

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

In the Matter of

Altria Group, Inc.

a corporation;

And

JUUL Labs, Inc.

a corporation.

DOCKET NO. 9393

NON-PARTY 7-ELEVEN'S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to 16 C.F.R. §3.45(b), non-party 7-Eleven, Inc. (“7-Eleven”) respectfully moves this Court for indefinite *in camera* treatment of Exhibits PX3204 (7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386), RX119, RX1193, RX1194, RX1195, and PX7044; and for and *in camera* treatment for up to five years for twenty-nine (29) of 7-Eleven’s competitively-sensitive, confidential business documents (“Confidential Documents”). 7-Eleven’s motion is based on this Motion; the attached Memorandum of Law in Support of 7-Eleven’s Motion for *In Camera* Treatment, the Declaration of Shazad Hooda (Exhibit 1), and thirty- seven (37) selected documents (Exhibits 2-38); and any other matter properly considered.

Dated: May 7, 2021

Respectfully submitted,

/s/ Robert M. Manley

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

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

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

**UNITED STATES OF AMERICA
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**MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY 7-ELEVEN'S MOTION
FOR *IN CAMERA* TREATMENT**

I. Introduction

Pursuant to 16 C.F.R. §3.45(b), non-party 7-Eleven, Inc. (“7-Eleven”) respectfully moves this Court for *in camera* treatment of 37 competitively-sensitive, confidential business documents (the “Confidential Documents”). 7-Eleven produced these documents, among others, in response to a Subpoena Duces Tecum served on December 7, 2020 by the Federal Trade Commission (“FTC”) and a Subpoena Duces Tecum served on December 4, 2020 by Altria Group, Inc. (“Altria”). Counsel for Complainant, the FTC, and counsel for Respondents, Altria and JUUL Labs, Inc. (“Juul”) have notified 7-Eleven that they collectively intend to introduce 29 of 7-Eleven’s documents, with their relevant attachments (a total of 52 documents), into evidence in the upcoming FTC evidentiary hearing in the above-captioned matter.

7-Eleven seeks *in camera* treatment for 37 documents as confidential business documents because, if those records were to become public, 7-Eleven would experience significant

harm in its ability to be competitive in the tobacco and convenience store industries. For the reasons set forth below, 7-Eleven respectfully requests that Confidential Documents specified below receive *in camera* treatment indefinitely, or alternatively, for five years. In support of its motion, 7-Eleven relies on the Declaration of Shazad Hooda (the “Hooda Declaration”). *See General Foods Corp.*, 95 F.T.C. 352, 355 (1980) (explaining that “to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury”).

II. Documents For Which Protection Is Sought

7-Eleven seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as sealed Exhibits 2-37:

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
PX3204	<div style="background-color: black; width: 100%; height: 100%; min-height: 300px;"></div>	<div style="background-color: black; width: 100%; height: 100%; min-height: 300px;"></div>	7_ELEVEN_ALTRIA_0 0013381	7_ELEVEN_ALTRIA_0 0013383

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
	<p>[REDACTED]</p>			
Attachment to PX3204	<p>[REDACTED]</p>	<p>[REDACTED]</p>	7- ELEVEN_ALTRIA_000 13384	7- ELEVEN_ALTRIA_000 13384
Attachment to PX3204	<p>[REDACTED]</p>	<p>[REDACTED]</p>	7- ELEVEN_ALTRIA_000 13385	7- ELEVEN_ALTRIA_000 13385
Attachment to PX3204 Attachment	<p>[REDACTED]</p>	<p>[REDACTED]</p>	7- ELEVEN_ALTRIA_000 13386	7- ELEVEN_ALTRIA_000 13386

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05441	7- ELEVEN_ALTRIA_000 05441
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05442	7- ELEVEN_ALTRIA_000 05442
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05443	7- ELEVEN_ALTRIA_000 05443
RX1702	[REDACTED]	[REDACTED]	7_ELEVEN_ALTRIA_0 0002466	7_ELEVEN_ALTRIA_0 0002468

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
RX1703	[REDACTED]	[REDACTED]	7_ELEVEN_ALTRIA_0 0004632	7_ELEVEN_ALTRIA_0 0004635
RX1704	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 04636	7- ELEVEN_ALTRIA_000 04641
RX1205	[REDACTED]	[REDACTED]	7_ELEVEN_ALTRIA_0 0015336	7_ELEVEN_ALTRIA_0 0015336
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05438	7- ELEVEN_ALTRIA_000 05438
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05439	7- ELEVEN_ALTRIA_000 05439

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
RX119/Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05440	7- ELEVEN_ALTRIA_000 05440
RX 1700	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 00901	7- ELEVEN_ALTRIA_000 00901
RX1701	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 00904	7- ELEVEN_ALTRIA_000 00904
RX1212	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 14311	7- ELEVEN_ALTRIA_000 14311
RX1193	[REDACTED]	[REDACTED]	7- ELEVEN ALTRIA 000	7- ELEVEN ALTRIA 000

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]	[REDACTED]	08205	08205
RX1194	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 08206	7- ELEVEN_ALTRIA_000 08206
RX1195	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 08207	7- ELEVEN_ALTRIA_000 08207
RX1215	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 08185	7- ELEVEN_ALTRIA_000 08185
RX1706	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 13872	7- ELEVEN_ALTRIA_000 13873
RX1706	[REDACTED]	[REDACTED]	7- ELEVEN ALTRIA 000	7- ELEVEN ALTRIA 000

Exhibit No.	Document title/ Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]	[REDACTED]	13874	13884
RX1708	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 18194	7- ELEVEN_ALTRIA_000 18194
RX1708	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 18195	7- ELEVEN_ALTRIA_000 18195
PX8001/ RX1190	[REDACTED]	[REDACTED]	PX7044-001	PX7044-088
PX7044	[REDACTED]	[REDACTED]	PX8001-001	PX8001-004

III. Confidential Documents Contain Material That If Disclosed Would Result In Serious Injury To 7-Eleven

A. Legal Standard

Pursuant to 16 C.F.R. § 3.45(b), *in camera* treatment is permitted when “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” the *in camera* treatment. An applicant seeking *in camera* treatment must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.” *General Foods Corp.*, 95

F.T.C. 352, 355 (1980); *see also H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961) (explaining that “the correct rule requires a showing that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.”). In determining whether *in camera* treatment is justified, courts consider factors, including:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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

Courts distinguish “trade secrets” from “ordinary business records” in the *in camera* treatment analysis. *In re 1-800 Contacts, Inc.*, 2017 F.T.C. LEXIS 55, *3-5 (April 4, 2017). The FTC recognizes the importance of granting *in camera* treatment to ordinary business records for a limited time, usually two to five years. *In re McWane, Inc.*, No. 9351, 2012 WL 3862131, at *2, *6 (F.T.C. Aug. 17, 2012). Documents containing “trade secrets” or “secret formulas, processes, and other secret technical information” may receive indefinite protection. *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). *In re 1-800 Contacts, Inc.*, 2017 F.T.C. LEXIS 55, *5-*6 (April 4, 2017).

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

7-Eleven’s Confidential Documents contain information regarding 7-Eleven’s sales revenue, marketing strategies, and negotiation strategies and practices. Such information should receive *in camera* treatment. *See, e.g., In re Champion Spark Plug Co.*, No. 9141, 1982 F.T.C. LEXIS 85, at *2 (Apr. 5, 1982) (granting *in camera* treatment for documents that have never been publicly disclosed by a company or its competitors).

1. Nine Of The Identified Confidential Documents Are Trade Secrets That Would Result In Serious Harm To 7-Eleven If Publicly Disclosed

Attachments to PX3204 marked 7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386, and Exhibits RX119, RX1193, RX1194, and RX1195 [REDACTED]

[REDACTED]

[REDACTED] Hooda Decl. at ¶¶ 14, 24, 30. Similarly, testimony contained within Exhibit PX7044,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attachments to PX3204, marked 7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386, and Exhibit RX119

[REDACTED]

[REDACTED] Because 7-Eleven is privately owned and keeps its sales information confidential, [REDACTED]

[REDACTED] *Id.*; see

also id. at ¶¶ 6; 14-15; 24.

RX119 [REDACTED]

[REDACTED]

[REDACTED] Publicly disclosing these internal processes would severely harm 7-Eleven [REDACTED]

[REDACTED] RX1193, RX1194,

and RX1195 contain information regarding 7-Eleven's [REDACTED]

[REDACTED]

33. Public disclosure of this information would harm 7-Eleven because it would disclose 7-Eleven's confidential negotiation strategies. The testimony within PX7044 [REDACTED]

[REDACTED]

[REDACTED]. Decl. at ¶¶ 67; 69. All the information above constitutes the type of "process" and "secret technical information" that the FTC states warrants *in camera* treatment. *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977).

2. Indefinite *In Camera* Treatment Should Be Granted For Specified Documents

The above-mentioned documents contain highly sensitive information that warrants indefinite *in camera* treatment. The trade secrets are "likely to remain sensitive or become more sensitive with the passage of time," such that indefinite confidentiality is warranted. *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS at *7-*8. These documents contain trade secrets, such as [REDACTED]

[REDACTED]

[REDACTED] PX7044, [REDACTED]

[REDACTED]

[REDACTED] Decl. at ¶¶ 46-48. The competitive significance of all of these documents is unlikely to decrease over time and, thus, warrants indefinite protection. In the alternative, 7-Eleven respectfully requests that these documents receive *in camera* treatment for five years, and requests that any redacted paragraphs relating to negotiation and business practices remain redacted indefinitely.

3. The Remaining Confidential Documents Are Business Records That Would Result In Serious Harm To 7-Eleven If Publicly Disclosed

Significantly, as discussed in the Hooda Declaration, the remaining Confidential

Documents are business records [REDACTED]

[REDACTED] The FTC has recognized the importance of *in camera* treatment for documents that contain product sales data and pricing information. *In re Otto Block Healthcare N. Am., Inc.*, No. 9378, 2018 FTC Lexis 111, at *11 (July 16, 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.

Several Confidential Documents contain information [REDACTED]

[REDACTED] Other Confidential Documents [REDACTED]

[REDACTED] [REDACTED] These confidential business records constitute the very type of business records that the FTC deems warrant *in camera* treatment. *See, e.g., In re Otto Bock Healthcare N. Am., Inc.*, 2018 FTC LEXIS 111, *6 (July 6, 2018) (noting that business records include “business plans, marketing plans, or sales documents.”); *see also, e.g., 1-800-Contacts*, 2017 F.T.C. LEXIS 55 at *17 (granting *in camera* treatment of documents containing evaluation of market plans, future strategic plans, and market growth indicators); *In the Matter of Benco Dental Supply Co.*, 2018 F.T.C. Lexis 156, at *20 (Oct. 11, 2018) (granting *in camera* treatment for documents containing business information

relating to “marketing strategies, sales and profit plans, and future sales outlook”).

