post launch.

13 Do you see that chart?

14 A. I see the chart.

15 Q. Are you able to tell which one's

16 NJOY and which one's JUUL?

17 A. It appears that the kind of thicker

18 tall bars are -- are -- you know, bar chart is

19 NJOY and -- I'm sorry, darker bars are NJOY,

20 and the lighter bars are visible, at first, I

21 didn't catch because they're pretty light on

22 the page, are the JUUL and then -- I'm not

23 sure what "ACV" in this -- how they're using

24 ACV in here. I'm assuming it's some measure

25 of velocity, but I don't know if it's for

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 refill or for pod -- for devices. I see the

3 line charts. The darker line is NJOY, and the

4 lighter line is JUUL.

5 Q. That's my understanding, too.

6 Is it fair to say that this chart is

7 attempting to show that NJOY grew faster post

8 launch than JUUL did?

9 A. It absolutely is fair to assume that

10 this chart is attempting to show that NJOY

11 grew faster in its first six months than JUUL

12 grew in its first six months.

13 Q. And that is occurring in 2019,

14 right, for NJOY?

15 A. That is correct.

16 Q. And because it's occurring in 2019,

17 that growth is occurring after Altria's

18 investment in JUUL, right?

19 A. The -- I don't -- well, that's hard

20 to say. I don't know when the launch was.

21 NJOY's launch, we'd have to go back to when

22 NJOY launched; not to when this report was

23 written.

24 Q. If you look at the previous page,

25 the paragraph that begins "NJOY's comeback

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 underscores the opportunity," and you look at

3 the second sentence there that says, "NJOY's

4 recent return to the market earlier this

5 year," do you see that?

6 A. "Recent return to the market earlier

7 this year after" -- yes.

8 Q. Okay.

9 A. Yes.

10 Q. Okay. So this is a June 2019

11 document. "This year" refers to earlier 2019?

12 A. Provided these first six months in

13 that sentence are both referring to the same

14 period, if this is in 2019, then yes, this

15 chart would show this being post Altria's

16 investment in JUUL.

17 Q. Just to get it on the record, what

18 you're saying is that this chart is showing

19 NJOY to have grown faster than JUUL did after

20 Altria's investment in JUUL, right?

21 MR. LEE: Objection to form.

22 A. So I'll characterize it in my own

23 words. This chart shows that in the first six

24 months of each relative brand's launch, that

25 NJOY grew faster than JUUL did in their first

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 six months, and that NJOY's first six months'

3 performance did come after the investment by

4 Altria in JUUL.

5 Q. You mentioned that you remember this

6 occurring because you had a meeting with NJOY

7 around this time?

8 A. Correct.

9 Q. And do you remember what you talked

10 about in that meeting?

11 A. We talked about NJOY trying to talk

12 us into putting their product back into our

13 assortment.

14 Q. Were you excited about doing that?

15 A. Not particularly.

16 Q. Fair enough.

17 A. Well, let me be clear why. We had a

18 history with NJOY back during this bankruptcy

19 period where we had a less than a perfect

20 commercial relationship with them. I don't

21 remember the details of it, but I remember

22 that when they exited the marketplace, we

23 weren't exactly made whole with respect to our

24 investment in their products and trying to --

25 and the investments they had made in trying to

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 drive those products with us and payment for

3 some of that. I don't have the details.

4 So, I would say just based on the

5 history with the company, I was not excited

6 about this but always excited about growing

7 sales, but this particular one was probably

8 less exciting for me. Maybe information you

9 don't need, but --

10 Q. That's okay.

11 Putting aside the history, shall we

12 say, were you excited about NJOY's potential

13 to generate sales?

14 A. I would say I was cautiously

15 optimistic that we might have another winning

16 product.

17 MR. SNIDOW: We have been on the

18 record I think for --

19 THE WITNESS: Yeah, let's take a

20 break.

21 MR. SNIDOW: -- an hour and

22 50 minutes. Let's go off the record.

23 (Recess was taken.)

24 BY MR. SNIDOW:

25 Q. Mr. Stout, next I'm going to show

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 you tab 16 in the binder, which is DX 1205.

3 A. Yes.

4 Q. This is an email from January of

5 2020, right?

