

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**

**MOTION OF THIRD PARTY ITG BRANDS, LLC FOR *IN CAMERA***  
**TREATMENT**

Pursuant to 16 C.F.R. § 3.45(b), third party ITG Brands, LLC (“ITG”), by and through its undersigned counsel, respectfully moves for *in camera* treatment of 21 competitively sensitive and confidential business documents (“Confidential Documents”) produced by ITG in response to two subpoenas *duces tecum*, a subpoena *ad testificandum* and a civil investigative demand issued by the Federal Trade Commission (“FTC”), as well as a subpoena *duces tecum* issued by Respondents Altria Group, Inc. (“Altria”) and JUUL Labs, Inc. (“JUUL”) in the above-captioned matter. In addition, ITG moves for *in camera* treatment of portions of two declarations and one deposition testimony transcript (“Confidential Testimony” and, together with the Confidential Documents, the “Confidential Materials”) provided by ITG in this proceeding.

The FTC has informed ITG that it intends to offer 25 of ITG’s documents, as well as two declarations and the full transcript of one deposition testimony into evidence in the administrative trial in the above-captioned matter. *See* Letter from James Abell to Elaine Johnston (Apr. 19, 2021), attached hereto as Exhibit A. In addition, Respondents Altria and JUUL have informed ITG that they intend to offer 18 of ITG’s documents, as well as the two declarations and full deposition

transcript, into evidence in the same proceeding. *See* Letter from Tanya Freeman to Elaine Johnston (Apr. 22, 2021), attached hereto as Exhibit B; Supplemental Letter from Tanya Freeman to Elaine Johnston (May 3, 2021), attached hereto as Exhibit C. For the reasons discussed in this motion, ITG requests that this Court afford the Confidential Materials, unredacted copies of which are attached as Exhibits F-CC, *in camera* treatment for the periods of time as set forth in Section II, *infra*.

All of the Confidential Materials contain highly confidential and competitively sensitive information that, if disclosed to the public or ITG's competitors, could cause serious and significant competitive injury to ITG. In support of this motion, ITG relies upon the Declaration of Robert E. Wilkey, General Counsel and Corporate Secretary of ITG, attached hereto as Exhibit D (the "Wilkey Declaration"). ITG's counsel has notified counsel for the FTC and counsel for Respondents Altria and JUUL about its intentions to file this motion; the FTC stated that it will not object to this motion, while Respondents' counsel has not indicated whether they plan to object to this motion.

**I. CONFIDENTIAL MATERIALS FOR WHICH *IN CAMERA* PROTECTION IS REQUESTED**

*In camera* protection is requested for the following Confidential Materials for the periods of time as set forth below:

<b>Exhibit No.<sup>1</sup></b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Bates Range</b>	<b>Requested Duration of <i>In Camera</i> Treatment</b>
PX3004; RX 1735; RX1227	Portfolio Review & Rationalization	August 2018	ITG_00001702	Five years
PX3005; RX1736	Pricing Update	December 2018	ITG_00001714	Five years
PX3014	Email from Jeff Eldridge to James Jameson, Mark Kornowski, Kent Mills, et al. re: Fiscal Year 2019 Targets and Plan Follow-up w/Attach: 2019 Targets by Division.xlsx	November 8, 2018	ITG_00000203- ITG_00000205	Five years
PX3018; RX1734	Email from Fred Paternostro to Alexander Mueller, John Torru, Rod Lane, et al. re: Strategic Meeting Slides. w/Attach: V2 2018-10 Sales Strategy_10-31-18.pptx	November 1, 2018	ITG_00001048- ITG_00001057	Five years
RX1737; RX1230	ITG Brands Presentation on E-Vapor entitled EVP Business	March 2020	ITG_00002131	Five years
PX3059	blu Comms and Product Tracking Brand Imagery 6.8.20.pptx	June 8, 2020	ITG_00002147	Five years
RX1738	ITG Brands Presentation on E-Vapor	October 2020	ITG_00002213- ITG_00002222	Five years
RX1740; RX1231	ITG Brands / Fontem Presentation re blu Incidence and Equity Tracker	June 2019	ITG_00002346	Five years
RX1741	Perceptions of Blu	August 2020	ITG_00002658	Five years

<sup>1</sup> Documents beginning with “PX” are those which FTC intends to offer at trial and documents beginning with “RX” are those which Respondents Altria and JUUL intend to offer at trial. Counsel for Respondents has indicated that some ITG documents on Altria’s proposed exhibit list appear twice as duplicate versions. Thus, for those such documents, both “RX” exhibit numbers have been provided.

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Bates Range</b>	<b>Requested Duration of <i>In Camera</i> Treatment</b>
PX3063	Formulation Optimisation	July 12, 2019	ITG_00003398- ITG_00003399	Five years
PX3065	ITGB 2021 Choice Growth Contract - Retail	September 28, 2020	ITG_00004071	Five years
PX3066; RX1742; RX1233	US Business Update	December 2019	ITG_00004073	Five years
RX1743; RX1225	Portfolio Review & Rationalization	August 1, 2018	ITG_00004146	Five years
PX3026	Excerpts taken from Premarket Tobacco Product Application for myblu Electronic Nicotine Delivery	April 24, 2020	ITG_00004452- ITG_00004491	Indefinite
PX3069	Optimized Batter and Automated Wick & Coil Introduction	January 30, 2020	ITG_00004552	Indefinite
PX3071	Income Statements	November 5, 2020	ITG_00004568	Five years
RX1744	ITG Brands Presentation on blu Performance Analysis	March 18, 2020	ITG_00004668	Five years
RX1745	blu Summary	January 7, 2020	ITG_00004670	Five years
RX1746	\$1 Device Expansion Recommendations	August 29, 2019	ITG_00004781	Five years
RX1747; RX1237	Q4 Sales Initiative Update	August 14, 2019	ITG_00004785	Five years
PX3105	FY19 Joint Business Planning	October 4, 2018	ITG_00005193- ITG_00005258	Five years
PX7012; RX0091	Jeff Eldridge Deposition Testimony	December 14, 2020		Five years
PX8010; RX0096	Carole Folmar Declaration	April 1, 2020		Five years
PX8011; RX0090	Jeff Eldridge Declaration	April 1, 2020		Five years



## II. DISCLOSURE OF THE CONFIDENTIAL MATERIALS WOULD CAUSE SERIOUS INJURY TO ITG

### A. LEGAL STANDARD

Pursuant to Rule 3.45(b), *in camera* treatment of materials is appropriate if “its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). The movant must show that the documents for which *in camera* protection is sought are “sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury.” *In re Jerk, LLC*, 2015 FTC LEXIS 39, at \*2 (Feb. 23, 2015) (quoting *In re General Foods Corp.*, 95 F.T.C. 352, 355 (Mar. 10, 1980) (quotations omitted)). Courts generally attempt “to protect confidential business information from unnecessary airing.” *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In evaluating whether documents and information are sufficiently secret and material such that disclosure would result in serious competitive injury, courts consider the following six factors: (1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977). “There is a presumption that *in camera* treatment will not be provided to information that is three or more years old.” *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157, at \*5 (Nov. 22, 2000).

## B. CONFIDENTIAL DOCUMENTS

The Confidential Documents contain proprietary, secret, competitively sensitive data and information regarding ITG's business which is shared on a confidential basis to a small group of officers, directors, senior-level employees, and outside counsel of ITG who have reason to access the information in order to perform their roles and responsibilities. Wilkey Decl. ¶¶ 33-34. All of these documents are the product of tremendous time, energy, and financial resource at ITG and for this reason, ITG has taken all reasonable precautions and safeguards in maintaining the secrecy of such documents. *Id.* ¶¶ 33-35. The Confidential Documents reside in restricted file sharing databases, access to which is limited only to authorized individuals with reason to know the contents of the documents. *Id.* ¶ 33. In producing these documents to the FTC and Respondents, ITG made sure to designate them as "Confidential" and noted that it was producing such documents pursuant to the Protective Order of this proceeding and the FTC's statutes and rules regarding confidentiality.

The information contained in the Confidential Documents is highly material to ITG's business. All of the Confidential Documents for which ITG seeks *in camera* treatment are less than three years old and the disclosure of such documents would result in the loss of a significant business advantage of ITG. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"). The Wilkey Declaration describes in detail the confidential and competitively sensitive nature of each Confidential Document. Wilkey Decl. ¶¶ 9-29. In sum, the Confidential Documents can be grouped by six categories of competitively sensitive information:

Category	Confidential Documents
Documents containing information relating to prices, rebates, promotions, and other offers	PX3004/RX1735/RX1227; PX3005/RX1736; PX3065; PX3066/RX1742/RX1233; RX1743/RX1225; RX1745; RX1746; RX1747/RX1237; and PX3105.
Documents containing information relating to pricing, sales, marketing, product, and other strategic initiatives	PX3004/RX1735/RX1227; PX3005/RX1736; PX3018/RX1734; PX3066/RX1742/RX1233; RX1743/RX 1225; RX1744; RX1745; RX1747/RX1237; and PX3105.
Documents containing information relating to customer contract terms, accounts, and customer-specific promotions	PX3014; RX1737/RX1230; RX1745; RX1746; RX1747/RX1237; and PX3105.
Documents containing information and analyses relating to consumer brand perceptions and preferences, buying patterns, complaints, and demographics	PX3059; RX1740/RX1231; RX1741; and PX3063.
Documents containing information relating to sales, costs, revenues, margins, and other key financial metrics	PX3004/RX1735/RX1227; PX3018/RX1734; RX1737/RX1230; RX1738; RX1743/RX 1225; PX3071; and RX1745.
Documents containing information relating to product formulations, designs, and other trade secret information	PX3026 and PX3069.

**1. Prices, rebates, promotions, and other offers**

ITG seeks *in camera* protection for a period of five years of several Confidential Documents which relate to ITG’s prices, rebates, promotions, and other offers. ITG is a tobacco company which markets and sells a broad portfolio of well-known cigarette, cigar, and e-vapor brands. Wilkey Decl. ¶ 7. Consumers of ITG’s tobacco products are extremely price-sensitive, and ITG regularly assesses its prices, rebates, and offers in order to aggressively compete against its competitors. *Id.* ¶¶ 8-9. Giving the public and ITG’s competitors access to this valuable information would cause serious competitive injury to ITG. If ITG’s competitors learn about its current and future prices, rebates, and promotions, then they could use this information to undercut ITG and take market share away from ITG. For these reasons, such pricing information is routinely afforded *in camera* protection by courts. *See, e.g., In the Matter of 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at \*5-6, \*11-12, \*20, \*24, \*27-28, \*30-31 (Aug. 8, 2016) (granting numerous third

party *in camera* motions to protect information relating to prices and rebates); *In re Otto Bock Healthcare N. Am.*, 2018 WL 3373830, at \*3, \*6-7, \*11, \*13-15 (July 2, 2018) (same).

## **2. Pricing, sales, marketing, product, and other strategic initiatives**

ITG seeks *in camera* protection for a period of five years of a number of Confidential Documents which discuss ITG's pricing, sales, marketing, and product strategies, in particular with respect to its blu portfolio of e-vapor products. By knowing these strategies, ITG's competitors could easily replicate or subvert ITG's competitive efforts. ITG has expended significant time and resource in developing these strategies, and by disclosing such information to its competitors, the value of these strategies is completely undermined. *See, e.g., 1-800 Contacts*, 2017 FTC LEXIS 55, at \*19 (granting motion for *in camera* treatment of documents relating to a non-party's "financial condition, pricing strategies, investment strategies, and techniques for marketing and advertising its products").

## **3. Customer contract terms, accounts, and customer-specific promotions**

ITG seeks five-year *in camera* protection of certain Confidential Documents which discuss key details about ITG's contracts and accounts, including information on customers' prices, volumes, products sold, rebate programs, volume incentive programs, and signage requirements. Giving ITG's competitors access to this valuable information would put them in a significantly better negotiating position and allow them to steal business from ITG. They would learn valuable insights about ITG's customers which they would not have otherwise known. Such competitively sensitive information is the prime example of the type of information afforded *in camera* protection under Rule 3.45(b). *See, e.g., Jerk*, 2015 FTC LEXIS 39, at \*12 (granting non-party motion to seek *in camera* treatment of "account dashboard, which contains information about consumer transactions for a particular merchant account"); *1-800 Contacts*, 2017 FTC LEXIS 55, at \*15-\*16 (granting non-party Google's motion for *in camera* treatment of documents relating to

“customer data and Google search query data, including keywords that customers bid on, costs-per-click bid by customer”).

#### **4. Consumer brand perceptions and preferences, buying patterns, complaints, and demographics**

ITG seeks *in camera* protection for a period of five years of four Confidential Documents which include comprehensive studies done by ITG or its consultants on consumer brand perceptions and preferences, buying patterns, complaints, and demographics. ITG has expended significant time, effort, and financial resources in developing these studies, which can be highly valuable in gaining key insights about consumers. Wilkey Decl. ¶¶ 15-18. Allowing ITG’s competitors to benefit from these expensive and comprehensive studies would result in a significant competitive injury to ITG. For example, from these documents, competitors would learn about the strengths and weaknesses of ITG’s products and the most common consumer complaints it receives. As a result, ITG’s competitors could respond by tailoring their own products and formulations to the competitive detriment of ITG. Consumer studies like these, therefore, are appropriate candidates for *in camera* protection. *See, e.g., 1-800 Contacts*, 2017 FTC LEXIS 55, at \*11-\*12 (granting motion for *in camera* treatment of documents relating to “internal analyses of customer demographics and buying patterns”); *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at \*5 (granting motion for *in camera* treatment of non-party documents “which reveal [moving party’s] internal analysis of its sales performance by product, self-evaluation of recent issues and customer complaints, and action plans”).

#### **5. Sales, costs, revenues, margins, and other key financial metrics**

ITG seeks *in camera* treatment for five years of a number of Confidential Documents which contain competitively sensitive financial information such as sales, costs, revenues, and gross margins. For example, several documents include detailed sales and output data by product, flavor,

sales channel, and customer. *See, e.g.,* Wilkey Decl. ¶¶ 9, 12, 13, 24, 26. These documents, if disclosed to ITG's competitors, would put ITG at a significant competitive disadvantage. Given that this data is all within the last three years, it could allow competitors to easily and accurately estimate ITG's current and future sales, costs, revenues, and margins. It would also allow them to adjust their own sales mix in order to more effectively compete against ITG. Such information should therefore be granted *in camera* treatment. *See, e.g., 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at \*9-\*26 (granting motions for *in camera* treatment of the following non-party documents among others: documents relating to "prices, sales and financial performance"; documents which "include financial statements that detail profit and loss"; and documents "which contain pricing strategies and data, sales data, revenues, documents concerning marketing strategies and budgets, and information on incentives, discounts, and rebates.").

#### **6. Product formulations, designs, and other trade secret information**

ITG seeks *in camera* treatment for an indefinite period of two Confidential Documents which contain information relating to product formulations, designs and other trade secret information. In determining the length of time for which *in camera* treatment is appropriate, "the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets." *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at \*2 (quoting *Hood*, 58 F.T.C. at 1189 (quotations omitted)). "Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged." *Id.* (citing multiple cases). Both documents for which ITG seeks indefinite *in camera* protection contain highly sensitive information regarding ITG's products, designs, and other trade secrets. PX3026 is an excerpt of ITG's Premarket Tobacco Product Applications ("PMTA") for its myblu Electronic Nicotine Delivery System Products submitted to the United States Food and Drug Administration ("FDA") on April 24, 2020.

Wilkey Decl. ¶ 22. The document contains highly sensitive trade secret information regarding ITG's blu products, including information about ingredients, product chemistry, and design. *Id.* PX3069 discusses in detail certain technical modifications made to certain blu devices and pod systems. *Id.* ¶ 23. In an industry where consumers' choices are so heavily influenced by the product and design features of each competitive offering, allowing ITG's competitors to access such valuable trade secret information would cause serious competitive injury to ITG. It would not only give ITG's competitors highly valuable insights into its products and designs but also undermine the significant R&D investment that ITG has made in its products. The competitive significance of these two documents is unlikely to decrease over time and thus indefinite *in camera* protection is warranted. *See, e.g., In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at \*13 (granting non-party motion for indefinite *in camera* treatment of documents which "reveal [moving party's] product design and development and include design specifications and drawings").

### **C. CONFIDENTIAL TESTIMONY**

The Confidential Testimony contains testimony from two senior level ITG employees with special access to, and special knowledge of, competitively sensitive information regarding ITG's business, including information in the Confidential Documents. Wilkey Decl. ¶¶ 30-32. For the reasons discussed below, ITG requests *in camera* treatment of portions of the Confidential Testimony for a period of five years.

#### **1. Deposition transcript**

ITG seeks *in camera* protection for the portions identified below of PX7012/RX0091, which is the full transcript of the videoconference deposition of Jeff Eldridge, Vice President, Area Central at ITG, taken on December 14, 2020 in response to a subpoena *ad testificandum* served upon ITG by the parties to this matter. During his deposition, Mr. Eldridge testified about his deep knowledge of ITG's business and the tobacco industry more generally, including his

views on ITG’s e-vapor products and pricing, the products and market positioning of Respondents Altria and JUUL, and the e-vapor industry more generally. Certain parts of his testimony concerned information that is highly competitively sensitive and known to Mr. Eldridge only by virtue of his senior and long-standing position at ITG. The disclosure of this information would cause ITG to lose a significant competitive advantage by providing detailed information about ITG’s competitively sensitive internal documents and processes. Specifically, the deposition discusses in detail sensitive and confidential business information regarding the following categories of competitively sensitive information:

<b>Category</b>	<b>Portions of Deposition Testimony</b>	<b>Confidential Documents Discussed</b>
Prices and sales channel strategies, including information reflected in the Confidential Documents	27:3-9; 49:25; 50:2-15; 65:16-25; 66:2-25; 67:2-25; 68:2-25; 69:2-10; 70:3-25; 71:2-25; 72:2-13; and 85:2-24	PX8011/RX0090; PX3004/RX1735/RX1227; and RX1743/RX1225
Marketing and promotional strategies, including information reflected in the Confidential Documents	131:16-25; 132:2-25; 133:2-25; 134:2-25; 135:4-25; 136:3-25; 137:2-11; 145:7-25; 146:3-4; 182:5-12; 183:5-18; 184:13-25; 185:2-19; 199:24-25; 200:2-25; 201:2-25; 202:2; 203:2-23; 212:13-25; and 213:2-4	PX8011/RX0090; PX3004/RX1735/RX1227; RX1743/RX1225; RX1746; and PX3018/RX1734
Customer research, including information reflected in the Confidential Documents	149:8-25	RX1741
Product research, development and analysis, including information reflected in the Confidential Documents	97:13-21 ; 150:2-25; 151:2-25; 152:2-25; 153:2-16; 155:14-23; 156:11-14; 172:23-25; and 173:2-14	PX8010/RX0096; RX1741; and PX8011/RX0090

ITG maintains the secrecy of this information by disclosing it only to those senior level employees, such as Mr. Eldridge, who have a specific need to know the information in order to



perform their duties and responsibilities. Similar to the Confidential Documents, ITG has taken all measures to protect the secrecy of the deposition testimony, and at the beginning of the deposition, it was stipulated that the transcript would be treated as “Confidential” and subject to the Protective Order in this proceeding. Eldridge Dep. 15:10-25. For these reasons, ITG requests that the above-cited excerpts receive five-year *in camera* treatment, as permitted under Rule 3.45(b). *See, e.g., In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602, at \*6-7 (granting non-party motion for *in camera* treatment of deposition transcript which addressed “[moving party’s] development process and strategy, [moving party’s] competitive market and technology process and strategy, [moving party’s] product costs and pricing, and [moving party’s] intellectual property and technology.”). The page and line numbers for which ITG seeks *in camera* treatment are summarized here:

27:3-9; 49:25; 50:2-15; 65:16-25; 66:2-25; 67:2-25; 68:2-25; 69:2-10; 70:3-25; 71:2-25; 72:2-13; 85:2-24; 97:13-21; 131:16-25; 132:2-25; 133:2-25; 134:2-25; 135:4-25; 136:3-25; 137:2-11; 145:7-25; 146:3-4; 149:8-25; 150:2-25; 151:2-25; 152:2-25; 153:2-16; 155:14-23; 156:11-14; 172:23-25; 173:2-14; 182:5-12; 183:5-18; 184:13-25; 185:2-19; 199:24-25; 200:2-25; 201:2-25; 202:2; 203:2-23; 212:13-25; and 213:2-4.

## **2. Declarations**

ITG seeks five-year *in camera* protection of Paragraph 7 of PX8010/RX0096, the declaration of Carole Folmar dated April 1, 2020, and Paragraphs 11, 15, 16, 17, 20, 21, 29, 30, 33, 34, and 35 of PX8011/RX0090, the declaration of Jeff Eldridge dated April 1, 2020. The identified paragraphs of the declarations contain extremely sensitive and confidential business information provided pursuant to third-party subpoenas served upon ITG by the parties to the matter. The disclosure of this information would cause ITG to lose a significant competitive advantage by providing detailed information about ITG’s competitively sensitive internal documents and processes as well as analysis by senior level company employees. In an effort to

safeguard the confidentiality of these documents, ITG requested at the time of production that the declarations remain confidential and non-public because of their competitively sensitive contents.

Ms. Folmar is the Senior Director of Product Integrity and Compliance and Associate General Counsel at ITG and has over a decade of experience in the tobacco industry. Wilkey Decl. ¶ 31. Paragraph 7 of Ms. Folmar's declaration includes competitively sensitive information regarding the amount of money expended by ITG in preparing its PMTA submissions to the FDA. *Id.* The above-cited paragraphs of Mr. Eldridge's declaration contain discussion of Mr. Eldridge's opinion on ITG's business and include competitively sensitive information regarding ITG's prices, promotions, customer accounts, sales channel strategies, research and development, and marketing plans. *Id.* ¶ 32. The public disclosure of these portions of the declarations would cause serious competitive harm to ITG because it would reveal not only information contained in the Confidential Documents but also analysis provided by senior level ITG employees of competitively sensitive information. For these reasons, ITG requests five-year *in camera* treatment of Paragraph 7 of Ms. Folmar's declaration and Paragraphs 11, 15, 16, 17, 20, 21, 29, 30, 33, 34, and 35 of Mr. Eldridge's declaration.

### **III. ITG'S STATUS AS A THIRD-PARTY WEIGHS IN FAVOR OF *IN CAMERA* TREATMENT**

*In camera* treatment is especially important in cases involving third party bystanders like ITG, who has produced thousands of pages of documents and provided the testimony of two employees in an effort to comply with the FTC's and Respondents' subpoenas and civil investigative demand. *Id.* ¶ 3. "There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. To that end, courts should give "special solicitude" to third parties seeking *in*

*camera* treatment, as doing so “encourages cooperation with future adjudicative discovery requests.” *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). Thus ITG’s status as a third party weighs in favor of granting *in camera* treatment of the Confidential Materials.

#### IV. CONCLUSION

For all of the foregoing reasons, and those set forth in the Wilkey Declaration, ITG respectfully requests that this Court grant this motion for *in camera* treatment for the Confidential Materials for the periods requested herein.

Dated: May 6, 2021

Respectfully submitted,

By: s/ M. Elaine Johnston

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*Counsel for ITG Brands, LLC*

## STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for ITG Brands, LLC (“ITG”) notified counsel for the Complainant the Federal Trade Commission (“FTC”) and counsel for Respondents Altria Group, Inc. (“Altria”) and JUUL Labs, Inc. (“JUUL”) via electronic mail on or about May 3, 2021 that ITG would be seeking *in camera* treatment of the Confidential Materials. Counsel for the FTC replied by e-mail indicating that they would not object to ITG’s motion. Counsel for Respondents have not indicated whether they plan to object to ITG’s motion.

Dated: May 6, 2021

By: s/ M. Elaine Johnston

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# EXHIBIT A

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

PUBLIC

WASHINGTON, D.C. 20580

Bureau of Competition  
Mergers II Division

April 19, 2021

**VIA EMAIL TRANSMISSION**Elaine Johnston  
Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020RE: *In the Matter of Altria Group Inc. and JUUL Labs, Inc., Docket No. 9393*

Dear Elaine:

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

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

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

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

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

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

If you have any questions, please feel free to contact me at 202-326-2289.

Sincerely,

/s/ James E. Abell

James E. Abell

Counsel Supporting the Complaint

Attachment

# Attachment A



Exhibit No.	Bates - Begin	Bates - End	Date	Full Name
PX3000	ITG00000073	ITG00000073	4/19/2017	ITG Presentation: Von Erl & Fontem Ventures Partnering discussions
PX3001	ITG00000869	ITG00000869	10/??/15	Fontem Ventures Presentation: e-cig Tracker - May 2015 wave
PX3004	ITG00001702	ITG00001702	08/??/18	blu Presentation: Portfolio Review & Rationalization
PX3005	ITG00001714	ITG00001714	??/??/???	blu Presentation: Pricing Update
PX3014	ITG_00000203	ITG_00000205	11/8/2018	Email from Jeff Eldridge to James Jameson, Mark Kornowski, Kent Mills, et al. re: Fiscal Year 2019 Targets and Plan Follow-up w/Attach: 2019 Targets by Division.xlsx
PX3018	ITG_00001048	ITG_00001049	11/1/2018	Email from Fred Paternostro to Alexander Mueller, John Torru, Rod Lane, et al. re: Strategic Meeting Slides. w/Attach: V2 2018-10 Sales Strategy_10-31-18.pptx
PX3019	ITG_00001206	ITG_00001210	4/24/2020	Letter from Carole Folmar to Matthew Holman re: Premarket Tobacco Product Application for myblu Freebase Electronic Nicotine Delivery System Products
PX3020	ITG_00001211	ITG_00001240	TBD	Document: Module 1.2 Reviewer's Guide myblu Freebase
PX3021	ITG_00001241	ITG_00001266	TBD	Document: Module 1.2 Reviewer's Guide blu Disposable
PX3022	ITG_00001267	ITG_00001271	4/24/2020	Letter from Carole Folmar to Matthew Holman re: Premarket Tobacco Product Application for myblu Intense Electronic Nicotine Delivery System Products
PX3023	ITG_00001272	ITG_00001301	TBD	Document: Module 1.2 Reviewer's Guide myblu Intense
PX3024	ITG_00001940	ITG_00001944	8/31/2020	Letter from Carole Folmar to Matthew Holman re: Premarket Tobacco Product Application for blu Disposable Electronic Nicotine Delivery System Products
PX3025	ITG_00004377	ITG_00004405	TBD	Document: Module 1.2 Reviewer's Guide blu PLUS+ Xpress
PX3026	ITG_00004452	ITG_00004491	4/24/2020	Excerpts taken from Premarket Tobacco Product Application for myblu Electronic Nicotine Delivery
PX3059	ITG_00002147	ITG_00002147	6/8/2020	ITG Presentation: blu Comms and Product Tracking Brand Imagery 6.8.20.pptx
PX3060	ITG_00002223	ITG_00002238	TBD	ITG Spreadsheet: ALL POD Systems.xlsx and Document Competitive Devices - POD systems - TD .pdf
PX3061	ITG_00002550	ITG_00002550	9/2/2020	ITG Presentation: Decoding PMI's NGP Strategy
PX3063	ITG_00003398	ITG_00003399	7/12/2019	Impact Presentation: Formulation Optimisation
PX3065	ITG_00004071	ITG_00004071	??/??/???	ITG Presentation: 2021 RETAIL Contract Selling Presentation V1.pptx
PX3066	ITG_00004073	ITG_00004073	12/??/19	Imperial Brands Presentation: US Business Update
PX3068	ITG_00004539	ITG_00004551	??/??/???	blu Document: Enhanced improvements.pdf
PX3069	ITG_00004552	ITG_00004552	1/30/2020	blu Presentation: Optimized Battery and Automated Wick & Coil Introduction
PX3071	ITG_00004568	ITG_00004568	11/5/2020	ITG Spreadsheet: ITG00003435 Copy.xlsx
PX3103	ITG_00004747	ITG_00004747	??/??/???	ITG Presentation: EVP Industry
PX3105	ITG_00005193	ITG_00005258	10/4/2018	ITG presentation: FY19 Joint Business Planning
PX7012	PX7012-001	PX7012-087	12/14/2020	Deposition Transcript of Jeffrey Eldridge (ITG) (December 14, 2020)
PX8010	PX8010-001	PX8010-002	4/1/2020	Declaration: Carole Folmar (ITG)
PX8011	PX8011-001	PX8011-008	4/1/2020	Declaration: Jeff Eldridge (ITG)

## **EXHIBIT B**

# Arnold & Porter

**CONFIDENTIAL**

April 22, 2021

**Via Email**

Elaine Johnston, Esq.  
Puja Patel, Esq.  
Justin Ormand, Esq.  
Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020

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

Dear Counsel:

We are writing regarding the use of documents and information provided and designated confidential by your client ITG Brands, LLC (“ITG”), in the upcoming FTC evidentiary hearing in the above-referenced matter, which is currently scheduled to commence June 2, 2021.