If these documents became public, [REDACTED]

[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 because [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 36). The Protective Order was issued to protect parties and third parties, including 7-Eleven, from improper disclosure and use of their confidential information. Pursuant to the Protective Order, all of 7-Eleven’s produced documents were designated “Confidential.” [REDACTED]

[REDACTED]

7-Eleven’s status as a non-party is especially pertinent. The FTC has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons*, 58 F.T.C. at 1186. The FTC has noted that “[a]s a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery

requests.” *In re Kaiser Aluminum & Chem Corp.*, 103 F.T.C. 500, 500 (May 25, 1984).

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

Given the sensitive nature of the remaining Confidential Documents, including information related to 7-Eleven’s sales, negotiations, and marketing strategies and practices, protection of these documents for five years is appropriate to prevent competitive injuries to 7-Eleven. If the information within the Confidential Documents is publicly disclosed, [REDACTED]

[REDACTED] The FTC has recognized that confidential business records may receive *in camera* treatment for up to five years. *In re 1-800 Contacts, Inc.*, 2017 F.T.C. LEXIS 55, at *6 (April 4, 2017). Accordingly, 7-Eleven respectfully requests that this information receive *in camera* treatment for a period of five years.

IV. Conclusion

For the reasons set forth above and in the accompanying Hooda Declaration, non-party 7-Eleven respectfully requests that this Court grant *in camera* treatment indefinitely for Exhibits PX3204 (7-ELEVEN_ALTRIA_00013385 and 7-ELEVEN_ALTRIA_00013386), RX119, RX1193, RX 1194, RX1195, and PX7044; and for five years for the remaining Confidential Documents.

Dated: May 7, 2021

Respectfully submitted,

/s/ Robert M. Manley

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

rmanley@mckoolsmith.com
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Tel: 214-978-4226
Fax: 214-978-4044

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

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

STATEMENT REGARDING MEETING AND CONFER

The undersigned counsel for non-party 7-Eleven, Inc. (“7-Eleven”) certifies that counsel for the parties were notified via email on or about May 6, 2021, that 7-Eleven would be seeking *in camera* treatment of certain Confidential Documents. Counsel for Complainant, the Federal Trade Commission, indicated via email on May 6, 2021 that they do not oppose 7-Eleven’s motion for *in camera* treatment of its Confidential Documents. Counsel for Respondents, Altria Group, Inc. and JUUL Labs, Inc. indicated via email on May 6, 2021 as follows: “Respondents do not object to the in camera motion to the extent it seeks to protect the covered documents from disclosure to the general public, however, we reserve our rights to seek relief from exclusion of certain in-house counsel of Respondents from in camera sessions or filings due to the covered documents’ in camera designation.”

/s/ Lisa Houssiere

Lisa Houssiere

PUBLIC
EXHIBIT 1
DECLARATION OF
SHAZAD HOODA
PARTIAL REDACTIONS

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

In the Matter of

Altria Group, Inc.
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And
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a corporation.

DOCKET NO. 9393

DECLARATION OF SHAZAD HOODA

I, Shazad Hooda, hereby declare as follows:

1. I am a Senior Category Manager at 7-Eleven, Inc. (“7-Eleven”), a non-party to the above-captioned proceeding.
2. I am making this declaration in support of non-party 7-Eleven’s motion for *in camera* treatment for certain confidential documents (the “Motion”).
3. I have personal knowledge of the matters stated herein, and if called upon to do so, could competently testify about them.
4. I have reviewed and am familiar with the confidential documents (the “Confidential Documents”) 7-Eleven produced in response to the Subpoena Duces Tecum served on December 7, 2020 by the Federal Trade Commission (the “FTC”) and the Subpoena Duces Tecum served on December 4, 2020 by Altria Group, Inc. (“Altria”).
5. Given my position at 7-Eleven, I am familiar with the type of information contained in the documents at issue and their competitive significance to 7-Eleven. Based on my review of the documents, my knowledge of 7-Eleven’s business, and my familiarity with the confidentiality protections afforded this type of information by 7-Eleven, the disclosure of the Confidential Documents to the public and to competitors of 7-Eleven would cause serious, irreparable harm to 7-Eleven.
6. As described in the Motion, 7-Eleven seeks *in camera* treatment for Confidential Documents identified below because they contain information related to [REDACTED]
[REDACTED]
[REDACTED],

and other propriety information as further described below.

Confidentiality Measures

7. 7-Eleven is a privately owned and is not publicly traded in the United States. As a result, much of the information contained in the Confidential Documents that 7-Eleven seeks *in camera* treatment for could only be known or determined by 7-Eleven itself. [REDACTED]

[REDACTED]

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

Documents Containing Confidential Sales Information

14. The FTC, JUUL Labs, Inc. (“JUUL”), and Altria have notified 7-Eleven that they intend

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
Attachment to PX3204	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000133 85	7- ELEVEN_ALTRIA_000133 85
Attachment to PX3204 Attachment	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000133 86	7- ELEVEN_ALTRIA_000133 86
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000054 41	7- ELEVEN_ALTRIA_000054 41
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000054 42	7- ELEVEN_ALTRIA_000054 42

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000054 43	7- ELEVEN_ALTRIA_000054 43
RX1702	[REDACTED]	[REDACTED]	7_Eleven_Altria_00002466	7_Eleven_Altria_00002468

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
RX1703	[REDACTED]	[REDACTED]	7_ELEVEN_ALTRIA_0000 4632	7_ELEVEN_ALTRIA_0000 4635
RX1704	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_0000 4636	7-ELEVEN_ALTRIA_0000 4641
RX1205	[REDACTED]	[REDACTED]	7_ELEVEN_ALTRIA_0001 5336	7_ELEVEN_ALTRIA_0001 5336

15. PX3204 marked 7_ELEVEN_ALTRIA_00013381-00013383 [REDACTED]
 [REDACTED]
 [REDACTED] This e-mail [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]. This e-mail [REDACTED]
 [REDACTED]
 [REDACTED]. Similarly, Attachment to
 PX3204 marked 7-ELEVEN_ALTRIA_00013384 is [REDACTED]
 [REDACTED]
 [REDACTED]. [REDACTED]
 [REDACTED]

[REDACTED]. Disclosure of information regarding [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED] This information is not publicly available and releasing this information would expose 7-Eleven's proprietary business information to the public. Thus, it is appropriate for these documents to be given *in camera* treatment.

16. Attachments to PX3204 marked 7-ELEVEN_ALTRIA_00013385 and - ELEVEN_ALTRIA_00013386 are [REDACTED]

[REDACTED]
 [REDACTED] These spreadsheets contain [REDACTED]
 [REDACTED]

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

[REDACTED] This information is also not publicly available and releasing this information [REDACTED]
 [REDACTED] Thus, it is appropriate for these documents to be given *in camera* treatment.

17. Attachments to PX3205 marked 7-ELEVEN_ALTRIA_00005441 and 7-ELEVEN_ALTRIA_000005442 are [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Attachment to PX3205 7-Eleven_Altria_00005443 is [REDACTED]

[REDACTED]. This information contains [REDACTED]

[REDACTED]. If this information becomes public, it would allow competitors to know 7-Eleven's [REDACTED]

[REDACTED]. [REDACTED]
 [REDACTED] It is therefore necessary that this document receive *in camera* treatment.

18. RX1702 marked 7-ELEVEN_ALTRIA_00002466 is [REDACTED]

[REDACTED]. This [REDACTED] was intended to remain confidential to the recipients only. This [REDACTED] includes [REDACTED]

[REDACTED] Disclosing information regarding 7-Eleven [REDACTED] would be detrimental to 7-Eleven as it [REDACTED]

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

19. RX 1703 marked 7_ELEVEN_ALTRIA_00004632 [REDACTED]

[REDACTED]
 [REDACTED] This information relates to [REDACTED]
 [REDACTED]

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05438	7- ELEVEN_ALTRIA_000 05438
Attachment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05439	7- ELEVEN_ALTRIA_000 05439
RX119/Attach ment to PX3205	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 05440	7- ELEVEN_ALTRIA_000 05440
RX 1700	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 00901	7- ELEVEN_ALTRIA_000 00901
RX1701	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 00904	7- ELEVEN_ALTRIA_000 00904

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
RX1212	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_000 14311	7- ELEVEN_ALTRIA_000 14311

24. Attachment to PX3205 marked 7-ELEVEN_ALTRIA_00005438 is [REDACTED]
 [REDACTED] Attachment to PX3205 marked 7-
 ELEVEN_ALTRIA_00005439 is [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] Thus, it is appropriate for these documents to be given *in camera*
 treatment.

25. RX119 marked 7-ELEVEN_ALTRIA_00005440 is [REDACTED]
 [REDACTED]
 [REDACTED] This document contains [REDACTED]
 [REDACTED]
 [REDACTED] If this were to be made public, [REDACTED]
 [REDACTED]
 [REDACTED] Thus, it is appropriate for these documents to be given *in camera* treatment.

26. RX1200 marked 7-ELVEN_ALTRIA_00000901 and RX1201 marked 7-
 ELEVEN_ALTRIA_000904 [REDACTED]
 [REDACTED] If this were to be made public, [REDACTED]
 [REDACTED]
 [REDACTED] Thus, it is
 appropriate for these documents to be given *in camera* treatment.

27. RX1212 marked 7-ELEVEN_ALTRIA_014311 includes [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] this document were to

become public [REDACTED]

Thus, it is appropriate for this document be given *in camera* treatment.

28. Publicly disclosing 7-Eleven’s confidential financial and strategic information identified in paragraphs 22-26 is not necessary in this proceeding and could be detrimental to 7-Eleven, whose only involvement in this proceeding is as a non-party.

29. With respect to all of these documents, 7-Eleven has taken significant steps to protect the confidential information contained in the documents identified in paragraphs 22-26. 7-Eleven takes substantial measures to guard the secrecy of this confidential information [REDACTED]

[REDACTED]

[REDACTED] The information is not, and would not otherwise become publicly available.

