

**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,

Respondents.

**PUBLIC**

**Docket No. 9393**

**RENEWED MOTION OF NON-PARTY WAWA, INC. FOR PARTIAL *IN CAMERA*  
TREATMENT OF ONE HEARING EXHIBIT**

Non-party Wawa, Inc. (“Wawa”), through its undersigned counsel, hereby files this Renewed Motion for *In Camera* Treatment of certain portions of the 2020 Declaration of William Kloss (the “Confidential Declaration”) that has been designated as a hearing exhibit by both Complaint counsel for the Federal Trade Commission (“FTC”) and counsel for Respondents Altria Group, Inc. and JUUL Labs, Inc. (together, “Respondents”) for introduction in the administrative trial of this matter that began on June 2, 2021.

In support of this Renewed Motion, Wawa relies upon the accompanying Declaration of William Kloss, dated June 4, 2021 (“Kloss Decl.”). For the reasons detailed below, Wawa respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in*

*camera* treatment indefinitely for certain portions of the Confidential Document (attached as Exhibit 1 to the Kloss Decl.).<sup>1</sup>

## I. Introduction

The Federal Trade Commission (“FTC”) and Respondents have notified Wawa that they intend to introduce the Confidential Declaration into evidence at the administrative trial in this matter. Certain information contained in the Confidential Declaration is secret, proprietary, commercially sensitive, and material to Wawa’s current and prospective business ventures involving the products at issue. Despite considerable burden, Wawa complied with Complaint counsel’s request to prepare the Declaration at issue, and it has been made available for use by Complaint counsel and Respondents’ counsel in accordance with the terms of the Protective Order. Wawa provided the document at issue to Complaint counsel only after multiple assurances that it would be kept confidential under the FTC’s rules, policies, and practices. On April 2, 2020, Administrative Law Judge D. Michael Chappell, entered the Protective Order Governing Discovery Material in this matter.

On May 7, 2021, non-party Wawa moved for in camera treatment for the entirety of the Confidential Declaration. On May 26, 2021, Judge Chappell denied without prejudice Wawa’s motion. Order at 13. Judge Chappell granted Wawa leave to file a renewed motion by June 4, 2021. *Id.* at 14. The Order directed that each non-party “carefully and thoroughly review all documents for which it seeks in camera treatment, and strictly narrow its requests to only those documents that comply with the Commission’s strict standards for in camera treatment.” *Id.* Consistent with the Order, Wawa’s renewed motion seeks in camera treatment for only those specific portions of the Confidential Declaration that, if publicly disclosed, would

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<sup>1</sup> Exhibit 1 is redacted from public filing, but is being submitted to the Office of Administrative Law Judges in its unredacted form with proposed redactions highlighted in yellow.

result in serious competitive injury to Wawa. Neither Complaint counsel nor Respondents' counsel objects to this Renewed Motion.

## II. Standard for *In Camera* Treatment

Materials merit *in camera* treatment when disclosure “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). An applicant for *in camera* treatment can establish such serious injury by showing that the information at issue is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). The following factors should be weighed in considering both secrecy and materiality: (1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. at 456-57.

A showing of injury may consist of extrinsic evidence or may be inferred from the nature of the documents themselves. *In re E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981). Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. *See In re General Foods Corp.*, 95 F.T.C. 352 (1980).

As stated in the Order, a request for *in camera* treatment by a non-party company to an FTC proceeding (such as Wawa) should be given “special solicitude.” Order at 4, citing *In*

*re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors”); accord *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests). Further, the Commission has recognized that it may be appropriate to provide *in camera* treatment for information contained in business records. *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at \*2 (April 5, 1982); *Hood*, 58 F.T.C. at 1188-89; *In re Kaiser Aluminum*, 103 F.T.C. at 500.

### **III. The Wawa Confidential Declaration Meets the Standard for *In Camera* Treatment**

Disclosure of certain information contained in the Confidential Declaration would cause serious competitive injury to Wawa. *In re General Foods Corp.*, 95 F.T.C. at 355. As set forth in the accompanying Declaration of William Kloss, the Confidential Declaration contains highly sensitive information related to (1) Wawa’s current and historical confidential contracts and Wawa’s contracting strategies with its suppliers, (2) Wawa’s current and historical assessments of the sales volume by suppliers of the products at issue, and (3) Wawa’s current pricing strategies and incentives for the products at issue. Kloss Decl. ¶ 6. Wawa’s renewed motion seeks *in camera* treatment for only those portions of the Confidential Declaration that, if publicly disclosed, would cause serious competitive injury to Wawa. Kloss Decl. ¶¶ 4, 7-10.