In particular, this letter serves as notice, per the Second Revised Scheduling Order entered March 4, 2021 and Paragraph 11 of the Protective Order Governing Confidential Material entered April 2, 2020, that Respondents Altria Group, Inc. and JUUL Labs, Inc. intend to offer documents or transcripts designated confidential by ITG identified on the enclosed Appendix A, and/or documents or transcripts containing or deriving from such information, as evidence at the upcoming hearing. The purpose of this notice is to provide ITG an opportunity to file a motion for *in camera* treatment of its material, which any such motions must be filed by May 7, 2021 under the Second Revised Scheduling Order. See FTC Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (a “third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge”).

Under Additional Provision No. 14 of the original Scheduling Order entered August 4, 2020 in this matter, this notice is required to and we so inform you “of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at \*1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each [] non-party that files a

motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.” *See also* FTC Rule of Practice 3.45(b), 16 C.F.R. § 3.45(b) (requiring for confidential treatment (a) that “public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment” or (b) that “the material constitutes sensitive personal information”).

Sincerely,

/s/ Tanya Freeman

cc: Justin Hedge  
Robert Katerberg

**Appendix A -- ITG Brands, LLC**

RX #	Bates Begin	Bates End	Description	Dates
RX0091			Deposition Eldridge - ITG	2020-12-14
RX0090			Declaration Eldridge - ITG	2020-04-01
RX0096			Declaration Folmar - ITG	2020-03-30
RX1735	ITG_00001702		Portfolio Review & Rationalization US Market- August 2018	2018-08
RX1736	ITG_00001714		Pricing Recommendations, Update	2018-12-18
RX1737	ITG_00002131	(native file so unclear)	ITG Brands Presentation on E-Vapor Business	2020-03-00
RX1738	ITG_00002213	ITG_00002222	ITG Brands Presentation on E-Vapor Products Dashboard	2020-10-01
RX1739	ITG_00002293	ITG_00002293	Competition	
RX1740	ITG_00002346	(native file so unclear)	ITG Brands / Fontem Presentation re blu Incidence and Equity Tracker	2019-06-01
RX1741	ITG_00002658	ITG_00002658	Perceptions of Blu	2020-08-01
RX1742	ITG_00004073	ITG_00004073	US Business Update	2019-12-01
RX1743	ITG_00004146	ITG_00004146	Portfolio Review and Rationalization, US Market - August 2018	2018-08-01
RX1744	ITG_00004668	(native file so unclear)	ITG Brands Presentation on blu Performance Analysis	2020-03-18
RX1745	ITG_00004670	ITG_00004670	blu Summary	
RX1746	ITG_00004781	ITG_00004781	\$1 Device Expansion Recommendations	2019-08-29
RX1747	ITG_00004785	ITG_00004785	Q4 Sales Initiative Update	2019-08-14
RX1748	ITG_00004928	ITG_00004928	August 2019 Known Competitor Promotions	8/0/2019
RX1749	ITG_00005185	ITG_00005185	Sales Deck	2019-07-08
RX1750	ITG00000475	ITG00000475	Single page document describing recent FDA announcements	2018-11-00

RX1751	ITG00001288	ITG00001288	Module 1.2 Reviewer's Guide on myblu Intense	2015-05-14
RX1752	ITG00001702		Portfolio Review Overview FINAL 8.7.2018.pptx	2018-08-07

**EXHIBIT C**

# Arnold & Porter

**CONFIDENTIAL**

May 3, 2021

**Via Email**

Elaine Johnston, Esq.  
Puja Patel, Esq.  
Justin Ormand, Esq.  
Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020

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

Dear Counsel:

We are writing in furtherance of our letter dated April 22, 2021, regarding the use of documents and information provided and designated confidential by your client ITG Brands, LLC (“ITG”), in the upcoming FTC evidentiary hearing in the above-referenced matter, which is currently scheduled to commence June 2, 2021.

We write on behalf of Respondents to clarify that we discovered duplicate exhibits for the following previously identified bates stamped documents: ITG\_00001702 (RX1735 and duplicate RX1227); ITG\_00002131 (RX1737 and duplicate RX1230); ITG\_00002293 (RX1739 and duplicate RX1228); ITG\_00002346 (RX1740 and duplicate RX1231); ITG\_00004073 (RX1742 and duplicate RX1233); ITG\_00004146 (RX1743 and duplicate RX1225); ITG\_00004785 (RX1747 and duplicate RX1237); ITG\_00004928 (RX1748 and duplicate RX1236); and ITG\_00005185 (RX1749 and duplicate RX1234). We also write to clarify that in Appendix A of our April 22, 2021 letter, the row marked RX1752, ITG\_00001702, was inadvertently mislabeled and should have been labeled as RX1734, ITG\_00001048, as included in the corresponding set of documents. Additionally, we write to clarify the description for RX1750. An updated list of all documents that Respondents intend to offer at the hearing that were designated confidential by ITG that accounts for these clarifications is set forth in the enclosed Appendix A. The only changes in the current Appendix A are to make the clarifications noted above, no additional documents have been added.

Sincerely,

/s/ Tanya Freeman



cc: Justin Hedge  
Robert Katerberg  
Matthew Bachrack

**Revised Appendix A -- ITG Brands, LLC**

RX#	Bates Begin	Bates End	Description	Date
RX0091			Deposition Eldridge - ITG	12/14/2020
RX0090			Declaration Eldridge - ITG	04/01/2020
RX0096			Declaration Folmar - ITG	03/30/2020
RX1734	ITG_00001048	ITG_00001057	Email from F. Paternostro to A. Mueller et al. re Strategic Meeting Slides, attaching V2 2018-10 Sales Strategy	11/01/2018
RX1735 (duplicate RX1227)	ITG_00001702		Portfolio Review & Rationalization US Market- August 2018	08/07/2018
RX1736	ITG_00001714		Pricing Recommendations, Update	12/18/2018
RX1737 (duplicate RX1230)	ITG_00002131		ITG Brands Presentation on E-Vapor Business	03/00/2020
RX1738	ITG_00002213	ITG_00002222	ITG Brands Presentation on EVP Dashboard	10/01/2020
RX1739 (duplicate RX1228)	ITG_00002293	ITG_00002293	blu Presentation on Competition	
RX1740 (duplicate RX1231)	ITG_00002346		ITG Brands / Fontem Presentation on blu Incidence and Equity Tracker	06/01/2019
RX1741	ITG_00002658	ITG_00002658	Perceptions of Blu	08/01/2020
RX1742 (duplicate RX1233)	ITG_00004073	ITG_00004073	Imperial Brands: US Business Update	12/01/2019
RX1743 (duplicate RX1225)	ITG_00004146	ITG_00004146	blu Presentation on Portfolio Review and	08/01/2018

			Rationalization, US Market - August 2018	
RX1744	ITG_00004668		ITG Brands Presentation on blu Performance Analysis	03/18/2020
RX1745	ITG_00004670	ITG_00004670	Imperial Brands Presentation on blu Summary	
RX1746	ITG_00004781	ITG_00004781	blu Presentation on \$1 Device Expansion Recommendations	08/29/2019
RX1747 (duplicate RX1237)	ITG_00004785	ITG_00004785	ITG Brands Presentation on Q4 Sales Initiative Update	08/14/2019
RX1748 (duplicate RX1236)	ITG_00004928	ITG_00004928	blu Presentation on August 2019 Known Competitor Promotions	08/00/2019
RX1749 (duplicate RX1234)	ITG_00005185	ITG_00005185	blu Presentation on Sales Deck	07/08/2019
RX1750	ITG00000475	ITG00000475	Project INN - Update Memo	11/00/2018
RX1751	ITG00001288	ITG00001288	Fontem Ventures Presentation on E-Vapour Strategy	05/14/2015

**EXHIBIT D**

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

**In the Matter of**

**Altria Group, Inc.  
a corporation;**

**And**

**JUUL Labs, Inc.  
a corporation.**

**Docket No. 9393**

**DECLARATION OF ROBERT D. WILKEY IN SUPPORT OF MOTION  
OF THIRD PARTY ITG BRANDS, LLC FOR *IN CAMERA* TREATMENT**

I, Robert D. Wilkey, hereby declare:

1. I am the General Counsel and Corporate Secretary of each of ITG Brands, LLC (“ITG”) and Fontem US LLC. I submit this declaration in support of ITG’s Motion for *In Camera* Treatment.
2. I am over eighteen years of age, make this Declaration based on my personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.
3. ITG received two subpoenas *duces tecum*, a subpoena *ad testificandum* and a civil investigative demand from the Federal Trade Commission (“FTC”), as well as a subpoena *duces tecum* from Respondents Altria Group, Inc. (“Altria”) and JUUL Labs, Inc. (“JUUL”), in the above-captioned matter. By all accounts, ITG has fully responded to and cooperated with the FTC and Respondents in response to such requests and has produced thousands of pages of documents

and provided testimony from two employees (through two detailed declarations and one full-day deposition) to the FTC and respondents.

4. ITG has been notified by the FTC that it intends to offer 25 documents produced by ITG, as well as two declarations and the full transcript of one deposition testimony provided by ITG, into evidence in the administrative trial of the above-captioned matter. In addition, ITG has been notified by Respondents Altria and JUUL that they intend to offer 18 documents produced by ITG, as well as the two declarations and full deposition transcript, into evidence in the same proceeding.

5. I have reviewed and am personally familiar with all of the documents and testimony which the parties to the above-captioned matter intend to offer at trial. Based on my review of these documents, my position at ITG, my deep knowledge of ITG's business, and my familiarity with the confidentiality protection normally afforded to the information contained herein, I submit that the disclosure of 21 ITG documents (the "Confidential Documents") and portions of two declarations and deposition testimony (the "Confidential Testimony" and, together with the Confidential Documents, the "Confidential Materials") to the public or to competitors of ITG would cause serious financial and competitive injury to ITG, and as such, should be afforded *in camera* protection.

6. The Confidential Materials are as follows:

<b>Exhibit No.<sup>1</sup></b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Bates Range</b>	<b>Requested Duration of <i>In Camera</i> Treatment</b>
PX3004; RX 1735; RX1227	Portfolio Review & Rationalization	August 2018	ITG_00001702	Five years
PX3005; RX1736	Pricing Update	December 2018	ITG_00001714	Five years
PX3014	Email from Jeff Eldridge to James Jameson, Mark Kornowski, Kent Mills, et al. re: Fiscal Year 2019 Targets and Plan Follow-up w/Attach: 2019 Targets by Division.xlsx	November 8, 2018	ITG_00000203- ITG_00000205	Five years
PX3018; RX1734	Email from Fred Paternostro to Alexander Mueller, John Torru, Rod Lane, et al. re: Strategic Meeting Slides. w/Attach: V2 2018-10 Sales Strategy_10-31-18.pptx	November 1, 2018	ITG_00001048- ITG_00001057	Five years
RX1737; RX1230	ITG Brands Presentation on E-Vapor entitled EVP Business	March 2020	ITG_00002131	Five years
PX3059	blu Comms and Product Tracking Brand Imagery 6.8.20.pptx	June 8, 2020	ITG_00002147	Five years
RX1738	ITG Brands Presentation on E-Vapor	October 2020	ITG_00002213- ITG_00002222	Five years
RX1740; RX1231	ITG Brands / Fontem Presentation re blu Incidence and Equity Tracker	June 2019	ITG_00002346	Five years
RX1741	Perceptions of Blu	August 2020	ITG_00002658	Five years

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Bates Range</b>	<b>Requested Duration of In Camera</b>
PX3063	Formulation Optimisation	July 12, 2019	ITG_00003398-ITG_00003399	Five years
PX3065	ITGB 2021 Choice Growth Contract - Retail	September 28, 2020	ITG_00004071	Five years
PX3066; RX1742; RX1233	US Business Update	December 2019	ITG_00004073	Five years
RX1743; RX1225	Portfolio Review & Rationalization	August 1, 2018	ITG_00004146	Five years
PX3026	Excerpts taken from Premarket Tobacco Product Application for myblu Electronic Nicotine Delivery	April 24, 2020	ITG_00004452-ITG_00004491	Indefinite
PX3069	Optimized Batter and Automated Wick & Coil Introduction	January 30, 2020	ITG_00004552	Indefinite
PX3071	Income Statements	November 5, 2020	ITG_00004568	Five years
RX1744	ITG Brands Presentation on blu Performance Analysis	March 18, 2020	ITG_00004668	Five years
RX1745	blu Summary	January 7, 2020	ITG_00004670	Five years
RX1746	\$1 Device Expansion Recommendations	August 29, 2019	ITG_00004781	Five years
RX1747; RX1237	Q4 Sales Initiative Update	August 14, 2019	ITG_00004785	Five years
PX3105	FY19 Joint Business Planning	October 4, 2018	ITG_00005193-ITG_00005258	Five years
PX7012; RX0091	Jeff Eldridge Deposition Testimony	December 14, 2020		Five years
PX8010; RX0096	Carole Folmar Declaration	April 1, 2020		Five years
PX8011; RX0090	Jeff Eldridge Declaration	April 1, 2020		Five years

<sup>1</sup> Documents beginning with “PX” are those which FTC intends to offer at trial and documents beginning with “RX” are those which Respondents Altria and JUUL intend to offer at trial. Counsel for Respondents has indicated that some ITG documents on Altria’s proposed exhibit list appear twice as duplicate versions. Thus, for those such documents, both “RX” exhibit numbers have been provided.



7. ITG is a tobacco company which markets and sells a broad portfolio of well-known cigarette, cigar, and e-vapor brands, including: Winston, Kool, Salem, Maverick and USA Gold cigarettes; Dutch Masters, Backwoods and Phillies cigars; and blu electronic cigarettes. ITG has been able to successfully compete with larger competitors such as Altria and RJR Reynolds as a result of continued investment and innovation in its products and offerings, competitive and creative pricing and rebate offers, and its strong customer relations.

8. The Confidential Materials contain proprietary, secret, competitively sensitive data and information including but not limited to information regarding ITG's prices, rebates, offers, sales, costs, revenues, margins, pricing strategies, customer contracts and accounts, product formulations and designs, trade secrets, marketing strategies, strategic plans, and other secret and competitively sensitive information to the ITG business. A detailed discussion of the Confidential Materials that the parties propose to offer at trial follows.

9. PX3004/RX1735/RX1227 is a presentation entitled "Portfolio Review & Rationalization" dated August 2018 which discusses ITG's pricing and product strategies with respect to its blu portfolio. It includes a discussion of several competitively sensitive aspects of the blu business, including: prices by sales channel; turn rates by product/flavor and sales channel; unit and dollar sales by product/flavor and sales channel; pricing strategies; and portfolio/product strategies. This information is highly competitively sensitive and has been shared with employees only on a need-to-know basis. ITG seeks *in camera* protection of this document for a period of five years.

10. PX3005/RX1736 is a presentation entitled "Pricing Update" dated December 2018 which contains a detailed discussion of ITG's prices and pricing strategies with respect to its blu portfolio, disclosure of which could cause serious competitive harm to ITG. ITG seeks *in camera*

protection of this document for a period of five years.

11. PX3014 is an email and Excel attachment dated November 8, 2019 detailing ITG's sales strategies with respect to certain key customer accounts. The Excel file includes a comprehensive and highly sensitive database of all of ITG's retail customers and the types and volumes of ITG products sold by each. ITG has devoted significant time and resources in creating and maintaining this database and it would take significant time and resources for anyone to replicate this database. ITG seeks *in camera* protection of this document for a period of five years.

12. PX3018/RX1734 is an email and PowerPoint attachment entitled "Fuel Growth Sales: Building for Growth" dated November 1, 2018. The document contains a detailed and highly sensitive discussion of ITG's growth strategy, and includes details on ITG's sales, customer accounts, and budget. This information is highly competitively sensitive and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

13. RX1737/RX1230 is a presentation entitled "EVP Business" dated March 2020. The document contains information regarding competitively sensitive aspects of the blu business, including information relating to profitability by channel, customer accounts and customer-specific promotions. This information is highly competitively sensitive and has been shared with employees only on a need-to-know basis. ITG seeks *in camera* protection of this document for a period of five years.

14. RX1738 is a presentation entitled "EVP Dashboard" dated October 2020. This document contains information regarding the e-vapor business of Imperial Brands, the parent company of ITG, and includes information relating to revenues and margins by region. This information is highly competitively sensitive and has been shared with employees only on a need-

to-know basis. ITG seeks *in camera* protection of this document for a period of five years.

15. PX3059 is a presentation relating to “Brand Imagery” dated June 8, 2020 and contains a detailed internal analysis conducted by ITG regarding brand perceptions of blu as compared to its competitors. ITG expended significant time, energy, and financial resources to conduct this study, and disclosure of this information would cause serious competitive injury to ITG. ITG seeks *in camera* protection of this document for a period of five years.

16. RX1740/RX1231 is a presentation entitled “Blu Incidence & Equity Tracker – Wave 2” dated June 2019 and contains a detailed internal study conducted by ITG regarding its blu products, including an analysis of consumer demographics; consumer preferences, buying patterns, and behaviors; blu’s e-vapor incidences compared to its competitors; and blu’s brand performance compared to its competitors. ITG expended significant time, energy, and financial resources to conduct this study, and disclosure of this information would cause serious competitive injury to ITG. ITG seeks *in camera* protection of this document for a period of five years.

17. RX1741 is a presentation entitled “Perceptions of Blu” dated August 2020 and contains a detailed internal study conducted by ITG regarding consumer complaints, consumer turnover, and blu’s performance compared to its competitors. ITG expended significant time, energy, and financial resources to conduct this study, and disclosure of this information would cause serious competitive injury to ITG. ITG seeks *in camera* protection of this document for a period of five years.

18. PX3063 is a presentation entitled “Formulation Optimisation” dated July 12, 2019 and contains a detailed study conducted by third-party research company Impact for ITG regarding consumer preferences and behaviors as to different formulations of blu products. ITG expended significant time, energy, and financial resources to conduct this study, and disclosure of this

information would cause serious competitive injury to ITG. ITG seeks *in camera* protection of this document for a period of five years.

19. PX3065 is a presentation entitled “ITGB 2021 Choice Growth Contract – Retail” dated September 28, 2020. The document contains information regarding ITG’s retail contracts and discusses ITG’s 2021 plans with respect to prices, rebate programs, volume incentive programs and signage requirements. This information is highly competitively sensitive and has been shared with employees only on a need-to-know basis. ITG seeks *in camera* protection of this document for a period of five years.

20. PX3066/RX1742/RX1233 is a presentation entitled “US Business Update” dated December 2019 that includes a detailed discussion of ITG’s marketing and pricing/promotional plans, as well as information related to prices. This information is highly competitively sensitive and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

21. RX1743/RX1225 is a slightly shorter version of PX3004/RX1735 and contains the same competitively sensitive information as PX3004/RX1735. ITG seeks *in camera* protection of this document for a period of five years.

22. PX3026 is an excerpt of ITG’s Premarket Tobacco Product Application (“PMTA”) for its myblu Electronic Nicotine Delivery System Products submitted to the United States Food and Drug Administration (“FDA”) on April 24, 2020. The document contains highly sensitive trade secret information regarding ITG’s blu products, including information about ingredients, product chemistry, and design. The information provided in this document is considered confidential commercial information and trade secret information protected under 21 C.F.R. § 20.61 which provides that “[d]ata and information submitted or divulged to the Food and Drug

Administration which fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure.” Dissemination of this document is strictly limited to a very small group of counsel and senior-level employees at ITG and the company has taken each and every measure to safeguard this document from public disclosure. Moreover, in light of the trade secret information contained in this document, its competitive significance is unlikely to decrease over time. ITG seeks *in camera* protection of this document for an indefinite period.

23. PX3069 is a presentation entitled “Optimized Battery and Automated Wick & Coil Introduction” dated January 30, 2020 that discusses in detail certain technical changes made to blu optimized devices and pod systems. Disclosure of this document could cause significant competitive injury to ITG, as it would give competitors access to its top secret trade secret information. ITG seeks *in camera* protection of this document for an indefinite period.

24. PX3071 is an income statement of Fontem US Inc., a subsidiary of Imperial Brands and affiliate of ITG, for the years 2015-2018 and includes detailed information regarding Fontem’s revenues, costs, profit margins, promotional spend, research and development spend, and selling expenses. This information is highly sensitive and, if disclosed to ITG’s competitors, could cause serious competitive injury to the company. ITG seeks *in camera* protection of this document for a period of five years.

25. RX1744 is a presentation entitled “Blu Performance Analysis” dated March 18, 2020 which contains a detailed and comprehensive discussion of the financial and competitive performance of the blu business. The document includes a number of highly competitive sensitive sales and marketing strategic initiatives, which if disclosed to the public, could cause serious competitive injury to ITG. The company seeks *in camera* protection of this document for a period

of five years.

26. RX1745 is a presentation entitled “blu Summary” dated January 17, 2020 which contains a detailed and comprehensive discussion of the financial and competitive performance of the blu business. The document includes highly competitively sensitive information relating to prices and promotions, pricing plans, sales and promotional strategies, customer accounts, volumes, revenues, and margins. This information is highly competitively sensitive and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

27. RX1746 is a presentation dated August 19, 2019 which discusses certain competitively sensitive pricing strategies with respect to the blu business. The document includes discussion of certain key customer accounts, volume strategies, and promotional offers. This information is highly competitively sensitive and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

28. RX1747/RX1237 is a presentation entitled “Q4 Sales Initiative Update” dated August 14, 2019. The document includes highly sensitive information in relation to ITG’s prices and promotions, pricing plans, sales and marketing strategies, inventory levels, and key customer accounts. This information is highly competitively sensitive and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

29. PX3105 is a presentation entitled “FY19 Joint Business Planning” dated October 4, 2018 discussing ITG’s strategic business plans. It includes a discussion of several competitively sensitive aspects of blu’s business, including: prices; customer accounts; sales channel strategies; research and development; and marketing plans. This information is highly competitively sensitive

and is known only to the most senior employees of the blu business. ITG seeks *in camera* protection of this document for a period of five years.

30. PX7012/RX0091 is a transcript of the videoconference deposition of Jeff Eldridge, Vice President, Area Central at ITG which was taken on December 14, 2020 in response to a subpoena *ad testificandum* in this matter. As a senior employee at ITG with over thirty years of experience in the tobacco industry, Mr. Eldridge has special access to, and expert knowledge of, competitively sensitive information regarding ITG's business, including information in the Confidential Documents. ITG relies on Mr. Eldridge's expert opinion in order to make decisions in many competitively sensitive aspects of ITG's business. The transcript contains discussion of many of the Confidential Documents and Mr. Eldridge's competitively sensitive expert opinion on these documents, ITG's business and the tobacco industry including information relating to: prices and sales channels strategy; marketing and promotional strategies; and customer research, product research, development and analysis. ITG seeks *in camera* protection of the following portions of this document for a period of five years:

27:3-9; 49:25; 50:2-15; 65:16-25; 66:2-25; 67:2-25; 68:2-25; 69:2-10; 70:3-25; 71:2-25; 72:2-13; 85:2-24; 97:13-21; 131:16-25; 132:2-25; 133:2-25; 134:2-25; 135:4-25; 136:3-25; 137:2-11; 145:7-25; 146:3-4; 149:8-25; 150:2-25; 151:2-25; 152:2-25; 153:2-16; 155:14-23; 156:11-14; 172:23-25; 173:2-14; 182:5-12; 183:5-18; 184:13-25; 185:2-19; 199:24-25; 200:2-25; 201:2-25; 202:2; 203:2-23; 212:13-25; and 213:2-4.

31. PX8010/RX0096 is the declaration of Carole Folmar dated April 1, 2020. Ms. Folmar is the Senior Director of Product Integrity and Compliance and Associate General Counsel at ITG and has over a decade of experience in the tobacco industry. ITG relies on Ms. Folmar's expert opinion in order to make decisions in many competitively sensitive aspects of ITG's

business. Paragraph 7 of Ms. Folmar's declaration includes competitively sensitive information regarding the amount of money expended by ITG in preparing ITG's PMTA submissions to the FDA. This information, if disclosed to ITG's competitors, would cause serious competitive injury to ITG. ITG seeks *in camera* protection of this portion of the document for a period of five years.

32. PX8011/RX0090 is the declaration of Jeff Eldridge dated April 1, 2020. Paragraphs 11, 15, 16, 17, 20, 21, 29, 30, 33, 34, and 35 of Mr. Eldridge's declaration contain discussion of Mr. Eldridge's highly competitively sensitive opinion on ITG's business including information relating to: prices; promotions; customer accounts; sales channel strategies; research and development; and marketing plans. ITG seeks *in camera* protection of this portion of the document for a period of five years.

33. The Confidential Materials are non-public and safeguarded by ITG under strict security protocols. At ITG, the Confidential Materials reside in restricted file sharing databases, which are separate from the rest of ITG's day-to-day operating materials. Access to the databases containing the Confidential Materials is highly restricted and provided only to authorized individuals on a need-to-know basis. Requests to access these databases are subject to approval by the IT and Legal departments within the company and granted only if necessary. If access to any of the Confidential Materials is needed for individuals outside of the company, NDAs are utilized to ensure that the information remains confidential.

34. The Confidential Materials have been shared on a confidential basis to a small group of officers, directors, senior-level employees, and outside counsel of ITG who have reason to access the information in order to perform their roles and responsibilities.

35. ITG has expended considerable time, energy, and financial resources in producing and preserving the confidentiality of the Confidential Materials. Disclosure of such material to the



public and ITG's competitors would cause serious and permanent competitive injury to ITG.