Documents Containing Confidential Negotiation Information

30. The FTC, JUUL, and Altria have notified 7-Eleven that they intend to introduce seventeen Confidential Documents containing [REDACTED]. As described in the Motion, 7-Eleven seeks *in camera* treatment for these documents as they contain information [REDACTED]. These documents are identified below:

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
RX1193	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_00008205
RX1194	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_00008206	7-ELEVEN_ALTRIA_00008206
RX1195	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_00008207	7-ELEVEN_ALTRIA_00008207

PUBLIC

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
RX1215	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_0000 8185	7-ELEVEN_ALTRIA_0000 8185
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13872	7-ELEVEN_ALTRIA_000 13873
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13874	7-ELEVEN_ALTRIA_000 13874
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13875	7-ELEVEN_ALTRIA_000 13875
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13876	7-ELEVEN_ALTRIA_000 13876
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13877	7-ELEVEN_ALTRIA_000 13877
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13878	7-ELEVEN_ALTRIA_000 13878

PUBLIC

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	[REDACTED]			
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13879	7-ELEVEN_ALTRIA_000 13879
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13880	7-ELEVEN_ALTRIA_000 13880
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13881	7-ELEVEN_ALTRIA_000 13881
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13882	7-ELEVEN_ALTRIA_000 13882
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13883	7-ELEVEN_ALTRIA_000 13883
RX1706	[REDACTED]	[REDACTED]	7-ELEVEN_ALTRIA_000 13884	7-ELEVEN_ALTRIA_000 13884
RX1708	[REDACTED]	[REDACTED]	7- ELEVEN_ALTRIA_00018194	7- ELEVEN_ALTRIA_00018194
RX1708	[REDACTED]	[REDACTED]	7-	7-

Attachments to RX1706 marked 7-ELEVEN_ALTRIA_0131874 through 7-Eleven_Altria_013884 include [REDACTED]

[REDACTED] Therefore, it is appropriate for this document to receive *in camera* treatment.

34. Attachments to RX1708 marked 7-ELEVEN_ALTRIA_00018194 and ELEVEN_ALTRIA_00018195 [REDACTED]

[REDACTED]. Therefore, the information contained in this document [REDACTED] Therefore, *in camera* treatment is appropriate.

35. Publicly disclosing any of 7-Eleven’s confidential financial and strategic information identified in paragraphs 30-33 is not necessary in this proceeding and could be detrimental to 7-Eleven, whose only involvement in this proceeding is as a non-party.

36. With respect to all of these documents, 7-Eleven has taken significant steps to protect the confidential information contained in the documents identified in paragraphs 30-33. 7-Eleven takes substantial measures to guard the secrecy of this confidential information by [REDACTED]. The information is not, and would not otherwise become publicly available.

Declaration of Jack Stout

37. PX8001 is [REDACTED]. Although [REDACTED] has already been marked Outside Attorney’s Eyes only subject to a protective order, it should also receive *in camera* treatment. The [REDACTED] contains [REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] The details of these statements and specific potential disadvantages faced by

7-Eleven are further discussed below:

38. Paragraphs 5, and 6 of PX8001 [REDACTED]

[REDACTED]

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

39. Paragraphs 8, of PX8001 [REDACTED]

[REDACTED]

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

40. Paragraphs 10 and 11 of [REDACTED]

[REDACTED]

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

41. Paragraph 4 of PX8001 contains [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Therefore, this testimony should receive *in camera* treatment.

42. Paragraphs 7, 11, and 16 of PX8001 contain

[REDACTED]

Thus, *in camera* treatment is appropriate.

43. Paragraph 11, 14, and 17 of PX8001 contain

[REDACTED]

Therefore, this testimony should receive *in camera* treatment.

44. Paragraph 17 of PX8001

[REDACTED]

Therefore, this testimony should receive *in camera* treatment.

45. Paragraph 15 of PX8001 discusses

[REDACTED]

Therefore, this testimony should receive *in camera* treatment.

46. Paragraphs 9, 14, and 15 of PX8001 contain

[REDACTED]

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

[REDACTED]

47. PX7044 is a deposition by Jack Stout, Senior Vice President of Merchandising and Demand Chain for 7-Eleven prepared in connection with this proceeding (hereinafter, “Deposition”). The Deposition took place on March 10, 2021, and Jack Stout provided testimony under oath. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

48. In addition, the Deposition contains direct quotes, references to, and a discussion of the Confidential Documents. [REDACTED]

[REDACTED]

[REDACTED] The details of these statements and specific potential disadvantages faced by 7-Eleven are further discussed below. Therefore, *in camera* treatment is appropriate.

49. Deposition lines 30:4-31:3 discuss [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

50. Deposition lines 44:19-45:4 refer to RX1194, a Confidential Document referenced above.

[REDACTED]

[REDACTED]

[REDACTED]

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

51. Deposition lines 48:7-16 and 48:20-49:7 refer to PX8001, a Confidential Document referenced above, and discuss [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

52. Deposition lines 106:11-22: reference RX1205, a [REDACTED]

Discuss PX8001 Paragraph 11, which is an above referenced Confidential Document.

[REDACTED]

[REDACTED] Because the Deposition lines are a direct quote, the harm to 7-Eleven would be the same if the document was shared as if the Deposition testimony was shared. Therefore, *in camera* treatment is appropriate.

59. Deposition lines 36:5-37:18 and 46:2-18:4 refer to RX1194 [REDACTED]

[REDACTED]. RX1194 is an above referenced Confidential Document. RX1194 [REDACTED]

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

60. Deposition lines 38:22-39:13; 39:19-23; 40:4-41:7; and 41:24-42:21 refer to RX1194, an above referenced Confidential Document, and discuss [REDACTED]

[REDACTED]

[REDACTED] This would give those competitors an unfair advantage over 7-Eleven. Therefore, *in camera* treatment is appropriate.

61. Deposition lines 63:13-64:10 discuss [REDACTED]

[REDACTED]

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

62. Deposition lines 67:6-16: reference [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

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

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

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

66. Deposition lines 166:4-23 discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

67. Deposition lines 103:4-104:9 discuss [REDACTED]
[REDACTED]

lines 115:4- 121:8 quote directly from a [REDACTED]
[REDACTED] Deposition lines 121:12-125:10 discuss [REDACTED]
[REDACTED]. Deposition lines 147:14-148:12 discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, these documents require *in camera* treatment.

68. Deposition lines 26:9-28:13: discuss [REDACTED]
[REDACTED] Deposition lines 29:15-30:3
discuss [REDACTED]
[REDACTED] Deposition lines 34:12-25 discuss [REDACTED]
[REDACTED] Deposition lines 42:21-44:2 discuss [REDACTED]
[REDACTED] Deposition lines 47:11-24: refers to [REDACTED]
[REDACTED]
[REDACTED] This would place 7-Eleven at a competitive disadvantage.
Therefore, *in camera* treatment is appropriate.


69. Furthermore, deposition lines 42:21-44:2 and 47:11-24 quote RX1194, an above
referenced Confidential Document. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

70. Deposition lines 161:2-6 and 161:17-32 discuss DX1198, [REDACTED]
[REDACTED]. Deposition lines 162:3-164:20 describe DX1199, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Therefore, *in camera* treatment is appropriate.

PUBLIC

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

Executed on May 7, 2021



Shazad Hooda

PUBLIC

EXHIBIT 2

PX3204

**7_ELEVEN_ALTRIA_00013381-
00013383**

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 3

ATTACHMENT TO PX3204

7_ELEVEN_ALTRIA_00013384

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 4

ATTACHMENT TO PX3204

7_ELEVEN_ALTRIA_00013385

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 5

ATTACHMENT TO PX3204

7_ELEVEN_ALTRIA_00013386

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 6

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005441

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 7

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005442

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 8

ATTACHMENT TO PX3205

7_ELEVEN_ALTRIA_00005443

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 9

RX1702

**7_ELEVEN_ALTRIA_00002466-
00002468**

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 10

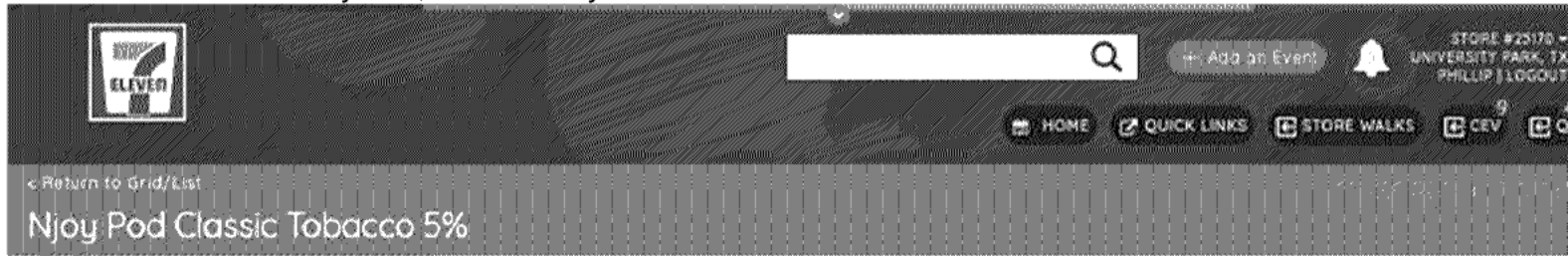
PARTIAL REDACTION

RX1703

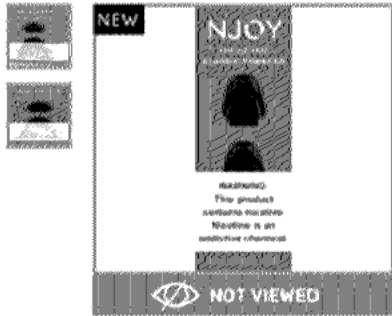
**7_ELEVEN_ALTRIA_00004632-
00004635**

From: Wilhelm, Phil </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DDFBAFE649644E14A53FC9950B79860B-WILHELM, PH>
To: Sabina Ahuja
Sent: 4/3/2020 1:23:25 PM
Subject: New item sheets
Attachments: Info Dispatch - NJOY Device.pdf

FYI on examples for the new item sheets. They are all the same as the info has the same verbiage. These look better on our system, as to the way it loads on the PDF that i have attached.