The Confidential Declaration refers to Wawa’s confidential business contracts relating to prices, discounts and rebates, and the allocation of promotional retail shelf space. See Confidential Declaration ¶¶ 6, 9, 10, 15-23. For example, Paragraphs 6 and 16-22 describe

specific contractual provisions and payments regarding shelf space and display position. *See, e.g.,* Confidential Declaration ¶ 17 ( [REDACTED]

[REDACTED]); Confidential Declaration ¶ 20 ( [REDACTED]

[REDACTED]). Similarly, Paragraphs 9, 15 and 23 describe various discounting and loyalty programs between Wawa and its suppliers. *See, e.g.,* Confidential Declaration ¶ 9 ( [REDACTED]

[REDACTED]); Confidential Declaration ¶ 15 ( [REDACTED]

[REDACTED]). Paragraph 10 describes Wawa's contractual obligations to its major suppliers. *See* Confidential Declaration ¶ 10 ( [REDACTED]

[REDACTED]). Likewise, Paragraph 23 describes the relationship between various discounting and promotional programs offered by Wawa and the promotional programs offered by its suppliers. *See, e.g.,* Confidential Declaration ¶ 23 ( [REDACTED]

[REDACTED]). Wawa would be at a significant disadvantage if its competitors or suppliers had access to the contractual terms concerning payments, discounts and incentives negotiated by Wawa. Kloss Decl. ¶ 7.

The Confidential Declaration also contains Wawa's current and historical data regarding Wawa's purchases and sales. Paragraphs 4, 5, 13, and 14 reference current and

historical sales volumes by supplier at Wawa. *See, e.g.*, Confidential Declaration ¶ 4 ( [REDACTED]

[REDACTED]

[REDACTED]; Confidential Declaration ¶ 13 ( [REDACTED]

[REDACTED]

[REDACTED]). Disclosure of Wawa’s confidential data regarding its purchases and sales would reveal to Wawa’s competitors, as well as to its existing and potential suppliers, Wawa’s perception of its suppliers and the products at issue and Wawa’s forward strategic planning.

Wawa uses this information in analyzing its growth related to the products at issue, in addition to seeking out competitive opportunities. Kloss Decl. ¶ 8.

Wawa’s current strategic pricing information and plans are vital to Wawa’s business, competitiveness, and profitability. *Id.* at ¶ 9. As set forth in the accompanying Kloss declaration, Paragraphs 8 and 24 of the Confidential Declaration contain specific references to Wawa’s pricing and discounting strategies. For example, Paragraphs 8 and 24 describe Wawa’s benchmarks for its retail prices for the products at issue and Wawa’s treatment of price increases imposed by its suppliers. *See, e.g.*, Confidential Declaration ¶ 8 ( [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Confidential Declaration ¶ 24

( [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

Significantly, the information in Paragraphs 8 and 24 of the Confidential Declaration provided to the Commission is not simply a general statement (*see* Order at 12), but rather relates to specific, current pricing and discounting strategies of Wawa. As set forth in the supporting Kloss declaration, any competitor or supplier could use this information in an attempt to disrupt Wawa's business strategy. Kloss Decl. ¶ 9. Were a competitor to know this sensitive information concerning Wawa's strategic pricing and plans, such a competitor would gain a significant business advantage at the expense of Wawa. *Id.* Moreover, existing or potential suppliers armed with such sensitive information could use it to their advantage in future negotiations with Wawa. *Id.*

Thus, the Commission has repeatedly recognized that current strategic pricing information and strategic plans, particularly those of a non-party, are eligible for *in camera* treatment. *See In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, \*28 (F.T.C. April 4, 2017) (granting *in camera* treatment for documents concerning non-party's pricing strategies and margins); *In re Int'l Assoc. of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13-14 (June 26, 1996) (collecting cases granting *in camera* treatment for documents revealing business plans and pricing strategies).