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

Dated: May 6, 2021

*s/ Robert D. Wilkey*  
Robert D. Wilkey

**EXHIBIT E**

**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 the Motion of Third Party ITG Brands, LLC for *In Camera* Treatment, it is HEREBY ORDERED that the following documents and testimony shall be afforded *in camera* treatment from the date of this Order for the time period so designated:

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Bates Range</b>	<b>Duration of <i>In Camera</i> Treatment</b>
PX3004; RX 1735; RX1227	Portfolio Review & Rationalization	August 2018	ITG_00001702	Five years
PX3005; RX1736	Pricing Update	December 2018	ITG_00001714	Five years
PX3014	Email from Jeff Eldridge to James Jameson, Mark Kornowski, Kent Mills, et al. re: Fiscal Year 2019 Targets and Plan Follow-up w/Attach: 2019 Targets by Division.xlsx	November 8, 2018	ITG_00000203-ITG_00000205	Five years

PX3018; RX1734	Email from Fred Paternostro to Alexander Mueller, John Torru, Rod Lane, et al. re: Strategic Meeting Slides. w/Attach: V2 2018-10 Sales Strategy_10-31-18.pptx	November 1, 2018	ITG_00001048-ITG_00001057	Five years
RX1737; RX1230	ITG Brands Presentation on E-Vapor entitled EVP Business	March 2020	ITG_00002131	Five years
PX3059	blu Comms and Product Tracking Brand Imagery 6.8.20.pptx	June 8, 2020	ITG_00002147	Five years
RX1738	ITG Brands Presentation on E-Vapor	October 2020	ITG_00002213-ITG_00002222	Five years
RX1740; RX1231	ITG Brands / Fontem Presentation re blu Incidence and Equity Tracker	June 2019	ITG_00002346	Five years
RX1741	Perceptions of Blu	August 2020	ITG_00002658	Five years
PX3063	Formulation Optimisation	July 12, 2019	ITG_00003398-ITG_00003399	Five years
PX3065	ITGB 2021 Choice Growth Contract - Retail	September 28, 2020	ITG_00004071	Five years
PX3066; RX1742; RX1233	US Business Update	December 2019	ITG_00004073	Five years
RX1743; RX1225	Portfolio Review & Rationalization	August 1, 2018	ITG_00004146	Five years
PX3026	Excerpts taken from Premarket Tobacco Product Application for myblu Electronic Nicotine Delivery	April 24, 2020	ITG_00004452-ITG_00004491	Indefinite
PX3069	Optimized Batter and Automated Wick & Coil Introduction	January 30, 2020	ITG_00004552	Indefinite
PX3071	Income Statements	November 5, 2020	ITG_00004568	Five years
RX1744	ITG Brands Presentation on blu Performance Analysis	March 18, 2020	ITG_00004668	Five years
RX1745	blu Summary	January 7, 2020	ITG_00004670	Five years

RX1746	\$1 Device Expansion Recommendations	August 29, 2019	ITG_00004781	Five years
RX1747; RX1237	Q4 Sales Initiative Update	August 14, 2019	ITG_00004785	Five years
PX3105	FY19 Joint Business Planning	October 4, 2018	ITG_00005193- ITG_00005258	Five years

Exhibit No.	Document Title/Description	Date	Redacted Page	Redacted Line(s)	Duration of <i>In Camera</i> Treatment
PX7012; RX0091	Jeff Eldridge Deposition Testimony	December 14, 2020	27	3-9	Five years
			49	25	
			50	2-15	
			65	16-25	
			66	2-25	
			67	2-25	
			68	2-25	
			69	2-10	
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			200	2-25	
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			203	2-23	
			212	13-25	
			213	2-4	

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Paragraph(s)</b>	<b>Duration of <i>In Camera</i> Treatment</b>
PX8010; RX0096	Carole Folmar Declaration	April 1, 2020	7	Five years
PX8011; RX0090	Jeff Eldridge Declaration	April 1, 2020	11, 15, 16, 17, 20, 21, 29, 30, 33, 34, and 35	Five years

**SO ORDERED.**

\_\_\_\_\_

Hon. D. Michael Chappell

Chief Administrative Law Judge

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

**EXHIBIT F**

**Exhibit No. PX3004**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT G**

**Exhibit No. PX3005**

**CONFIDENTIAL – REDACTED IN ENTIRETY**



**EXHIBIT H**

**Exhibit No. PX3014**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT I**

**Exhibit No. PX3018**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT J**

**Exhibit No. RX1737**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT K**

**Exhibit No. PX3059**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT L**

**Exhibit No. RX1738**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT M**

**Exhibit No. RX1740**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT N**

**Exhibit No. RX1741**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT O**

**Exhibit No. PX3063**

**CONFIDENTIAL – REDACTED IN ENTIRETY**



**EXHIBIT P**

**Exhibit No. PX3065**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT Q**

**Exhibit No. PX3066**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT R**

**Exhibit No. RX1743**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT S**

**Exhibit No. PX3026**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT T**

**Exhibit No. PX3069**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT U**

**Exhibit No. PX3071**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT V**

**Exhibit No. RX1744**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT W**

**Exhibit No. RX1745**

**CONFIDENTIAL – REDACTED IN ENTIRETY**



**EXHIBIT X**

**Exhibit No. RX1746**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT Y**

**Exhibit No. RX1747**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT Z**

**Exhibit No. PX3105**

**CONFIDENTIAL – REDACTED IN ENTIRETY**

**EXHIBIT AA**  
**Exhibit No. PX7012**

Jeff Eldridge  
December 14, 2020

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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

(Via remote videoconference)

December 14, 2020

9:04 a.m. Eastern

Videoconference Deposition of

JEFF ELDRIDGE, before Kristi Cruz, a Notary

Public of the State of New York.

Jeff Eldridge  
December 14, 2020

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2 to 5

Page 2	Page 4																																																																												
<p>1</p> <p>2 A P P E A R A N C E S: (All appearing remotely)</p> <p>3</p> <p>4 FEDERAL TRADE COMMISSION</p> <p>5 Attorneys for Complainant</p> <p>6 600 Pennsylvania Avenue, NW</p> <p>7 Washington, D.C. 20580</p> <p>8 BY: MEREDITH LEVERT, ESQ.</p> <p>9 KRISTIAN ROGERS, ESQ.</p> <p>10 MATTHEW CHESNES, ESQ.</p> <p>11 202.326.2289</p> <p>12 mlevert@ftc.gov</p> <p>13</p> <p>14 ARNOLD &amp; PORTER KAYE SCHOLER LLP</p> <p>15 Attorneys for Respondent Altria Group, Inc.</p> <p>16 601 Massachusetts Avenue, NW</p> <p>17 Washington, D.C. 10002</p> <p>18 BY: ROBERT J. KATERBERG, ESQ.</p> <p>19 BRYAN MARRA, ESQ.</p> <p>20 JUSTIN HEDGE, ESQ.</p> <p>21 HASAN SIDDIQUI, ESQ.</p> <p>22 202.942.6289</p> <p>23 robert.katerberg@arnoldporter.com</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S: (Cont'd)</p> <p>3</p> <p>4 ALLEN &amp; OVERY LLP</p> <p>5 Attorneys for ITG Brands and the Witness</p> <p>6 1221 Avenue of the Americas</p> <p>7 New York, New York 10020</p> <p>8 BY: JUSTIN ORMAND, ESQ.</p> <p>9 ELAINE JOHNSTON, ESQ.</p> <p>10 212.610.6407</p> <p>11 justin.ormand@allenoverly.com</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																																												
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Jeff Eldridge  
December 14, 2020

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<p style="text-align: right;">Page 6</p> <p>1 -----EXHIBITS-----</p> <p>2 ELDRIDGE FOR I.D.</p> <p>3 6 Screenshot of myblu Intense</p> <p>4 product from blu.com 77</p> <p>5 11 Slide deck, Portfolio Review and</p> <p>6 Rationalization, August 2018 80</p> <p>7 12 Slide deck, Forward Competition 83</p> <p>8 13 4/28/20 Imperial Brands press</p> <p>9 Release 91</p> <p>10 14 EVP business slide deck 101</p> <p>11 15 blu Incidents and Equity Tracker,</p> <p>12 Wave 2 presentation 105</p> <p>13 16 blu Summary slide deck 111</p> <p>14 17 U.S. Business Update, Imperial</p> <p>15 Brands, December 2019 slide deck 114</p> <p>16 18 7/08/20 Sales Deck 126</p> <p>17 19 8/29/19 \$1 Device Expansion</p> <p>18 Recommendations 135</p> <p>19 20 August 2019 Known Competitor</p> <p>20 Promotions 140</p> <p>21 21 8/14/19 Q4 Sales Initiative Update 142</p> <p>22 22 Slide deck entitled Perceptions</p> <p>23 of blu Summary August 2020 147</p> <p>24 23 Email with attached native file 204</p> <p>25 24 Pricing update slide deck 205</p>	<p style="text-align: right;">Page 8</p> <p>1 J. ELDRIDGE</p> <p>2 A. Jefferson Henry Eldridge.</p> <p>3 Q. Mr. Eldridge, who is your employer?</p> <p>4 A. ITG Brands.</p> <p>5 Q. Is your current title vice</p> <p>6 president, area central?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Very good. Mr. Eldridge, we met a</p> <p>9 moment ago. My name is Rob Katerberg. I'm</p> <p>10 one of the counsel representing Altria in this</p> <p>11 case. You understand that you're here today</p> <p>12 to give testimony in a legal case between the</p> <p>13 FTC and Altria and JUUL?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you understand the FTC sued</p> <p>16 Altria and JUUL saying that a 35 percent</p> <p>17 investment that Altria made in JUUL is</p> <p>18 anti-competitive?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay. Mr. Eldridge, thank you very</p> <p>21 much for making yourself available today. I</p> <p>22 know you're busy with your own job and you and</p> <p>23 your company are a stranger to this dispute,</p> <p>24 and we really appreciate your cooperation.</p> <p>25 We're going to try to make this as efficient</p>
<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT REPORTER: The attorneys</p> <p>3 participating in this deposition</p> <p>4 acknowledge that I am not physically</p> <p>5 present in the deposition room and that I</p> <p>6 will be reporting this deposition</p> <p>7 remotely. They further acknowledge that,</p> <p>8 in lieu of an oath administered in person,</p> <p>9 the witness will verbally declare his/her</p> <p>10 testimony in this matter is under penalty</p> <p>11 of perjury. The parties and their counsel</p> <p>12 consent to this arrangement and waive any</p> <p>13 objections to this manner of reporting.</p> <p>14 Please indicate your agreement by stating</p> <p>15 your name and your agreement on the record.</p> <p>16 (All parties recite their agreement</p> <p>17 and consent.)</p> <p>18 J E F F E L D R I D G E,</p> <p>19 called as a witness, having been duly</p> <p>20 sworn by a Notary Public, was examined</p> <p>21 and testified as follows:</p> <p>22 EXAMINATION BY</p> <p>23 MR. KATERBERG:</p> <p>24 Q. Good morning, sir. Could you please</p> <p>25 state your full name for the record?</p>	<p style="text-align: right;">Page 9</p> <p>1 J. ELDRIDGE</p> <p>2 and quick and painless as possible.</p> <p>3 You understand the FTC-filed case</p> <p>4 that we're here for today in April 2020?</p> <p>5 A. I'm not actually sure of the date,</p> <p>6 but I'm of the understanding that it was</p> <p>7 filed.</p> <p>8 Q. Very good. Do you understand that</p> <p>9 it's scheduled to go to trial next April,</p> <p>10 April 2021?</p> <p>11 A. Again, I'm not sure of the date.</p> <p>12 Q. Are you aware that before the FTC</p> <p>13 filed the case, they conducted an</p> <p>14 investigation?</p> <p>15 A. No, I'm not.</p> <p>16 Q. Well, are you aware that they sent a</p> <p>17 subpoena for documents to your company, ITG?</p> <p>18 A. Yes, I'm aware.</p> <p>19 Q. And you're aware that ITG produced</p> <p>20 some documents to the FTC?</p> <p>21 A. Yes, I am aware.</p> <p>22 Q. Okay. And you're aware that you</p> <p>23 signed a declaration that ITG and its counsel</p> <p>24 gave to the FTC?</p> <p>25 A. Yes, I'm aware.</p>

Jeff Eldridge  
December 14, 2020

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10 to 13

<p style="text-align: right;">Page 10</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Okay. So we'll be spending some</p> <p>3 time with that declaration a little later.</p> <p>4 We've marked it as an exhibit, and we'll want</p> <p>5 to ask you a few questions about it.</p> <p>6 Are you aware, Mr. Eldridge, that a</p> <p>7 colleague of yours named Carol Folmar also</p> <p>8 submitted a declaration that was submitted to</p> <p>9 the FTC?</p> <p>10 A. Yes, I'm aware.</p> <p>11 Q. And are you aware that after the FTC</p> <p>12 started this administrative case, we, meaning</p> <p>13 Altria's outside counsel, also served a</p> <p>14 subpoena on your employer, ITG, asking for</p> <p>15 some documents?</p> <p>16 A. Is that not the same question you</p> <p>17 just asked?</p> <p>18 Q. Well, my question earlier was about</p> <p>19 the FTC asking ITG for documents. That was my</p> <p>20 earlier question.</p> <p>21 My question now is, are you aware</p> <p>22 that, separate from that, Altria -- meaning me</p> <p>23 and my colleagues as outside counsel for</p> <p>24 Altria -- also served a subpoena and asked</p> <p>25 for, basically, a second round of documents?</p>	<p style="text-align: right;">Page 12</p> <p>1 J. ELDRIDGE</p> <p>2 this case, or one of the issues in this case,</p> <p>3 is whether Altria's investment in JUUL had an</p> <p>4 adverse impact on competition in the e-vapor</p> <p>5 marketplace?</p> <p>6 A. I'm not aware of the details of the</p> <p>7 case.</p> <p>8 Q. Okay. But do you understand the</p> <p>9 judge may take into account what you have to</p> <p>10 say here today about the e-vapor marketplace</p> <p>11 and about competition and the impact of</p> <p>12 Altria's investment?</p> <p>13 A. Yes, I am aware.</p> <p>14 Q. Okay. Very good. So Mr. Eldridge,</p> <p>15 I just want to ask you a few questions about</p> <p>16 your history of giving testimony, if you've</p> <p>17 ever testified before either in a deposition</p> <p>18 or trial setting.</p> <p>19 A. Only in a criminal case.</p> <p>20 Q. Was that connected with your work at</p> <p>21 ITG or with tobacco or e-vapor in any way?</p> <p>22 A. Yes, it was.</p> <p>23 Q. Can you just briefly describe what</p> <p>24 that was about?</p> <p>25 A. It was a criminal case. It was an</p>
<p style="text-align: right;">Page 11</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes, I'm aware.</p> <p>3 Q. Okay. And you're aware that ITG</p> <p>4 produced more documents as a result of that</p> <p>5 process?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And you're aware that the FTC shared</p> <p>8 with us, as Altria's counsel, the documents</p> <p>9 that ITG produced to the FTC earlier in the</p> <p>10 investigation, right?</p> <p>11 A. I'm not totally aware of the</p> <p>12 exchange of documents.</p> <p>13 Q. Okay. Totally understand. I'm just</p> <p>14 trying to sort of lay the groundwork here</p> <p>15 because we're going to be talking about some</p> <p>16 of these documents later today. So I just</p> <p>17 wanted to try to get out there kind of what</p> <p>18 was shared, where these documents that we're</p> <p>19 going to be looking at are coming from.</p> <p>20 Now, Mr. Eldridge, do you understand</p> <p>21 that you're on a preliminary list that the FTC</p> <p>22 provided of who they expect to be witnesses to</p> <p>23 testify at a trial in this case?</p> <p>24 A. Yes, I'm aware.</p> <p>25 Q. And you understand that the issue in</p>	<p style="text-align: right;">Page 13</p> <p>1 J. ELDRIDGE</p> <p>2 armed robbery at a retail store. There was</p> <p>3 product stolen. I testified to the product</p> <p>4 and the manufacturer codes that were present</p> <p>5 or that are present on the product.</p> <p>6 Q. Got it. Okay. And my guess is that</p> <p>7 testimony was probably not remote virtual sort</p> <p>8 of testimony like we're doing today, right?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. So this is new, this remote</p> <p>11 testimony. It's new for many of us, so we'll</p> <p>12 all just try to cooperate and get through any</p> <p>13 technical glitches that may occur and be as</p> <p>14 efficient as possible. But basically, you</p> <p>15 understand that what's going to happen today</p> <p>16 is we're going to be asking you a bunch of</p> <p>17 questions. I'll go first. An attorney from</p> <p>18 the FTC will then have the opportunity to ask</p> <p>19 you questions.</p> <p>20 You understand that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you understand that the</p> <p>23 attorneys who are not questioning you at any</p> <p>24 given time can make various objections to the</p> <p>25 questions that are asked, and that's for the</p>



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<p style="text-align: right;">Page 14</p> <p>1 J. ELDRIDGE</p> <p>2 judge to take into account and rule on later,</p> <p>3 if appropriate?</p> <p>4 A. Yes, I am aware.</p> <p>5 Q. And you're aware that if there's an</p> <p>6 objection, you still need to answer the</p> <p>7 question as long as you understand it. I</p> <p>8 don't want you answering any questions that</p> <p>9 you don't understand. So if you don't</p> <p>10 understand something I'm asking at any time,</p> <p>11 please feel free to ask me to rephrase or</p> <p>12 clarify or whatever. You understand that,</p> <p>13 right?</p> <p>14 A. Based on how the objection is</p> <p>15 framed, yes, I understand.</p> <p>16 Q. Okay. And you also understand that</p> <p>17 the one exception where you can decline to</p> <p>18 answer is where a question is asking you for</p> <p>19 privileged communications, meaning</p> <p>20 communications you may have had with your</p> <p>21 attorney, with ITG's attorney, in-house or</p> <p>22 outside counsel. I'm not intending to ask you</p> <p>23 for any of that kind of information. It's not</p> <p>24 appropriate for me to learn that, and so I</p> <p>25 hope that I won't ask for it.</p>	<p style="text-align: right;">Page 16</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Okay. Good. And now you understand</p> <p>3 there's a court reporter taking down your</p> <p>4 testimony, and she's going to generate a</p> <p>5 transcript, right?</p> <p>6 A. Yes, I do.</p> <p>7 Q. And we're going to look at some</p> <p>8 documents which will be marked as exhibits to</p> <p>9 your deposition. I understand you may have</p> <p>10 had an opportunity to try out the Box</p> <p>11 software, and we'll work through this together</p> <p>12 in a few minutes here. We'll look at some</p> <p>13 specific documents.</p> <p>14 I believe we sent you a set of the</p> <p>15 hard copies of some of the documents. We</p> <p>16 weren't able to get all of them in there, but</p> <p>17 many of the documents that we're going to be</p> <p>18 talking about today were sent to you in hard</p> <p>19 copy in a box. Did you receive that?</p> <p>20 A. Yes. I received those that are</p> <p>21 right here in the corner of my desk.</p> <p>22 Q. Okay. Good. So when we get to it,</p> <p>23 we can do whatever you feel more comfortable</p> <p>24 with. We can either look at the documents on</p> <p>25 the screen, or you can look at the hard copies</p>
<p style="text-align: right;">Page 15</p> <p>1 J. ELDRIDGE</p> <p>2 If your attorney perceives that I'm</p> <p>3 asking you a question that touches on it, he</p> <p>4 can instruct you not to answer the question,</p> <p>5 and that's the one situation where you can</p> <p>6 decline to answer a question even though you</p> <p>7 understand it.</p> <p>8 Very good?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And you understand that there's a</p> <p>11 protective order in this case to protect the</p> <p>12 confidentiality of the business's proprietary</p> <p>13 information, third party, such as your</p> <p>14 employer?</p> <p>15 A. I can't say that I am of the</p> <p>16 understanding that there's a protective order.</p> <p>17 I could only assume that there would be.</p> <p>18 Q. Very good. And so if you and your</p> <p>19 counsel designate your testimony as</p> <p>20 confidential, it can't be made public; it</p> <p>21 can't be shared with the Altria or JUUL</p> <p>22 businesses; and all of the counsel on this</p> <p>23 call are outside counsel for the companies.</p> <p>24 You understand that, right?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 17</p> <p>1 J. ELDRIDGE</p> <p>2 if you prefer, or we can do some of each.</p> <p>3 The box there probably looks like it</p> <p>4 contains a lot of stuff. Just to give you</p> <p>5 some assurance, we're probably not going to</p> <p>6 get into all the documents there today, only a</p> <p>7 subset of them. So I just wanted to explain</p> <p>8 that because I gather the box can be pretty</p> <p>9 intimidating given the number of things in</p> <p>10 there.</p> <p>11 This is not an endurance contest,</p> <p>12 Mr. Eldridge. We want you to be comfortable</p> <p>13 at all times. Any time you need a break,</p> <p>14 water or whatever, just say so. We can take a</p> <p>15 short break and reconvene.</p> <p>16 Mr. Eldridge, are you aware of any</p> <p>17 reason why you wouldn't be able to give</p> <p>18 complete and accurate testimony here today?</p> <p>19 A. No reason why not.</p> <p>20 Q. Okay. Any questions for me before</p> <p>21 we go further?</p> <p>22 A. No. I'm fine. Thank you.</p> <p>23 Q. Okay. Very good.</p> <p>24 So one thing I wanted to do</p> <p>25 preliminarily, there's a bunch of technical</p>

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<p style="text-align: right;">Page 18</p> <p>1 J. ELDRIDGE</p> <p>2 terms, abbreviations that I've seen in the</p> <p>3 documents in this case and in your company's</p> <p>4 documents in particular, and I think they're</p> <p>5 used in the industry more generally.</p> <p>6 So just to make sure that we're kind</p> <p>7 of on the same page and may save some time</p> <p>8 later, I just want to go over some</p> <p>9 abbreviations to see if you're comfortable</p> <p>10 with it and see if we have the same</p> <p>11 understanding.</p> <p>12 So the first one is, when I say</p> <p>13 "FTC," you'll understand that that means</p> <p>14 Federal Trade Commission, which is one of the</p> <p>15 parties to this dispute.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Now, Mr. Eldridge, the</p> <p>18 industry we're going to be referring to here</p> <p>19 today, I've heard people call it the e-vapor</p> <p>20 industry; I've heard people use e-cigarettes;</p> <p>21 some people just call it vapor. Do you have a</p> <p>22 preferred terminology that you usually use, or</p> <p>23 are they all pretty much interchangeable to</p> <p>24 you?</p> <p>25 A. They're all synonymous in my mind.</p>	<p style="text-align: right;">Page 20</p> <p>1 J. ELDRIDGE</p> <p>2 Administration, which is a regulatory --</p> <p>3 A. Yes.</p> <p>4 Q. And that's a regulatory agency that</p> <p>5 regulates tobacco products among other things,</p> <p>6 right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And if I use the abbreviation PMTA,</p> <p>9 do you have an understanding as to what that</p> <p>10 refers to?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Is that Premarket Tobacco Product</p> <p>13 Application?</p> <p>14 A. Yes, exactly.</p> <p>15 Q. And that would be an application</p> <p>16 that is submitted by a tobacco company or an</p> <p>17 e-vapor company to the FDA for a market</p> <p>18 authorization to sell product?</p> <p>19 A. Correct.</p> <p>20 Q. I may use the expression from time</p> <p>21 to time "8/8/16 product." That's a date,</p> <p>22 August 8, 2016. Do you have an understanding</p> <p>23 of what that refers to?</p> <p>24 A. Not specifically. I mean, I</p> <p>25 understand the date.</p>
<p style="text-align: right;">Page 19</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Very good. If I say "ITG," you'll</p> <p>3 understand that means your employer? I think</p> <p>4 the official corporate name is ITG Brands,</p> <p>5 LLC; is that right?</p> <p>6 A. Correct.</p> <p>7 Q. What does the ITG stand for? If you</p> <p>8 know.</p> <p>9 A. What it was consummated of, Imperial</p> <p>10 Tobacco Company.</p> <p>11 Q. Very good. Speaking of that, ITG</p> <p>12 has a parent company that's called Imperial</p> <p>13 Brands, PLC, right?</p> <p>14 A. Yes.</p> <p>15 Q. If I just call them Imperial for</p> <p>16 short, will that be okay?</p> <p>17 A. Yes, that's fine.</p> <p>18 Q. Okay. And one of the parties to</p> <p>19 this proceeding is a company known as JUUL</p> <p>20 Labs, Inc. Some people call them JLI; some</p> <p>21 people just call them JUUL. Do you have a way</p> <p>22 that you usually refer to them?</p> <p>23 A. JUUL, typically, is how I recognize.</p> <p>24 Q. Okay. And when I say "FDA," you'll</p> <p>25 understand that to mean the U.S. Food and Drug</p>	<p style="text-align: right;">Page 21</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Are you familiar with something</p> <p>3 called the deeming rule that FDA had that</p> <p>4 brought the e-vapor products under the FDA's</p> <p>5 regulatory oversight?</p> <p>6 A. Yes. I am aware of that.</p> <p>7 Q. All right. So when we get to it,</p> <p>8 we'll talk a little more about that and how</p> <p>9 that particular date relates to that. I don't</p> <p>10 think we need to dig any further into that</p> <p>11 right now.</p> <p>12 Mr. Eldridge, in some of ITG's</p> <p>13 documents, I've seen the acronym EVP. I think</p> <p>14 that stands for e-vapor products, maybe an</p> <p>15 abbreviation that's used for that sector.</p> <p>16 Does that sound right?</p> <p>17 A. You're exactly right. Electronic</p> <p>18 vapor products.</p> <p>19 Q. I've also seen NGP. I think that</p> <p>20 stands for next generation products. Is that</p> <p>21 familiar to you?</p> <p>22 A. Yes, very familiar.</p> <p>23 Q. And next generation products refers</p> <p>24 to this category of products that are the next</p> <p>25 generation of tobacco; in other words, not</p>

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<p style="text-align: right;">Page 22</p> <p>1 J. ELDRIDGE</p> <p>2 combustible cigarettes. Is that your</p> <p>3 understanding?</p> <p>4 A. Yes, it is my understanding.</p> <p>5 Q. In connection with tobacco products,</p> <p>6 I've seen this term HPHC. Does that ring a</p> <p>7 bell?</p> <p>8 A. It really does not.</p> <p>9 Q. Harmful or potentially harmful</p> <p>10 constituents. Does that ring a bell in</p> <p>11 relation to --</p> <p>12 A. That does not ring a bell.</p> <p>13 Q. Okay, okay. Fair enough.</p> <p>14 What about open systems versus</p> <p>15 closed systems, do those terms mean anything</p> <p>16 to you in relation to e-vapor products?</p> <p>17 A. Yes.</p> <p>18 Q. Can you describe that distinction?</p> <p>19 A. Closed systems ultimately are not</p> <p>20 refillable; and open systems typically have</p> <p>21 the mouth piece, and vapor juice can be filled</p> <p>22 into the tanks.</p> <p>23 Q. Got it. Okay. Very good. That's</p> <p>24 helpful. I think we're on the same page.</p> <p>25 Now, your position is vice</p>	<p style="text-align: right;">Page 24</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Okay. And I don't need you to list</p> <p>3 all the 13 states, but can you just describe</p> <p>4 generally the geography of that central region</p> <p>5 in terms of the --</p> <p>6 A. Yes. We have the central part of</p> <p>7 the United States, you know, Minnesota down to</p> <p>8 Louisiana. I also have Alabama, West</p> <p>9 Virginia, up through the middle section of the</p> <p>10 United States.</p> <p>11 Q. Got it. I think you said your</p> <p>12 responsibilities encompass not only e-vapor</p> <p>13 products, but also the other tobacco products</p> <p>14 that ITG sells, like cigarettes, traditional</p> <p>15 cigarettes, and cigars, right?</p> <p>16 A. That is correct.</p> <p>17 Q. And what portion of your time,</p> <p>18 roughly, would you estimate you spend on</p> <p>19 e-vapor as opposed to the traditional tobacco</p> <p>20 products?</p> <p>21 A. 25 percent, roughly.</p> <p>22 Q. In addition to area central, how</p> <p>23 many other areas are there, the regions that</p> <p>24 the company divides the United States into for</p> <p>25 these purposes?</p>
<p style="text-align: right;">Page 23</p> <p>1 J. ELDRIDGE</p> <p>2 president, area central; is that right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And ITG is a U.S. tobacco company</p> <p>5 and subsidiary of Imperial Brands, PLC?</p> <p>6 A. Yes, it is.</p> <p>7 Q. And ITG, if I understand correctly,</p> <p>8 is the third largest tobacco company in the</p> <p>9 United States; is that right?</p> <p>10 A. Yes, it is.</p> <p>11 Q. And I've read that Imperial is the</p> <p>12 fourth largest tobacco company globally. Does</p> <p>13 that sound right?</p> <p>14 A. That sounds about right. I'm not</p> <p>15 exactly sure.</p> <p>16 Q. Okay. What are your</p> <p>17 responsibilities and functions as vice</p> <p>18 president, area central at ITG?</p> <p>19 A. As a vice president, I oversee the</p> <p>20 distribution and ultimately the sales arm of</p> <p>21 cigarettes, cigars, and vapor products that we</p> <p>22 sell in 13 Midwestern states; 265 to 70</p> <p>23 employees that I'm responsible for; the HR</p> <p>24 part of it; as well as distribution and sales</p> <p>25 of the items that we represent.</p>	<p style="text-align: right;">Page 25</p> <p>1 J. ELDRIDGE</p> <p>2 A. There's two other areas. There's an</p> <p>3 eastern area and a western area.</p> <p>4 Q. Got it. Okay. And Mr. Eldridge,</p> <p>5 who do you report to?</p> <p>6 A. Mrs. Kim Reed.</p> <p>7 Q. Is she executive vice president for</p> <p>8 sales?</p> <p>9 A. Yes, she is.</p> <p>10 Q. Is Mr. Oliver Kutz -- I'm not sure</p> <p>11 if that's the pronunciation -- is he currently</p> <p>12 the CEO of ITG Brands?</p> <p>13 A. Oliver Kutz, and yes, he is.</p> <p>14 Q. Thank you for that. Does Ms. Reed</p> <p>15 report to Mr. Kutz?</p> <p>16 A. Yes, she does.</p> <p>17 Q. When you signed the declaration for</p> <p>18 the FTC earlier this year, and we'll look at</p> <p>19 it in a second, but I'll represent to you, you</p> <p>20 signed it on April 1, 2020; and as of that</p> <p>21 time you said you had recently changed</p> <p>22 titles -- you said that in the declaration --</p> <p>23 and it went from area vice president, midwest</p> <p>24 states, to vice president, area central.</p> <p>25 I just want to clarify, was that a</p>