6 A. Yes, January 29th, 2020.

7 Q. It's an email from Phil Wilhelm to

8 Jill Cortabitarte?

9 A. Yes.

10 Q. And does she work at 7-Eleven?

11 A. She does.

12 Q. Do you see he's attaching a

13 presentation called "JUUL 7-Eleven Category

14 Review January 2020"?

15 A. Yes.

16 Q. If you turn to tab 17, which is

17 DX 1206, that is the attachment.

18 A. I'm there.

19 Q. If you turn to the next page, you'll

20 see the title slide for the deck, and it says,

21 "JUUL Labs, 7-Eleven, 7-Eleven Business

22 Review." Do you see that?

23 A. I do.

24 Q. Do you know if this is a 7-Eleven

25 created document or a JUUL created document?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. It is almost certainly a JUUL

3 created document, though I have not reviewed

4 this document. But just based on the way it's

5 titled, that it came originally in the email

6 from -- it looks like it -- I think came from,

7 I guess his name is Jorge Ortiz, to Phil, and

8 Phil in that email forwarded to Jill.

9 This is almost certainly created by

10 JUUL.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. This is saying that, in January of

24 2020, JUUL was offering a \$9.99 promotional

25 price, right?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. Yes, that's what it says.

3 Q. Do you remember that kind of

4 promotion occurring before?

5 A. I don't recall. We run a lot of

6 promotions, so I don't recall a specific time

7 period where this might have brought earlier.

8 Q. That's fair.

9 Fair to say you have no affirmative

10 recollection of JUUL doing that kind of price

11 promotion, say, in 2017 or 2018?

12 A. Correct, I don't.

13 Q. We saw before in the 2018 and 2016

14 documents that the MSRP for JUUL was 49.99.

15 Do you recall that?

16 A. Yes.

17 Q. And I understand these are

18 promotional prices, but fair to say that 9.99

19 is a lot lower than 49.99, right?

20 A. Correct.

21 Q. About one-fifth the price, true?

22 A. About 80 percent off.

23 Q. That's a great way of putting it.

24 This is January 2020, so about a

25 year after Altria's investment in 2018, right?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. Correct.

3 Q. And like you said, not apples to

4 apples, but 80 percent off, right?

5 A. Well, 80 percent off of that former

6 price. I would note that in this graph, this

7 looks like the average price of that kit has

8 hovered around \$35 and sometimes below.

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

10 next.

11 It actually does show the average

12 prices in this photograph, right?

13 A. Yes.

14 Q. The first one is actually from

15 December 2, 2018?

16 A. Yes, the first bar is.

17 Q. I'll represent to you that the

18 investment did not occur until the end of

19 December 2018.

20 So, this is saying that the average

21 price before the investment, at least on this

22 date, was \$35.71, true?

23 A. That's what it appears to be, yes.

24 Q. If you fast forward to the last

25 three bars, it's showing that the average

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 price for JUUL in November 2019 is \$12.32.

3 Do you see that?

4 A. I do.

5 Q. And then \$12.20, and \$12.13, it

6 looks, in the next several weeks, right?

7 A. Yes.

8 Q. If you look at what the average

9 price is here, that's a substantial reduction,

10 true?

11 A. Yes.

12 Q. That substantial reduction, it looks

13 like it occurred in the approximate 12 months

14 after Altria's investment in December 2018?

15 A. 11 months.

16 Q. Do you know why JUUL was discounting

17 its products at this time?

18 A. I don't. I don't know why they made

19 this decision at this precise time.

20 Q. Was this occurring around the same

21 time that other manufacturers were offering \$1

22 price promotions?

23 A. This appears to be significantly

24 later, as I recall, from the earlier

25 discussion. Significantly after that point.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 I believe those first six months, right if I'm

3 -- just -- see if I remember correctly, but

4 that Morgan Stanley report had six months'

5 worth of sales, right? And that was around

6 June of 2019, July 2019, so maybe the first

7 six months of January through June-ish, this

8 is November, so this appears to be several

9 months later in time. That's just my

10 recollection.

11 Q. This is after that discount that we

12 looked at, right?

13 A. Yes, yes; that's correct. The

14 meeting that we referenced was around summer

15 of 2019. At that time they were, you know, at

16 least in the process of a 99 cent promotion,

17 and this time period after that, correct.

18 Q. Is it typical in the e-cigarette

19 market for different manufacturers to compete

20 with discounts and price promotions like this?