Wawa expends a considerable amount of effort in creating the information contained in this document and takes substantial measures to protect the secrecy of such information. Kloss Decl. ¶¶ 10-14. Much of the information contained in the document is proprietary to Wawa, a privately held company, and is not disclosed outside of the company. *Id.* Wawa limits dissemination of such information and takes every reasonable step to protect its confidentiality. *Id.* Indeed, much of the information is closely held even within Wawa. For example, the financial and strategic planning information contained in the Confidential

Declaration is disclosed only to a limited number of employees at Wawa on a need-to-know basis. *Id.* ¶ 13. Also, access to the underlying information regarding Wawa’s contracts and contracting strategies is securely stored on a network drive. *Id.* Access to the drive is monitored and granted only to a limited number of employees. *Id.* Wawa’s internal policies and practices also limit dissemination of this information and govern how the information is handled by employees who are granted access. *Id.* ¶ 14. Moreover, it would be extremely difficult for Wawa’s competitors or suppliers to obtain the information contained in the Confidential Declaration. *Id.* ¶ 11

Disclosure of the select portions of the Confidential Declaration containing Wawa’s highly confidential business information would not materially promote the resolution of this matter. Instead, the disclosure of these confidential documents would materially harm Wawa and create a loss of business advantage. Thus, the balance of interests favors *in camera* treatment for the subject documents. *See In re Bristol-Myers*, 90 F.T.C. at 456-57.

Based upon the above facts, Wawa submits that it has adequately satisfied the elements set forth in *Bristol-Myers*, 90 F.T.C. at 456-57, and therefore should be afforded *in camera* status for the identified portions of the Confidential Declaration.

**IV. *In Camera* Treatment of the Confidential Declaration Should Extend for an Indefinite Period**

Wawa seeks *in camera* treatment for the portions of the document identified in Exhibit 1 for an indefinite time period. As a non-party seeking *in camera* treatment for its confidential business information, Wawa’s request should be treated with “special solicitude.” *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. at 500 (order directing *in camera* treatment for non-party’s sales statistics over five years old). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with FTC requests in adjudicative proceedings.



*See id.* (“As a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Here, Wawa prepared the Declaration at Complaint counsel’s request, and it has been made available for use by Complaint counsel and Respondents’ counsel in accordance with the terms of the Protective Order.

Wawa’s request that *in camera* treatment for the identified portions of the Confidential Declaration be maintained for an indefinite time is reasonable. Indefinite in camera treatment is warranted when “the need for confidentiality of the material . . . is not likely to decrease over time . . .” 16 C.F.R. § 3.45(b). Here, disclosure of this secret information concerning Wawa’s short- and long-term pricing strategies would create an unreasonable and unnecessary risk of competitive harm to Wawa. Given the broad nature of the confidential strategic and pricing information contained in the document, the competitive significance of that information is unlikely to diminish with time. As a non-party to this action, there is no public right to information that will be impinged by indefinite *in camera* treatment to the Confidential Declaration. *Kaiser Aluminum*, 103 F.T.C. at 500 (The public’s “understanding of this proceeding does not depend on access to these data”). Accordingly, *in camera* treatment for an indefinite time period is necessary to avoid the serious and irreparable harm to Wawa and significant loss of business advantage that would result from disclosure of this information at any future date.<sup>2</sup>

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<sup>2</sup> To the extent *in camera* treatment is not given for an indefinite period, Wawa requests that the period of *in camera* treatment of the Confidential Declaration be no less than 10 years. *See* Order at 3, citing *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at \*2-3 (Apr. 25, 1990). (granting *in camera* treatment for a period of ten years for detailed cost data).

**V. Conclusion**

For the reasons set forth above and in the Declaration of William Kloss submitted in support of this Renewed Motion, Wawa respectfully requests that this Court grant its Renewed Motion for *in camera* treatment for the identified portions of the Confidential Declaration.

Respectfully submitted,

/s/ Justin W. Lamson

*Attorneys for Wawa, Inc.*

Dated: June 4, 2021

**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,

Respondents.

**PUBLIC**

**Docket No. 9393**

**DECLARATION OF WILLIAM KLOSS IN SUPPORT OF NON-PARTY WAWA INC.'S  
RENEWED MOTION FOR PARTIAL *IN CAMERA* TREATMENT  
OF ONE HEARING EXHIBIT**

I, William Kloss, declare as follows:

1. Wawa is a privately held chain of over 850 convenience stores located in Pennsylvania, New Jersey, Delaware, Maryland, Virginia, Florida, and Washington, D.C.
2. I have worked at Wawa from 2008 until the present and from 2004 to 2006. I am currently the Category Manager for Tobacco and Alcohol at Wawa, a position I have held since 2018. I make this declaration based upon my personal knowledge and in support of Wawa's Renewed Motion for Partial *In Camera* Treatment of One Hearing Exhibit.
3. I am familiar with the Confidential Declaration for which Wawa seeks in camera treatment. I am familiar with how Wawa prepares and maintains the information contained in this document, its financial significance to the company, and its potential value to third parties such as Wawa's competitors and current or potential suppliers.