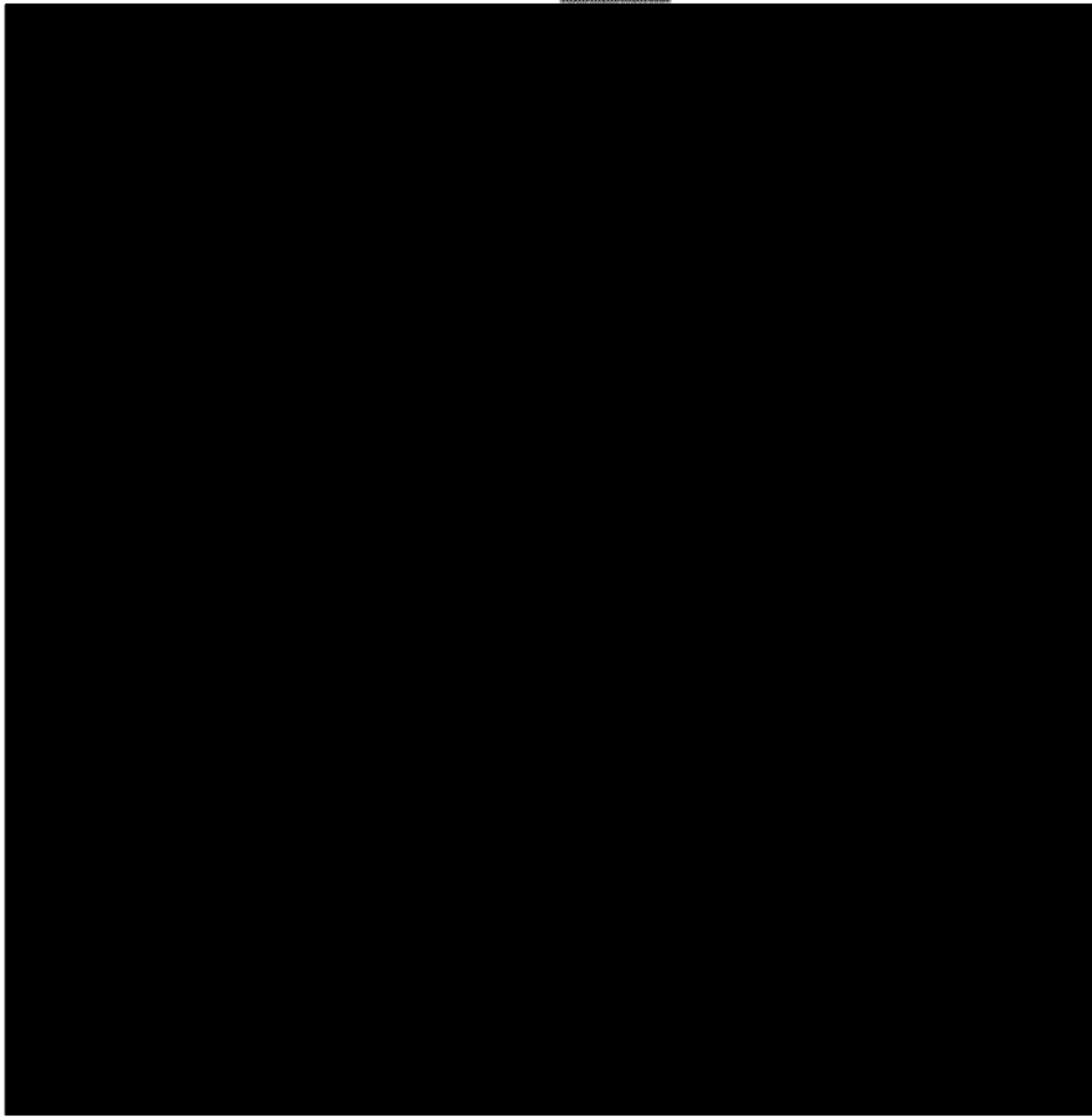


Njoy Pod Classic Tobacco 5%



CONFIDENTIAL PARTIAL REDACTION

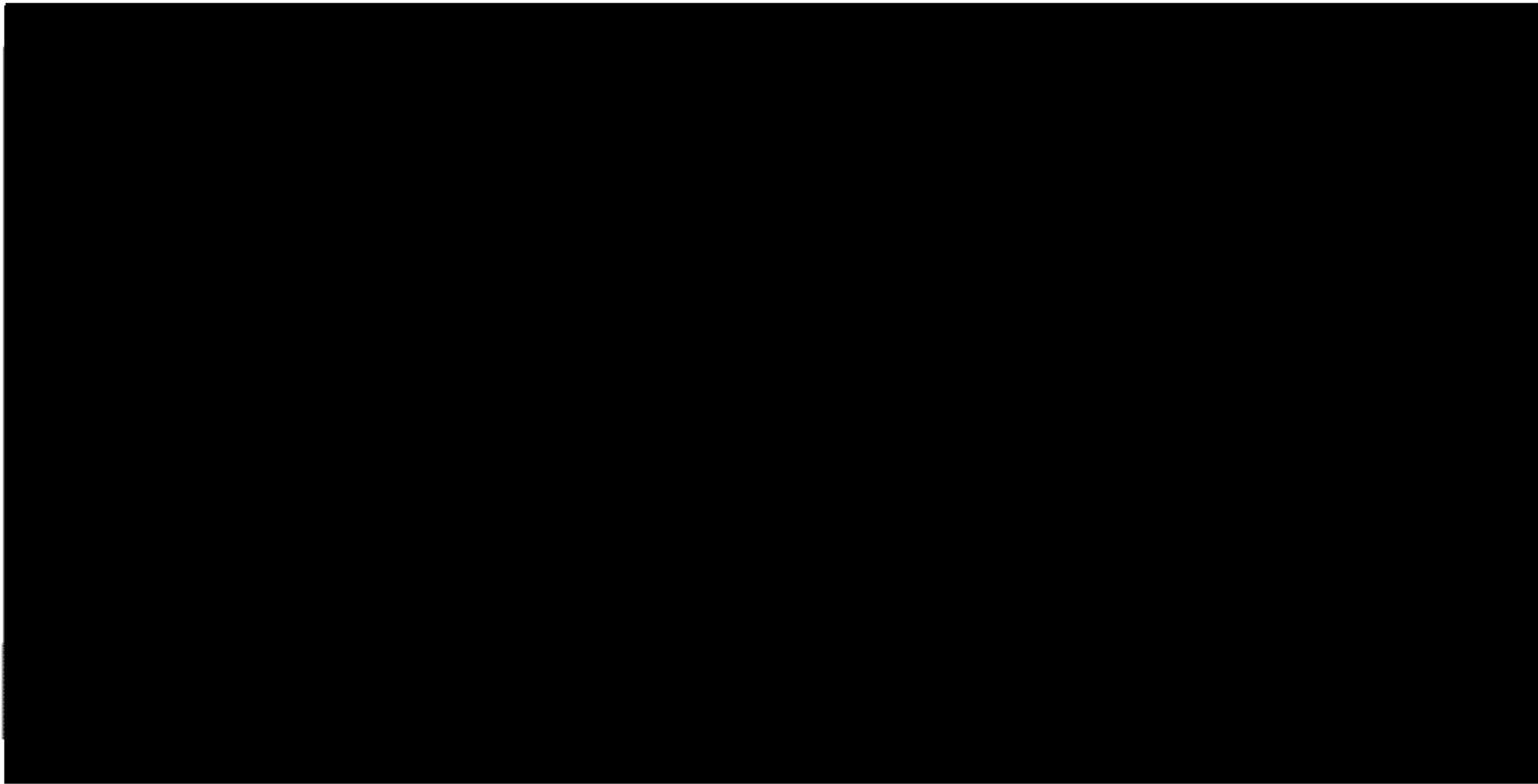
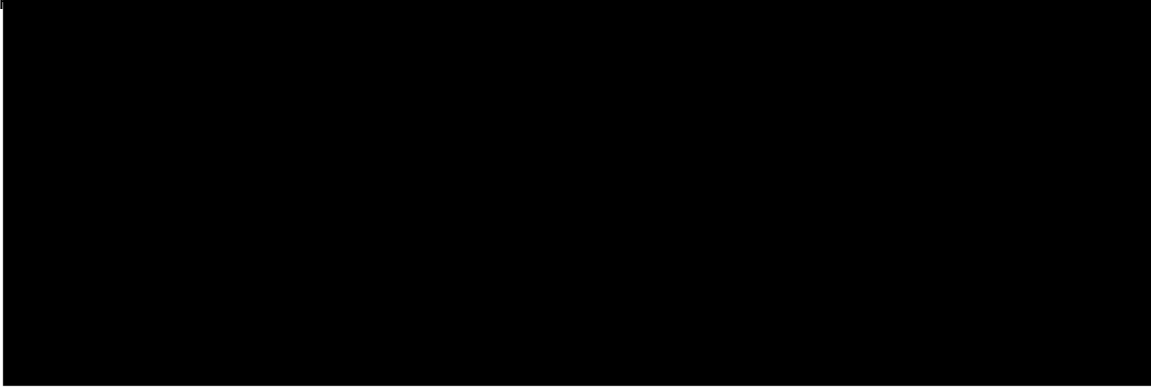
This product
contains nicotine.
Nicotine is an
addictive chemical.



CONFIDENTIAL PARTIAL REDACTION



CONFIDENTIAL PARTIAL REDACTION



Senior Category Manager-Other Tobacco Products
7-Eleven Inc.
Cypress Waters
3200 Hackberry Rd
Irving, Texas 75063
Office 972-828-6628
Phil.Wilhelm@7-11.com