21 MR. LEE: Objection to form.

22 A. I mean, it's common for every

23 manufacturer to run promotions, you know, when

24 they want to increase velocity. We've seen

25 various competitors in the e-cig market run

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 promotions. I suppose, yes, it was common for

3 e-cig manufacturers to compete with each other

4 using promotions.

5 Q. And that's true today, right?

6 A. Yes.

7 Q. If you look at slide 29, the title

8 is, "Device Kit Key Dates for Updated Pricing

9 Strategy."

10 Do you see that?

11 A. Yes.

12 Q. It says, "February 9th device list

13 price drops to \$13.40"?

14 A. I see that.

15 Q. That was on February 9, 2020, right?

16 A. I'm presuming this is a

17 forward-looking plan, and presuming it's a

18 forward-looking plan, I would presume that

19 February 9, 2020 would be the implied date,

20 but that's not indicated on the page.

21 Q. The next one over says March 1st.

22 Do you see that?

23 A. Yes.

24 Q. And that says, "Device MSRP change

25 to 19.99"?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. Yes.

3 Q. And that MSRP means manufacturer's

4 suggested retail price, true?

5 A. Generally speaking, yes, and I'm

6 assuming that's the case here.

7 Q. And that number is half, less than

8 half of the 49.99 MSRP that we saw from 2018?

9 A. About 40 percent of it, yes.

10 Q. So, 60 percent off, would you say?

11 A. Yeah, 60 percent less, yes.

12 Q. So, to spell it out in the record,

13 the price shown for March 1st here is

14 60 percent lower than the pre-investment

15 prices that we looked at from 2018 and 2016,

16 right?

17 A. Or at least the 49.99. I am not

18 certain that there wasn't an interim price

19 change --

20 Q. Of course.

21 A. -- in between the 49.99 and the

22 19.99. In fact, we could probably calculate

23 it from these numbers on gross profit and all

24 that, but I'm probably not in the mood to do

25 that.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. We're not going to do that. But

3 thank you. That's helpful, though.

4 Then it says in June -- "On

5 June 1st, there's going to be a summer promo."

6 Do you see this?

7 A. Yes.

8 Q. "It's going to be up to \$5 for these

9 375 promo funding to match retailers BDF rate,

10 MSRP 14.99."

11 Did I read that correctly?

12 A. Yes, you read that correctly.

13 Q. Is that suggesting that the MSRP was

14 going to go down even further to 14.99?

15 A. It appears that what this summer

16 promotion is, that at 7-Eleven, that we would

17 recommend a price of 14.99 as opposed to

18 19.99, and that some funding would be provided

19 to attain that rate. But I'm not super

20 familiar with their promotional-funding

21 program, but that is my interpretation of

22 this. I could be wrong, but that's how I

23 would interpret.

24 Q. So, am I right, your interpretation

25 is that in June, the MSRP was going to go to

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 14.99?
 3 A. At 7-Eleven in particular. Again,
 4 this says to match the retailer's BDF. I'm
 5 assuming is, like, buy-down funds or something
 6 similar, but that we had a better rate
 7 potentially than other retailers. I don't
 8 know that to be the case. But just taken as
 9 someone who's never seen this document before
 10 and interpreting this, that would be my
 11 interpretation; is that at 7-Eleven, the
 12 suggested retail would go down to 14.99.
 13 Q. Assuming you're right on that,
 14 that's, what, 65 percent or so lower than
 15 49.99?
 16 A. That's correct, yeah. So this would
 17 be 70 percent less than 49.99.
 18 Q. Do you ever remember discounts like
 19 these occurring before June 2020?
 20 A. What do you mean, in specific?
 21 Q. Do you ever remember an MSRP at be
 22 7-Eleven for JUUL of 14.99 occurring before
 23 June 1st, 2020?
 24 A. I don't have any specific
 25 recollection of any MSRP of JUUL at 7-Eleven.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 To answer your question yes or no, no, I
 3 don't.
 4 Q. Let's look at tab 22, which is
 5 DX 1211.
 6 A. I'm there.
 7 Q. This is an email from Phil Wilhelm
 8 to CorpComm Department with a cc to Claire
 9 Reyes, it looks like?
 10 A. Yes.
 11 Q. It's from March 16, 2018?
 12 A. Correct.
 13 Q. If you look down at the paragraph
 14 after "Promo master offers for MarkTen
 15 products," it says, "Effective 3/26 there will
 16 be two fully funded offers for MarkTen and
 17 MarkTen Elite electronic cigarettes."
 18 Did I read that correctly?
 19 A. You did.
 20 Q. It goes on to describe them. It
 21 says, "Buy device and get \$3 off a cartridge
 22 all U.S. stores."
 23 Do you see that?
 24 A. I do.
 25 Q. And it says, "Buy a battery kit and