4. I submit this declaration in support of non-party Wawa's Renewed Motion for *in camera* treatment of portions of the Confidential Declaration (attached as Exhibit 1).<sup>1</sup> The portions of the Confidential Declaration for which Wawa seeks *in camera* treatment contain highly sensitive and confidential material. Those portions, highlighted in yellow in Exhibit 1, consist of parts or all of paragraphs 4-6, 8-10, and 13-24 of the Confidential Declaration.

5. The document was prepared for Complaint Counsel after assurances that the confidentiality of the commercially sensitive information contained in the Declaration would be maintained under the FTC's rules, policies, and practices. On April 2, 2020, Administrative Law Judge D. Michael Chappell entered the Protective Order Governing Discovery Material in this matter.

6. Exhibit 1 contains highly sensitive information related to (1) Wawa's current and historical contracts and Wawa's contracting strategies with its suppliers, (2) Wawa's current and historical assessments of the sales volume by suppliers of the products at issue, and (3) Wawa's current pricing strategies and incentives for the products at issue.

7. Exhibit 1 refers to Wawa's confidential business contracts relating to prices, discounts and rebates, and the allocation of promotional retail shelf space. *See* Exhibit 1 ¶¶ 6, 9, 10, 15-23. For example, Paragraphs 6 and 16-22 describe specific contractual provisions and payments regarding shelf space and display position. *See, e.g.,* Exhibit 1 ¶ 17 ( [REDACTED] [REDACTED] ); Exhibit 1 ¶ 20 ( [REDACTED] )

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<sup>1</sup> Exhibit 1 is redacted from public filing, but is being submitted to the Office of Administrative Law Judges in its unredacted form with proposed redactions highlighted in yellow.

[REDACTED]

[REDACTED]”); *see also* Exhibit 1 ¶¶ 6, 16-19, 21-22 (referencing contractual provisions between Wawa and its suppliers). Similarly, Paragraphs 9, 15 and 23 describe various discounting and loyalty programs between Wawa and its suppliers. *See, e.g.*, Exhibit 1 ¶ 9 (“ [REDACTED] [REDACTED] ); Confidential Document ¶ 15 ( [REDACTED] ). Paragraph 10 describes Wawa’s contractual obligations to its major suppliers. *See* Exhibit 1 ¶ 10 ( [REDACTED] [REDACTED] ). Likewise, Paragraph 23 describes the relationship between various discounting and promotional programs offered by Wawa and the promotional programs offered by its suppliers. *See, e.g.*, Exhibit 1 ¶ 23 (“ [REDACTED] [REDACTED] ).

Wawa would be at a significant disadvantage if its competitors or suppliers had access to the contractual terms concerning payments, discounts and incentives negotiated by Wawa.

8. Similarly, disclosure of Wawa’s confidential data regarding its purchases and sales would reveal to Wawa’s competitors, as well as to its existing and potential suppliers, Wawa’s perception of its suppliers and the products at issue and Wawa’s forward strategic planning. Paragraphs 4, 5, 13, and 14 reference current and historical sales volumes by supplier at Wawa. *See, e.g.*, Exhibit 1 ¶ 4 ( [REDACTED]

[REDACTED] Exhibit 1 ¶ 13 ( [REDACTED] [REDACTED]

[REDACTED]; see also Exhibit 1 ¶¶ 4, 14 (referring to specific sales volumes). Wawa uses this information in analyzing its growth related to the products at issue, in addition to seeking out competitive opportunities.

9. Wawa's current strategic pricing information and plans are vital to Wawa's business, competitiveness, and profitability. Paragraphs 8 and 24 of Exhibit 1 contain references to Wawa's specific, current pricing and discounting strategies. For example, Paragraphs 8 and 24 describe Wawa's benchmarks for its retail prices for the products at issue and Wawa's treatment of price increases imposed by its suppliers. See, e.g., Exhibit 1 ¶ 8 ([REDACTED])

[REDACTED]

[REDACTED]; Exhibit 1 ¶ 24 (" [REDACTED]

[REDACTED]

[REDACTED]. Were a competitor to know this sensitive information concerning Wawa's

strategic pricing and plans, such a competitor would gain a significant business advantage at the expense of Wawa. Moreover, existing or potential suppliers armed with such sensitive information could use it to their advantage in future negotiations with Wawa.

