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

)	
In the Matter of)	
)	
Altria Group, Inc.)	DOCKET NO. 9393
a corporation;	·	
and		
JUUL Labs, Inc.		
a corporation.)	
)	
)	
)	

NON-PARTY NJOY, LLC'S UNOPPOSED RENEWED MOTION FOR IN CAMERA

TREATMENT OF DESIGNATED TRIAL EXHIBITS

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

INTRODUCTION

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

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

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

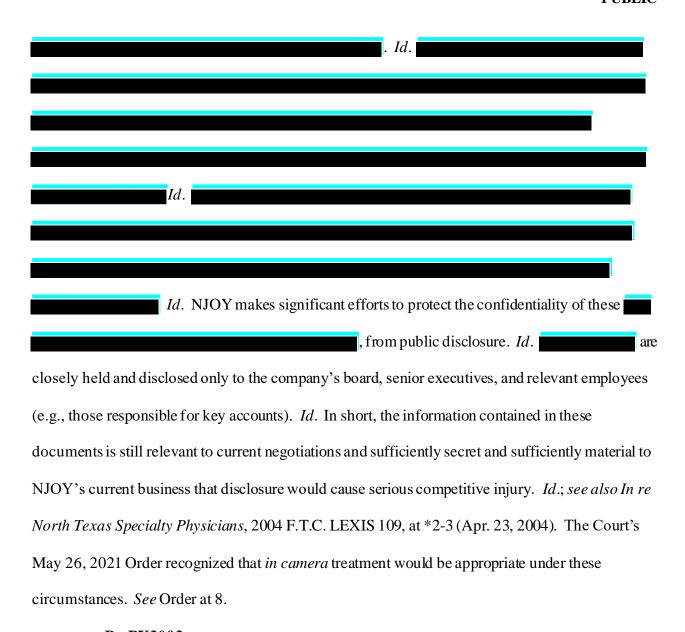
I. NJOY Seeks In Camera Treatment for Portions of Four Documents

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

A. PX3002

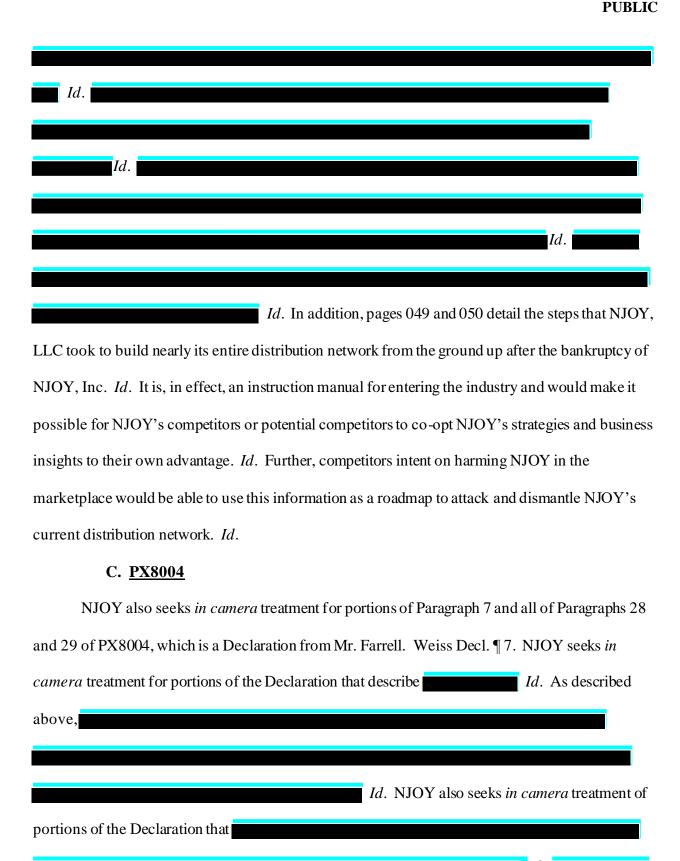
NJOY seeks in camera treatment for the following pages of PX3002, a 2017 business presentation: 003-004, 006, 008, 009-014, 016-026, 028-032, 034, 037-043, 045-047. Weiss Decl. ¶ 5. These slides include details about NJOY's *Id.* While the document is more than three years old, disclosure of could materially harm NJOY's current relationship with retailers and distributors and disadvantage NJOY in its negotiations with retailers and distributors with whom it is seeking to restore relationships previously held by NJOY, Inc. Id. Id. Retail doors are critical to NJOY's continuing competitive success. *Id*. Id.