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 get a free pod pack," and then it lists the
 3 number of states where that will happen, true?
 4 A. Yes.
 5 Q. This is saying that, in March 2018
 6 Altria was offering a promotion first whereby
 7 if you bought a device, you would get \$3 off a
 8 cartridge in all U.S. stores; is that right?
 9 A. That's what it appears to say, yes.
 10 Q. And the second promotion is, if you
 11 buy a battery kit, then you get a free pod
 12 pack, true?
 13 A. Yes, that's what it says.
 14 Q. What does it mean, that these are
 15 fully-funded offers?
 16 A. Well, I'll tell you that sometimes,
 17 I have seen that term used in a couple of
 18 different ways. When I use it, my team can be
 19 inconsistent. So, I want to be clear that
 20 when I use it, I mean that the price markdown
 21 from the everyday price to the promotional
 22 price, the entirety of the retail discount is
 23 paid for by the manufacturer to us and that
 24 money is then passed along to our stores. For
 25 example, if a product goes from \$2 to \$1

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 retail price, that the manufacturer would cut
 3 a check to 7-Eleven for that dollar of
 4 markdown, right? That said, from time to
 5 time, we have people use the term fully funded
 6 to mean that we maintain the same penny profit
 7 or the same margin rate, right? That they're
 8 funding it slightly differently, but that it's
 9 fully funded to maintain some other definition
 10 of full, right?
 11 So, I don't know what the specifics
 12 of this offer were, but when I use the term,
 13 it is to fund the entirety of the retail
 14 discount.
 15 Q. So, in other words, in order to fund
 16 the promotion, Altria was going to, in some
 17 way, give 7-Eleven money?
 18 A. Correct. That would be my -- I
 19 would struggle to find an interpretation other
 20 than that.
 21 Q. And to state possibly the obvious --
 22 A. Hold on. Can I back up and clarify?
 23 Q. Yes, of course.
 24 A. The one difference here is
 25 because -- and again context matters, because

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 this is going from us to CorpComm and then
 3 CorpComm is going to forward this information
 4 to stores, fully funded from the store's
 5 perspective as the recipient of this, as
 6 opposed to a merchant being a recipient of
 7 this, the funding could come from 7-Eleven to
 8 the store as opposed to from the manufacturer
 9 from the store.
 10 I suspect that is not the case here,
 11 but in strictest terms, we sometimes will
 12 provide funding from corporate to stores, and
 13 if we funded that and funded it fully, we
 14 would call that fully funded. So, it is
 15 entirely possible, though I think not the most
 16 likely interpretation, that some or all of the
 17 funding was coming from 7-Eleven; not the
 18 manufacturer. The more likely interpretation
 19 is that this is being funded from the
 20 manufacturer to 7-Eleven.
 21 Q. Thank you for the clarification.
 22 Assuming the more-likely explanation
 23 is correct, Altria was going to give 7-Eleven
 24 money for these promotions, right?
 25 A. That's correct.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Q. If you look at the attachment to
 3 this email, which is tab 23, DX 1212, do you
 4 see the page that says, "MarkTen Promo Master
 5 Offers" at the top?
 6 A. I do.
 7 Q. The first bullet says, "MarkTen has
 8 fully funded another offer for all 7-Eleven
 9 stores."
 10 Do you see that?
 11 A. That seems more clear that this is
 12 most likely funded from the manufacturer.
 13 Q. Okay. That's what I was hoping you
 14 would say.
 15 So, it seems here that the flag here
 16 is for Altria via MarkTen to give 7-Eleven
 17 money in order to fund this promotion, right?
 18 A. Yes.
 19 Q. And to state the obvious, when
 20 Altria has to do that, they end up making less
 21 profit on the product, right?
 22 MR. LEE: Objection to form.
 23 A. I think -- I'm unclear that we
 24 should deal in generalities here, right? And
 25 I'm serious, because if you mean -- do you