PUBLIC

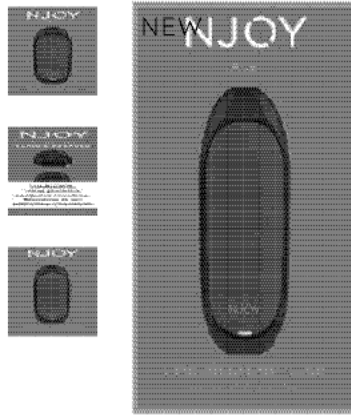
EXHIBIT 11

PARTIAL REDACTION

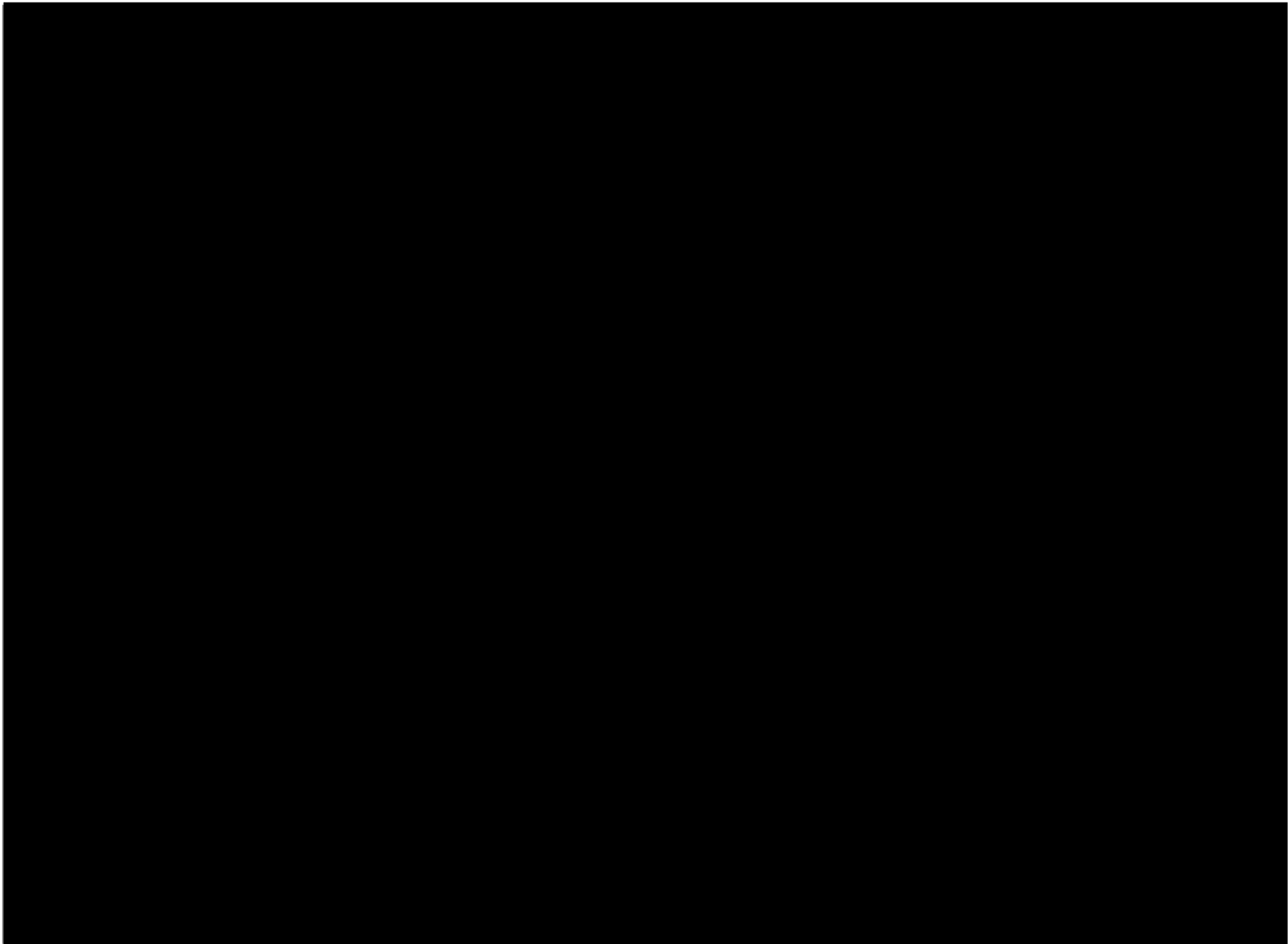
RX1704

**7_ELEVEN_ALTRIA_00004636-
00004641**

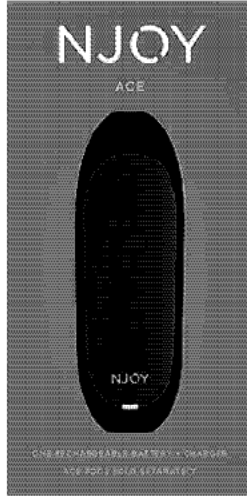
CONFIDENTIAL-PARTIAL REDACTION



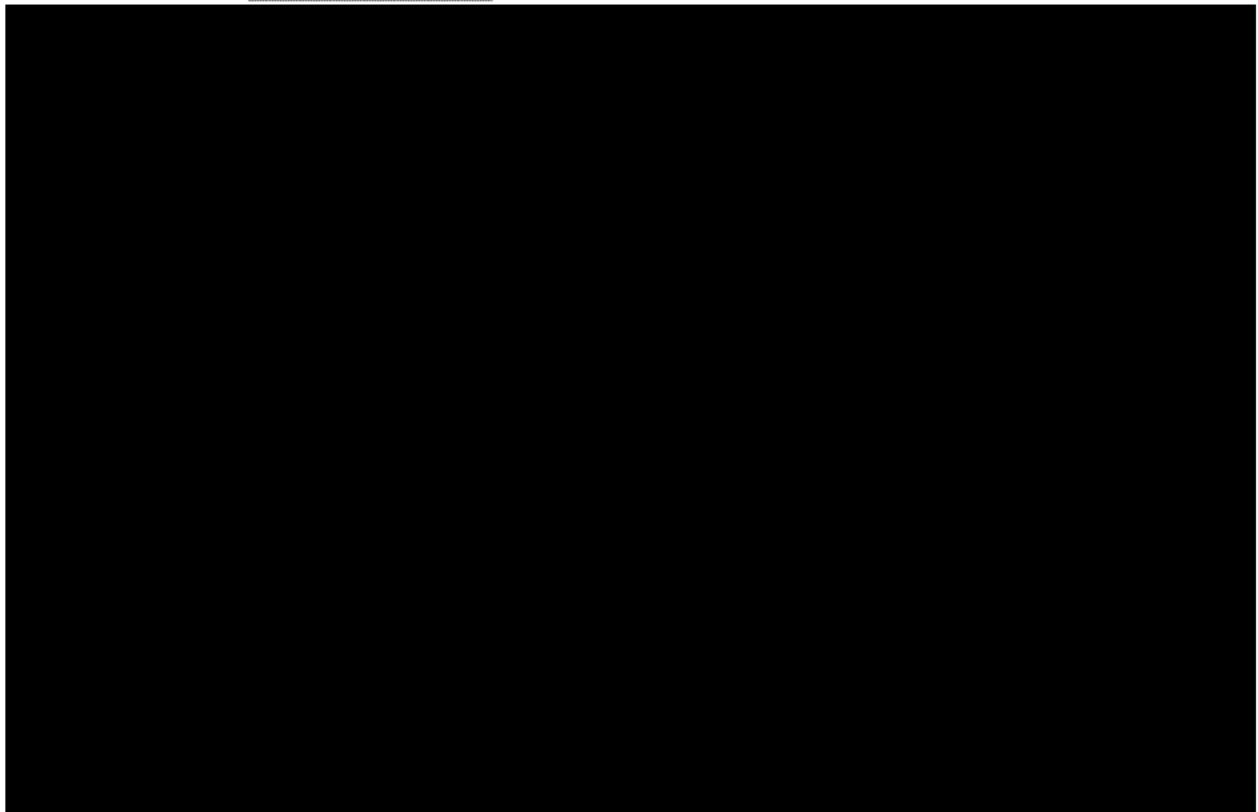
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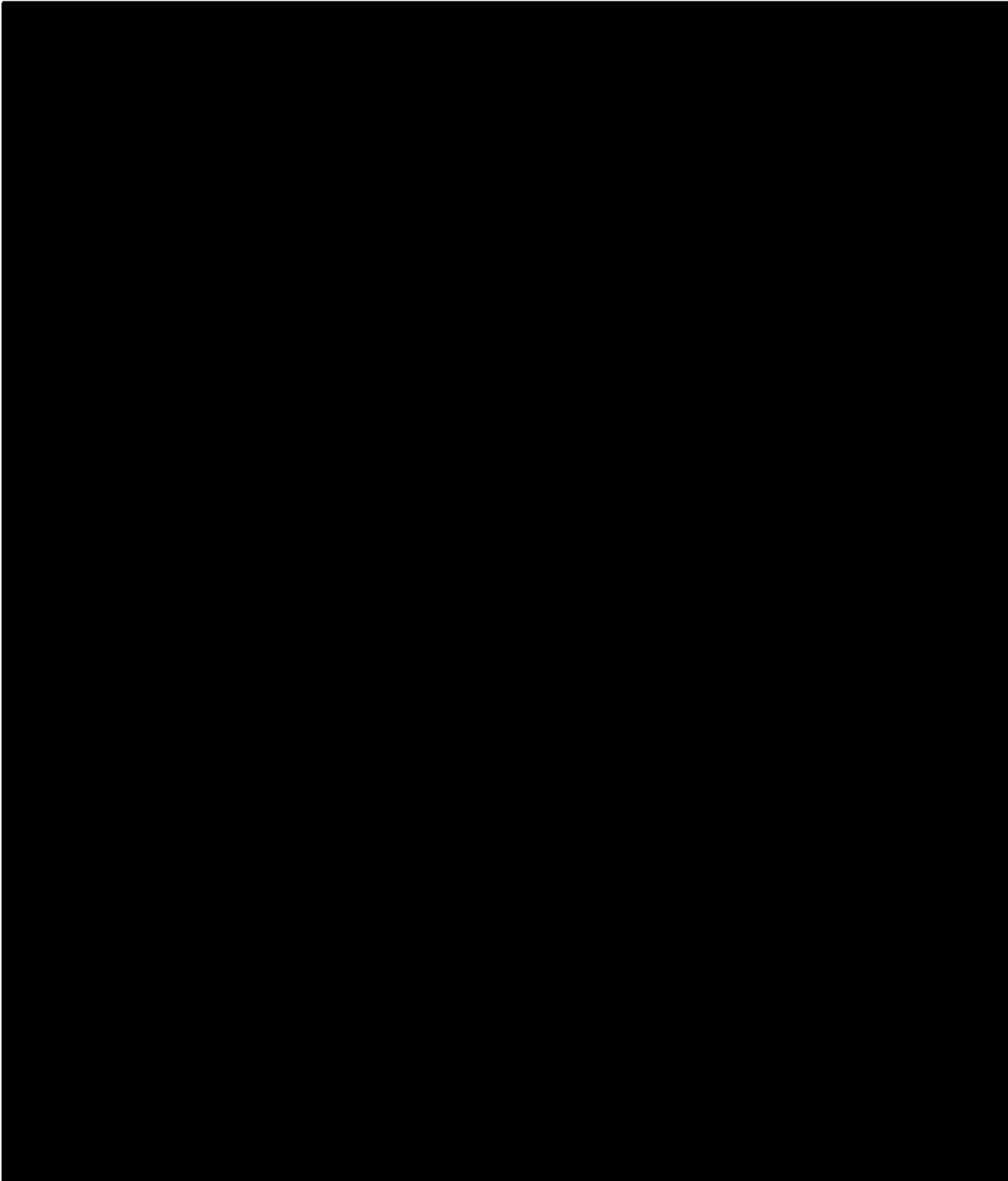
CONFIDENTIAL-PARTIAL REDACTION