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<p style="text-align: right;">Page 26</p> <p>1 J. ELDRIDGE</p> <p>2 substantive change, or was that just the same</p> <p>3 job, but the title, just the nomenclature</p> <p>4 changed in the title?</p> <p>5 A. Same job, different title, different</p> <p>6 name.</p> <p>7 Q. Did the central region -- was the</p> <p>8 central region the same thing as the Midwest</p> <p>9 states region that was in the earlier title</p> <p>10 for the job?</p> <p>11 A. Basically, yes. I did pick up some</p> <p>12 additional states with the transition.</p> <p>13 Q. I see. Okay. And Mr. Eldridge, do</p> <p>14 you have any responsibilities with regard to</p> <p>15 online sales?</p> <p>16 A. No, I do not.</p> <p>17 Q. Okay. And you're aware that blu</p> <p>18 does sell its products -- excuse me. Let</p> <p>19 me -- withdrawn.</p> <p>20 You're aware that ITG Brands sells</p> <p>21 multiple e-vapor products under the brand name</p> <p>22 blu, right, B-L-U?</p> <p>23 A. Yes.</p> <p>24 Q. And you're aware that blu does have</p> <p>25 online sales through a website called blu.com?</p>	<p style="text-align: right;">Page 28</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Mr. Eldridge, in your</p> <p>3 responsibilities as vice president, area</p> <p>4 central, I gather you have occasion from time</p> <p>5 to time to report information to your</p> <p>6 colleagues?</p> <p>7 A. Would you ask that question again,</p> <p>8 Robert?</p> <p>9 Q. Sure. Let me try to clarify that.</p> <p>10 You need to communicate with your</p> <p>11 colleagues through reporting, through creation</p> <p>12 of slide decks, things like that, to carry out</p> <p>13 your responsibilities as vice president, area</p> <p>14 central; is that right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And from time to time, your</p> <p>17 colleagues similarly need to communicate with</p> <p>18 you, report information to you, right?</p> <p>19 A. Yes.</p> <p>20 Q. And I gather within ITG it's</p> <p>21 important for you to be able to trust the</p> <p>22 information your colleagues provide to you,</p> <p>23 market data, that sort of thing?</p> <p>24 A. Yes. It is important.</p> <p>25 Q. Within ITG, as far as you know,</p>
<p style="text-align: right;">Page 27</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes, I'm aware.</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 Q. Okay. You started with Lorillard</p> <p>11 Tobacco Company in 1987; is that right?</p> <p>12 A. That is correct.</p> <p>13 Q. Was that like a first job out of</p> <p>14 college?</p> <p>15 A. I had a brief stint with a food</p> <p>16 broker.</p> <p>17 Q. Okay.</p> <p>18 A. And started with ITG Brands.</p> <p>19 Q. Got it.</p> <p>20 A. Started with Lorillard.</p> <p>21 Q. Started with Lorillard, right.</p> <p>22 Other than the brief stint with the</p> <p>23 food broker, your entire career has been spent</p> <p>24 in the tobacco industry?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 29</p> <p>1 J. ELDRIDGE</p> <p>2 people always try to do their best to give</p> <p>3 complete and accurate information so the</p> <p>4 company can rely on it in making business</p> <p>5 decisions, right?</p> <p>6 A. That is correct.</p> <p>7 Q. In your responsibilities as vice</p> <p>8 president, area central, do you keep up with</p> <p>9 the company's financial statements?</p> <p>10 A. Not in detail, I do not.</p> <p>11 Q. If I wanted to ask you questions,</p> <p>12 for example, about -- or if I wanted to find</p> <p>13 out information about blu's financial</p> <p>14 statements, operating income, that sort of</p> <p>15 thing, would you have familiarity to address</p> <p>16 that sort of thing; or would that need to be</p> <p>17 directed to somebody else?</p> <p>18 A. I do not have familiarity with that</p> <p>19 in detail.</p> <p>20 Q. Okay. I want to ask you a few</p> <p>21 things about the parent company. So Imperial</p> <p>22 is based in Bristol in the United Kingdom; is</p> <p>23 that right?</p> <p>24 A. That is correct.</p> <p>25 Q. And it's a publicly traded company?</p>

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<p style="text-align: right;">Page 30</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes.</p> <p>3 Q. Do you own stock in Imperial?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Is the current CEO of Imperial a</p> <p>6 gentleman by the name of Stefan Bomhard?</p> <p>7 Hopefully I got the pronunciation right.</p> <p>8 A. Yes. He's the current.</p> <p>9 Q. He's the current CEO, and previously</p> <p>10 the CEO was Alison Cooper; is that correct?</p> <p>11 A. That is correct.</p> <p>12 Q. Does Mr. Kutz, as CEO of ITG here in</p> <p>13 the U.S., does he report directly to the CEO</p> <p>14 of Imperial, Mr. Bomhard, or is there a</p> <p>15 reporting chain between the two of those?</p> <p>16 A. I don't really know if there's a</p> <p>17 reporting chain.</p> <p>18 Q. Okay. Now, from time to time,</p> <p>19 Imperial reports results as a publicly traded</p> <p>20 company and reports on the business outlook to</p> <p>21 shareholders and the investment community.</p> <p>22 Are you aware of that?</p> <p>23 A. Yes, sir, I am.</p> <p>24 Q. And are you involved in the process</p> <p>25 of coming up with the information that gets</p>	<p style="text-align: right;">Page 32</p> <p>1 J. ELDRIDGE</p> <p>2 companies go and make presentations to the</p> <p>3 securities analysts there. We may look at</p> <p>4 some documents later that's associated with</p> <p>5 Imperial's presentations at that conference.</p> <p>6 In any event, you understand,</p> <p>7 Mr. Eldridge, that it's important for</p> <p>8 executives to give accurate information to the</p> <p>9 investment community?</p> <p>10 A. Yes.</p> <p>11 Q. And as far as you know, they strive</p> <p>12 to do that?</p> <p>13 A. Yes.</p> <p>14 Q. There's also a company that I gather</p> <p>15 is a subsidiary of Imperial called Fontem,</p> <p>16 F-O-N-T-E-M, U.S., LLC. Are you familiar with</p> <p>17 an entity by that name?</p> <p>18 A. Yes. I am familiar with that.</p> <p>19 Q. Can you explain to us the</p> <p>20 relationship between ITG and Fontem?</p> <p>21 A. We're simply the sales agent for</p> <p>22 Fontem.</p> <p>23 Q. Okay. I think I understand. So</p> <p>24 what does Fontem do, exactly, if ITG is the</p> <p>25 sales agent?</p>
<p style="text-align: right;">Page 31</p> <p>1 J. ELDRIDGE</p> <p>2 reported to the investment community?</p> <p>3 A. No, I am not.</p> <p>4 Q. Do you follow what's going on in</p> <p>5 that arena, you know, listen in to quarterly</p> <p>6 earnings calls and read annual reports, that</p> <p>7 sort of thing?</p> <p>8 MR. ORMAND: Object to the form.</p> <p>9 A. Not in detail, I do not.</p> <p>10 Q. Not in detail, but in general, do</p> <p>11 you keep up with it and observe what's going</p> <p>12 on with reporting of quarterly reports and</p> <p>13 that sort of thing for Imperial, the parent</p> <p>14 company?</p> <p>15 A. Somewhat, yes.</p> <p>16 Q. Are you familiar with an annual</p> <p>17 tobacco company investor conference called --</p> <p>18 this is an acronym. Sorry. I left this out</p> <p>19 of the acronyms we went over earlier, but</p> <p>20 CAGNY, which stands for Consumer Analysts</p> <p>21 Group of New York?</p> <p>22 A. I've heard the term. I'm not that</p> <p>23 familiar with CAGNY.</p> <p>24 Q. Very good. They put on a conference</p> <p>25 every February, I believe, that different</p>	<p style="text-align: right;">Page 33</p> <p>1 J. ELDRIDGE</p> <p>2 A. I'm not really, you know, a part of</p> <p>3 corporate structure, you know. Planning broad</p> <p>4 strategies, providing us with some guidance,</p> <p>5 and ultimately we deliver the sales activities</p> <p>6 for Fontem.</p> <p>7 Q. What about new product development,</p> <p>8 R&amp;D, that sort of thing, would that be done by</p> <p>9 Fontem?</p> <p>10 A. I would expect so. I don't really</p> <p>11 know.</p> <p>12 Q. Is Fontem involved in planning</p> <p>13 commercial and sales strategy?</p> <p>14 A. I would say somewhat, yes.</p> <p>15 Q. All right. And before 2015, I want</p> <p>16 to just kind of understand the corporate</p> <p>17 lineage here. Do I understand correctly that</p> <p>18 before that point in time, Fontem was part of</p> <p>19 Lorillard Tobacco?</p> <p>20 A. I don't really know if it was a part</p> <p>21 of. That name was used during that time</p> <p>22 frame.</p> <p>23 Q. All right. And before 2015, if I</p> <p>24 understand correctly from your declaration,</p> <p>25 you worked at Lorillard; is that right?</p>

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<p style="text-align: right;">Page 34</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes.</p> <p>3 Q. Now, when -- well, let me ask you,</p> <p>4 around 2015 a tobacco company called Reynolds</p> <p>5 merged with Lorillard, right?</p> <p>6 A. Correct.</p> <p>7 Q. As part of that process, if I</p> <p>8 understand correctly, Lorillard had to divest</p> <p>9 some assets. Does that sound right?</p> <p>10 A. That sounds right.</p> <p>11 Q. Okay. And do I understand correctly</p> <p>12 that in that divestiture, Fontem, along with</p> <p>13 some other brands, some combustible tobacco</p> <p>14 brands were included in what Lorillard</p> <p>15 divested?</p> <p>16 A. Yes.</p> <p>17 Q. And Imperial brands, the U.K. parent</p> <p>18 company, bought those brands as part of that</p> <p>19 divestiture process?</p> <p>20 A. Yes. As I understand it.</p> <p>21 Q. And is that how you personally,</p> <p>22 Mr. Eldridge, you transitioned from being an</p> <p>23 employee of Lorillard to being an employee of</p> <p>24 ITG?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Okay. Very good. Mr. Eldridge, do</p> <p>3 you have any interaction with the executives</p> <p>4 at Imperial, the parent company, these days?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Do you have any interaction</p> <p>7 with the regulatory function? And by</p> <p>8 regulatory function, I mean the people at ITG</p> <p>9 or at Fontem who would be responsible for</p> <p>10 interfacing with the FDA about regulatory</p> <p>11 processes for e-vapor products.</p> <p>12 MR. ORMAND: Object to form.</p> <p>13 A. I do not interact with those folks.</p> <p>14 Q. Do you sort of, at least generally</p> <p>15 keep up with what's going on on the regulatory</p> <p>16 side of the business?</p> <p>17 MR. ORMAND: Object to form.</p> <p>18 A. Generally would be a good way to put</p> <p>19 it.</p> <p>20 Q. Okay. So I'll ask you some</p> <p>21 questions. And I don't mean to be tedious</p> <p>22 about this. I'm just trying to get a sense of</p> <p>23 kind of what you're familiar with because I</p> <p>24 have questions on a variety of different</p> <p>25 subject matters. I don't want to waste your</p>
<p style="text-align: right;">Page 35</p> <p>1 J. ELDRIDGE</p> <p>2 Q. How was it, if you could just</p> <p>3 briefly explain -- so you were a sales</p> <p>4 executive with Lorillard previously. How did</p> <p>5 it come about that you transferred to ITG</p> <p>6 instead of staying with Lorillard after</p> <p>7 Lorillard became part of Reynolds?</p> <p>8 A. I don't really know how. I know</p> <p>9 part of the sales force were needed, and I was</p> <p>10 part of the Lorillard sales force and I was</p> <p>11 asked to stay on.</p> <p>12 Q. Got it. That's helpful. When you</p> <p>13 were in Lorillard in 2015 and before that, did</p> <p>14 your responsibilities include e-vapor</p> <p>15 products?</p> <p>16 A. Part of that time, yes.</p> <p>17 Q. Can you break that down for us?</p> <p>18 When you say "part of that time," what would</p> <p>19 be the time when you were working on e-vapor</p> <p>20 and what would be the time when you weren't?</p> <p>21 A. Lorillard acquired blu in, I believe</p> <p>22 it was, 2012.</p> <p>23 Q. Got it. Who owned blu before that?</p> <p>24 A. The name I remember was Justin</p> <p>25 Healy.</p>	<p style="text-align: right;">Page 37</p> <p>1 J. ELDRIDGE</p> <p>2 time spending a lot of time on details for</p> <p>3 something that's not really in your lane, but</p> <p>4 I'm just trying to get a sense of kind of how</p> <p>5 your responsibilities traverse these various</p> <p>6 different areas.</p> <p>7 Do you have an understanding that</p> <p>8 Fontem has intellectual property rights,</p> <p>9 patents, related to e-vapor?</p> <p>10 A. I'm not familiar with your term.</p> <p>11 Q. Do you understand what patents are?</p> <p>12 A. Yes.</p> <p>13 Q. So do you understand that Fontem</p> <p>14 owns certain patents related to e-vapor</p> <p>15 products?</p> <p>16 A. Again, I'm not familiar with</p> <p>17 corporate structure.</p> <p>18 Q. Understood. Okay.</p> <p>19 Mr. Eldridge, in some of the</p> <p>20 documents of both Imperial and ITG, I've seen</p> <p>21 references to FY. I think maybe it means</p> <p>22 fiscal year and financial year. Maybe you can</p> <p>23 just tell me. Do I understand correctly that</p> <p>24 Imperial and ITG operate on a fiscal year</p> <p>25 that's different than calendar year?</p>



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<p style="text-align: right;">Page 38</p> <p>1 J. ELDRIDGE</p> <p>2 A. That is correct.</p> <p>3 Q. And is it that October through</p> <p>4 December would be first quarter of the -- is</p> <p>5 it fiscal year or financial year? How do you</p> <p>6 say it usually?</p> <p>7 A. They are used synonymously, fiscal</p> <p>8 year and financial year.</p> <p>9 Q. Okay. Fair enough. So is October</p> <p>10 through December, is that the first quarter of</p> <p>11 the fiscal year or financial year?</p> <p>12 A. October through December, yes, first</p> <p>13 quarter.</p> <p>14 Q. Very good. So right now we're in</p> <p>15 the first quarter of 2021 as Imperial and ITG</p> <p>16 would see it?</p> <p>17 A. That is correct.</p> <p>18 Q. And the fiscal year 2020 has not</p> <p>19 concluded at this point from ITG's</p> <p>20 perspective?</p> <p>21 A. That is not correct. Our fiscal</p> <p>22 year ended in September, the end of September.</p> <p>23 Q. Fiscal year of 2020 ended in</p> <p>24 September?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 40</p> <p>1 J. ELDRIDGE</p> <p>2 A. Could you rephrase that question,</p> <p>3 Robert?</p> <p>4 Q. Sure, yeah. I'm going to represent</p> <p>5 to you -- and I'm happy to show you the</p> <p>6 document; it would be helpful for context --</p> <p>7 but Imperial's former CEO, Ms. Alison Cooper,</p> <p>8 characterized blu as, quote, "the original</p> <p>9 brand in the market," close quote. Is that</p> <p>10 something you're familiar with?</p> <p>11 A. No, I am not.</p> <p>12 MS. LEVERT: Same objection.</p> <p>13 MR. ORMAND: Join.</p> <p>14 Q. Let's take a look at the document.</p> <p>15 The document we're going to look at I don't</p> <p>16 believe is in the hard copies that we sent</p> <p>17 you, but if I can ask my colleague, Mr. Marra,</p> <p>18 to pull up tab 39.</p> <p>19 MR. KATERBERG: Bryan, I think we're</p> <p>20 going to mark this document Eldridge</p> <p>21 Exhibit 7. Is that right?</p> <p>22 MR. MARRA: That's right, it will be</p> <p>23 Exhibit 7.</p> <p>24 MR. KATERBERG: So while we're doing</p> <p>25 the logistics, I'll just read out for the</p>
<p style="text-align: right;">Page 39</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Got it. Okay. I think I</p> <p>3 understand.</p> <p>4 Mr. Eldridge, I want to ask you</p> <p>5 about the blu product line. I think we talked</p> <p>6 about this earlier, ITG's e-vapor line of</p> <p>7 products is generally called blu, B-L-U?</p> <p>8 A. That is correct.</p> <p>9 Q. And blu, as I understand it, is the</p> <p>10 oldest and most established e-vapor brand in</p> <p>11 the industry. Does that sound familiar?</p> <p>12 A. It is one of the earliest.</p> <p>13 Q. I understand it's been around since</p> <p>14 about 2009. Does that sound right?</p> <p>15 A. I'm not familiar with the actual</p> <p>16 date, but it does sound about right.</p> <p>17 Q. So there's an occasion when</p> <p>18 Imperial's former CEO, Ms. Cooper, Alison</p> <p>19 Cooper, she called blu the, quote, "original</p> <p>20 brand in the market," close quote. We can</p> <p>21 look at the document and I can show you if</p> <p>22 you'd like to look at the context, but does</p> <p>23 that generally sound right to you?</p> <p>24 MS. LEVERT: Object to form.</p> <p>25 MR. ORMAND: Join.</p>	<p style="text-align: right;">Page 41</p> <p>1 J. ELDRIDGE</p> <p>2 record that Eldridge Exhibit 7 is going to</p> <p>3 be a transcript that we retrieved from the</p> <p>4 internet from Imperial's website, and it's</p> <p>5 a transcript of a presentation at CAGNY,</p> <p>6 Consumer Analyst Group of New York, on</p> <p>7 February 21, 2019.</p> <p>8 (Eldridge Exhibit 7, 2/21/19 CAGNY</p> <p>9 presentation transcript, marked for</p> <p>10 identification, as of this date.)</p> <p>11 Q. Mr. Eldridge, you should be able to</p> <p>12 see this on the screen through the Box</p> <p>13 interface. Just let me know when you're</p> <p>14 ready. And I'll give counsel a chance to look</p> <p>15 at the document as well.</p> <p>16 A. What was the number again, Robert?</p> <p>17 Q. It's going to show up in the shared</p> <p>18 exhibit folder, and it should show up as</p> <p>19 Exhibit 7.</p> <p>20 A. There's multiples in the folder, so</p> <p>21 I'm looking for that one.</p> <p>22 I see it. Bear with me, please.</p> <p>23 I'd like to print this, if you don't mind.</p> <p>24 Q. Sure.</p> <p>25 MR. KATERBERG: Let's go off the</p>

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<p style="text-align: right;">Page 42</p> <p>1 J. ELDRIDGE</p> <p>2 record for a second.</p> <p>3 (Discussion held off the record.)</p> <p>4 BY MR. KATERBERG:</p> <p>5 Q. Mr. Eldridge, I'll give you as much</p> <p>6 time as you need to look at the document. I'm</p> <p>7 just going to ask you about something fairly</p> <p>8 specific that's at the bottom of page 9.</p> <p>9 Unfortunately there's no page numbers on the</p> <p>10 hard copy, as far as I can tell, but it's page</p> <p>11 9 of 15.</p> <p>12 Excuse me. I'm sorry. I misspoke.</p> <p>13 Bottom of page 10 of 15, and it's the place</p> <p>14 where it says, "Slide - Strong Consumer</p> <p>15 Awareness for blu."</p> <p>16 A. I'm there.</p> <p>17 Q. Okay. Very good.</p> <p>18 Mr. Eldridge, this is again the</p> <p>19 CAGNY presentation. It's a presentation that</p> <p>20 Imperial makes at a consumer analysts</p> <p>21 conference to talk about what's going on in</p> <p>22 the business, and Ms. Cooper, Ms. Alison</p> <p>23 Cooper was presenting at this function. If</p> <p>24 you see under Slide: Strong Consumer</p> <p>25 Awareness for blu, do you see where it says,</p>	<p style="text-align: right;">Page 44</p> <p>1 J. ELDRIDGE</p> <p>2 A. I do see that statement.</p> <p>3 Q. So this is February of 2019. Do you</p> <p>4 remember hearing anything about a study</p> <p>5 showing very strong unaided awareness of the</p> <p>6 blu brand among smokers and vapors?</p> <p>7 A. I do not remember.</p> <p>8 Q. There's a company, a consumer</p> <p>9 research company that I understand does work</p> <p>10 for ITG from time to time called Engine. Does</p> <p>11 the name of that outfit ring a bell?</p> <p>12 A. It does not.</p> <p>13 Q. I'm going to show you some slides</p> <p>14 that were presented along with these remarks</p> <p>15 at the CAGNY conference. You'll see there it</p> <p>16 says, "Slide - Strong Consumer Awareness for</p> <p>17 blu." We'll mark the slides as the next</p> <p>18 exhibit.</p> <p>19 MR. KATERBERG: Bryan, if you can</p> <p>20 mark our tab 47, which is going to be</p> <p>21 Eldridge Exhibit 8.</p> <p>22 MR. ORMAND: Robert, is that in the</p> <p>23 hard copy set or no?</p> <p>24 MR. KATERBERG: Unfortunately not.</p> <p>25 Q. Mr. Eldridge, I apologize. We tried</p>
<p style="text-align: right;">Page 43</p> <p>1 J. ELDRIDGE</p> <p>2 "Brand awareness is high in the U.S. blu is</p> <p>3 the original vaping brand in the market and</p> <p>4 celebrates its 10th anniversary this year?"</p> <p>5 A. Yes, I see that.</p> <p>6 Q. So that's the quotation that I was</p> <p>7 referring to a moment ago. Does that sound</p> <p>8 right to you, to hear blu characterized as the</p> <p>9 original vaping brand in the market?</p> <p>10 A. That is how Ms. Cooper characterized</p> <p>11 it.</p> <p>12 Q. Would you agree with that?</p> <p>13 A. I have no reason to disagree with</p> <p>14 it.</p> <p>15 Q. Okay. And then in the next</p> <p>16 paragraph, you'll see she refers to new data</p> <p>17 from a study just completed which shows "very</p> <p>18 strong, unaided awareness among smokers and</p> <p>19 vapers." Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And then she further says, "You can</p> <p>22 see that blu achieves an awareness that's</p> <p>23 significantly ahead of most other vapor</p> <p>24 brands, particularly with smokers, and it's</p> <p>25 growing." Do you see that?</p>	<p style="text-align: right;">Page 45</p> <p>1 J. ELDRIDGE</p> <p>2 to do our best to get you the documents ahead</p> <p>3 of time, but the couple ones that we're</p> <p>4 looking at right now, we weren't able to get</p> <p>5 those in the set shipped to you over the</p> <p>6 weekend. So sorry about that. Feel free to</p> <p>7 print it out if you need to. I'm just going</p> <p>8 to ask you about one particular slide in this</p> <p>9 set, which is going to be slide 34.</p> <p>10 But let's give Bryan a second to</p> <p>11 upload the document in the Box.</p> <p>12 (Eldridge Exhibit 8, 2/21/19</p> <p>13 Imperial Brands Maximizing Category</p> <p>14 Opportunities slide deck, marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. It's showing up for me in my Box</p> <p>17 folder as Exhibit 8.</p> <p>18 A. Number 8?</p> <p>19 Q. Yes. So just to identify Exhibit 8</p> <p>20 for the record, this is a slide deck that we</p> <p>21 retrieved from Imperial's website dated</p> <p>22 February 21, 2019, and it's titled Imperial</p> <p>23 Brands Maximizing Category Opportunities.</p> <p>24 Do you have it open, sir?</p> <p>25 A. I do.</p>



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<p style="text-align: right;">Page 46</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Can you please turn to slide 34, and</p> <p>3 do you see a slide that says "Strong consumer</p> <p>4 awareness for blu"?</p> <p>5 A. Yes. I see that slide.</p> <p>6 Q. Would it appear to you this would be</p> <p>7 a slide that goes along with the part of the</p> <p>8 transcript we looked at a moment ago in</p> <p>9 Exhibit 7, where Ms. Cooper talks about blu</p> <p>10 being the original vaping brand?</p> <p>11 A. Yes. By looking at the two</p> <p>12 documents, it appears so.</p> <p>13 Q. So this slide, the title is "Strong</p> <p>14 consumer awareness for blu," and you'll see</p> <p>15 the footnote with the source there that says,</p> <p>16 "February 2019 survey conducted by Engine</p> <p>17 among a sample of 2,000 18 and over U.S.</p> <p>18 adults."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Does that ring any bells, by any</p> <p>22 chance, of a study that was done around this</p> <p>23 time about the awareness of the blu brand?</p> <p>24 A. No, it does not.</p> <p>25 Q. All right. Well, be that as it may,</p>	<p style="text-align: right;">Page 48</p> <p>1 J. ELDRIDGE</p> <p>2 (Eldridge Exhibit 2, Screenshot from</p> <p>3 blu.com of online blu products, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. So let me know when you're ready.</p> <p>6 A. I will. I'm trying to get back to</p> <p>7 the shared Box.</p> <p>8 MR. MARRA: It should be in your box</p> <p>9 of documents, actually, if you want to</p> <p>10 look there.</p> <p>11 THE WITNESS: Which one is it?</p> <p>12 MR. MARRA: Number 2. Sorry. I've</p> <p>13 confused myself. It's number 1. Sorry.</p> <p>14 It's number 1 in your hard copy set.</p> <p>15 THE WITNESS: I've got a one-page</p> <p>16 document.</p> <p>17 Q. One-page document, and at the top it</p> <p>18 should say, "E-Cigarette and Vaping Kits,</p> <p>19 E-cig Shop, blu." Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Very good. So this is</p> <p>22 Eldridge Exhibit 2, and it's a screenshot that</p> <p>23 we retrieved from the blu.com website. Does</p> <p>24 this show, Mr. Eldridge, the current e-vapor</p> <p>25 products that blu offers for sale on the</p>
<p style="text-align: right;">Page 47</p> <p>1 J. ELDRIDGE</p> <p>2 you see the bar charts there where it shows</p> <p>3 unaided awareness among smokers and unaided</p> <p>4 awareness among vapors. Does it appear to be</p> <p>5 the case that blu is second only to JUUL for</p> <p>6 awareness in both of those cohorts?</p> <p>7 MR. ORMAND: Object to form.</p> <p>8 MS. LEVERT: Join.</p> <p>9 A. Certainly based on this study, the</p> <p>10 information contained in this document, that</p> <p>11 blu has significant awareness.</p> <p>12 Q. Okay. Very good. We can set that</p> <p>13 aside.</p> <p>14 I just want to ask you a few</p> <p>15 questions about the lineup, the product lineup</p> <p>16 of blu. So we're going to go back to the Box</p> <p>17 sub-folder, and we will start with Exhibit 2.</p> <p>18 If you can open Exhibit 2, and I'll represent</p> <p>19 for the record that Exhibit 2 is a screenshot</p> <p>20 that we pulled from the blu.com website that</p> <p>21 shows products that are offered by blu for</p> <p>22 sale online.</p> <p>23 Do you see it, Mr. Eldridge?</p> <p>24 A. I'm trying to open it. Okay. All I</p> <p>25 see is your screen, or somebody's screen.</p>	<p style="text-align: right;">Page 49</p> <p>1 J. ELDRIDGE</p> <p>2 website and also in the retail stores through</p> <p>3 the channel that you're responsible for?</p> <p>4 A. Will you rephrase that again,</p> <p>5 please?</p> <p>6 Q. Sure. Does this show the current</p> <p>7 lineup of blu e-cigarette products?</p> <p>8 A. Yes, it does.</p> <p>9 Q. The blu Device that's on the</p> <p>10 left-hand side, am I correct in understanding,</p> <p>11 is that associated with myblu? I've seen this</p> <p>12 term, myblu, for the pod-based product. The</p> <p>13 blu Device that's depicted there, is that the</p> <p>14 myblu Device that you would refill pods with?</p> <p>15 A. Yes, it is.</p> <p>16 Q. And the blu PLUS+ Xpress Kit, am I</p> <p>17 correct in understanding that's a cigalike</p> <p>18 product with tank refills that you buy?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And then last but not least, we have</p> <p>21 the blu Disposable on the right-hand side, and</p> <p>22 do I understand correctly that those are</p> <p>23 single-use cigalikes?</p> <p>24 A. Yes, they are.</p> <p>25 <span style="background-color: black; color: black;">[REDACTED]</span></p>