10. Based on my review of the document, my knowledge of Wawa's business, and my familiarity with the confidentiality protection afforded this type of information by Wawa, broad disclosure of portions of the Confidential Declaration for which Wawa seeks *in camera* treatment would cause serious competitive injury to Wawa. Disclosure of the information

contained in the Declaration would result in a loss of business advantage and cause serious irreparable injury to Wawa, and would provide Wawa's competitors, and existing and potential suppliers, with information that is confidential and critical to Wawa's business.

11. Wawa takes substantial measures to protect the secrecy of the information contained in the Declaration for which it seeks *in camera* treatment. Much of the information contained in the document is proprietary to Wawa, a privately held company, and is not publicly disclosed outside of the company. Wawa limits dissemination of such information and takes every reasonable step to protect its confidentiality. Indeed, much of the information is closely held even within Wawa.

12. For example, the financial and strategic planning information contained in Exhibit 1 is disclosed only to a limited number of employees at Wawa on a need-to-know basis. Access to the underlying information regarding Wawa's contracts and contracting strategies is securely stored on a network drive. Access to the drive is monitored and granted only to a limited number of employees.


13. Wawa's internal policies and practices limit dissemination of this information and govern how the information is handled by employees who are granted access. This information is not disclosed outside of Wawa except to the extent necessary to engage in confidential contract negotiations or confidential discussions with potential or existing suppliers.

14. The information contained in Exhibit 1 for which Wawa seeks *in camera* treatment would be extremely difficult for Wawa's competitors or other outside persons to access or duplicate. Wawa has expended a significant amount of resources in preparing the information that is contained in the Confidential Declaration for which it seeks partial *in camera*

treatment. Wawa compiles and analyzes multiple data sources to calculate the volume, share, and pricing information contained in Exhibit 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of June, 2021



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William Kloss



**NON-PARTY WAWA CORPORATION'S RENEWED MOTION FOR PARTIAL *IN*  
*CAMERA* TREATMENT OF ONE HEARING EXHIBIT**

**EXHIBIT 1**

(REDACTED IN PUBLIC FILING)

**DECLARATION OF WILLIAM KLOSS**  
**CATEGORY MANAGER — TOBACCO AND ALCOHOL**  
**WAWA, INC.**

**I. BACKGROUND**

1. Wawa is a privately held chain of over 850 convenience stores located in Pennsylvania, New Jersey, Delaware, Maryland, Virginia, Florida, and Washington, DC.  
Wawa is known for its large selection of built-to-order foods and specialty beverages. Wawa also sells a wide variety of tobacco products, gasoline, and other traditional convenience store products.
2. I have been working at Wawa from 2008 until the present, as well as from 2004 to 2006. I am currently the Category Manager for Tobacco & Alcohol at Wawa, a role I have held since May of 2018. Prior to my current role, I held a variety of other managerial and procurement roles at Wawa. Between 2006 and 2008, I worked at Daymon Worldwide. I was also an Adjunct Professor for Food Science and Management at Delaware Valley College from 2009 to 2011. I obtained an MBA from Delaware Valley University in 2008.
3. Wawa sells a variety of tobacco products at its stores, including traditional combustible cigarettes, electronic cigarettes, cigars, and smokeless tobacco. Wawa takes proactive measures to prevent youth smoking and vaping. As part of that policy, Wawa does not sell JUUL products at stores that are within 1/2 mile of a school, or display physical JUUL products at our stores.

**//. TRADITIONAL CIGARETTES**

4. Wawa sells traditional combustible cigarettes from all three major cigarette manufacturers. At Wawa, [REDACTED] is the leading supplier of combustible cigarettes with a share of approximately [REDACTED]. [REDACTED] is the second largest supplier with a share of approximately [REDACTED].

[REDACTED] third supplier at Wawa, primarily with its [REDACTED].

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

6. Combustible cigarettes are displayed on a shelf behind the cashier's counter. Wawa has little flexibility in how it displays combustible cigarettes because of contractual obligations with the largest cigarette suppliers. By agreement with [REDACTED]

[REDACTED]

[REDACTED] Likewise, Wawa is contractually obligated to display [REDACTED]

[REDACTED] The

remaining shelf space on the bottom is allocated to [REDACTED] that Wawa sells.