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 mean less profit per unit or less total
 3 profit?
 4 Q. Let me put it this way: It
 5 decreases the per-unit margin for that
 6 product.
 7 A. For the manufacturer. Generally,
 8 yes, that is generally true.
 9 Q. And the hope, I assume, is that by
 10 getting 7-Eleven money for these promotions,
 11 that it will drive sales, as you point out, to
 12 future profits, correct?
 13 A. Correct. Or even current profits at
 14 just higher volumes, right? May not speak
 15 future profits; it may be currently more
 16 profitable because the volume uplift may be
 17 enough to offset the discount.
 18 Q. And if that didn't occur, if there
 19 was an uptick in volume, that would, of
 20 course, be a bad thing for the product, right?
 21 A. Depends on the strategy of the
 22 promotion. To your point, if it's to drive
 23 awareness of future purchases, you may not
 24 need enough uplift to pay for it today. It
 25 may be more of a long-term investment. If

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 your intention is for this to pay for itself
 3 in the short term, then yeah, it would be bad
 4 if you didn't get the uplift.
 5 At any rate, if you saw no change in
 6 movement during a promotional period, you
 7 would consider that not good news, if your job
 8 is to promote products.
 9 Q. Let's look at tab 26, which is
 10 DX 1215.
 11 A. Yes.
 12 Q. This is an email from Michael Berger
 13 to Phil Wilhelm. Do you see this?
 14 A. I do.
 15 Q. The date appears to be July 22nd of
 16 2017, right?
 17 A. I see that, yes.
 18 Q. And then in the email below, there's
 19 an email from Phil Wilhelm to Michael Berger
 20 on July 21st, right?
 21 A. Yes.
 22 Q. If you look in the email, there's a
 23 number of bullet points, and I want to focus
 24 on the one numbered "1."
 25 Do you see that?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. I do.

3 Q. It says, "Altria (MarkTen) has given

4 us 1.8M upfront to do what we would like to

5 incent the customer to buy (right now is buy

6 device get a cartridge free) with SEI having a

7 bill back setup to give the store the

8 cartridge money back."

9 Did I read that correctly?

10 A. You read that correctly.

11 Q. Can you explain, in your own words,

12 what that is describing?

13 A. So again, I'm interpreting someone

14 else's email, and I'll do the best I can to

15 give you my educated assessment. It sounds

16 like, to me, Altria has agreed to provide

17 \$1.8 million in promotional funding and has

18 given the category team, led by Phil Wilhelm,

19 the flexibility to decide kind of how to spin

20 that to incent the customer to buy and that

21 right now, the incentive to the customer is to

22 buy a device and get a cartridge free, and

23 that the methodology for paying that

24 1.8 million is to provide a bill back, which a

25 bill back typically would mean that the

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 manufacturer -- at the time the store

3 purchases some product, the manufacturer

4 provides a financial incentive at the time of

5 purchase as opposed to at the time the

6 customer purchases the device.

7 There's two types of funding, right;

8 bill back and sales back kind of dollars,

9 right? And on the bill-back side, this money,

10 this 1.8 million would have likely been set up

11 as a fund, and that money would have been paid

12 to stores at the time they bought more

13 cartridges and that that money would have been

14 used as a source of funding to fund this buy a

15 device get a cartridge free. The more

16 cartridges at the store bought, the more

17 bill-back money they would get, and that would

18 be the funding source for this. That's the

19 way I would interpret it.

20 Q. Yes.

21 A. Could be something slightly

22 different, but I think that's probably right.

23 Q. The second one I think is a little

24 easier, which is, (as read) "We have

25 done direct mail coupons to MarkTen customer

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 mailing database, sending them a free chicken

3 sand or cheeseburger coupon, 1.99 value, to

4 come in the store and try the e-cig and get a

5 free sand."

6 Did I read that correctly?

7 A. You've read it correctly.

8 Q. That, am I right, is describing a

9 coupon that essentially said buy a MarkTen

10 product and you'll get a chicken sandwich or a

11 cheeseburger for free?

12 A. Correct, yeah. And those coupons

13 were apparently direct mail, which would mean

14 mailed -- likely physical coupon mailed to the

15 customer's home.

16 Q. And the purpose of giving the coupon

17 for the chicken sandwich or cheeseburger was

18 to incent people to purchase the MarkTen

19 product, right?