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<p style="text-align: right;">Page 50</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 Q. Fair enough. I don't need to catch</p> <p>17 you off guard with the declaration. Why don't</p> <p>18 we just look at it.</p> <p>19 So if you turn to --</p> <p>20 MR. KATERBERG: What do we have that</p> <p>21 marked, Bryan, as an exhibit in Box? Is</p> <p>22 it Exhibit 1?</p> <p>23 MR. MARRA: That's right.</p> <p>24 Q. Mr. Eldridge, a copy of the</p> <p>25 declaration that you signed with the FTC</p>	<p style="text-align: right;">Page 52</p> <p>1 J. ELDRIDGE</p> <p>2 Q. The one pager we just reviewed is</p> <p>3 Eldridge Exhibit 2.</p> <p>4 A. Okay. I'm pulling up the</p> <p>5 declaration. I'm going to print it.</p> <p>6 So 25?</p> <p>7 Q. 25, yeah.</p> <p>8 A. And this is Exhibit 1?</p> <p>9 Q. Yes, sir.</p> <p>10 A. Okay. I have it.</p> <p>11 Q. Okay. Very good.</p> <p>12 MR. KATERBERG: So why don't just I</p> <p>13 designate it for the record. So the</p> <p>14 record will reflect that Eldridge</p> <p>15 Exhibit 1 is an eight-page document</p> <p>16 entitled Declaration of Jeff Eldridge, and</p> <p>17 it is Bates stamped FTC PROD 1333 through</p> <p>18 1340.</p> <p>19 (Eldridge Exhibit 1, Declaration of</p> <p>20 Jeff Eldridge, marked for identification,</p> <p>21 as of this date.)</p> <p>22 Q. And Mr. Eldridge, if you could turn</p> <p>23 to the last page of that, that's your</p> <p>24 signature on the document; is that right?</p> <p>25 A. Yes, it is.</p>
<p style="text-align: right;">Page 51</p> <p>1 J. ELDRIDGE</p> <p>2 earlier in the year, we've marked that as an</p> <p>3 exhibit, and it's Eldridge Exhibit 1 in Box.</p> <p>4 You could feel free to print it out if you</p> <p>5 want because we probably will be coming back</p> <p>6 to it quite a bit. It's eight pages.</p> <p>7 MR. MARRA: It's also in your hard</p> <p>8 copy set. It should be in envelope number</p> <p>9 25.</p> <p>10 A. So these other documents that I've</p> <p>11 looked at, how should I organize those for</p> <p>12 further reference? I'm trying to keep things</p> <p>13 in order here, gentlemen.</p> <p>14 Q. I understand. Appreciate that. I</p> <p>15 think if you want to mark maybe in the lower</p> <p>16 right-hand corner, if you've got a pen or</p> <p>17 pencil handy, what exhibit number we gave to</p> <p>18 those and then just put them in a stack, I</p> <p>19 think is the best way to do it.</p> <p>20 A. So the CAGNY Imperial brands was</p> <p>21 number 8?</p> <p>22 Q. Correct, yeah. The CAGNY transcript</p> <p>23 is 7; the presentation is 8; the slide deck is</p> <p>24 8.</p> <p>25 A. The one page that we just reviewed?</p>	<p style="text-align: right;">Page 53</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Very good. Mr. Eldridge, is this a</p> <p>3 true and accurate copy of the declaration that</p> <p>4 you gave to the FTC earlier in the year?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Now, we started looking at this with</p> <p>7 respect to that one data point, and I do want</p> <p>8 to ask you about that. But before we get to</p> <p>9 that, I want to ask you a few questions about</p> <p>10 the process that led up to this declaration,</p> <p>11 your signing this declaration.</p> <p>12 Can you tell me generally, from your</p> <p>13 perspective, how it came about that you signed</p> <p>14 this declaration earlier this year?</p> <p>15 A. Well, I was contacted by our</p> <p>16 internal legal team saying that there was some</p> <p>17 questions that the Federal Trade Commission</p> <p>18 wanted to ask me, and through a series of Q</p> <p>19 and A, this document, this declaration was</p> <p>20 worked up.</p> <p>21 Q. Do you recall when you were first</p> <p>22 approached about doing this?</p> <p>23 A. I do not exactly.</p> <p>24 Q. Okay. This was signed on April 1st.</p> <p>25 Do you recall if it was a long time before</p>

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<p style="text-align: right;">Page 54</p> <p>1 J. ELDRIDGE</p> <p>2 April 1st when you were first contacted about</p> <p>3 this, or was it just a few days before?</p> <p>4 A. It was quite a while before.</p> <p>5 Q. All right. And do you know why you</p> <p>6 were the lucky one who got chosen for this</p> <p>7 role?</p> <p>8 MR. ORMAND: Object to the form.</p> <p>9 A. I do not.</p> <p>10 Q. Do you know if anyone else in the</p> <p>11 sales organization was approached about</p> <p>12 signing a declaration for the FTC for this</p> <p>13 matter?</p> <p>14 A. I do not.</p> <p>15 Q. I think you mentioned that there are</p> <p>16 other regions besides central. Do you know</p> <p>17 why you, as the vice president for the central</p> <p>18 region, and not one of the other regions were</p> <p>19 selected as the person to sign the</p> <p>20 declaration?</p> <p>21 A. No, I do not.</p> <p>22 Q. Do you know if the FTC spoke with</p> <p>23 people from those other regions?</p> <p>24 A. No, I do not.</p> <p>25 Q. All right. And I think you</p>	<p style="text-align: right;">Page 56</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Mr. Eldridge, do you know who wrote</p> <p>3 the declaration?</p> <p>4 A. Who wrote it?</p> <p>5 Q. Yeah.</p> <p>6 A. Based on those conversations, it was</p> <p>7 crafted by the FTC.</p> <p>8 Q. And did you get a chance to review</p> <p>9 it and suggest edits to it?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Do you remember how much time you</p> <p>12 spent reviewing it?</p> <p>13 A. Not exactly. Quite a bit.</p> <p>14 Q. Under an hour? Over an hour?</p> <p>15 A. Over an hour.</p> <p>16 Q. Over two hours?</p> <p>17 A. Possibly.</p> <p>18 Q. Do you recall if you made any</p> <p>19 changes, any edits to the declaration?</p> <p>20 A. Some.</p> <p>21 Q. Do you recall what they were?</p> <p>22 A. I do not.</p> <p>23 Q. Do you recall if there were any</p> <p>24 changes that you asked to be made that were</p> <p>25 not made?</p>
<p style="text-align: right;">Page 55</p> <p>1 J. ELDRIDGE</p> <p>2 mentioned that you had some Q and A with the</p> <p>3 FTC. By that, do I understand conversations</p> <p>4 directly between you and the FTC staff?</p> <p>5 A. Yes.</p> <p>6 Q. And how many of those were there?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you remember if they were</p> <p>9 telephone or in person or Zoom or something</p> <p>10 else, what the format was?</p> <p>11 A. Telephone.</p> <p>12 Q. Would you say more than one?</p> <p>13 A. I don't recall.</p> <p>14 Q. More than five?</p> <p>15 A. No.</p> <p>16 Q. You may have already answered this,</p> <p>17 so I apologize, but are you aware that a lady</p> <p>18 by the name of Carol Folmar also signed a</p> <p>19 declaration for the FTC?</p> <p>20 A. Yes. I am aware Carol was</p> <p>21 approached with this.</p> <p>22 Q. Were any of your conversations with</p> <p>23 the FTC also held in a setting where</p> <p>24 Ms. Folmar also first stated at the same time?</p> <p>25 A. No, they were not.</p>	<p style="text-align: right;">Page 57</p> <p>1 J. ELDRIDGE</p> <p>2 A. Would you ask that question again,</p> <p>3 please?</p> <p>4 Q. Sure. Do you recall if you</p> <p>5 requested any changes to be made to your</p> <p>6 declaration, but the changes were not made?</p> <p>7 A. No. There weren't any requests that</p> <p>8 I made to be changed that were declined.</p> <p>9 Q. Do you know if anybody else</p> <p>10 suggested, besides you, suggested any changes</p> <p>11 to the draft declaration that the FTC</p> <p>12 prepared?</p> <p>13 A. There may have been.</p> <p>14 Q. Okay. You're not familiar with the</p> <p>15 details? You don't know specifically what</p> <p>16 they were?</p> <p>17 A. No.</p> <p>18 Q. Do you know, Mr. Eldridge, if ITG</p> <p>19 got any benefit from having you and Ms. Folmar</p> <p>20 sign these declarations?</p> <p>21 MS. LEVERT: Object to form.</p> <p>22 MR. ORMAND: Object to form.</p> <p>23 A. Can you ask the question again, sir?</p> <p>24 Q. Sure. Do you know if ITG got</p> <p>25 anything out of it from having you and</p>

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<p style="text-align: right;">Page 58</p> <p>1 J. ELDRIDGE</p> <p>2 Ms. Folmar sign these declarations for the</p> <p>3 FTC?</p> <p>4 MS. LEVERT: Same objection.</p> <p>5 Foundation.</p> <p>6 MR. ORMAND: Objection to form.</p> <p>7 A. I do not know.</p> <p>8 Q. Do you know if FTC offered any</p> <p>9 benefit to ITG to have you sign the</p> <p>10 declaration?</p> <p>11 MS. LEVERT: Object to form.</p> <p>12 Foundation.</p> <p>13 MR. ORMAND: Join.</p> <p>14 A. I do not know.</p> <p>15 Q. What's your understanding, what's in</p> <p>16 it for you or for your employer for you to</p> <p>17 sign these declarations and put yourself in</p> <p>18 the middle of this dispute between the FTC and</p> <p>19 Altria and JUUL?</p> <p>20 MS. LEVERT: Object to form and</p> <p>21 foundation.</p> <p>22 MR. ORMAND: Join.</p> <p>23 A. Robert, ask the question again,</p> <p>24 please.</p> <p>25 Q. Sure. What's in it for you or for</p>	<p style="text-align: right;">Page 60</p> <p>1 J. ELDRIDGE</p> <p>2 MR. ORMAND: Objection.</p> <p>3 MS. LEVERT: Objection as well.</p> <p>4 A. No.</p> <p>5 MS. LEVERT: I apologize. Counsel,</p> <p>6 should we have an agreement that an</p> <p>7 objection for one is an objection for all?</p> <p>8 MR. ORMAND: That's fine.</p> <p>9 MR. KATERBERG: Absolutely. We</p> <p>10 agree to that.</p> <p>11 MS. LEVERT: Thank you.</p> <p>12 MR. KATERBERG: Could the court</p> <p>13 reporter read back the last question and</p> <p>14 answer?</p> <p>15 (Record read.)</p> <p>16 Q. Did we get that right, Mr. Eldridge?</p> <p>17 That's your answer?</p> <p>18 A. Yes. That's my answer.</p> <p>19 Q. Mr. Eldridge, do you want to be a</p> <p>20 witness in this case?</p> <p>21 A. I'm here to help.</p> <p>22 Q. Thank you for that. Has the FTC</p> <p>23 told you anything about what they anticipate</p> <p>24 having you testify about?</p> <p>25 A. No, they have not.</p>
<p style="text-align: right;">Page 59</p> <p>1 J. ELDRIDGE</p> <p>2 your employer for you to get involved in this</p> <p>3 and sign the declaration?</p> <p>4 MS. LEVERT: Same objections.</p> <p>5 MR. ORMAND: Join.</p> <p>6 A. I don't know. You're asking me to</p> <p>7 speculate.</p> <p>8 Q. Okay. Have you spoken with anyone</p> <p>9 at the FTC since you signed the declaration on</p> <p>10 April 1st?</p> <p>11 A. No, I have not.</p> <p>12 Q. In getting ready for your deposition</p> <p>13 here today, did you speak with anyone other</p> <p>14 than your counsel?</p> <p>15 A. No, I have not.</p> <p>16 Q. All right. I think you said earlier</p> <p>17 you're aware -- you confirmed that you're</p> <p>18 aware that you were on the FTC's preliminary</p> <p>19 witness list for the trial in this case. Do I</p> <p>20 have that right?</p> <p>21 A. Yes.</p> <p>22 Q. When did you become aware of that?</p> <p>23 A. In the last month or so.</p> <p>24 Q. Did you get a choice whether you</p> <p>25 wanted to be a witness?</p>	<p style="text-align: right;">Page 61</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Was there anything in the earlier</p> <p>3 Q and A with the FTC leading up to the</p> <p>4 declaration that they asked if you could</p> <p>5 testify about that you disagreed with?</p> <p>6 A. No.</p> <p>7 Q. Is there anything in particular that</p> <p>8 you want to testify about if you're brought</p> <p>9 before the Administrative Law Judge to provide</p> <p>10 your testimony in this case?</p> <p>11 A. No.</p> <p>12 Q. Have you spoken with anyone else at</p> <p>13 ITG, other than counsel, about your testimony</p> <p>14 in this case?</p> <p>15 MR. ORMAND: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. I'll answer it again. No.</p> <p>18 Q. Very good. Thank you.</p> <p>19 MR. KATERBERG: Sir, we've been</p> <p>20 going for about an hour. If you'd like to</p> <p>21 take a break now, I'm happy to accommodate</p> <p>22 that, or we can keep going.</p> <p>23 THE WITNESS: Yeah, I'd like to take</p> <p>24 a break.</p> <p>25 MR. KATERBERG: Very good. So I've</p>

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1 J. ELDRIDGE  
2 got 10:07. Let's go off the record.  
3 (Recess was taken.)  
4 MR. KATERBERG: We're going to go  
5 back on the record.  
6 BY MR. KATERBERG:  
7 Q. We're back from the first breakage,  
8 Mr. Eldridge. I want to go through a few more  
9 pictures of the products that we pulled from  
10 the internet. I think it would be similar to  
11 the one we looked at a moment ago, which was  
12 Exhibit 2.  
13 If you can go to the hard copy  
14 binder, I think that might be the easiest way  
15 to do this, and then I will identify the  
16 documents for the record. So your tab 2 in  
17 your hard copy binder should be a screenshot  
18 that says "blu Device." For the record, we've  
19 marked this as Eldridge Exhibit 3.  
20 Do I have that right, Bryan?  
21 MR. MARRA: That's right.  
22 (Eldridge Exhibit 3, blu Device  
23 screenshot, marked for identification, as  
24 of this date.)  
25 Q. Do you see it?

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1 J. ELDRIDGE  
2 A. Yes, I do.  
3 Q. Is that the myblu device that you  
4 can purchase pods for?  
5 A. Yes, it is.  
6 Q. We'll do this real quick. If you  
7 can just flip to the next one, tab 3 in your  
8 binder. And for the record, this is Eldridge  
9 Exhibit 3, and this should be a screenshot of  
10 blu PLUS+ Xpress Kit. Do you see that?  
11 MR. MARRA: I think, for the record,  
12 it's Exhibit 4.  
13 MR. KATERBERG: Thank you for that.  
14 (Eldridge Exhibit 4, blu PLUS+  
15 Xpress Kit screenshot, marked for  
16 identification, as of this date.)  
17 Q. Eldridge Exhibit 4 is the blu PLUS+  
18 Xpress Kit, and that's tab 3 in your binder.  
19 Just let me know when you've seen it.  
20 A. It's Exhibit 4, but tab 3?  
21 Q. Exactly, yeah.  
22 A. Okay. I have it.  
23 Q. Is that the blu PLUS+ Xpress Kit  
24 that's offered for sale both online and in  
25 retail stores, which you referred to earlier,

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1 J. ELDRIDGE  
2 and it's a cigalike that can be used again and  
3 again by repurchasing tanks?  
4 A. Yes, it is.  
5 Q. And we'll do one more of these. If  
6 you turn to tab 4 in your binder, which is  
7 going to be Eldridge Exhibit 5. For the  
8 record, Eldridge Exhibit 5 is a screenshot  
9 from the blu.com website that says, "Classic  
10 Tobacco Disposable."  
11 (Eldridge Exhibit 5, blu.com  
12 screenshot, Classic Tobacco Disposable,  
13 marked for identification, as of this  
14 date.)  
15 A. I've got it.  
16 Q. Do you see that? And is that one of  
17 the flavor varieties of the disposable  
18 e-cigarette product that's offered under the  
19 name blu?  
20 A. That's a tobacco variety.  
21 Q. This is the disposable e-cigarette,  
22 and it comes in multiple flavors, correct?  
23 A. Yes, it does.  
24 Q. And the one that's depicted here is  
25 classic tobacco, and in addition to that,

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1 J. ELDRIDGE  
2 there's also other flavors available for sale,  
3 right?  
4 A. Correct.  
5 Q. Thank you very much for that. We  
6 can set those aside.  
7 I wanted to turn back to your  
8 declaration, which is Exhibit 1.  
9 Mr. Eldridge, is it easier for you if I read  
10 out the exhibit number, or we could use the  
11 numbers that correspond to the tabs in your  
12 binder?  
13 A. I've been writing the exhibit  
14 numbers on the folders, so that probably is  
15 best.  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]





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<p style="text-align: right;">Page 74</p> <p>1 J. ELDRIDGE</p> <p>2 be looking at a Q and A on page 14. By the</p> <p>3 way, I misspoke a moment ago. I think we</p> <p>4 didn't actually get this off of the Imperial</p> <p>5 website. I think we got it from a</p> <p>6 subscription service.</p> <p>7 But in any event, do you recognize</p> <p>8 this as a transcript of a first half earnings</p> <p>9 call for the parent company for your company,</p> <p>10 Imperial Brands?</p> <p>11 A. By looking at it, I can only say</p> <p>12 that's what it is.</p> <p>13 Q. Okay. Fair enough. I want to ask</p> <p>14 you a question about the particular Q and A on</p> <p>15 page 14. There's a gentleman named Richard</p> <p>16 Hill who is identified here about halfway down</p> <p>17 the page as group commercial director of</p> <p>18 vapor. Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. I think you said a moment ago the</p> <p>21 name didn't sound familiar to you. Does this</p> <p>22 cause it to ring any bells?</p> <p>23 A. Not really in terms of corporate</p> <p>24 structure.</p> <p>25 Q. All right. So he's responding to a</p>	<p style="text-align: right;">Page 76</p> <p>1 J. ELDRIDGE</p> <p>2 MS. LEVERT: Object to form and</p> <p>3 foundation.</p> <p>4 A. Yes. I agree with that statement.</p> <p>5 Q. And then he further says, "And the</p> <p>6 focus is to drive the pod systems. That's</p> <p>7 where we think the growth will come from;</p> <p>8 that's the natural landing point for the</p> <p>9 smoker." Would you agree with that statement</p> <p>10 by Mr. Hill?</p> <p>11 A. Yes. I would agree with that.</p> <p>12 Q. Thank you. You can set that aside.</p> <p>13 I want to ask you some questions</p> <p>14 about a product called myblu Intense. Are you</p> <p>15 familiar with myblu Intense?</p> <p>16 A. Yes, I am.</p> <p>17 Q. If you will turn back to the binder,</p> <p>18 I'm going to mark another exhibit, but you can</p> <p>19 just look at it in the binder. It's going to</p> <p>20 be tab 5 of the binder, and I think we're up</p> <p>21 to Exhibit 11.</p> <p>22 MR. KATERBERG: Bryan, is that</p> <p>23 right?</p> <p>24 MR. MARRA: We are --</p> <p>25 MR. KATERBERG: Excuse me. I'm</p>
<p style="text-align: right;">Page 75</p> <p>1 J. ELDRIDGE</p> <p>2 question from a guy named Robert Rampton. If</p> <p>3 you look up the page a little bit from UBS</p> <p>4 Investment Bank, and Mr. Rampton is asking, he</p> <p>5 says, "So it looks like blu -- myblu is</p> <p>6 cannibalizing blu. Is there a reason we</p> <p>7 should expect that change over time and what</p> <p>8 does that mean for the overall revenue</p> <p>9 contribution of the segment."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you have a sense for what that</p> <p>13 means, myblu cannibalizing blu?</p> <p>14 MR. ORMAND: Object to form.</p> <p>15 A. I can only, in reading it, determine</p> <p>16 that he was saying overtaking the blu</p> <p>17 franchise.</p> <p>18 Q. And if you look at Mr. Hill's</p> <p>19 response, do you see where it says, "So we</p> <p>20 have a loyal consumer base on disposables, and</p> <p>21 we see disposables as quite separate, really,</p> <p>22 from pods. We don't see much crossover</p> <p>23 between the two."</p> <p>24 A. I see that.</p> <p>25 Q. Do you agree with that statement?</p>	<p style="text-align: right;">Page 77</p> <p>1 J. ELDRIDGE</p> <p>2 sorry. I made a mistake. We actually</p> <p>3 pre-marked this one, so it's Exhibit 6.</p> <p>4 For the record, Exhibit 6, which is how it</p> <p>5 should show up in Box, corresponds to</p> <p>6 Mr. Eldridge's tab 5. And for the record,</p> <p>7 it's a screenshot from the blu.com website</p> <p>8 of the myblu Intense product.</p> <p>9 (Eldridge Exhibit 6, Screenshot of</p> <p>10 myblu Intense product from blu.com, marked</p> <p>11 for identification, as of this date.)</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes, I have it.</p> <p>14 Q. All right. Is this an accurate</p> <p>15 representation of the myblu Intense pods that</p> <p>16 are currently offered for sale by blu both</p> <p>17 online and in retail stores?</p> <p>18 A. Yes.</p> <p>19 Q. As I understand it, myblu Intense is</p> <p>20 a type of pod that you can use with the myblu</p> <p>21 device; is that right?</p> <p>22 A. That is correct.</p> <p>23 Q. And is there something in particular</p> <p>24 about myblu Intense that distinguishes it from</p> <p>25 the other pods that are offered for the myblu</p>



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<p style="text-align: right;">Page 78</p> <p>1 J. ELDRIDGE</p> <p>2 Device?</p> <p>3 A. It's a nic salt-based product.</p> <p>4 Q. Can you tell us about nic -- nic</p> <p>5 salt, that's short for nicotine salts?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Can you tell us a little bit about</p> <p>8 nicotine salts?</p> <p>9 A. I'm not a scientist, but my</p> <p>10 understanding is that it's more like a</p> <p>11 combustible in terms of nicotine delivery.</p> <p>12 Q. Have you heard the concept,</p> <p>13 Mr. Eldridge, nicotine satisfaction?</p> <p>14 A. Yes.</p> <p>15 Q. Is it your understanding that one</p> <p>16 method of delivering approved nicotine</p> <p>17 satisfaction is through nicotine salts?</p> <p>18 MS. LEVERT: Object to form.</p> <p>19 A. Would you repeat the question?</p> <p>20 Q. Sure. Let me withdraw it and</p> <p>21 rephrase.</p> <p>22 Is it your understanding that</p> <p>23 nicotine salts is a helpful feature that can</p> <p>24 contribute to nicotine satisfaction?</p> <p>25 MS. LEVERT: Object to form.</p>	<p style="text-align: right;">Page 80</p> <p>1 J. ELDRIDGE</p> <p>2 A. Which tab, Robert?</p> <p>3 Q. Tab 7, please.</p> <p>4 (Eldridge Exhibit 11, Slide deck,</p> <p>5 Portfolio Review and Rationalization,</p> <p>6 August 2018, marked for identification, as</p> <p>7 of this date.)</p> <p>8 MR. KATERBERG: For the record,</p> <p>9 Exhibit 11 is a slide deck entitled</p> <p>10 Portfolio Review and Rationalization,</p> <p>11 August 2018. And the Bates number is ITG</p> <p>12 00001702.</p> <p>13 Q. Mr. Eldridge, I'm going to be asking</p> <p>14 you about some content that appears at slide</p> <p>15 56.</p> <p>16 MR. KATERBERG: It's showing up in</p> <p>17 my Box. Do counsel have access to the</p> <p>18 document?</p> <p>19 MR. ORMAND: I do, but it's</p> <p>20 25 megabytes, so if you could screen share</p> <p>21 it, that might be faster than trying to</p> <p>22 download it for me.</p> <p>23 MR. KATERBERG: Bryan, can you do</p> <p>24 that?</p> <p>25 Q. Mr. Eldridge, while we're doing</p>
<p style="text-align: right;">Page 79</p> <p>1 J. ELDRIDGE</p> <p>2 A. My understanding would be yes.</p> <p>3 Q. And do you understand that -- well,</p> <p>4 you're familiar with the JUUL pod product,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Is it your understanding that JUUL</p> <p>8 has nicotine salts?</p> <p>9 A. That is my understanding, yes.</p> <p>10 Q. And myblu Intense is a product, a</p> <p>11 type of pod that's offered for the myblu</p> <p>12 product, that also has nicotine salts, right?</p> <p>13 A. Correct.</p> <p>14 Q. And the other pod products that</p> <p>15 you're competing with these days mostly use</p> <p>16 nicotine salts; is that correct?</p> <p>17 MS. LEVERT: Object to form.</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Let's look at a document. We're</p> <p>20 going to look at tab 7 in your set. So you</p> <p>21 can look at it in your hard copy set while we</p> <p>22 upload it to Box, and I think it's going to be</p> <p>23 Exhibit 11.</p> <p>24 MR. KATERBERG: Did I get the number</p> <p>25 right?</p>	<p style="text-align: right;">Page 81</p> <p>1 J. ELDRIDGE</p> <p>2 that, does this document look familiar to you,</p> <p>3 this Portfolio Review and Rationalization</p> <p>4 document?</p> <p>5 A. Not really. Dated August 2018? I</p> <p>6 don't recall this.</p> <p>7 Q. Understood. So I just want to ask</p> <p>8 you about something on page 56. Do you have</p> <p>9 it there in the hard copy, Mr. Eldridge?</p> <p>10 A. I'm looking at slide 56.</p> <p>11 Q. So we'll let Bryan get there on the</p> <p>12 electronic copy, and then I'll just ask you</p> <p>13 about this.</p> <p>14 So you see where it says on the</p> <p>15 left-hand side "Competitive Landscape of Pod</p> <p>16 Devices?"</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Then it says, "About 75 percent of</p> <p>19 our competition offer nicotine salts for their</p> <p>20 pod devices."</p> <p>21 A. I see that.</p> <p>22 Q. Would you consider it to be the case</p> <p>23 that having nicotine salts gives a pod product</p> <p>24 an advantage in the marketplace?</p> <p>25 A. I could not say it.</p>

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1 J. ELDRIDGE

2 Q. What would be the purpose of having

3 nicotine salts in a product?

4 MS. LEVERT: Object to form.

5 A. Nicotine delivery, efficiency.

6 Q. Having nicotine salts improves the

7 capacity for nicotine delivery. Is that your

8 understanding?

9 A. My understanding is it's not the

10 capacity, it's the timing. It's quicker

11 delivery.

12 Q. Okay. So nicotine salts improves

13 the speed of delivery of nicotine?

14 A. That's how I understand it.

15 Q. Okay. And so a product that has the

16 ability to improve the speed of nicotine

17 delivery through nicotine salts could have an

18 advantage over products in the marketplace

19 that do not have that capability?

20 MS. LEVERT: Object to form.

21 A. It's certainly possible.

22 Q. Okay. And because myblu Intense had

23 nicotine salts, it was seen as a product that

24 could potentially go head-to-head with JUUL,

25 right?

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1 J. ELDRIDGE

2 MS. LEVERT: Object to form and

3 foundation.