7. Historically, manufacturers of combustible cigarettes have raised prices twice each year. Altria is usually the one to lead with a price increase announcement, and the other cigarette manufacturers typically follow with their own price increases a few days later. In 2019, however, the cigarette manufacturers announced and implemented three price increases rather than the typical two.

8. [REDACTED]  
[REDACTED]

Wawa is often required to do so as a result of state mandatory minimum prices. In states without mandatory minimum prices, such as Virginia and Florida., [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

9. [REDACTED]

10. Altria has a field team to monitor Wawa's compliance with Altria's promotional requirements. [REDACTED]

**W. ELECTRONIC CIGARETTES**

- 11. Wawa sells closed tank electronic cigarettes, which means that the vaping liquid comes prefilled by the supplier and the devices are ready to be used out of the box. This contrasts with open tank electronic cigarettes, where users are responsible for filling their vaping devices with e-liquids on their own.
- 12. Wawa has never sold open tank vaping devices, and has no plans to sell them in the future. Wawa has chosen not to sell open tank vaping devices because of lack of quality assurance controls, greater risk of counterfeit products, and a large variety of custom devices and e-liquids that would be difficult to maintain at convenience stores that sell limited SKUs. Open tank systems were also responsible for the health issues associated with vaping that were widely reported in the press in 2019. For those reasons, open tank systems are typically sold at vape shops or online, rather than at convenience stores like Wawa.
- 13. J [REDACTED]

[REDACTED]

14. [REDACTED]

15. Rival electronic cigarette producers responded to JUUL's growth with increased promotional activity in 2018. [REDACTED] Altria also released a new electronic cigarette device in 2018 called MarkTen Elite, which was a pod-based system similar to JUUL's devices.

16. [REDACTED] As with combustible cigarettes, display position for electronic cigarettes is important, with brands vying for the most visibility in the display.

17. [REDACTED]

18. In October of 2018, Altria announced that it would discontinue MarkTen Elite, and in December of 2018,

Altria announced that it would shut down its Nu Mark division and discontinue all remaining MarkTen products. [REDACTED]

19. Once Altria discontinued MarkTen and exited the sale of electronic cigarettes, [REDACTED]

20. [REDACTED]

21. In February of 2020, [REDACTED]

22. Following Altria's announcement, [REDACTED]

Consistent with Wawa's goal of reducing youth vaping, Wawa continue to sell JUUL products, but will no longer display JUUL product packaging to the public.

23. Wawa voluntarily ended all discounts on electronic cigarettes in the fall of 2019 because of the negative


**press reports associated with vaping.** [Redacted]

24. [Redacted]

\* \* \*

**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      **day of** P/4rcA, 2020:



W am Kloss  
Category **Manager**— **Tobacco & Alcohol**  
Wawa, Inc.

**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,

Respondents.

**PUBLIC**

**Docket No. 9393**

**[PROPOSED] ORDER**

Upon consideration of Non-Party Wawa, Inc.’s (“Wawa’s”) Renewed Motion for Partial *In Camera* Treatment of One Hearing Exhibit, it is HEREBY ORDERED that the portions of the following document (identified in Exhibit 1 to the Declaration of William Kloss, dated June 4, 2021) are to be provided permanent *in camera* treatment from the date of this Order.

<b>Exhibit No.</b>	<b>Date -</b>
PX8006/RX00112	2020-03-27

ORDERED:

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

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



**UNITED STATES OF AMERICA  
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**PUBLIC**

**Docket No. 9393**

**CERTIFICATE OF SERVICE**

I hereby certify that, on June 4, 2021, I delivered via electronic mail a true and correct copy of the foregoing Renewed Motion Of Non-Party Wawa, Inc. For Partial *In Camera* Treatment Of One Hearing Exhibit and the Supporting Declaration of William Kloss, dated June 4, 2021 to:

Office of the Secretary  
Federal Trade Commission  
Constitution Center  
400 Seventh Street, S.W., Suite 5610  
Washington, DC 20024  
[electronicFilings@ftc.gov](mailto:electronicFilings@ftc.gov)

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580  
[ojl@ftc.gov](mailto:ojl@ftc.gov)

**Complaint Counsel**

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Dated: June 4, 2021

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