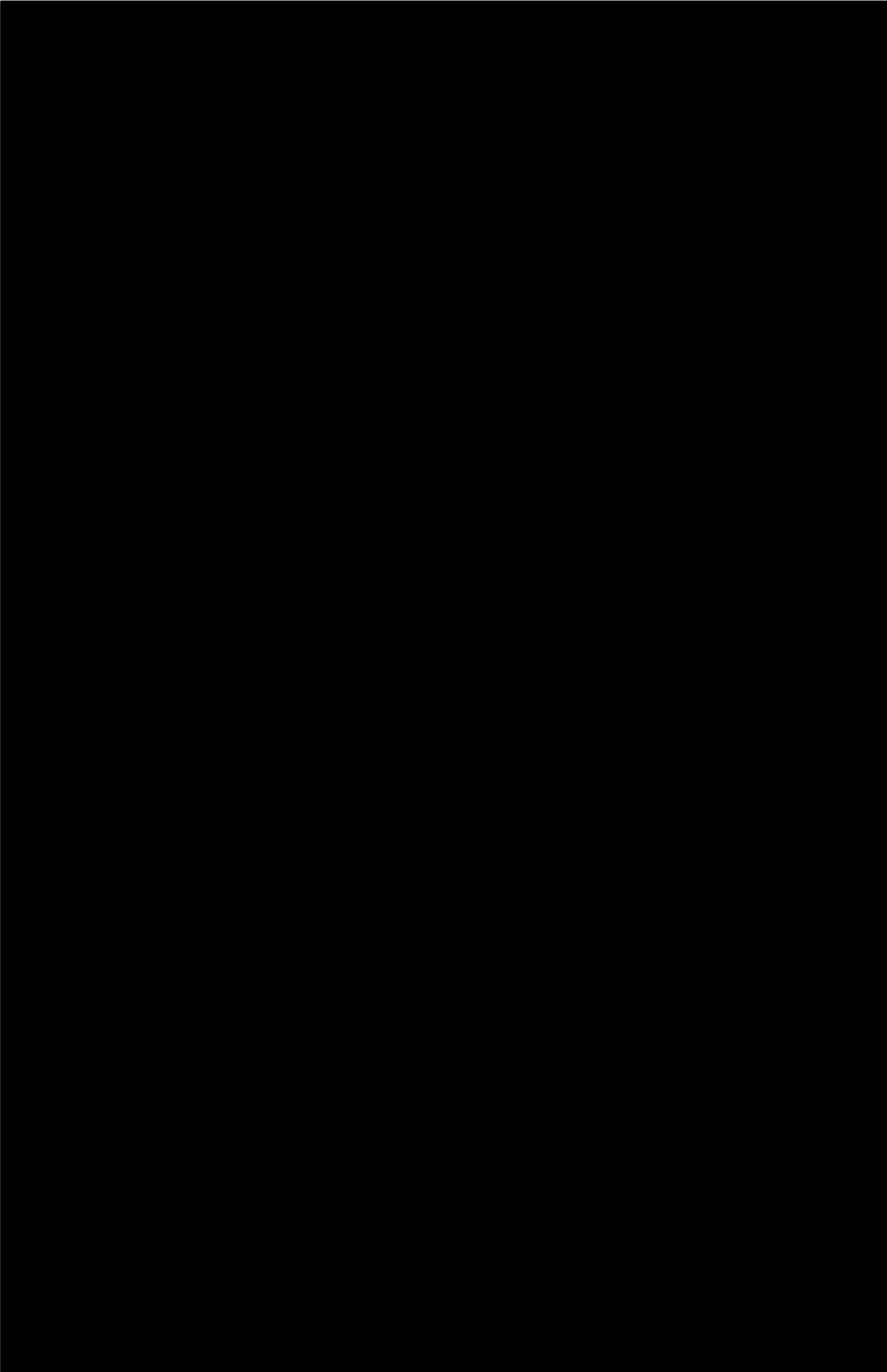
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CONFIDENTIAL-PARTIAL REDACTION

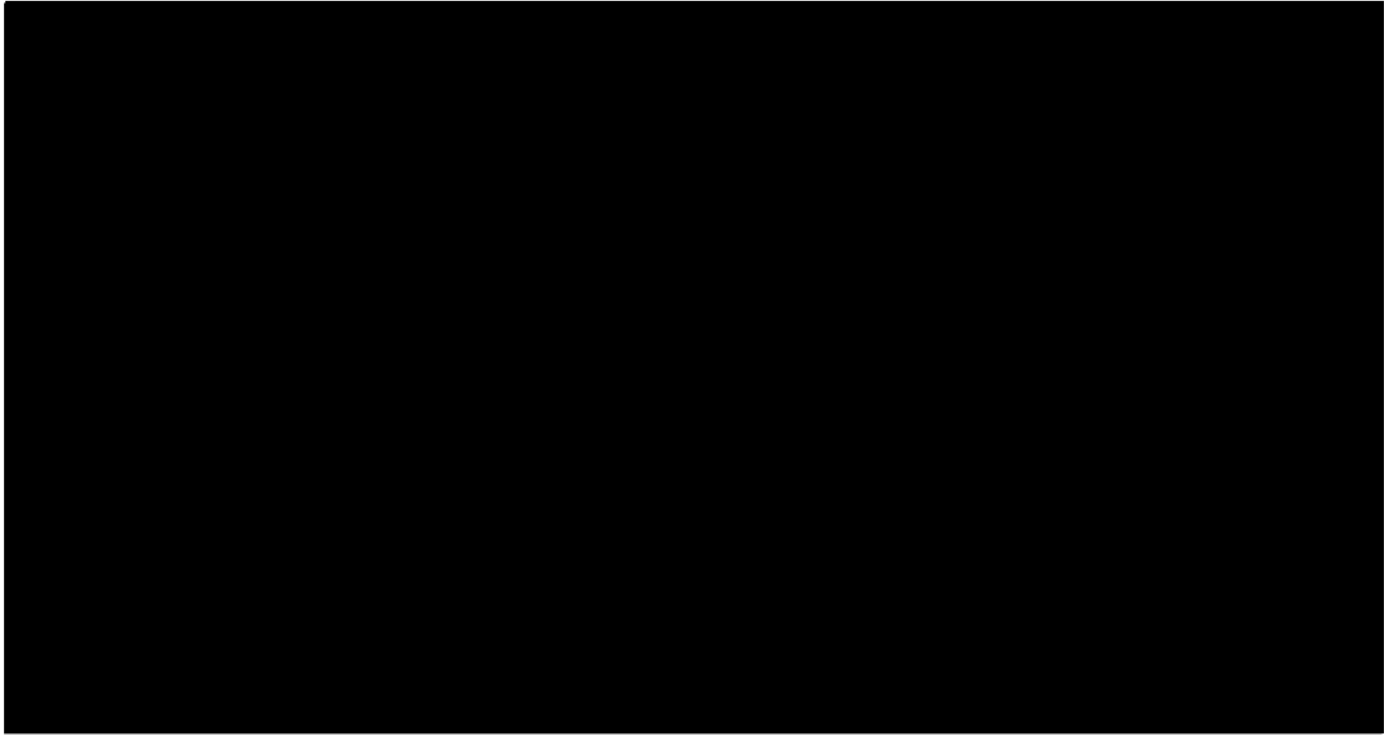
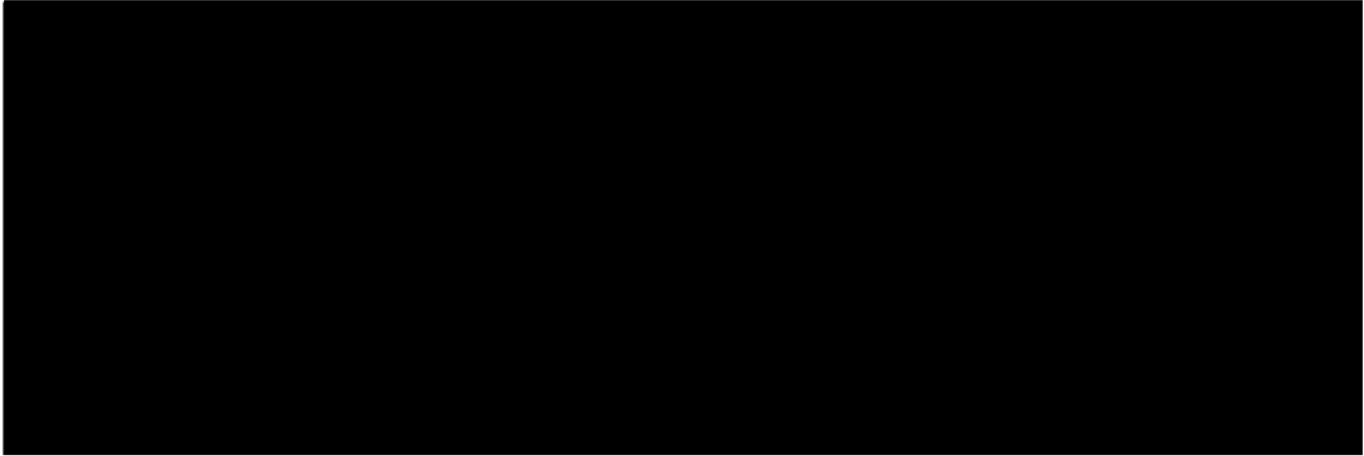


CONFIDENTIAL-PARTIAL REDACTION



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CONFIDENTIAL-PARTIAL REDACTION



Franchisees are independent contractors who control their employment matters and control the manner and means of the daily operation of their stores. Franchisees are obligated to follow the requirements of the franchise agreements they signed, most of which generally require purchasing certain merchandise from recommended vendors and carrying certain designated items and categories. 7-Eleven Confidential and Proprietary Information