4 A. Correct.

5 Q. I want to show you a document from

6 March 2019, and this is going to be tab 12 in

7 your binder. It looks like it will also be

8 Eldridge Exhibit 12.

9 MR. KATERBERG: Bryan, could you up

10 load that one to Box.

11 (Eldridge Exhibit 12, Slide deck,

12 Forward Competition, marked for

13 identification, as of this date.)

14 A. Exhibit 12?

15 Q. Yes, sir. Tab 12 and Exhibit 12.

16 The numbers match for once.

17 MR. KATERBERG: For the record, I'll

18 identify the document. This is a slide

19 deck with Bates number ITG 00002293, and

20 the title of the deck is just Forward

21 Competition.

22 A. I have it.

23 Q. Very good. So while we're waiting

24 for it to upload, I'm going to want to ask you

25 about -- the slides are not numbered,

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1 J. ELDRIDGE

2 unfortunately, but I'm going to ask you about

3 the second-to-last page.

4 Mr. Eldridge, before we get there,

5 do you recognize this?

6 A. I do not.

7 Q. Do you recognize on the cover of the

8 deck, there's an upside down triangle with a

9 drum. Does that logo mean anything to you?

10 A. It doesn't mean anything to me.

11 Q. All right. And in the lower

12 right-hand corner of some of the slides,

13 there's a little stamp that says I&I. Do you

14 recognize that?

15 A. Yes, I do.

16 Q. What does that signify?

17 A. That's a term we use that would

18 stand for insights and intelligence.

19 Q. Very good. So I want to ask you

20 about the second-to-last slide. I'll

21 represent to you, Mr. Eldridge, we have

22 metadata that comes with these documents when

23 they're produced; and although there's not a

24 date on this document, the metadata showed

25 that this slide deck was from March 2019. Do

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1 J. ELDRIDGE

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 I want to ask you a little bit about

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<p style="text-align: right;">Page 86</p> <p>1 J. ELDRIDGE</p> <p>2 the origins of these products. I believe you</p> <p>3 told me earlier that Lorillard acquired blu in</p> <p>4 2012. Am I getting that right?</p> <p>5 A. Correct.</p> <p>6 Q. And were you involved with the</p> <p>7 products at that time in your role with</p> <p>8 Lorillard?</p> <p>9 A. In 2012 we assumed the sales</p> <p>10 responsibility for blu.</p> <p>11 Q. At that point, was it the blu</p> <p>12 disposable product and the blu PLUS+ product,</p> <p>13 or just one or the other of those?</p> <p>14 A. It wasn't blu PLUS+. We had a</p> <p>15 cartridge-based system. Worked similarly to</p> <p>16 blu PLUS+, and primary business was</p> <p>17 disposables.</p> <p>18 Q. I see. Okay. And was that</p> <p>19 basically the same version of the product</p> <p>20 that's currently in the market now?</p> <p>21 A. I couldn't attest to any revisions</p> <p>22 in the disposable products. I know the</p> <p>23 cartridges are no longer available. We're</p> <p>24 using the tank terminology in products today.</p> <p>25 Q. Is that just a difference in</p>	<p style="text-align: right;">Page 88</p> <p>1 J. ELDRIDGE</p> <p>2 they would have had to be 8/8/16 products per</p> <p>3 the FDA to let that continue, right?</p> <p>4 A. Yes.</p> <p>5 Q. Now, the myblu pod products, do you</p> <p>6 have an understanding as to whether that was</p> <p>7 an 8/8/16 product?</p> <p>8 A. It was not on the market before</p> <p>9 8/8/16.</p> <p>10 Q. Wouldn't it have had to be on the</p> <p>11 market before 8/8/16 for the FDA to let the</p> <p>12 company continue selling it before PMTA</p> <p>13 application went in?</p> <p>14 A. I'm not astute in that, but products</p> <p>15 that were brought in after 8/8/16 are still on</p> <p>16 the market.</p> <p>17 Q. Myblu was launched in early 2018; is</p> <p>18 that right?</p> <p>19 A. Sounds about right.</p> <p>20 Q. And I've seen a company or product</p> <p>21 name associated with that called Von Erl,</p> <p>22 V-O-N, space, E-R-L. Does that sound</p> <p>23 familiar?</p> <p>24 A. Yes, it does.</p> <p>25 Q. And was Von Erl an earlier brand</p>
<p style="text-align: right;">Page 87</p> <p>1 J. ELDRIDGE</p> <p>2 terminology, or are the cartridges and tanks</p> <p>3 physically different?</p> <p>4 A. They work the same way, but there</p> <p>5 are some differences that I'm not totally</p> <p>6 aware of.</p> <p>7 Q. Okay. When we were starting out the</p> <p>8 deposition, I used this phrase: "8/8/16</p> <p>9 products." And I'll represent to you that</p> <p>10 that's the FDA's cut-off date for when a</p> <p>11 product needed to be on the market in the U.S.</p> <p>12 to come in under the deeming rule and for a</p> <p>13 company to continue to market it pending the</p> <p>14 deadline for PMTA approval.</p> <p>15 Does that ring a bell?</p> <p>16 A. Yes, it does.</p> <p>17 Q. Do you have an understanding as to</p> <p>18 whether those products are -- when I say</p> <p>19 "those products," I mean the disposable and</p> <p>20 the blu PLUS+, those are 8/8/16 products?</p> <p>21 A. I don't really know. I think the</p> <p>22 disposables may be, but I'm not -- because of</p> <p>23 the tanks coming on later, they may not be.</p> <p>24 Q. For the company to be selling them</p> <p>25 in the United States over the last few years,</p>	<p style="text-align: right;">Page 89</p> <p>1 J. ELDRIDGE</p> <p>2 name for the product that was launched in 2018</p> <p>3 that was then branded myblu?</p> <p>4 A. Von Erl was an acquisition.</p> <p>5 Q. I want to ask you some questions</p> <p>6 about that. Was Von Erl, is it your</p> <p>7 understanding that that was owned by an</p> <p>8 Austrian company before it was put on the</p> <p>9 market by you all as myblu?</p> <p>10 A. I don't remember the details of</p> <p>11 that.</p> <p>12 Q. Do you know anything about the</p> <p>13 background of that acquisition?</p> <p>14 A. I do not.</p> <p>15 Q. Do you understand that Fontem</p> <p>16 entered the deal with the company that owned</p> <p>17 Von Erl?</p> <p>18 A. That's how I understand it, yes.</p> <p>19 Q. Do you have an understanding as to</p> <p>20 why Fontem was interested in Von Erl?</p> <p>21 MR. ORMAND: Object to form.</p> <p>22 A. No, I do not.</p> <p>23 Q. Do you know if Fontem tried to</p> <p>24 develop a pod product internally as opposed to</p> <p>25 one that it would buy from an outside source?</p>

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<p style="text-align: right;">Page 90</p> <p>1 J. ELDRIDGE</p> <p>2 MS. LEVERT: Object to form and</p> <p>3 foundation.</p> <p>4 A. I don't know the answer to that.</p> <p>5 Q. If you know, why would Fontem have</p> <p>6 not tried just to develop a pod product</p> <p>7 internally?</p> <p>8 MR. ORMAND: Object to form.</p> <p>9 A. I wouldn't know why.</p> <p>10 Q. By the way, do you know if Fontem</p> <p>11 and Von Erl entered into any noncompetes in</p> <p>12 connection with the transaction in which the</p> <p>13 Von Erl product was acquired?</p> <p>14 MS. LEVERT: Object to foundation.</p> <p>15 A. I do not know.</p> <p>16 Q. Okay. Do you know if ITG or Fontem</p> <p>17 has made PMTA filings for the blu and myblu</p> <p>18 products?</p> <p>19 A. Filings have been made.</p> <p>20 Q. Do you know when they were made?</p> <p>21 A. I do not have a date. Before the</p> <p>22 deadline.</p> <p>23 Q. Do you recall what the deadline was?</p> <p>24 It changed a few times, so I don't mean that</p> <p>25 to be a trick question. Let me suggest to you</p>	<p style="text-align: right;">Page 92</p> <p>1 J. ELDRIDGE</p> <p>2 retrieved from Imperial's website.</p> <p>3 Do you see the document, sir?</p> <p>4 A. Yes, I do.</p> <p>5 Q. So does this refresh your</p> <p>6 recollection that PMTA filings were made for</p> <p>7 the blu products on or about April 28, 2020?</p> <p>8 A. That's when this was released.</p> <p>9 Q. And Imperial's announcing that the</p> <p>10 filings had been made, so the filings were</p> <p>11 made either on or about April 28, 2020, or at</p> <p>12 some time previous to April 28, 2020?</p> <p>13 A. As I said before, I'm not clear when</p> <p>14 they actually filed them other than this</p> <p>15 documentation. They were filed.</p> <p>16 Q. Right. Do you see where it says in</p> <p>17 the press release, "Fontem is seeking</p> <p>18 authorization for the continued marketing of a</p> <p>19 wide range of its myblu electronic vaping</p> <p>20 products"? It's in the first paragraph.</p> <p>21 A. I see it.</p> <p>22 Q. "The company believes that the</p> <p>23 evidence provided shows that blu electronic</p> <p>24 vaping products could play a role in the</p> <p>25 protection of public health in line with the</p>
<p style="text-align: right;">Page 91</p> <p>1 J. ELDRIDGE</p> <p>2 that it was originally to be in May of this</p> <p>3 year, and then it was ultimately extended due</p> <p>4 to COVID to September 9, 2020. Does that</p> <p>5 sound right?</p> <p>6 A. It does sound right.</p> <p>7 Q. Okay. I'm going to show you a</p> <p>8 document that maybe you can help us put a date</p> <p>9 on this.</p> <p>10 MR. KATERBERG: If I can ask Bryan</p> <p>11 to upload tab 30, and I think that's going</p> <p>12 to make it Eldridge Exhibit 13. Sorry,</p> <p>13 sir. This one's not in your set, but it's</p> <p>14 just a short one-page press release.</p> <p>15 (Eldridge Exhibit 13, 4/28/20</p> <p>16 Imperial Brands press release, marked for</p> <p>17 identification, as of this date.)</p> <p>18 A. Which exhibit number am I looking</p> <p>19 for?</p> <p>20 Q. This is going to be Exhibit 13.</p> <p>21 It's not showing up yet in my Box.</p> <p>22 A. I don't see it yet.</p> <p>23 Q. For the record, Exhibit 13 is a copy</p> <p>24 of a press release on Imperial Brands</p> <p>25 letterhead dated 28 April 2020 that was</p>	<p style="text-align: right;">Page 93</p> <p>1 J. ELDRIDGE</p> <p>2 guidance issued by the FDA." Do you see that</p> <p>3 in the fourth paragraph?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Your understanding is that the</p> <p>6 company believes that its products are</p> <p>7 qualified to meet the standard that the FDA</p> <p>8 applies for granting market authorization?</p> <p>9 A. That is my understanding.</p> <p>10 Q. And these applications, if they were</p> <p>11 submitted on or before April 28, 2020, were</p> <p>12 actually about four months ahead of schedule,</p> <p>13 right?</p> <p>14 A. It appears that way.</p> <p>15 Q. Now, you mentioned earlier in our</p> <p>16 discussion today the FDA flavor ban that was</p> <p>17 announced in January 2020, I believe, and went</p> <p>18 into effect February of 2020. Do you recall</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Now, if I understand correctly, you</p> <p>22 all had to remove from the market flavor pods</p> <p>23 for myblu because of that regulatory action,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">Page 94</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Nevertheless, for PMTA purposes, if</p> <p>3 I understand correctly, the company did make</p> <p>4 PMTA filings for the myblu flavored pods</p> <p>5 because, although those are not currently on</p> <p>6 the market, if the marketing authorization</p> <p>7 order was granted, then those products could</p> <p>8 potentially come back in the market. Is that</p> <p>9 your understanding?</p> <p>10 A. Yes. That is my understanding.</p> <p>11 Q. Mr. Eldridge, you submitted a</p> <p>12 declaration to the FTC about the regulatory</p> <p>13 process, and that declaration was dated the</p> <p>14 same date as yours. We can take a look at it.</p> <p>15 I'm not sure there's really a need to, but she</p> <p>16 does say in that declaration that the company</p> <p>17 planned to submit PMTAs for 45 SKUs. And do</p> <p>18 you understand SKUs stands for stock-keeping</p> <p>19 unit?</p> <p>20 A. Yes.</p> <p>21 Q. And that was said to comprise 22</p> <p>22 SKUs for myblu, 18 SKUs for blu PLUS+, and</p> <p>23 five SKUs for blu disposables. Does that</p> <p>24 number sound familiar, if you're familiar</p> <p>25 generally with what the company's plans were</p>	<p style="text-align: right;">Page 96</p> <p>1 J. ELDRIDGE</p> <p>2 have any information or background about</p> <p>3 generally how things are going on the PMTA</p> <p>4 front?</p> <p>5 MR. ORMAND: Object to the form.</p> <p>6 A. No. I have no idea.</p> <p>7 Q. Okay. We can make this quick. Just</p> <p>8 to see if this rings any bells, my</p> <p>9 understanding -- I'm not an FDA regulatory</p> <p>10 lawyer, but my understanding is the first step</p> <p>11 after PMTA filings is made is that the FDA</p> <p>12 will issue something called the acceptance</p> <p>13 letter that signifies that the PMTA is</p> <p>14 accepted for filing and it's administratively</p> <p>15 complete. Does that ring any bells?</p> <p>16 A. Yes. I am familiar with that</p> <p>17 process.</p> <p>18 Q. Do you know if Fontem or ITG had</p> <p>19 received acceptance letters for the PMTA</p> <p>20 filings that you all made in April of this</p> <p>21 year?</p> <p>22 A. I do not know if we have.</p> <p>23 Q. My understanding is another step,</p> <p>24 the next step in the process is something</p> <p>25 called a filing letter that signifies that</p>
<p style="text-align: right;">Page 95</p> <p>1 J. ELDRIDGE</p> <p>2 for the PMTA process?</p> <p>3 A. I have no reason to dispute that.</p> <p>4 Q. Is it your understanding,</p> <p>5 Mr. Eldridge, that PMTAs have been submitted,</p> <p>6 in fact, for 45 SKUs for blu products?</p> <p>7 A. I don't know the actual numbers</p> <p>8 before you just read them to me.</p> <p>9 Q. Okay. But you don't have any reason</p> <p>10 to doubt that what Ms. Folmar said in her</p> <p>11 declaration was accurate and complete and that</p> <p>12 the company did follow through with those</p> <p>13 plans?</p> <p>14 A. I have no reason to dispute.</p> <p>15 Q. All right. To your understanding,</p> <p>16 PMTA filings were submitted, including for</p> <p>17 flavors like the ones we talked about a moment</p> <p>18 ago that had to be removed from the flavor</p> <p>19 ban, and that would have included things like</p> <p>20 cherry, vanilla, and Polar Mint?</p> <p>21 A. Yes. That is my understanding.</p> <p>22 Q. Now, I know you're aware that the</p> <p>23 PMTA filings were made, and I also know that</p> <p>24 you're not closely acquainted with the</p> <p>25 regulatory side of the business. But do you</p>	<p style="text-align: right;">Page 97</p> <p>1 J. ELDRIDGE</p> <p>2 PMTA is about to undergo substantive reviews,</p> <p>3 scientific reviews. Does that ring a bell?</p> <p>4 A. I knew there's another step. To</p> <p>5 that name, I'm not aware.</p> <p>6 Q. Do you know if Fontem or ITG has</p> <p>7 received filing letters for its products for</p> <p>8 the PMTA submissions it made in April?</p> <p>9 A. I do not know.</p> <p>10 Q. You agree it's a big investment for</p> <p>11 a company to make, to file a PMTA?</p> <p>12 A. Yes, I would agree.</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 Q. ITG wouldn't have made that kind of</p> <p>23 investment if it didn't have a basis to</p> <p>24 believe that it could get through the</p> <p>25 regulatory process and have a good chance of</p>

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<p style="text-align: right;">Page 98</p> <p>1 J. ELDRIDGE</p> <p>2 getting its products approved; is that right?</p> <p>3 MS. LEVERT: Object to form.</p> <p>4 A. I mean, one can only expect that</p> <p>5 that would be the case.</p> <p>6 Q. Mr. Eldridge, now is probably a</p> <p>7 logical stopping point, if you want to take</p> <p>8 another ten-minute break or so.</p> <p>9 THE WITNESS: Yeah. That would be</p> <p>10 great.</p> <p>11 MR. KATERBERG: All right. It is</p> <p>12 now 10:10 your time. So reconvene at</p> <p>13 10:20 Central, 11:20 Eastern. Thank you,</p> <p>14 sir.</p> <p>15 (Recess was taken.)</p> <p>16 MR. KATERBERG: We're back on the</p> <p>17 record after our second break.</p> <p>18 BY MR. KATERBERG:</p> <p>19 Q. Mr. Eldridge, is it your</p> <p>20 understanding that any vapor product that's on</p> <p>21 the market today must be an 8/8/16 product in</p> <p>22 order to qualify for being able to stay on the</p> <p>23 market per the FDA regulations?</p> <p>24 A. Yes.</p> <p>25 Q. Now, I want to ask you some</p>	<p style="text-align: right;">Page 100</p> <p>1 J. ELDRIDGE</p> <p>2 A. Not specifically. There's lots of</p> <p>3 other companies competing in the marketplace.</p> <p>4 These are the primary, as stated.</p> <p>5 Q. I want to explore that a little bit.</p> <p>6 So one company, one brand of pod product that</p> <p>7 I've heard of is Leap, L-E-A-P. Are you</p> <p>8 familiar with them?</p> <p>9 A. Not in detail.</p> <p>10 Q. Are you aware of them as a company,</p> <p>11 a pod product that competes in the United</p> <p>12 States in e-vapor?</p> <p>13 A. I've heard the name, Robert.</p> <p>14 Q. On occasion, blu tracks them as a</p> <p>15 competitor of myblu, right?</p> <p>16 MS. LEVERT: Object to form and</p> <p>17 foundation.</p> <p>18 A. I don't have an answer to that. I</p> <p>19 don't know. That one doesn't ring a bell, so</p> <p>20 I can't tell you whether we're tracking them</p> <p>21 or not.</p> <p>22 Q. Let me look at a document that maybe</p> <p>23 can help put a little more definition on this.</p> <p>24 I'm going to have you refer to tab 11 in your</p> <p>25 notebook, and this will be uploaded to Box as</p>
<p style="text-align: right;">Page 99</p> <p>1 J. ELDRIDGE</p> <p>2 questions about competitors in the e-vapor</p> <p>3 marketplace. In your declaration that you</p> <p>4 provided to the FTC earlier this year, you</p> <p>5 identified several competitors, and those</p> <p>6 included JUUL, Reynolds, Vuse, NJOY, and JTI</p> <p>7 with the brand name Logic. Are those all</p> <p>8 familiar to you as competitors of the e-vapor</p> <p>9 marketplace?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And those are the main four that you</p> <p>12 would normally think of?</p> <p>13 A. Yes.</p> <p>14 Q. Now, let's look at your declaration.</p> <p>15 This is Exhibit 1 to your deposition, and I</p> <p>16 believe it's in paragraph 25 where you named</p> <p>17 those companies.</p> <p>18 A. Okay.</p> <p>19 Q. What I want to ask you about is, if</p> <p>20 you look closely at that paragraph, the other</p> <p>21 closed system vaping with which blu primarily</p> <p>22 competes in the U.S. are those four companies</p> <p>23 that I just named. Are there others besides</p> <p>24 those four that you can think of that you also</p> <p>25 compete with?</p>	<p style="text-align: right;">Page 101</p> <p>1 J. ELDRIDGE</p> <p>2 Eldridge Exhibit 14.</p> <p>3 (Eldridge Exhibit 14, EVP Business</p> <p>4 slide deck, marked for identification, as</p> <p>5 of this date.)</p> <p>6 MR. KATERBERG: While we're</p> <p>7 uploading it, I'll go ahead and identify</p> <p>8 it for the record. This is a slide deck</p> <p>9 with Bates number ITG 00002131, with a</p> <p>10 title EVP Business. I'll represent that</p> <p>11 the indications are that the document is</p> <p>12 dated March 2020, although it does not</p> <p>13 bear a date on the title slide.</p> <p>14 THE WITNESS: I have the document.</p> <p>15 MR. KATERBERG: Let me just give a</p> <p>16 second for counsel for the document to</p> <p>17 show up in Box.</p> <p>18 It looks like it's now shown up in</p> <p>19 Box.</p> <p>20 Q. While folks are pulling it up,</p> <p>21 Mr. Eldridge, do you recognize this EVP</p> <p>22 Business slide deck?</p> <p>23 A. It's familiar. Not specifically,</p> <p>24 but this format is familiar.</p> <p>25 Q. There's a bunch of things in this</p>



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<p style="text-align: right;">Page 102</p> <p>1 J. ELDRIDGE</p> <p>2 that may be of interest, but the one thing I</p> <p>3 want to refer you to is just on the</p> <p>4 second-to-last page, and I believe it's slide</p> <p>5 49, although some of these slides have numbers</p> <p>6 at the bottom and some don't. But it's the</p> <p>7 slide second to last that says "Pricing Brand</p> <p>8 Board-Pod Systems." Are you there?</p> <p>9 A. Yes, I am.</p> <p>10 Q. I asked you earlier about Leap, and</p> <p>11 I was just curious because in your declaration</p> <p>12 you mentioned four of the competitors, the</p> <p>13 companies that show up on this pricing brand</p> <p>14 board -- excuse me, three of them, JUUL, Vuse,</p> <p>15 and NJOY, on this brand board. Leap is also</p> <p>16 included as a company or a brand that you're</p> <p>17 looking at what they're doing as far as</p> <p>18 pricing and promotions; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Is it fair to say that ITG, at least</p> <p>21 as of this point in March 2020, is looking at</p> <p>22 Leap as a pod competitor in the marketplace?</p> <p>23 MR. ORMAND: Object to the form. I</p> <p>24 think the data is for the 13 weeks</p> <p>25 ending -- is that May 26, 2017? I can't</p>	<p style="text-align: right;">Page 104</p> <p>1 J. ELDRIDGE</p> <p>2 Q. You can set that aside.</p> <p>3 Another company that I've seen show</p> <p>4 up in some of the ITG documents is SMOK,</p> <p>5 spelled S-M-O-K. Does that one ring a bell?</p> <p>6 A. It does not.</p> <p>7 Q. Let's turn to the document that's</p> <p>8 previously been marked as Exhibit 11. This is</p> <p>9 where having it in a stack may come in handy.</p> <p>10 Just to make sure we're on the same page,</p> <p>11 Exhibit 11 should be a deck that says on the</p> <p>12 front, "Portfolio Review and Rationalization,</p> <p>13 U.S. Market, August 2018."</p> <p>14 A. I have it.</p> <p>15 Q. If you can turn to slide 55. Let me</p> <p>16 know when you're there.</p> <p>17 A. Yes, I am.</p> <p>18 Q. Do you see on the left-hand side</p> <p>19 there it says, "Competitive landscape of pod</p> <p>20 devices: There are at least 20 competitive</p> <p>21 brands within the pod device subcategory." Do</p> <p>22 you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Do you agree with that statement?</p> <p>25 MS. LEVERT: Object to form and</p>
<p style="text-align: right;">Page 103</p> <p>1 J. ELDRIDGE</p> <p>2 read it because it's so small.</p> <p>3 THE WITNESS: That's what it says.</p> <p>4 Q. Let me ask you about that. I've</p> <p>5 seen these footers on some slides, and</p> <p>6 sometimes they just don't really quite match</p> <p>7 up. If you look at the slide above that one,</p> <p>8 slide 48, that's showing the source, "IRI</p> <p>9 latest 13 weeks ending 1/26/20."</p> <p>10 Do you see that, Mr. Eldridge?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have a sense for whether the</p> <p>13 2017 date might be a typo?</p> <p>14 A. I don't. It's not my document.</p> <p>15 Q. Right, okay. The myblu pod product</p> <p>16 wasn't on the market as myblu in May of 2017,</p> <p>17 right?</p> <p>18 A. Correct.</p> <p>19 Q. Regardless of the date, whatever</p> <p>20 date this is purporting to describe at this</p> <p>21 point in time, whoever was keeping track of</p> <p>22 this information was considering Leap to be a</p> <p>23 competitor that was worthy of monitoring in</p> <p>24 the pod marketplace?</p> <p>25 A. For this one slide, yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 J. ELDRIDGE</p> <p>2 foundation.</p> <p>3 A. I mean, there's a lot of them in</p> <p>4 there. That means 20 or more. So yes.</p> <p>5 Q. And you consider those to be</p> <p>6 competitive brands with respect to myblu?</p> <p>7 MS. LEVERT: Object to form.</p> <p>8 A. I consider the primaries that are</p> <p>9 listed to be primary competitors.</p> <p>10 Q. The ones that are listed that we</p> <p>11 referred to earlier are the primary</p> <p>12 competitors, but these would also be -- these</p> <p>13 additional ones would also be competitors at a</p> <p>14 secondary level?</p> <p>15 MS. LEVERT: Object to form.</p> <p>16 A. Yes. These are in the marketplace.</p> <p>17 Q. I want to show you another document</p> <p>18 that lists a few more names. I just want to</p> <p>19 bounce these names off of you and see if they</p> <p>20 ring a bell. This is going to be tab 17 in</p> <p>21 your binder, and so we'll mark this as</p> <p>22 Exhibit 15 to the Eldridge deposition.</p> <p>23 (Eldridge Exhibit 15, blu Incidents</p> <p>24 and Equity Tracker, Wave 2 presentation,</p> <p>25 marked for identification, as of this</p>

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<p style="text-align: right;">Page 106</p> <p>1 J. ELDRIDGE</p> <p>2 date.)</p> <p>3 THE WITNESS: Tab 17?</p> <p>4 MR. KATERBERG: Yes, sir.</p> <p>5 THE WITNESS: Exhibit number again,</p> <p>6 please?</p> <p>7 MR. KATERBERG: Exhibit 15.</p> <p>8 THE WITNESS: Okay.</p> <p>9 Q. So while it's being uploaded, I'll</p> <p>10 identify the document for the record. This is</p> <p>11 a slide deck entitled blu Incidents and Equity</p> <p>12 Tracker, Wave 2, U.S. Results, June 2019, and</p> <p>13 the Bates number is ITG 00002346. And I see</p> <p>14 that it's up on Box.</p> <p>15 Mr. Eldridge, are you familiar with</p> <p>16 this document, this blu Incidents and Equity</p> <p>17 Tracker, Wave 2 presentation?</p> <p>18 A. No, I'm not.</p> <p>19 Q. I'll represent to you that this</p> <p>20 appears to be a presentation on a study of</p> <p>21 brand equity recognition for the blu brand.</p> <p>22 What I want to ask you about specifically is</p> <p>23 on slide 28.</p> <p>24 A. Okay.</p> <p>25 Q. So you see there, there's a number</p>	<p style="text-align: right;">Page 108</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Eleaf?</p> <p>3 A. No.</p> <p>4 Q. If you could turn to slide 53,</p> <p>5 there's some more brands listed on here.</p> <p>6 Joyetech, does that ring a bell?</p> <p>7 A. It does not.</p> <p>8 Q. VaporFi, is that familiar?</p> <p>9 A. No.</p> <p>10 Q. Vapin Plus?</p> <p>11 A. That name rings a bell, but I</p> <p>12 couldn't tell you anything about it.</p> <p>13 Q. Cue?</p> <p>14 A. Likewise; rings a bell.</p> <p>15 Q. 21st Century Smoke?</p> <p>16 A. Yeah. I recall that one.</p> <p>17 Q. SaltNic? This seems to be maybe a</p> <p>18 play on nicotine salts; they just flipped the</p> <p>19 words. Does that one ring a bell?</p> <p>20 A. It does not.</p> <p>21 Q. Suorin?</p> <p>22 A. No.</p> <p>23 Q. I can't even tell what the next one</p> <p>24 is. Do you recognize that name?</p> <p>25 A. Doesn't ring a bell, but it looks</p>
<p style="text-align: right;">Page 107</p> <p>1 J. ELDRIDGE</p> <p>2 of brands listed in the left-hand side that</p> <p>3 were compared with blu and JUUL and other</p> <p>4 brands for brand recognition. Do you see</p> <p>5 that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. So some of those overlap with what</p> <p>8 we talked about before. In addition, there's</p> <p>9 the SMOK that I referred to earlier. Does</p> <p>10 seeing it here ring any bells about SMOK's</p> <p>11 presence in the marketplace as a competitor?</p> <p>12 A. No, it does not.</p> <p>13 Q. What about the one right under that,</p> <p>14 VaporTech?</p> <p>15 A. Doesn't ring a bell.</p> <p>16 Q. What about, we'll talk about MarkTen</p> <p>17 later. We talked about Logic. What about</p> <p>18 Halo or Holo? I can't actually tell if that's</p> <p>19 an A or an O.</p> <p>20 A. Halo. It doesn't ring a bell</p> <p>21 either.</p> <p>22 Q. How about KangerTech?</p> <p>23 A. No.</p> <p>24 Q. Naked?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 109</p> <p>1 J. ELDRIDGE</p> <p>2 like it says Mr. Salt.</p> <p>3 Q. Cosmic Fog?</p> <p>4 A. That one rings a bell. I'm not sure</p> <p>5 about it, though.</p> <p>6 Q. And Cuttwood?</p> <p>7 A. Not recognizable.</p> <p>8 Q. And what about BO?</p> <p>9 A. Likewise, not recognizable.</p> <p>10 Q. So some of these ring a bell; you</p> <p>11 wouldn't consider them to be in that primary</p> <p>12 tier of competitors, but nevertheless, they</p> <p>13 are e-vapor brands that are out there in the</p> <p>14 marketplace?</p> <p>15 A. Yeah. One in particular, 21st</p> <p>16 Century, I'm not sure if it's even available</p> <p>17 anymore. I know this document is dated.</p> <p>18 Q. Okay. I see.</p> <p>19 Mr. Eldridge, do you consider</p> <p>20 competition to be vigorous in the e-vapor</p> <p>21 marketplace?</p> <p>22 MS. LEVERT: Object to form.</p> <p>23 A. There's lots of brands. I wouldn't</p> <p>24 say vigorous. I would say there's lots of</p> <p>25 brands.</p>