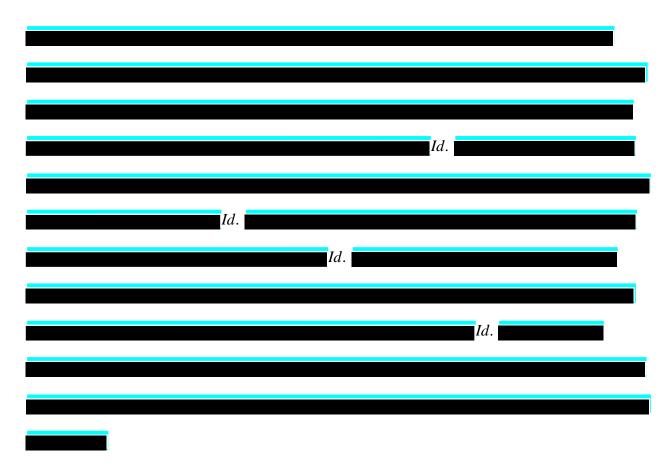
³ NJOY and NJOY, Inc. are wholly distinct entities, and NJOY is not a reorganized or successor entity to NJOY, Inc. In February 2017, NJOY acquired assets from NJOY, Inc. as part of a bankruptcy proceeding.



B. PX3003

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



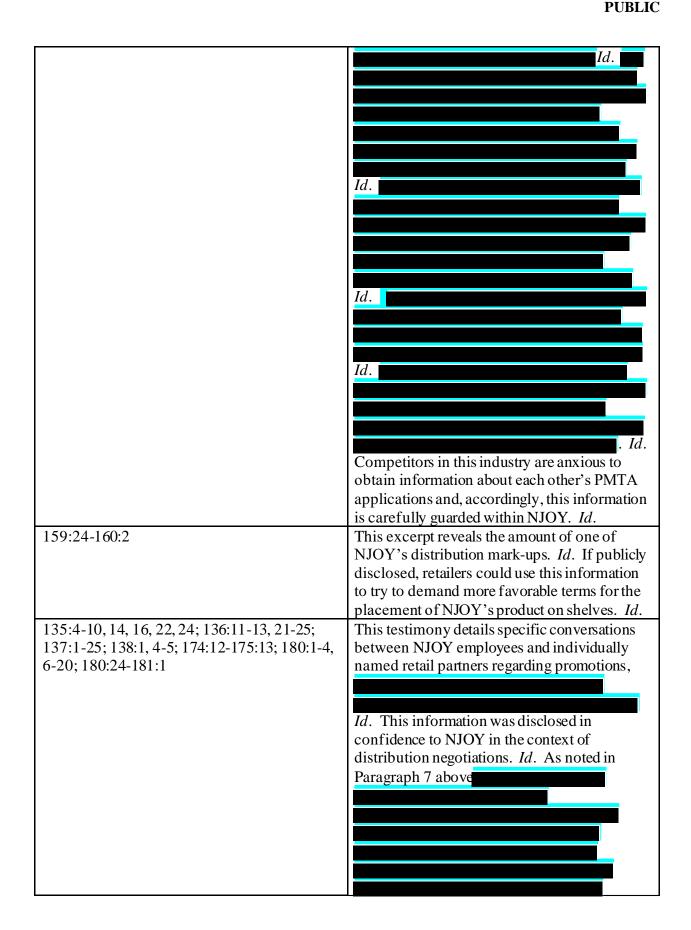


D. <u>PX7029</u>

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

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

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



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

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

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

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

CONCLUSION

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

Dated: June 4, 2021 By:/s/ Katrina M. Robson

Katrina M. Robson

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Counsel for NJOY, LLC

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

In the Matter of Altria Group, Inc. a corporation;)))	DOCKET NO. 9393
and		
JUUL Labs, Inc. a corporation.)))	
NJOY, LLC I	N CAN	UNOPPOSED RENEWED MOTION OF MERA TREATMENT FRIAL EXHIBITS
Upon consideration of NJOY, LL	.C's ('	'NJOY") Unopposed Renewed Motion for In
Camera Treatment of Designated Trial Ex	hibits (("Motion"), it is HEREBY ORDERED that the
documents listed in NJOY's Motion are to	be prov	vided in camera treatment to the extent described
in its Motion.		
ORDERED:		D. Michael Chappell Chief Administrative Law Judge
Date:		

CERTIFICATE OF SERVICE

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

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell Administrative Law Judge Federal Trade Commission 600 Pennsylvania Ave., NW, Rm. H-110 Washington, DC 20580 oalj@ftc.gov

I also certify that I delivered via e-mail a copy of the foregoing document to:

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Complaint Counsel

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

Counsel for Third Party NJOY, LLC

CERTIFICATE FOR ELECTRONIC FILING

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

June 4, 2021 By: /s/ Monsura A. Sirajee

Monsura A. Sirajee

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

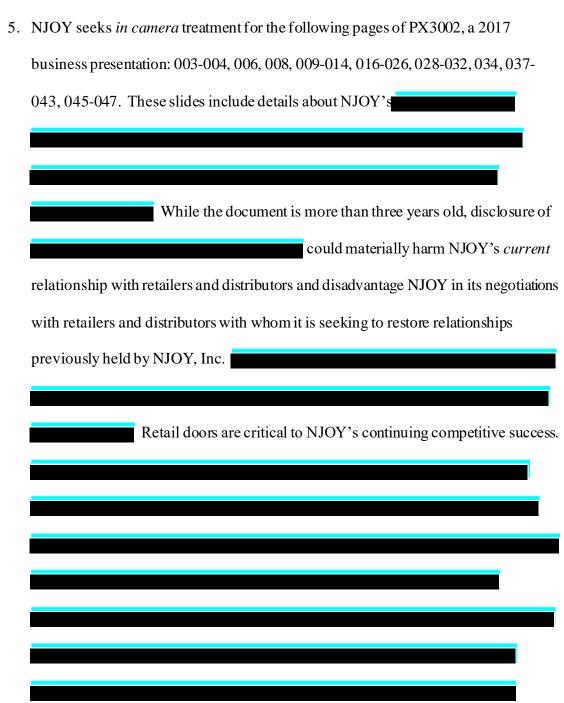
	,	
In the Matter of)	
Altria Group, Inc.)	DOCKET NO. 9393
a corporation;	,	
and		
JUUL Labs, Inc.		
a corporation.)	
)	
)	
)	

DECLARATION OF JEFFREY WEISS SUPPORTING NON-PARTY NJOY, LLC'S UNOPPOSED RENEWED MOTION FOR IN CAMERA TREATMENT OF DESIGNATED TRIAL EXHIBITS

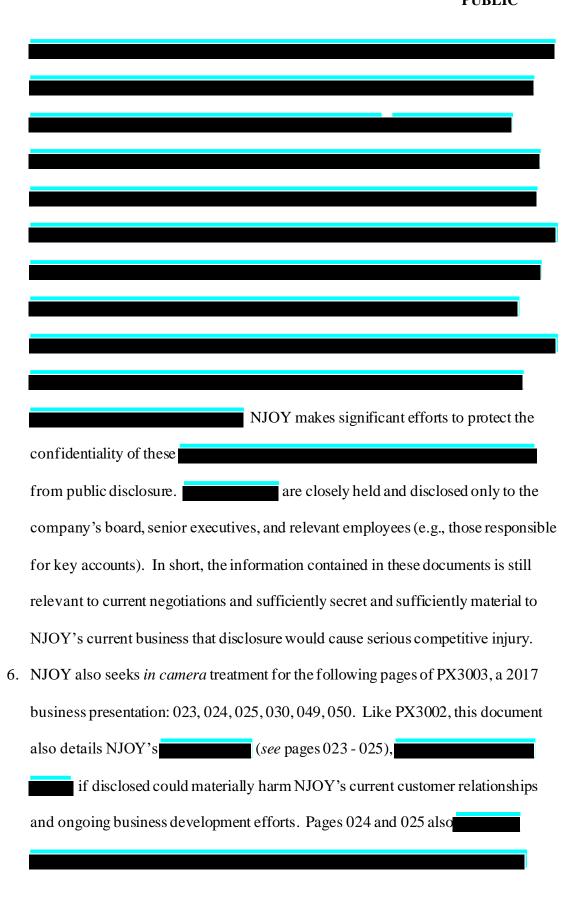
I, Jeffrey Weiss, declare as follows:

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

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



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



In addition, pages 049 and 050 detail the steps that
NJOY, LLC took to build nearly its entire distribution network from the ground up
after the bankruptcy of NJOY, Inc. It is, in effect, an instruction manual for entering
the industry and would make it possible for NJOY's competitors or potential
competitors to co-opt NJOY's strategies and business insights to their own
advantage. Further, competitors intent on harming NJOY in the marketplace would
be able to use this information as a roadmap to attack and dismantle NJOY's current
distribution network.
NJOY also seeks in camera treatment for portions of Paragraph 7 and all of
Paragraphs 28 and 29 of PX8004, which is a Declaration from Mr. Farrell. NJOY
seeks in camera treatment for portions of the Declaration that describe
As described above,

7.

. N	NJOY also seeks in camera treatment of portions of the
Declaration that	
Deciaration that	

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

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

90:3-91:16; 91:20-22; 92:8-9; 92:17-20; 92:23-93:1; 94:12-95:5	This testimony reveals details about NJOY's PMTA applications.
	Competitors in this industry are anxious to obtain information about each other's PMTA applications and, accordingly, this information is carefully guarded within NJOY.
159:24-160:2	This excerpt reveals the amount of one of NJOY's distribution mark-ups. If publicly disclosed, retailers could use this information to try to demand more favorable terms for the placement of NJOY's product on shelves.
135:4-10, 14, 16, 22, 24; 136:11-13, 21-25; 137:1-25; 138:1, 4-5; 174:12-175:13; 180:1-4, 6-20; 180:24-181:1	This testimony details specific conversations between NJOY employees and individually named retail partners regarding promotions,
	This information was disclosed in confidence to NJOY in the context of distribution negotiations. As noted in Paragraph 7 above,

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

9. The information identified in the above chart is closely held and not disclosed outside of NJOY or is only disclosed in the context of confidential communications with retailers or distributors. I hereby declare that the above statement is true to the best of my knowledge, information, and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury. Executed this 4th day of June in Hollywood, Florida.

Dated: June 4, 2021

y: ____

Jeffrey Weiss

DOCUMENTS WITHHELD PENDING ORDER