CONFIDENTIAL-PARTIAL REDACTION

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PUBLIC

EXHIBIT 12

RX 1205

7_ELEVEN_ALTRIA_00015336

**[REDACTED IN ITS
ENTIRETY]**

EXHIBIT 13

ATTACHMENT TO PX 3205

7_ELEVEN_ALTRIA_00005438

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 14

ATTACHMENT TO PX 3205

7_ELEVEN_ALTRIA_00005439

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 15

RX119/ATTACHMENT TO

PX3205

7_ELEVEN_ALTRIA_00005440

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 16

RX1700

7_ELEVEN_ALTRIA_00000901

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 17

PX1701

7_ELEVEN_ALTRIA_00000904

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 18

RX1212

7_ELEVEN_ALTRIA_00014311

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 19

RX1193

7_ELEVEN_ALTRIA_00008205

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 20

RX1194

7_ELEVEN_ALTRIA_00008206

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 21

RX1195

7_ELEVEN_ALTRIA_00008207

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 22

RX1215

7_ELEVEN_ALTRIA_00008185

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 23

RX1706

**7_ELEVEN_ALTRIA_00013872-
00013873**

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 24

RX1706

7_ELEVEN_ALTRIA_00013874

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 25

RX1706

7_ELEVEN_ALTRIA_00013875

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 26

RX1706

7_ELEVEN_ALTRIA_00013876

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 27

RX1706

7_ELEVEN_ALTRIA_00013877

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 28

RX1706

7_ELEVEN_ALTRIA_00013878

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 29

RX1706

7_ELEVEN_ALTRIA_00013879

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 30

RX1706

7_ELEVEN_ALTRIA_00013880

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 31

RX1706

7_ELEVEN_ALTRIA_00013881

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 32

RX1706

7_ELEVEN_ALTRIA_00013882

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 33

RX1706

7_ELEVEN_ALTRIA_00013883

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 34

RX1706

7_ELEVEN_ALTRIA_00013884

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 35

RX1708

7_ELEVEN_ALTRIA_00018194

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 36

RX1708

7_ELEVEN_ALTRIA_00018195

**[REDACTED IN ITS
ENTIRETY]**

PUBLIC

EXHIBIT 37

PARTIAL REDACTION

PX8001

Declaration of Jack Stout

DECLARATION OF JACK STOUT
SENIOR VICE PRESIDENT – MERCHANDISING AND DEMAND CHAIN
7-ELEVEN INC.

I. BACKGROUND

1. 7-Eleven was founded in Dallas, TX in 1927, and has since grown to become the largest convenience store chain in the United States and the world. There are approximately 9,300 7-Eleven stores located in the United States, approximately 80% of which are franchised and 20% of which are corporate owned. There are approximately 70,000 stores worldwide.
2. I have been Senior Vice President for Merchandising and Demand Chain at 7-Eleven since 2017. In my role, I manage the merchandising division, which is responsible for sourcing and pricing of products sold at our stores. I also manage 7-Eleven’s demand chain, which is responsible for getting products from suppliers to stores. I have been at 7-Eleven since 2003, and have held a number of other roles in operations, strategic planning, and merchandising during that time.
3. Prior to my time at 7-Eleven, I worked for TXU Energy and Booz Allen & Hamilton, and I served as an Officer in the United States Air Force. I have an MBA from Duke University Fuqua School of Business, an MS in Applied Statistics from Wright State University, and a BS in Mathematics from Duke University.

II. TOBACCO SALES AT 7-ELEVEN

4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

CONFIDENTIAL-PARTIAL REDACTION

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. [REDACTED]
9. 7-Eleven has regional pricing zones for combustible cigarettes, [REDACTED]
10. [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. [REDACTED]
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. [REDACTED]
[REDACTED]
[REDACTED]


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

* * *

CONFIDENTIAL-PARTIAL REDACTION

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

EXHIBIT 38

PX7044

PARTIAL REDACTION

Deposition of Jack Stout

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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.

CONFIDENTIAL-PARTIAL REDACTION

Page 2

1
 2 A P P E A R A N C E S: (All appearing remotely)
 3
 4 FEDERAL TRADE COMMISSION
 5 Attorneys for Complainant
 6 600 Pennsylvania Avenue, NW
 7 Washington, D.C. 20580
 8 BY: JOONSUK LEE, ESQ.
 9 MICHAEL LOVINGER, ESQ.
 10 202.326.2289
 11 jlee4@ftc.gov
 12
 13
 14 WILKINSON STEKLOFF
 15 Attorneys for Respondent Altria Group, Inc.
 16 2001 M Street, NW
 17 10th Floor
 18 Washington, D.C. 20036
 19 BY: JOHN JAMES SNIDOW, ESQ.
 20 ALISON ZOSCHAK, ESQ.
 21 JAMES ROSENTHAL, ESQ.
 22 HAYTER WHITMAN, ESQ.
 23 202.847.4000
 24 jsnidow@wilkinsonstekloff.com
 25

Page 4

1
 2 A P P E A R A N C E S: (Cont'd)
 3
 4 McKOOL SMITH
 5 Attorneys for 7-Eleven and the Witness
 6 300 Crescent Court, Suite 1500
 7 Dallas, Texas 75201
 8 BY: ROBERT M. MANLEY, ESQ.
 9 LISA HOUSIERE, ESQ.
 10 214.978.4226
 11 rmanley@mckoolsmith.com
 12
 13
 14 ALSO PRESENT:
 15 AMANDA CHILDS, ESQ., House Counsel, 7-Eleven
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1
 2 A P P E A R A N C E S: (Cont'd)
 3
 4 WACHTELL LIPTON ROSEN & KATZ
 5 Attorneys for Respondent Altria Group, Inc.
 6 51 West 52nd Street
 7 New York, New York 10019
 8 BY: ADAM SOWLATI, ESQ.
 9 212.403.1062
 10 asowlati@wlrk.com
 11
 12
 13 CLEARY GOTTlieb STEEN & HAMILTON LLP
 14 Attorneys for Respondent JUUL Labs, Inc.
 15 2112 Pennsylvania Avenue, NW
 16 Washington, D.C. 20037
 17 BY: CHINWE CHUKWUOGO, ESQ.
 18 202.974.1500
 19 cchukwuogo@cgsh.com
 20
 21
 22
 23
 24
 25

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

CONFIDENTIAL-PARTIAL REDACTION

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:

CONFIDENTIAL-PARTIAL REDACTION

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?

CONFIDENTIAL-PARTIAL REDACTION

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

CONFIDENTIAL-PARTIAL REDACTION

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

CONFIDENTIAL-PARTIAL REDACTION

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.

CONFIDENTIAL-PARTIAL REDACTION

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]

Page 32

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.

Page 31

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 [REDACTED]

3 [REDACTED]

4 Q. [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 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.

Page 33

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

CONFIDENTIAL-PARTIAL REDACTION

Page 54

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

Page 55

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

Page 56

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?

Page 57

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

CONFIDENTIAL-PARTIAL REDACTION

Page 58

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

Page 59

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

Page 60

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.

Page 61

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

CONFIDENTIAL-PARTIAL REDACTION

Page 66

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

Page 67

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,

Page 68

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]

Page 69

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]

CONFIDENTIAL-PARTIAL REDACTION

Page 82

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

Page 83

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

Page 84

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 @njoy.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

Page 85

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.

CONFIDENTIAL-PARTIAL REDACTION

Page 86

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 gambling 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?

Page 87

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.

Page 88

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,

Page 89

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 --

CONFIDENTIAL-PARTIAL REDACTION

Page 90

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

Page 91

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 Did I read that right?
 3 A. You read it correctly.
 4 Q. What 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.

Page 92

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

Page 93

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

CONFIDENTIAL-PARTIAL REDACTION

Page 94

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

Page 95

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

Page 96

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.

Page 97

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.

CONFIDENTIAL-PARTIAL REDACTION

Page 98

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

Page 99

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

Page 100

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

Page 101

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

CONFIDENTIAL-PARTIAL REDACTION

Page 106

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?

Page 107

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?

Page 108

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

Page 109

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.

CONFIDENTIAL-PARTIAL REDACTION

Page 110

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

Page 111

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"?

Page 112

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.

Page 113

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. [REDACTED]
 25 [REDACTED]

CONFIDENTIAL-PARTIAL REDACTION

Page 142

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

Page 143

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]

Page 144

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

Page 145

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?

CONFIDENTIAL-PARTIAL REDACTION

Page 146

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.

Page 147

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 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q. So if we go back to

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 148

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 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

Page 149

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

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]

Page 150

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 Q. Do you know what e-cigarette brands

13 Reynolds is selling at 7-Eleven today?

14 A. I always run the risk of getting

15 these wrong, but if my recollection is

16 correct, they're the seller of the Vuse brand

17 and related product lines.

18 Q. Thank you.

19 And the next one is Imperial.

20 Imperial is number three player at

21 7-Eleven for combustible cigarettes; is that

22 correct understanding?

23 A. That's my understanding, yes. The

24 they sell the Winston and Kool brands.

25 Q. Thank you.

Page 152

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 shelves when they discontinued those brands.

3 I'm unaware of any other brands.

4 Q. Thank you.

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]

Page 151

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Do you happen to know what

3 electronic cigarette brands Imperial is

4 selling at 7-Eleven today?

5 A. Again, at the risk of being

6 incorrect, I believe their primary brand is

7 the blu brand. I didn't study all my brands

8 for this deposition.

9 Q. Thank you. This is not a memory

10 test, but I just wanted to ask about those.

11 If you can trust my representation, I think

12 you are doing great here.

13 A. Okay. I mean, to be honest, this is

14 a little challenging at times because the

15 level of detail we're getting into sometimes

16 is a level of detail I don't operate at on a

17 day-to-day basis in our business. But I'll do

18 my best.

19 Q. Understood. Thanks very much for

20 your patience here.

21 And today, does Altria have any

22 electronic cigarette brand sold at 7-Eleven?

23 A. I'm actually not sure. I don't know

24 of any, off the top of my head. I know we had

25 pulled the MarkTen and MarkTen Elite off the

Page 153

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY

2 Q. [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] I

15 don't know. But I know that we would not be

16 selling any flavored electronic cigarettes,

17 and that would remain true, as that remains

18 against FDA regulations.