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<p style="text-align: right;">Page 110</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Do you consider -- do a lot of the</p> <p>3 brands do a lot of aggressive action on</p> <p>4 pricing?</p> <p>5 MS. LEVERT: Object to form.</p> <p>6 A. I think there is pricing action,</p> <p>7 yes.</p> <p>8 Q. Since you've been involved in</p> <p>9 selling e-vapor products, has the leadership</p> <p>10 of the category changed? And by leadership of</p> <p>11 the category, I'm talking about who has the</p> <p>12 highest market share.</p> <p>13 A. Since I have been? Back in 2012?</p> <p>14 Q. Yeah. For the whole time that</p> <p>15 you've been working on e-vapor products.</p> <p>16 A. Yes. Blu was the leader back early</p> <p>17 after we acquired it. It is not anymore.</p> <p>18 Q. Do you recall who else has been the</p> <p>19 leader at various points in time?</p> <p>20 A. Today, it's JUUL.</p> <p>21 Q. Was there a time when Vuse was the</p> <p>22 leader?</p> <p>23 A. I don't recall.</p> <p>24 Q. Okay. And you mentioned JUUL is the</p> <p>25 leader. I understand, though, that in the</p>	<p style="text-align: right;">Page 112</p> <p>1 J. ELDRIDGE</p> <p>2 familiar to you?</p> <p>3 A. No, it does not.</p> <p>4 Q. I want to turn your attention to</p> <p>5 slide 7. Although I'm not sure there's an</p> <p>6 actual number on it, it's the seventh slide in</p> <p>7 the deck and the title is Market Share, Pods</p> <p>8 Volume, Cumulative Pods/Device Ratio.</p> <p>9 Let me know when you get there.</p> <p>10 A. I'm there.</p> <p>11 Q. I want to focus your attention on</p> <p>12 the graph on the left-hand side. It's a graph</p> <p>13 I've seen in various other decks. We may look</p> <p>14 at some of them later. But you see where it</p> <p>15 has lines that indicate JUUL, Vuse, NJOY, and</p> <p>16 blu for the e-vapor market share?</p> <p>17 A. Yes. I see it.</p> <p>18 Q. So you'd agree that since around</p> <p>19 mid-2019, JUUL, which is the gray line, has</p> <p>20 generally been trending downward, whereas</p> <p>21 Vuse, which is the black line, has generally</p> <p>22 been trending upward?</p> <p>23 MR. ORMAND: Object to the form.</p> <p>24 A. Yeah. That's what this says.</p> <p>25 Q. And that's consistent with what you</p>
<p style="text-align: right;">Page 111</p> <p>1 J. ELDRIDGE</p> <p>2 last couple of years, JUUL has been trending</p> <p>3 down and Vuse has been gaining share. Is that</p> <p>4 consistent with what you've seen in the</p> <p>5 marketplace?</p> <p>6 A. Yes.</p> <p>7 MS. LEVERT: Object to form.</p> <p>8 Q. All right. So we're going to look</p> <p>9 at a document that has some graphics on this.</p> <p>10 Let's turn to tab 8 in your binder.</p> <p>11 MR. KATERBERG: So we'll mark this</p> <p>12 as the next in order, which I think will</p> <p>13 make it 16.</p> <p>14 (Eldridge Exhibit 16, blu Summary</p> <p>15 slide deck, marked for identification, as</p> <p>16 of this date.)</p> <p>17 Q. While it's being uploaded, I'll</p> <p>18 identify Eldridge Exhibit 16 for the record as</p> <p>19 a slide deck entitled blu Summary. The</p> <p>20 metadata indicates that it's from January 17,</p> <p>21 2020, and the Bates number is ITG 00004670.</p> <p>22 A. Okay. I have it.</p> <p>23 Q. Very good.</p> <p>24 I see it has shown up in Box.</p> <p>25 Mr. Eldridge, does this slide deck look</p>	<p style="text-align: right;">Page 113</p> <p>1 J. ELDRIDGE</p> <p>2 observed in the marketplace?</p> <p>3 A. Yes.</p> <p>4 Q. And it looks like you guys, blu, is</p> <p>5 the blue line, fittingly so, and NJOY is the</p> <p>6 orange line. And it looks like you were</p> <p>7 higher than NJOY in March there for a period</p> <p>8 of time, but then they passed you around</p> <p>9 mid-2019, but now you've started to close the</p> <p>10 gap?</p> <p>11 MS. LEVERT: Object to form.</p> <p>12 A. Yeah. I see that.</p> <p>13 Q. Do you agree with that statement?</p> <p>14 A. Yes.</p> <p>15 Q. At the top of the slide, there's</p> <p>16 this caption -- I've seen this language in</p> <p>17 some other places as well -- "blu franchise</p> <p>18 resilient in a difficult environment." Do you</p> <p>19 agree with that?</p> <p>20 A. Yes.</p> <p>21 Q. And by "difficult environment,"</p> <p>22 that's referring to the tough competition from</p> <p>23 the other competitors as well as the</p> <p>24 regulatory environment?</p> <p>25 MR. ORMAND: Object to the form.</p>

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<p style="text-align: right;">Page 114</p> <p>1 J. ELDRIDGE</p> <p>2 A. That's a fair statement.</p> <p>3 Q. Despite those headwinds, the blu</p> <p>4 franchise has proved to be resilient so far?</p> <p>5 A. To this point in 2019, yes.</p> <p>6 Q. You can set that one aside. We're</p> <p>7 going to turn to tab 21 in your notebook. We</p> <p>8 will mark that as Exhibit 17.</p> <p>9 (Eldridge Exhibit 17, U.S. Business</p> <p>10 Update, Imperial Brands, December 2019</p> <p>11 slide deck, marked for identification, as</p> <p>12 of this date.)</p> <p>13 Q. While it's being uploaded, I'll</p> <p>14 identify it for the record. This is a slide</p> <p>15 deck entitled U.S. Business Update, Imperial</p> <p>16 Brands, December 2019, and the Bates number is</p> <p>17 ITG 00004073.</p> <p>18 A. Exhibit number?</p> <p>19 Q. Exhibit number is 17.</p> <p>20 A. I have it.</p> <p>21 Q. Very good. Does this document look</p> <p>22 familiar to you, Mr. Eldridge?</p> <p>23 A. Somewhat, yes.</p> <p>24 Q. You think you've seen this before in</p> <p>25 the ordinary course of business?</p>	<p style="text-align: right;">Page 116</p> <p>1 J. ELDRIDGE</p> <p>2 see bigger shifts." Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Then the very next line says, "myblu</p> <p>5 still gaining share slowly." That's slide 9.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. It sounds like you all were gaining</p> <p>9 some share in this time period, fiscal year</p> <p>10 2019. Maybe not as much as you wanted to, not</p> <p>11 as much as some of the other players in the</p> <p>12 marketplace?</p> <p>13 A. According to this graphic, yes.</p> <p>14 Q. And is that consistent with what you</p> <p>15 observed as vice president, area central?</p> <p>16 A. Yes.</p> <p>17 Q. And it looks from the -- there's a</p> <p>18 graph on slide 9, and it looks like Vuse</p> <p>19 expanded market share considerably from around</p> <p>20 1.3 percent in October 2018 to 13 percent in</p> <p>21 October 2019 in the pod marketplace. Do you</p> <p>22 see that?</p> <p>23 A. I see that.</p> <p>24 Q. And it looks like NJOY went from</p> <p>25 1.3 percent in February 2019 to 8 percent in</p>
<p style="text-align: right;">Page 115</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yeah. It's familiar.</p> <p>3 Q. If you turn to slide 5, the top line</p> <p>4 there is "Ambitious plan for blu in fiscal</p> <p>5 year '20. Renewed focus shows results." Do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then it says under that, "myblu</p> <p>9 clear growth engine." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Can you help explain what this is</p> <p>12 getting at? Do you recall talk about an</p> <p>13 ambitious plan for blu in fiscal year '20 and</p> <p>14 renewed focus in myblu being a growth engine?</p> <p>15 A. What was the date of this document?</p> <p>16 Q. This is December 2019.</p> <p>17 A. Yeah. We had a strong distribution</p> <p>18 campaign in what is our -- would have been our</p> <p>19 Q1 2020, through December, as we established</p> <p>20 earlier, and it was proven results.</p> <p>21 Q. Got it. If you could turn to slide</p> <p>22 8, please.</p> <p>23 A. Okay.</p> <p>24 Q. Slide 8 is saying, "myblu growth is</p> <p>25 not strong, but steady. Other manufacturers</p>	<p style="text-align: right;">Page 117</p> <p>1 J. ELDRIDGE</p> <p>2 October 2019. Do you see that?</p> <p>3 A. The NJOY was -- yeah. That 1.3 is a</p> <p>4 Vuse number.</p> <p>5 Q. So it looks like 1.3 maybe comes up</p> <p>6 two places. Would agree with me that 1.3 --</p> <p>7 A. That's correct. I see it there in</p> <p>8 February. I see what you're saying.</p> <p>9 Q. So both NJOY and Vuse had pretty</p> <p>10 tremendous growth in their pod share during</p> <p>11 just a few months?</p> <p>12 A. Correct.</p> <p>13 MR. ORMAND: Object to the form.</p> <p>14 Q. And Mr. Eldridge, do you have a</p> <p>15 sense for why, when your company prepares</p> <p>16 these kinds of charts, why is it important for</p> <p>17 your company to focus on share of the pod</p> <p>18 marketplace as opposed to all e-vapor</p> <p>19 marketplace?</p> <p>20 MS. LEVERT: Object to form.</p> <p>21 A. Can you state that again, Robert,</p> <p>22 please?</p> <p>23 Q. Sure. So in charts like this, why</p> <p>24 does ITG, Imperial, consider it important to</p> <p>25 look at share of the pod marketplace as</p>

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<p style="text-align: right;">Page 118</p> <p>1 J. ELDRIDGE</p> <p>2 opposed to the entire marketplace for all</p> <p>3 e-vapor products?</p> <p>4 MS. LEVERT: Object to form.</p> <p>5 A. Because pods are important and we're</p> <p>6 working to sell more pods, as it is a</p> <p>7 significant player in the marketplace.</p> <p>8 Q. Got it. Okay. One second, please.</p> <p>9 I want to go back to a document that</p> <p>10 we previously marked, which is Eldridge</p> <p>11 Exhibit 14.</p> <p>12 A. Slide 1 says EVP Business?</p> <p>13 Q. Yes, sir, absolutely. I want to ask</p> <p>14 you about slide 3 in particular, which I think</p> <p>15 is consistent with some of these other</p> <p>16 documents we've just been looking at. The top</p> <p>17 says "Context/Company Executive Summary." Do</p> <p>18 you see under the column "What," where it</p> <p>19 says, "Market trends showing declines in 2020</p> <p>20 driven by flavor restrictions." Would that be</p> <p>21 the FDA flavor regulatory action that you</p> <p>22 talked about earlier?</p> <p>23 A. That and state restrictions.</p> <p>24 Q. Got it. Okay. State restrictions</p> <p>25 also.</p>	<p style="text-align: right;">Page 120</p> <p>1 J. ELDRIDGE</p> <p>2 A. I can't say, but I'm looking at the</p> <p>3 thing at the bottom. It says March 2020. I</p> <p>4 think we were looking at 2019 data on the</p> <p>5 other slide. That's my point.</p> <p>6 Q. Yeah. Okay. Do you see under the</p> <p>7 column "So What," where the last sub-bullet</p> <p>8 says, "Vuse growth driven by promotions and</p> <p>9 distribution gains"?</p> <p>10 A. I see that.</p> <p>11 Q. Is that consistent with what you see</p> <p>12 in the marketplace? Do you see Vuse, or do</p> <p>13 you hear from accounts that Vuse is active or</p> <p>14 was active at this point in time in running</p> <p>15 promotions?</p> <p>16 A. Yes. That is consistent.</p> <p>17 Q. And promotions would mean pricing</p> <p>18 promotions?</p> <p>19 A. Yes.</p> <p>20 Q. I want to ask you about something on</p> <p>21 slide 45.</p> <p>22 A. Same deck?</p> <p>23 Q. Same deck, yes. Slide 45, same</p> <p>24 deck. So this slide starts with</p> <p>25 competition -- the title is Competition</p>
<p style="text-align: right;">Page 119</p> <p>1 J. ELDRIDGE</p> <p>2 Then it says, "Vuse continuing to</p> <p>3 gain market share and JUUL declining, but</p> <p>4 still number one share of market." Do you see</p> <p>5 that?</p> <p>6 A. I do.</p> <p>7 Q. And that's referring to that same</p> <p>8 trend that we saw in that graph a moment ago</p> <p>9 with the gray line and the black line showing</p> <p>10 JUUL going downward and Vuse going upward?</p> <p>11 A. I believe that's two different time</p> <p>12 frames.</p> <p>13 Q. So there have been two different</p> <p>14 time frames when JUUL has been trending</p> <p>15 downward and Vuse has been trending upward?</p> <p>16 MS. LEVERT: Objection to form.</p> <p>17 A. What I'm saying here is I believe</p> <p>18 this is a different time frame from what we</p> <p>19 were looking at on the other deck.</p> <p>20 Q. Okay. I think I understand. So the</p> <p>21 other deck was describing a particular time</p> <p>22 frame when Vuse was gaining share and JUUL's</p> <p>23 share was declining. And this is describing a</p> <p>24 similar trend, but in a different period of</p> <p>25 time?</p>	<p style="text-align: right;">Page 121</p> <p>1 J. ELDRIDGE</p> <p>2 Executive Summary, and under the column "What"</p> <p>3 it says, "blu portfolio best positioned</p> <p>4 against market headwinds as the only leading</p> <p>5 manufacturer selling product in all three</p> <p>6 product segments."</p> <p>7 And my question to you,</p> <p>8 Mr. Eldridge, is: Do you agree that blu</p> <p>9 portfolio is best positioned against market</p> <p>10 headwinds for the reason stated?</p> <p>11 A. It is well positioned.</p> <p>12 Q. The bullet beneath that says,</p> <p>13 "Competitive pricing as of March 2020</p> <p>14 continues to put pressure on MSRP price with</p> <p>15 price reductions driving increased volume</p> <p>16 share of market for some competitors." Do you</p> <p>17 agree with that observation as well?</p> <p>18 A. I agree with that.</p> <p>19 Q. I want to turn back to NJOY. You</p> <p>20 can put that document aside. I think we saw</p> <p>21 from one of the charts a moment ago that NJOY</p> <p>22 has grown in market share in recent months.</p> <p>23 Do you recall that?</p> <p>24 A. Yes.</p> <p>25 Q. I want to turn your attention to</p>

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<p style="text-align: right;">Page 122</p> <p>1 J. ELDRIDGE</p> <p>2 what we've previously marked as Exhibit 9.</p> <p>3 We're going to go to slide 7 of Exhibit 9.</p> <p>4 Just for the record, as we're getting there,</p> <p>5 this is the slide deck entitled Portfolio</p> <p>6 Review and Rationalization.</p> <p>7 A. I have it.</p> <p>8 Q. And do you see there where the title</p> <p>9 says Industry Growth Rates By Segment and</p> <p>10 Manufacturer?</p> <p>11 A. Slide 7?</p> <p>12 Q. Yes, sir.</p> <p>13 A. You're referring to which line</p> <p>14 again, Robert?</p> <p>15 Q. Slide 7. I'm going to ask you some</p> <p>16 questions about NJOY. You're on the right</p> <p>17 page at this point?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Very good. So you'll see</p> <p>20 here that this data, it's sourced to MSAi, and</p> <p>21 I guess I should just ask you, do you</p> <p>22 understand what MSAi means?</p> <p>23 A. Yes, Management Science Associates.</p> <p>24 That's a database that collects the</p> <p>25 information.</p>	<p style="text-align: right;">Page 124</p> <p>1 J. ELDRIDGE</p> <p>2 devices, pod packs, and disposables over that</p> <p>3 period of time, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Much greater growth than any of the</p> <p>6 other competitors that are depicted in the</p> <p>7 chart?</p> <p>8 MR. ORMAND: Object to the form.</p> <p>9 A. In this period, yes.</p> <p>10 Q. And so for 232 percent, that would</p> <p>11 mean NJOY sold 2.3 times as many pod packs in</p> <p>12 the most recent three months as they had sold</p> <p>13 in the three months before that. That's what</p> <p>14 you understand the data from MSAi to show?</p> <p>15 A. Yes.</p> <p>16 Q. By the way, I'm just going to take</p> <p>17 us off topic for one second; but while we've</p> <p>18 got this document open, if you can flip to the</p> <p>19 slide immediately before this one, slide 6.</p> <p>20 A. Okay.</p> <p>21 Q. There's a little notation. So this</p> <p>22 is a slide entitled Industry Growth Rates By</p> <p>23 Segment, and there's a notation at the bottom</p> <p>24 that I want to ask you about, and that's the</p> <p>25 one that says, "With MarkTen exiting the</p>
<p style="text-align: right;">Page 123</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Very good. And would you agree that</p> <p>3 this slide depicting the data for MSAi is</p> <p>4 showing a significant volume of growth for</p> <p>5 NJOY in the three months ending in June 22,</p> <p>6 2019?</p> <p>7 A. I don't see reference to the date.</p> <p>8 Q. Oh, I'm sorry. It's kind of hard to</p> <p>9 read. If you look at the bottom of the page</p> <p>10 where it says, "Source: MSAi data ending</p> <p>11 6/22/2019 with data from the latest three</p> <p>12 months with growth rate compared to the prior</p> <p>13 three months." Do you see that?</p> <p>14 A. I see it now.</p> <p>15 Q. Sorry about that. It's black, not</p> <p>16 gray, so it's hard to make out. So this would</p> <p>17 be comparing the three months immediately</p> <p>18 preceding June 22 with the three months before</p> <p>19 that, if I'm reading it right. Is that how</p> <p>20 you understand it?</p> <p>21 A. Typically, it's comparing like</p> <p>22 periods, yes.</p> <p>23 Q. And so the percentages on the</p> <p>24 right-hand column there for NJOY are showing</p> <p>25 significant growth in total vapor pod kits and</p>	<p style="text-align: right;">Page 125</p> <p>1 J. ELDRIDGE</p> <p>2 market, both RJR, Vuse, and Logic increased</p> <p>3 promotional activity on their traditional</p> <p>4 systems in an effort to capture some of this</p> <p>5 volume."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. If you understand that, can you</p> <p>9 explain for us what that means?</p> <p>10 A. Well, based on what it's saying, it</p> <p>11 was comparing the exit of MarkTen in 2018 and</p> <p>12 that there was additional activities with</p> <p>13 these brands that drive the -- you know, that</p> <p>14 drove their market share and growth.</p> <p>15 Q. So it's basically saying what you</p> <p>16 all observed at ITG was that Reynolds and --</p> <p>17 Reynolds is associated with the Vuse product,</p> <p>18 right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And so Reynolds, Vuse, and</p> <p>21 Logic, they engaged in price promotions</p> <p>22 because they were trying to pick up some of</p> <p>23 the consumer demand that had previously gone</p> <p>24 toward the MarkTen product?</p> <p>25 A. We were not privy to the why for</p>

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<p style="text-align: right;">Page 126</p> <p>1 J. ELDRIDGE</p> <p>2 Reynolds and Logic, but it's our understanding</p> <p>3 that that may be the reason why.</p> <p>4 Q. Right. Got it. So you don't have</p> <p>5 access to their documents; you don't know why</p> <p>6 they did it; but you can observe that the</p> <p>7 pricing actions are taking place in the</p> <p>8 marketplace and that the timing coincides with</p> <p>9 MarkTen exiting the market?</p> <p>10 A. Yes.</p> <p>11 Q. Got it. Okay. So I want to look at</p> <p>12 one more thing with respect to NJOY. This is</p> <p>13 going to be tab 16 of your set. So we'll mark</p> <p>14 this as the next one in order, which will make</p> <p>15 it Exhibit 18.</p> <p>16 (Eldridge Exhibit 18, 7/08/20 Sales</p> <p>17 Deck, marked for identification, as of</p> <p>18 this date.)</p> <p>19 Q. I'll identify Exhibit 18 for the</p> <p>20 record as Box is pulling it up. This is a</p> <p>21 slide deck entitled Sales Deck dated July 8,</p> <p>22 2019, and the Bates number is ITG 00005185.</p> <p>23 I want to ask you about slide 11,</p> <p>24 Mr. Eldridge.</p> <p>25 A. Okay. I'm there.</p>	<p style="text-align: right;">Page 128</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes, I do.</p> <p>3 Q. And I think -- you tell me, but I</p> <p>4 think what that's referring to is if you look</p> <p>5 at the bar chart above that for Manufacturer</p> <p>6 Unit Sales Change, NJOY, the number next to</p> <p>7 NJOY is 2,898, which exceeds the number for</p> <p>8 Reynolds and Fontem combined; and Logic is a</p> <p>9 negative number. Do you see that?</p> <p>10 A. Previous slide -- you went to the</p> <p>11 previous slide?</p> <p>12 Q. Oh, no. I'm sorry. I'm still on</p> <p>13 slide 11. I'm looking at the graph in the</p> <p>14 middle of the page on slide 11.</p> <p>15 A. Yeah. That is the unit change.</p> <p>16 Q. The unit change. So NJOY added more</p> <p>17 sales during this time period, the latest</p> <p>18 13 weeks, than your company and Reynolds and</p> <p>19 Logic combined?</p> <p>20 A. Yes.</p> <p>21 Q. And is that through aggressive</p> <p>22 pricing action and improvements in</p> <p>23 distribution?</p> <p>24 MS. LEVERT: Object to form.</p> <p>25 MR. KATERBERG: Withdrawn.</p>
<p style="text-align: right;">Page 127</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Let's give counsel a second for the</p> <p>3 document to arrive on Box.</p> <p>4 While we're awaiting that,</p> <p>5 Mr. Eldridge, does this deck look familiar to</p> <p>6 you?</p> <p>7 A. Familiar, yes.</p> <p>8 Q. Is this something that you'd deal</p> <p>9 with in the ordinary course of business?</p> <p>10 A. Not all of time. This was a</p> <p>11 reference document that we received.</p> <p>12 Q. So I think the document has shown up</p> <p>13 on Box, so we'll proceed on slide 11.</p> <p>14 Remember, this is as of July 8, 2019. You'll</p> <p>15 see at the top of the slide it says, "Three of</p> <p>16 the top manufacturers are driving significant</p> <p>17 growth in the E-vape category; JUUL, R.J.</p> <p>18 Reynolds, and NJOY." Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And then at the bottom it says,</p> <p>21 "Although NJOY ranks fourth in total unit</p> <p>22 sales among top manufacturers, however, NJOY</p> <p>23 drove more unit sales in the latest 13 weeks</p> <p>24 than R.J., Logic, and blu combined." Do you</p> <p>25 see that?</p>	<p style="text-align: right;">Page 129</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Do you have a basis to --</p> <p>3 Mr. Eldridge, to what do you attribute the</p> <p>4 growth that NJOY experienced in this period of</p> <p>5 time that led it to get more unit sales</p> <p>6 additions than you and two of your competitors</p> <p>7 combined?</p> <p>8 A. I'm not positive on timing, but they</p> <p>9 introduced a period-based system.</p> <p>10 Q. I see. Okay.</p> <p>11 Now, Mr. Eldridge, you can set that</p> <p>12 one aside. I want to ask you some general</p> <p>13 questions about price promotions. I think you</p> <p>14 said earlier that there's been a lot of price</p> <p>15 promotion and activity in the vapor category?</p> <p>16 A. Yes, sir.</p> <p>17 Q. To your knowledge, has that been</p> <p>18 true for the entire time period 2018 through</p> <p>19 today?</p> <p>20 A. In different variances, yes.</p> <p>21 Q. It's pretty much the case that if</p> <p>22 you want to be in this category, you've got to</p> <p>23 run promotions in order to be competitive?</p> <p>24 A. Yes.</p> <p>25 Q. ITG periodically runs promotions to</p>

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<p style="text-align: right;">Page 130</p> <p>1 J. ELDRIDGE</p> <p>2 drive sales volume for myblu devices or pods,</p> <p>3 right?</p> <p>4 A. That is correct.</p> <p>5 Q. And in your declaration that you</p> <p>6 gave to the FTC earlier this year, I think you</p> <p>7 said the biggest factor in setting prices for</p> <p>8 myblu in deciding what promotions to run is</p> <p>9 the price of competing pod-based e-vapor</p> <p>10 products. Do you confirm, reaffirm that</p> <p>11 statement?</p> <p>12 A. Yes.</p> <p>13 Q. Now, the way you phrased it is "the</p> <p>14 price of competing pod-based e-vapor</p> <p>15 products." Am I reading that correctly to</p> <p>16 think that in deciding what promotions to run</p> <p>17 for myblu, for your pod product, you wouldn't</p> <p>18 so much take into account something that your</p> <p>19 competitors were doing with disposable, with</p> <p>20 cigalike products?</p> <p>21 A. We compare pods to pods.</p> <p>22 Q. So NJOY daily, is that a product, a</p> <p>23 disposable product that competes with blu</p> <p>24 disposable?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 131</p> <p>1 J. ELDRIDGE</p> <p>2 Q. All right. So if NJOY started</p> <p>3 running promotions just on daily, that's not</p> <p>4 the kind of thing that would make you think,</p> <p>5 Oh, gee, we have to run a promotion on myblu?</p> <p>6 MS. LEVERT: Object to form.</p> <p>7 A. We're always looking at the pricing</p> <p>8 in the marketplace. The statement in the</p> <p>9 declaration was specific to pods.</p> <p>10 Q. Okay. Yeah. So for determining</p> <p>11 what promotions to run for pods, you look for</p> <p>12 what promotions your competitors are doing for</p> <p>13 pods, right?</p> <p>14 A. Yes.</p> <p>15 MR. ORMAND: Object.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 133</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>