20 A. Well, I mean, yes, to a degree. I

21 think this one requires a bit of

22 clarification, too, in that I suspect that

23 because we're focused on the driving of our

24 fresh food business and Altria knows this,

25 that we probably asked for a specific type of

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 offer, chicken sandwich; hey, could you fund a

3 food coupon as opposed to just a discount.

4 But yes, the additional value with

5 purchase of MarkTen, the intent by Altria

6 would be to drive more sales of MarkTen, but

7 also to be a good partner to 7-Eleven to

8 support something that was strategically

9 important to us, which was our food business.

10 That's how I'd characterize it.

11 Q. Let's look at tab 27, which is --

12 it's actually a PX 4214.

13 A. I'm there.

14 Q. This is from Fred Myers on Monday,

15 June 25, 2018, right?

16 A. That is correct.

17 Q. And he's forwarding an email from it

18 looks like Dave Mannon in to Fred Myers on

19 June 20, 2018, right?

20 A. Yes.

21 Q. Who is Dave Mannon, if you know.

22 A. So Dave Mannon I think at this time

23 was the primary Altria kind of person on the

24 leading 7-Eleven account team who calls on

25 7-Eleven. My only question here is not

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 A F T E R N O O N S E S S I O N
 3 (Time noted: 2:47 p.m.)
 4 J A C K S T O U T,
 5 resumed and testified as follows:
 6 EXAMINATION BY
 7 MR. LEE:
 8 Q. Good afternoon, Mr. Stout. Again,
 9 my name is Joonsuk Lee, I'm with the Federal
 10 Trade Commission, and I'm going to ask you
 11 some questions. I may jump around a little
 12 bit because Counsel has covered a number of
 13 areas that I would otherwise cover. So if you
 14 need a frame of reference for any of my
 15 questions, just say, back up a second, and
 16 tell me what we are talking about here before
 17 I jump in. Is that okay?
 18 A. Sure.
 19 Q. Thank you.
 20 Do you have your declaration, I
 21 think, marked as DX 1190 handy?
 22 A. Yes, I do.
 23 Q. And I think earlier today,
 24 Mr. Snidow asked you a few questions about the
 25 declaration, and I'm not going to ask the same

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 question again.
 3 But just let me confirm that the
 4 document marked as DX 1190, is this your
 5 signed declaration given to the Federal Trade
 6 Commission relating to the transaction between
 7 Altria and JUUL?
 8 A. Yes.
 9 Q. I think you confirmed this earlier
 10 to Mr. Snidow's question, but is everything in
 11 this declaration you signed still true and
 12 correct, to the best of your knowledge?
 13 A. To the best of my knowledge, yes.
 14 Q. Okay. Thank you.
 15 [REDACTED]

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 Q. [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 Do you know any other Altria
 11 combustible cigarette brands at 7-Eleven?
 12 A. I mean, we carry some. I'll be
 13 honest with you, from time to time, I confuse
 14 which brands are sold by which companies, but
 15 I know we sell their L&M brand. I think we
 16 sell some other brands by Altria, other than
 17 Marlboro.
 18 Q. Thank you.
 19 How do you receive your combustible
 20 cigarettes products from Altria? Do you get
 21 it through a third-party distributor?
 22 A. Yes, we primarily receive cigarettes
 23 from Altria through third-party wholesale
 24 arrangement. Our two biggest wholesale --
 25 basically, almost the entirety of the U.S. is

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 covered by McLane Corporation and Core-Mark.
 3 Q. Okay. Thank you.
 4 And have you heard about Altria's
 5 subsidiary called AGDC; Altria Group
 6 Distribution Company?
 7 A. Yes.
 8 Q. What is 7-Eleven's relationship with
 9 AGDC, the Altria subsidiary?
 10 A. So, the Altria Group Distribution
 11 Company -- I mean, I think of them as the
 12 commercial-sales arm of Altria, and our
 13 relationship with them is that we meet, from
 14 time to time, to discuss plans to grow our
 15 business together mutually; we discuss
 16 problems that one or the other may have with
 17 the relationship or execution of our sales
 18 plans. So, we maintain a relationship with
 19 them, but they essentially are the group with
 20 which we negotiate our commercial terms of
 21 service and maintain a sales relationship.
 22 Q. Thank you.
 23 Since you became Senior Vice
 24 President Merchandising at 7-Eleven, who was
 25 your primarily counterpart at AGDC?