19 Q. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

CONFIDENTIAL-PARTIAL REDACTION

Page 170

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 7 Q. All right. Let's start at a high
 8 level.
 9 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Page 172

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 courteousness of which you've conducted
 3 this. It's been a good experience for me,
 4 being a first-time deponent here, and I
 5 was a little bit not sure what to expect,
 6 but this has been pretty painless, and I
 7 appreciate both of you kind of keeping it
 8 that way.
 9 MR. SNIDOW: Thank you, Mr. Stout.
 10 MR. LEE: Thank you, Mr. Stout.
 11 Have a great year at the stores.
 12 (Time noted: 3:34 p.m.)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 171

1 J. STOUT - OUTSIDE COUNSEL EYES ONLY
 2 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 13 MR. SNIDOW: With that, I think I
 14 have no further questions.
 15 Mr. Stout, thank you so much for
 16 your time. We truly appreciate it.
 17 MR. LEE: I don't have any question
 18 either. Thank you.
 19 THE WITNESS: Happy to help both
 20 sides here. You know, I appreciate the
 21 thoroughness of the questioning, but also
 22 the accommodations you guys have made to
 23 provide these documents in paper. I
 24 cannot imagine reading and referring to
 25 this stuff on screen, and also just the

Page 173

1 A C K N O W L E D G M E N T
 2
 3 STATE OF NEW YORK)
 4 :SS
 5 COUNTY OF)
 6
 7 I, JACK STOUT, hereby certify that I
 8 have read the transcript of my testimony taken
 9 under oath in my deposition of March 10, 2021;
 10 that the transcript is a true, complete and
 11 correct record of my testimony, and that the
 12 answers on the record as given by me are true
 13 and correct.
 14
 15
 16
 17 _____
 18 JACK STOUT
 19
 20 Signed and subscribed to before
 21 me, this day of _____, 20__.
 22
 23 _____
 24 Notary Public, State of New York
 25

PUBLIC
EXHIBIT 39
PROTECTIVE ORDER

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.

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

In the Matter of

Altria Group, Inc.

a corporation;

And

JUUL Labs, Inc.

a corporation.

DOCKET NO. 9393**[PROPOSED] ORDER**

Upon consideration of Non-Party 7-Eleven, Inc.'s ("7-Eleven")'s Motion for *In Camera* Review, it is HEREBY ORDERED that the following documents are to be provided indefinite *in camera* treatment:

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
Attachment to PX3204	Spreadsheet of product analysis focus item ranking	03/2018	7-ELEVEN_ALTRIA_00013385	7-ELEVEN_ALTRIA_00013385
Attachment to Attachment	Spreadsheet of product analysis focus item ranking from 03/05/2018 to 03/12/2018	03/2018	7-ELEVEN_ALTRIA_00013386	7-ELEVEN_ALTRIA_00013386
RX119/Attachment to PX3205	2019 Tobacco Business Unit Plan by Shazad Hooda / Phil	10/02/2018	7-ELEVEN_ALTRIA_00005440	7-ELEVEN_ALTRIA_00005440

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	Wilhelm			
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	02/08/2018	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_0008205
RX1194	JUUL Partnership Discussion	08/23/2018	7-ELEVEN_ALTRIA_00008206	7-ELEVEN_ALTRIA_0008206
RX1195	JUUL VENDOR PLAYBOOK	08/2018	7-ELEVEN_ALTRIA_00008207	7-ELEVEN_ALTRIA_0008207

Upon consideration of Non-Party 7-Eleven, Inc.’s (“7-Eleven”)’s Motion for *In Camera* Review, it is HEREBY ORDERED that the following documents are to be provided indefinite *in camera* treatment for five years:

Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
PX3204	Email from Phil Wilhelm to Michael Abernathy, Danielle Houman, Michael Jester,	03/15/2018	7_ELEVEN_ALT RIA_00013381	7_ELEVEN_ALTRIA_0001 3383

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	et al. re: My thought on My BLU and the Edg POD category w/Attach: #8 Penetration Report - Multiple Slins My BLU by Market last week.xis; #8 Penetration Report -Multiple Slins			
Attachment to PX3204	Spreadsheet of order units from 2/19/2018 through 3/12/2018	03/2018	7-ELEVEN_ALTRIA_00013384	7-ELEVEN_ALTRIA_00013384
Attachment to PX3205	Spreadsheet of order units from February-March 2018 of the MyBLU pods	03/2018	7-ELEVEN_ALTRIA_00005441	7-ELEVEN_ALTRIA_00005441
Attachment to PX3205	Spreadsheet of packaged foods total per year sales from 2015-2018	03/2018	7-ELEVEN_ALTRIA_00005442	7-ELEVEN_ALTRIA_00005442
Attachment to PX3205	Spreadsheet of categories on changes in sales of different products	03/2018	7-ELEVEN_ALTRIA_00005443	7-ELEVEN_ALTRIA_00005443
RX1702	Email from G. Preston to P.	04/22/2020	7_ELEVEN_ALT	7_ELEVEN_ALTRIA_0000

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	<p>Wilhelm, K.</p> <p>Sonal, D.</p> <p>Calzini, J.</p> <p>Cortabitarte re: Vuse</p> <p>Alto Pods List Price Change & Solo, Ciro</p> <p>& Vibe PUK Transition attaching Alto</p> <p>Price Change, MRMRPS, VUSE List</p> <p>Price Changes</p>		RIA_00002466	2468
RX1703	<p>Email from P. Wilhelm to S. Ahuja re</p> <p>New Item sheets attaching Info Dispatch -</p> <p>NJOY Device</p>	04/22/2020	7_ELEVEN_ALT RIA_00004632	7_ELEVEN_ALTRIA_0000 4635
RX1704	NJOY Info Dispatch	04/03/2020	7- ELEVEN_ALTRI A_00004636	7- ELEVEN_ALTRIA_000464 1
RX1205	7-Eleven Business Review	01/29/2020	7_ELEVEN_ALT RIA_00015336	7_ELEVEN_ALTRIA_0001 5336
Attachment to PX3205	Spreadsheet of Tobacco Team 2018 Goals	2018	7- ELEVEN_ALTRI A_00005438	7- ELEVEN_ALTRIA_000054 38
Attachment	Non Foods Team	2018	7- ELEVEN ALTRI	7- ELEVEN ALTRIA 000054

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
to PX3205	2018 Goals		A_00005439	39
RX 1700	Email from K. Arjoonsingh to P. Wilhelm re Follow-up: blu Performance Update	09/06/2019	7-ELEVEN_ALTRIA_00000901	7-ELEVEN_ALTRIA_00000901
RX1701	Slide titled "\$1 device showing high volume growth & supporting pod pack growth" re Follow-up: BLU Performance Update	09/2019	7-ELEVEN_ALTRIA_00000904	7-ELEVEN_ALTRIA_00000904
RX1212	MarkTen Promo Master Offers	03/16/2018	7-ELEVEN_ALTRIA_00014311	7-ELEVEN_ALTRIA_00014311
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	02/08/2018	7-ELEVEN_ALTRIA_00008205	7-ELEVEN_ALTRIA_00008205

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
RX1194	JUUL Partnership Discussion	08/23/2018	7-ELEVEN_ALTRIA_00008206	7-ELEVEN_ALTRIA_00008206
RX1195	JUUL VENDOR PLAYBOOK	08/2018	7-ELEVEN_ALTRIA_00008207	7-ELEVEN_ALTRIA_00008207
RX1215	Email from M. Berger to P. Wilhelm re: a few follow-up questions from the Korea team	07/22/2017	7-ELEVEN_ALTRIA_000008185	7-ELEVEN_ALTRIA_00008185
RX1706	Email extending promotions for Elite	04/26/2018	7-ELEVEN_ALTRIA_00013872	7-ELEVEN_ALTRIA_00013873
RX1706	Attachments to Email extending promotions for Elite	03/2018-7/2018	7-ELEVEN_ALTRIA_00013874	7-ELEVEN_ALTRIA_00013874
RX1706	Attachments to Email extending promotions for Elite	03/2018-08/2018	7-ELEVEN_ALTRIA_00013875	7-ELEVEN_ALTRIA_00013875
RX1706	Attachments to Email extending promotions for Elite	03/2018-08/2018	7-ELEVEN_ALTRIA_00013876	7-ELEVEN_ALTRIA_00013876
RX1706	Attachments to Email extending promotions for Elite	03/2018-08/2018	7-ELEVEN_ALTRIA_00013877	7-ELEVEN_ALTRIA_00013877
RX1706	Attachments to Email extending	05-2018-08/2018	7-ELEVEN_ALTRIA_00013878	7-ELEVEN_ALTRIA_00013878

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Exhibit No.	Description	Date	Beginning Bates No.	Ending Bates No.
	promotions for Elite		A_00013878	78
RX1706	Attachments to Email extending promotions for Elite	05/2018-08/2018	7-ELEVEN_ALTRIA_00013879	7-ELEVEN_ALTRIA_00013879
RX1706	Attachments to Email extending promotions for Elite	03/2018-08/2018	7-ELEVEN_ALTRIA_00013880	7-ELEVEN_ALTRIA_00013880
RX1706	Attachments to Email extending promotions for Elite	05/2018-08/2018	7-ELEVEN_ALTRIA_00013881	7-ELEVEN_ALTRIA_00013881
RX1706	Attachments to Email extending promotions for Elite	05/2018-08/2018	7-ELEVEN_ALTRIA_00013882	7-ELEVEN_ALTRIA_00013882
RX1706	Attachments to Email extending promotions for Elite	05/2018-08/2018	7-ELEVEN_ALTRIA_00013883	7-ELEVEN_ALTRIA_00013883
RX1706	Attachments to Email extending promotions for Elite	05/2018-08/2018	7-ELEVEN_ALTRIA_00013884	7-ELEVEN_ALTRIA_00013884
RX1708	Attachment to Email re Elite \$8.99 Promotional Offer	03/2018	7-ELEVEN_ALTRIA_00018194	7-ELEVEN_ALTRIA_00018194
RX1708	Attachment to Email re Elite 19.99 promotional	03/2018	7-ELEVEN_ALTRIA_00018195	7-ELEVEN_ALTRIA_00018195

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

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2021.

THE HONORABLE D. MICHAEL CHAPPELL
CHIEF ADMINISTRATIVE LAW JUDGE

PUBLIC**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 May 7, 2021, I caused to be served the following documents on the parties listed below by the manner indicated:

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

The Office of the Secretary: (via electronic mail)

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

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

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

Federal Trade Commission (via electronic mail)

Aaron Ross
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Complaint Counsel (via electronic mail)

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

PUBLIC

Washington, DC 20580 (202) 326-2289

Counsel for JUUL Labs, Inc. (via electronic mail)

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

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

Counsel for Altria Group, Inc. (via electronic mail)

Marc Wolinsky
Jonathan Moses
Kevin Schwartz
Adam Goodman
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Tel: 212-403-1000
MWolinsky@wlrk.com
JMMoses@wlrk.com
KSchwartz@wlrk.com

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ALGoodman@wlrk.com

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

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

/s/ Lisa Houssiere

Lisa Houssiere