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 A. I think it's changed a bit over

3 time, and it depends on what you mean by,

4 "primary counterpart." But our key account

5 representative at the time that I became

6 senior vice president, I think, was Dave

7 Mannon. His boss, though, and now currently I

8 believe president of AGDC, Scott Myers, has

9 been heavily involved in our business, as

10 well. I've talked to both of those gentlemen.

11 But currently Jessica, I think her last name

12 is Hendrickson, also calls on our business

13 frequently.

14 We've talked to a variety of

15 representatives over there. I don't know who

16 I would call my direct counterpart.

17 Q. Thank you.

18 Do you recall there was a gentleman

19 named Mr. Craig Johnson at AGDC?

20 A. Craig Johnson, yes, I think he was

21 president of AGDC prior to Scott Myers

22 assuming that role.

23 Q. Have you met Mr. Johnson personally?

24 A. Yes, I have.

25 Q. Thank you.

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Now the President of AGDC is

3 Mr. Scott Myers, correct?

4 A. That's my -- I might have titles

5 wrong, but he essentially leads their sales

6 group over there, yes.

7 Q. So, Mr. Myers took it over from

8 Mr. Johnson; that's your understandings?

9 A. That's my understanding; although, I

10 don't know if they had precisely the same

11 titles and roles. From my perspective, Scott

12 has taken over the role that Craig had with

13 respect to our business.

14 Q. Thank you.

15 When you had discussion with your

16 counterparts at AGDC, the Altria subsidiary,

17 did you discuss other tobacco products outside

18 of combustible cigarettes, as well?

19 A. Sure, absolutely.

20 Q. So if we go back to

21 pre-December 2018 time period, do you recall

22 there was an Altria subsidiary named NuMark?

23 A. Yes.

24 Q. Do you recall whether you discussed

25 any business between 7-Eleven and Altria

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1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 relating to NuMark products?

3 A. I didn't have detailed discussions

4 personally with Altria about those products,

5 but at a high level, yes, you know, both

6 MarkTen and MarkTen Elite and them seeing them

7 as opportunities to grow their business

8 outside of the traditional combustible

9 cigarette brands. But the detailed

10 discussions around the sales plans for those

11 would have been handled by my category team.

12 Q. Thank you.

13 And please refresh my understanding,

14 who actually do you consider are your category

15 team members related to electronic cigarettes

16 at 7-Eleven?

17 A. It's interesting. Right now, we

18 have an open position at the product-director

19 level. But the product director that was on

20 that business at the time. Actually, if you

21 look at the whole time period that we've

22 discussed today, two different product

23 directors have been in place, and that would

24 be what I would consider the -- the lead of

25 the category team is the product director, and

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2 Antoine or Tony Stapleton was one of those

3 product directors. He moved into a different

4 role with the company. He's since left the

5 company. But as he went into a different role

6 in our operations team, we put Jill

7 Cortabitarte in the role as product director.

8 You see both of their names referenced in our

9 discussion earlier today.

10 And then at the senior category

11 manager level, the -- Shazad Hooda has been

12 our senior category manager of cigarettes, and

13 Phil Wilhelm at the time was our senior

14 category manager of other tobacco products. I

15 actually don't recall who is currently in the

16 other tobacco products senior category manager

17 role. I'd have to look at an org chart. But

18 the reason I remember Shazad and Phil so

19 clearly is they were in those roles for very

20 long periods of time, even when I was in

21 positions less senior than my one today, but

22 they're easy for me to remember.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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PUBLIC

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EXHIBIT 4 ATTACHMENT TO

RX1193 ELEVEN ALTRIA 00008205

[REDACTED IN ITS ENTIRETY]

PUBLIC

PUBLIC

EXHIBIT 5 ATTACHMENT TO

RX1195 ELEVEN ALTRIA 00008207

[REDACTED IN ITS ENTIRETY]

PUBLIC

PUBLIC

EXHIBIT 6

PROTECTIVE ORDER

[NOT REDACTED]

PUBLIC

**UNITED STATES OF AMERICA
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.)	
_____)	

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

PUBLIC**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.

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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.

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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.

CERTIFICATE OF SERVICE

I, Lisa Houssiere, declare under penalty of perjury under the laws of the District of Columbia that the following is true and correct. On June 11, 2021, I caused to be served the following documents on the parties listed below by the manner indicated:

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

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The Office of the Administrative Law Judge (via electronic mail)

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/s/ Lisa Houssiere
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