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<p style="text-align: right;">Page 138</p> <p>1 J. ELDRIDGE</p> <p>2 it.</p> <p>3 Q. When did bluNation start? If you</p> <p>4 remember.</p> <p>5 A. I don't recall exactly. It was</p> <p>6 initiated primarily to the pod, when we had</p> <p>7 pods.</p> <p>8 Q. Do you know if your competitors have</p> <p>9 similar kinds of rewards programs?</p> <p>10 A. I do not know.</p> <p>11 Q. Was there a point after the</p> <p>12 bluNation program was started that it was</p> <p>13 significantly expanded?</p> <p>14 A. Not that I know of. I mean, it was</p> <p>15 offered everywhere and then redeemed online.</p> <p>16 Q. Do you know if there are any plans</p> <p>17 to expand it or roll out additional features</p> <p>18 or anything in 2021?</p> <p>19 A. I do not know.</p> <p>20 Q. I saw a reference in a document to</p> <p>21 something called bluNation 2.0. Does that</p> <p>22 terminology mean anything to you?</p> <p>23 A. I don't recall that.</p> <p>24 Q. I'm going to read you a statement,</p> <p>25 Mr. Eldridge. I'll represent to you this</p>	<p style="text-align: right;">Page 140</p> <p>1 J. ELDRIDGE</p> <p>2 Known Competitor Promotions, marked for</p> <p>3 identification, as of this date.)</p> <p>4 Q. For the record, Eldridge Exhibit 20</p> <p>5 is a one-page document entitled August 2019</p> <p>6 Known Competitor Promotions, and the Bates</p> <p>7 number is ITG 00004928.</p> <p>8 A. I have it.</p> <p>9 Q. Let's just give a second for counsel</p> <p>10 to get it through Box.</p> <p>11 A. And this was Exhibit 19?</p> <p>12 Q. I'm sorry, sir. Exhibit 20.</p> <p>13 A. My apologies.</p> <p>14 Q. Mr. Eldridge, do you recognize this</p> <p>15 chart?</p> <p>16 A. Not specifically, no.</p> <p>17 Q. Is this a form of chart that you all</p> <p>18 use regularly? I'm saying not necessarily as</p> <p>19 of this particular date, but have you seen</p> <p>20 charts like this before that get carried</p> <p>21 forward that show, kind of on a comparison</p> <p>22 basis, what your competitors are doing in</p> <p>23 promotions at a particular point in time?</p> <p>24 A. Not in terms of form. This is a</p> <p>25 summary of the information that we've</p>
<p style="text-align: right;">Page 139</p> <p>1 J. ELDRIDGE</p> <p>2 comes from Imperial's 2019 annual report. We</p> <p>3 can get the document and look at it if you</p> <p>4 want to, but I just want to get your take on</p> <p>5 this statement. For the 2019 time period,</p> <p>6 Imperial wrote, "We did not make as much</p> <p>7 progress with blu in the USA as we</p> <p>8 anticipated. Our performance was also</p> <p>9 impacted by increased competitor discounting</p> <p>10 and regulatory uncertainty."</p> <p>11 Would you agree with that as a</p> <p>12 characterization of the issues that blu faced</p> <p>13 in 2019?</p> <p>14 MR. ORMAND: Object to the form.</p> <p>15 A. Yes. I indicated that before.</p> <p>16 Q. Very good. I think you indicated</p> <p>17 before as well, but you all monitor pretty</p> <p>18 closely the discounting activity and</p> <p>19 promotional activity by your competitors?</p> <p>20 A. Yes.</p> <p>21 Q. I want to show you a document that's</p> <p>22 tab 9 in your notebook, and we'll mark it as</p> <p>23 the next exhibit in order, which will make it</p> <p>24 Exhibit 20.</p> <p>25 (Eldridge Exhibit 20, August 2019</p>	<p style="text-align: right;">Page 141</p> <p>1 J. ELDRIDGE</p> <p>2 collected for this purpose. I'm not sure of</p> <p>3 the context it was in. You're just showing me</p> <p>4 one page. But it's a recap of what's going on</p> <p>5 in the marketplace.</p> <p>6 Q. Gotcha. Yeah. What I'm basically</p> <p>7 wondering -- this is August 2019. I'm just</p> <p>8 wondering if you all prepare these kinds of</p> <p>9 things regularly so that if we look, maybe</p> <p>10 there would also be one for the next month</p> <p>11 after that and the next month, as opposed to</p> <p>12 being a one-off.</p> <p>13 A. I wouldn't say there's that specific</p> <p>14 a cadence.</p> <p>15 Q. Understood. At this particular</p> <p>16 point in time, it looks like the major</p> <p>17 competitors, including JUUL, Vuse Alto, and</p> <p>18 NJOY ACE were all running pretty significant</p> <p>19 promotions on the devices of pods?</p> <p>20 MR. ORMAND: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Are there any competitors that</p> <p>23 you're aware of that never run promotions in</p> <p>24 the e-vapor space?</p> <p>25 A. I can't tell you that. I don't</p>



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2 know. I'm sure there are.

3 Q. You don't have any specific

4 knowledge of any, though?

5 A. No.

6 Q. Have you observed any competitors in

7 the e-vapor space backing off promotions in

8 the last couple of years?

9 MS. LEVERT: Object to form.

10 A. No.

11 Q. I want to show you one more

12 document, and then it might be a good time to

13 break. If you could look at tab 24, which

14 we'll mark as the next exhibit in order.

15 (Eldridge Exhibit 21, 8/14/19 Q4

16 Sales Initiative Update, marked for

17 identification, as of this date.)

18 Q. While we're uploading it to Box, to

19 identify it for the record, Eldridge

20 Exhibit 21 is a slide deck entitled Q4 Sales

21 Initiative Update, August 14, 2019. And the

22 Bates number is ITG 00004785.

23 If you'll let me know when you have

24 it and we'll make sure --

25 A. Yeah.

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1 J. ELDRIDGE

2 Q. Very good. Mr. Eldridge, is this a

3 document you're familiar with, this Q4 Sales

4 Initiative Update?

5 A. Not specifically, no.

6 Q. Do you recall regularly prepared

7 documents of this type --

8 MR. ORMAND: Sorry, Robert. Before

9 we move on, I don't have it.

10 MR. KATERBERG: Oh, I'm sorry. I

11 got ahead of myself.

12 MS. LEVERT: I don't have it either,

13 yet.

14 Okay. Now I have it.

15 MR. ORMAND: Got it.

16 MR. KATERBERG: Okay. Thank you.

17 Sorry about that. Don't hesitate to jump

18 in if I get ahead.

19 Q. Mr. Eldridge, I'll withdraw the

20 previous question.

21 Are you familiar with sales

22 initiative documents of this type being

23 regularly prepared and crossing your desk in

24 your responsibilities?

25 A. Yes.

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1 J. ELDRIDGE

2 Q. All right. So I want to ask you

3 about slide 21, and remember this is

4 August 14, 2019, so in the middle of the

5 fourth quarter of the fiscal year. And slide

6 21 says, "Intense competitive promotions

7 leading to deeper promotions to drive trial."

8 Do you see that?

9 A. Yes, sir.

10 Q. That's consistent with what we've

11 seen if some of these other documents, and I

12 read you the quote from Imperial's annual

13 report that talked about promotional activity

14 by competitors being particularly intense in

15 2019, right?

16 A. Yes.

17 Q. And this particular page depicts

18 certain specific promotions that your

19 competitors were running at this particular

20 point in time, right?

21 A. Correct.

22 Q. And I have a question. I've been

23 trying to figure out what the third product

24 down from the top is. I can see the first one

25 is NJOY, the second one is Vuse alto, the one

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1 J. ELDRIDGE

2 at the bottom is obviously JUUL. Do you

3 recognize that one?

4 A. Without seeing the brand on it,

5 there's numerous pod-based products in the

6 market.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 J. ELDRIDGE

2 MR. ORMAND: Object to the form.

3 [REDACTED]

4 [REDACTED]

5 Q. Okay. Thank you very much, sir. We

6 can put that one aside.

7 MR. KATERBERG: Let's go off the

8 record for a second.

9 (Discussion held off the record.)

10 MR. KATERBERG: We'll start back up

11 at 12 noon Central, 1 p.m. Eastern.

12 (Luncheon recess taken at

13 12:30 p.m.)

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1 J. ELDRIDGE

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:05 p.m.)

4 J E F F E L D R I D G E,

5 resumed and testified as follows:

6 CONTINUED EXAMINATION

7 BY MR. KATERBERG:

8 Q. Mr. Eldridge, we're back from our

9 lunch break. Thank you for your patience and

10 cooperation today. I just have a few more

11 questions for you.

12 Mr. Eldridge, would you agree that

13 if a pod product tends to leak a lot, that can

14 negatively affect its performance in the

15 marketplace?

16 A. Yes.

17 Q. Would you agree that for a device to

18 be successful long term, it can't have

19 leakage? No leakage is a must for a device?

20 MS. LEVERT: Object to form.

21 A. I think there's an acceptable amount

22 in the eyes of the consumer.

23 Q. Let me show you a document that is

24 in your book as tab 18. And we will mark it

25 as the next exhibit in order, which I think

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1 J. ELDRIDGE

2 will make it 22.

3 (Eldridge Exhibit 22, Slide deck

4 entitled Perceptions of blu Summary

5 August 2020, marked for identification, as

6 of this date.)

7 Q. I'll identify the document for the

8 record while it's being uploaded.

9 Eldridge Exhibit 22 is a slide deck

10 entitled Perceptions of blu Summary

11 August 2020, and it's Bates number is ITG

12 00002658.

13 A. The exhibit number again, please?

14 Q. Exhibit number is 22.

15 A. Thank you. I have it.

16 Q. Very good. Let's just give a second

17 for it to upload so counsel have access.

18 MR. ORMAND: I have it.

19 Q. So, Mr. Eldridge, do you recognize

20 this document perceptions of blu Summary from

21 August 2020?

22 A. Not specifically, no.

23 Q. Do you recognize the general

24 category of information of this being consumer

25 research on e-vapor products that was

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1 J. ELDRIDGE

2 conducted by ITG?

3 A. Yes.

4 Q. So I want to refer you to slide 4 in

5 particular, and it says at the top Getting the

6 Basics Right.

7 A. Okay.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Page 150  
1 J. ELDRIDGE  
2 [REDACTED]  
[REDACTED]

Page 152  
1 J. ELDRIDGE  
2 [REDACTED]  
[REDACTED]

Page 151  
1 J. ELDRIDGE  
2 [REDACTED]  
[REDACTED]

Page 153  
1 J. ELDRIDGE  
2 [REDACTED]  
[REDACTED]  
17 Q. Are you familiar with a product that  
18 Newmark had in the marketplace, pod-based  
19 product for a period of time in 2018 called  
20 MarkTen Elite?  
21 A. Yes, sir.  
22 Q. Did you ever hear anything about  
23 MarkTen Elite leaking?  
24 A. Not specifically.  
25 Q. What about other than specifically?

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1 J. ELDRIDGE

2 A. Based on what I had heard from

3 retailers and consumers, the statement was

4 that all pod-based systems leak.

5 Q. Did you ever hear anything about

6 MarkTen specifically leaking?

7 A. As I stated before, no.

8 Q. Did you ever hear anything about

9 NJOY leaking?

10 A. Not specifically.

11 Q. Did you ever hear anything about

12 Vuse Alto leaking?

13 A. Not specifically.

14 Q. What about Logic?

15 A. No.

16 Q. What about JUUL?

17 A. No.

18 Q. I want to ask you about the

19 statement you just made about all pod-based

20 e-cigarettes experiencing some issues with

21 leaking. As you're aware, there's a similar

22 statement to that in your declaration. We can

23 actually look at it if you'd like. It's

24 paragraph 25 of your declaration, last

25 sentence. And your declaration is Exhibit 1.

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1 J. ELDRIDGE

2 A. I'm there.

3 Q. Where it says, "Based on information

4 from wholesalers and retailers, my

5 understanding is that all pod-based

6 e-cigarettes experience some issues with

7 leaking." What specifically is that

8 information from wholesalers and retailers

9 that you're referring to there?

10 A. It's hearsay; conversation.

11 Q. With who?

12 A. None that I can remember

13 specifically.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. But you don't remember anybody who's

25 given you information about other pod products

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1 J. ELDRIDGE

2 leaking?

3 MR. ORMAND: Object to the form.

4 A. Not specifically, no.

5 Q. Okay. And were these communications

6 where they gave you this information, were

7 they verbal? In writing? Telephone? Can you

8 tell us anything about the context?

9 A. The only thing I recall seeing

10 anything about competitors leaking was in

11 conversation. [REDACTED]

12 [REDACTED]

13 [REDACTED] have

14 you seen with your own eyes any examples of

15 other pod products leaking?

16 A. No, I have not.

17 Q. Are you aware that for ITG's

18 document production in this case in response

19 to the subpoena, your emails were searched for

20 any communications with wholesalers or

21 retailers that had the word "leaking" during

22 the relevant period of time and nothing turned

23 up?

24 A. I'm aware there was a search.

25

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1 J. ELDRIDGE

2 Q. You made some statements in your

3 declaration about a product called Salt of the

4 Earth that ITG I believe does not sell anymore.

5 Do you recall that?

6 A. Yes, sir.

7 Q. What can you tell us about that? Do

8 you recall when ITG started selling Salt of

9 the Earth and when it stopped?

10 A. I don't recall specifically when and

11 when it stopped.

12 Q. Do you recall anything about why it

13 stopped?

14 A. No.

15 Q. Do you know if ITG would have needed

16 to file PMTA application for the Salt of the

17 Earth e-liquid in order to keep it on the

18 market?

19 A. I don't know. If we wanted to keep

20 it, I believe we would have had to file.

21 Q. Is it your understanding, consistent

22 with our discussion earlier today, that that

23 would have required a significant investment

24 on the part of ITG and/or Fontem?

25 A. As with any SKU, yes.

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<p style="text-align: right;">Page 158</p> <p>1 J. ELDRIDGE</p> <p>2 Q. I want to ask you about some</p> <p>3 statements made in your declaration with</p> <p>4 regard to the withdrawal of the MarkTen Elite</p> <p>5 product.</p> <p>6 A. Okay.</p> <p>7 Q. So in particular, I want to direct</p> <p>8 your attention to paragraph 28 of your</p> <p>9 declaration.</p> <p>10 A. Okay.</p> <p>11 Q. And in the third sentence in</p> <p>12 paragraph 28, you say, "Given Altria's</p> <p>13 resources as the largest tobacco company in</p> <p>14 the U.S., my view is they would have been able</p> <p>15 to grow MarkTen Elite if they had kept it on</p> <p>16 the market." Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And then you say, "I was surprised</p> <p>19 when Altria announced that it was pulling</p> <p>20 MarkTen Elite off the market because the</p> <p>21 product had not been on the market very long."</p> <p>22 Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. My Eldridge, my question is: Did</p> <p>25 you have any access to any internal Altria</p>	<p style="text-align: right;">Page 160</p> <p>1 J. ELDRIDGE</p> <p>2 well MarkTen Elite was retaining customers</p> <p>3 after initial trial?</p> <p>4 A. No, I did not.</p> <p>5 Q. Did you have any information about</p> <p>6 how much Altria and Newmark had to spend in</p> <p>7 terms of investment in order to achieve the</p> <p>8 level of sales that MarkTen Elite was able to</p> <p>9 garner?</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you have any insight into how</p> <p>12 Altria rated its chances of getting a PMTA</p> <p>13 market authorization for elite?</p> <p>14 A. No.</p> <p>15 Q. Did you have any information that</p> <p>16 would allow you personally to form a view as</p> <p>17 to the likelihood of elite getting a PMTA</p> <p>18 authorization?</p> <p>19 A. No.</p> <p>20 Q. Did anyone else that you recall tell</p> <p>21 you that they were also surprised that MarkTen</p> <p>22 Elite was coming off the market?</p> <p>23 A. Not that I recall specifically.</p> <p>24 Q. Did you tell anyone else you were</p> <p>25 surprised?</p>
<p style="text-align: right;">Page 159</p> <p>1 J. ELDRIDGE</p> <p>2 information about MarkTen Elite?</p> <p>3 A. No.</p> <p>4 Q. Were you aware that MarkTen had a</p> <p>5 serious leaking problem quantified as</p> <p>6 40 percent of the MarkTen Elite products?</p> <p>7 MS. LEVERT: Object to form and</p> <p>8 foundation.</p> <p>9 A. Not that I recall, no.</p> <p>10 Q. Did you know anything about whether</p> <p>11 MarkTen Elite generated excessive levels of</p> <p>12 formaldehyde?</p> <p>13 A. No.</p> <p>14 Q. Did you know anything about whether</p> <p>15 MarkTen Elite generated other harmful</p> <p>16 substances at a level that was greater than</p> <p>17 would be deemed acceptable?</p> <p>18 MS. LEVERT: Object to form.</p> <p>19 A. No.</p> <p>20 Q. Did you have any information on how</p> <p>21 well MarkTen Elite was doing in converting</p> <p>22 adult smokers from combustible cigarettes to</p> <p>23 e-vapor?</p> <p>24 A. No, I did not.</p> <p>25 Q. Did you have any information on how</p>	<p style="text-align: right;">Page 161</p> <p>1 J. ELDRIDGE</p> <p>2 A. I could have, but not specifically.</p> <p>3 Q. Would you agree with the proposition</p> <p>4 that in order to be successful in the e-vapor</p> <p>5 marketplace, it's not enough just to have the</p> <p>6 resources of a large tobacco company, you</p> <p>7 actually also need to have a product that</p> <p>8 consumers find attractive and that can pass</p> <p>9 through regulatory hurdles?</p> <p>10 MR. ORMAND: Objection to form.</p> <p>11 MS. LEVERT: Objection to form.</p> <p>12 Foundation.</p> <p>13 A. Please repeat the question, Robert.</p> <p>14 Q. Sure. Would you agree that to be</p> <p>15 successful in e-vapor, it's not enough just to</p> <p>16 have the resources of a large tobacco company,</p> <p>17 you also have to have a product that's</p> <p>18 attractive to consumers and that can clear the</p> <p>19 regulatory hurdles?</p> <p>20 MR. ORMAND: Same objection.</p> <p>21 MS. LEVERT: Same objection.</p> <p>22 A. Yes.</p> <p>23 MR. KATERBERG: Mr. Eldridge, thank</p> <p>24 you very much for your cooperation. The</p> <p>25 you've been very patient with us. I think</p>

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<p style="text-align: right;">Page 162</p> <p>1 J. ELDRIDGE</p> <p>2 that's all the questions I have. I'm</p> <p>3 going to reserve my remaining time, to the</p> <p>4 extent I have any left, until after</p> <p>5 Ms. Levert completes her questions.</p> <p>6 MS. LEVERT: Thank you.</p> <p>7 Mr. Eldridge, are you okay with not taking</p> <p>8 a break, or do you want to take a quick</p> <p>9 break?</p> <p>10 THE WITNESS: No, I'm fine.</p> <p>11 MS. LEVERT: Okay. Then we'll go</p> <p>12 ahead and continue.</p> <p>13 EXAMINATION BY</p> <p>14 MS. LEVERT:</p> <p>15 Q. As you know, my name is Meredith</p> <p>16 Levert, I'm an attorney for the Federal Trade</p> <p>17 Commission. Can you hear me okay?</p> <p>18 A. Yes. I just have a question. Is it</p> <p>19 okay to have the documents that have already</p> <p>20 been submitted?</p> <p>21 Q. Yes. In fact, that will be helpful</p> <p>22 because I'm going to ask you about a few of</p> <p>23 them.</p> <p>24 A. Okay.</p> <p>25 Q. Are you still logged into the box</p>	<p style="text-align: right;">Page 164</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes, I have it.</p> <p>3 Q. Mr. Eldridge, do you see that the</p> <p>4 first sentence of paragraph 13 reads,</p> <p>5 "Convenience stores typically display tobacco</p> <p>6 products on dedicated shelves behind the cash</p> <p>7 register, also referred to as the fixture or</p> <p>8 the back bar."</p> <p>9 Do you see the sentence I just read?</p> <p>10 A. Yes, I do.</p> <p>11 Q. In your experience, how is the back</p> <p>12 bar typically organized?</p> <p>13 A. The entire back bar or specific to</p> <p>14 vapor?</p> <p>15 Q. Are there different sections in the</p> <p>16 back bar that displays different nicotine</p> <p>17 products?</p> <p>18 A. Yes, they typically are. We have</p> <p>19 combustible cigarettes and then we have vapor</p> <p>20 space, and then there's also space for cigars</p> <p>21 typically.</p> <p>22 Q. The combustible space is separate</p> <p>23 from the vapor space, and then the cigars have</p> <p>24 an additional separate space; is that correct?</p> <p>25 A. Typically, yes.</p>
<p style="text-align: right;">Page 163</p> <p>1 J. ELDRIDGE</p> <p>2 document sharing platform?</p> <p>3 A. Yes, I am.</p> <p>4 Q. Okay, great. Just as Mr. Katerberg</p> <p>5 did earlier, I from time to time am going to</p> <p>6 ask you to look at an exhibit in the Box</p> <p>7 platform, and I will ask you questions about</p> <p>8 the exhibits. But before asking you any</p> <p>9 questions about an exhibit, I'll give you a</p> <p>10 chance to review it and to print it out if you</p> <p>11 would like. If you have any difficulty either</p> <p>12 viewing or printed out an exhibit, will you</p> <p>13 let me know?</p> <p>14 A. Yes, I will.</p> <p>15 Q. Great. Similar to when</p> <p>16 Mr. Katerberg was asking you questions, when I</p> <p>17 use the term ITG, I'm referring to ITG Brands</p> <p>18 LLC. Do you understand that?</p> <p>19 A. Yes.</p> <p>20 Q. Great. If you can take out what has</p> <p>21 been marked as Eldridge Exhibit 1, which is</p> <p>22 your declaration.</p> <p>23 A. I have it.</p> <p>24 Q. If I could direct you to paragraph</p> <p>25 13, which is on page 3 of the declaration.</p>	<p style="text-align: right;">Page 165</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Do you know what the largest sales</p> <p>3 channel for blu products is?</p> <p>4 A. Not specifically, but I would say</p> <p>5 that it would be the convenience store</p> <p>6 channel, as well.</p> <p>7 Q. Do you know roughly what percentage</p> <p>8 of blu's products sales volume is from the</p> <p>9 convenience store channel?</p> <p>10 A. I do not know.</p> <p>11 Q. Do you have a sense for roughly what</p> <p>12 percentage of blu's sales are through vape</p> <p>13 stores?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have any sense of whether</p> <p>16 it's a small percentage or large percentage of</p> <p>17 blu's sales are through vape stores?</p> <p>18 A. It's small.</p> <p>19 Q. Do you know why that is?</p> <p>20 A. I do not.</p> <p>21 Q. If you could now direct your</p> <p>22 attention to paragraph 18 of your declaration.</p> <p>23 A. Okay.</p> <p>24 Q. And starting with the third sentence</p> <p>25 of that paragraph, it reads, "e-vapor devices</p>

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166 to 169

<p style="text-align: right;">Page 166</p> <p>1 J. ELDRIDGE</p> <p>2 can be either closed or open system. Closed</p> <p>3 system devices can only be used with sealed</p> <p>4 prefilled cartridges, tanks, or pods that are</p> <p>5 compatible with the device. In contrast, open</p> <p>6 system e-vapor devices have a removable mouth</p> <p>7 piece and the consumer manually fills and</p> <p>8 refills the device with E-liquid. ITG does</p> <p>9 not sell any open systems e-vapor devices in</p> <p>10 the United States."</p> <p>11 Do you see the language that I just</p> <p>12 read?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Do you know why ITG doesn't sell any</p> <p>15 open system e-vapor devices in the U.S.?</p> <p>16 A. I do not know.</p> <p>17 Q. Do you know what the largest sales</p> <p>18 channel in the U.S. for open systems is?</p> <p>19 A. I can only say that I would expect</p> <p>20 it would be the make shelves.</p> <p>21 Q. In your experience, do convenience</p> <p>22 stores usually sell open systems?</p> <p>23 A. In some cases, yes.</p> <p>24 Q. When you say in some cases, do you</p> <p>25 have a sense for directionally, is it a lot of</p>	<p style="text-align: right;">Page 168</p> <p>1 J. ELDRIDGE</p> <p>2 salts.</p> <p>3 A. Right.</p> <p>4 Q. Do you have an understanding as to</p> <p>5 what nicotine salts are?</p> <p>6 A. Other than what I testified to this</p> <p>7 morning, is that it was, you know -- I'm not a</p> <p>8 scientist by any means, so how they deliver</p> <p>9 the nicotine, that's all I'm aware of.</p> <p>10 Q. And do the myblu Gold Leaf and</p> <p>11 Menthol flavors mentioned in this paragraph,</p> <p>12 do those contain nicotine salts?</p> <p>13 A. Gold Leaf and Menthol are not</p> <p>14 nicotine salts.</p> <p>15 Q. What do they contain?</p> <p>16 A. Again, I'm not a scientist, but the</p> <p>17 term we use internally is they're freebase</p> <p>18 products. It's a different way of delivering</p> <p>19 nicotine.</p> <p>20 Q. Did any of the blu cigalikes contain</p> <p>21 nicotine salts?</p> <p>22 A. No.</p> <p>23 Q. Do any of the blu disposables</p> <p>24 contain nicotine salts?</p> <p>25 A. No, they do not.</p>
<p style="text-align: right;">Page 167</p> <p>1 J. ELDRIDGE</p> <p>2 convenience stores that sell open systems, or</p> <p>3 does that tend to be an exception?</p> <p>4 A. It tends to be an exception.</p> <p>5 Q. Do you know why that is?</p> <p>6 A. I do not.</p> <p>7 Q. If you could turn to paragraph 23 of</p> <p>8 your declaration.</p> <p>9 A. Okay.</p> <p>10 Q. The first few sentences of that</p> <p>11 paragraph read, "Prior to February 6, 2020</p> <p>12 myblu Liquidpods were available in 13 flavors.</p> <p>13 Now myblu Liquidpods are available only in</p> <p>14 four flavors, each of which is a tobacco or</p> <p>15 menthol flavor; Tobacco Chill Intense, Tobacco</p> <p>16 Intense, Gold Leaf, and Menthol. These myblu</p> <p>17 pod flavors are available at varying nicotine</p> <p>18 strengths. The Tobacco Chill Intense and</p> <p>19 Tobacco Intense pods have nicotine salts in</p> <p>20 them."</p> <p>21 Do you see the sentences that I just</p> <p>22 read?</p> <p>23 A. Yes, I believe so.</p> <p>24 Q. I know you spoke a little bit</p> <p>25 earlier I believe this morning about nicotine</p>	<p style="text-align: right;">Page 169</p> <p>1 J. ELDRIDGE</p> <p>2 Q. When were the myblu Intense pods</p> <p>3 introduced to the market?</p> <p>4 A. I believe it was early 2018, late</p> <p>5 2017.</p> <p>6 Q. I believe Mr. Katerberg asked you</p> <p>7 questions about myblu generally, but do you</p> <p>8 know if the myblu Intense pods specifically</p> <p>9 were developed internally by ITG, or did ITG</p> <p>10 acquire the myblu Intense?</p> <p>11 A. I believe the reference was to Von</p> <p>12 Erl acquisition, and the Von Erl products were</p> <p>13 salt-based products.</p> <p>14 Q. And do you know if the Von Erl</p> <p>15 products also included the myblu freebase</p> <p>16 products?</p> <p>17 A. They did not.</p> <p>18 Q. Do you know how ITG came to</p> <p>19 introduce the myblu freebase products, then?</p> <p>20 A. Let me retract. The Von Erl</p> <p>21 products had the freebase products. It was</p> <p>22 the pod system that we acquired.</p> <p>23 Q. When you say it was the pod system</p> <p>24 that you acquired --</p> <p>25 A. The Von Erl systems and the product</p>



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<p style="text-align: right;">Page 170</p> <p>1 J. ELDRIDGE</p> <p>2 were freebase system, and Intense was</p> <p>3 introduced after.</p> <p>4 Q. Do you know, was Intense something</p> <p>5 that ITG developed, or did ITG acquire Intense</p> <p>6 from another company?</p> <p>7 A. I don't know for certainty.</p> <p>8 Q. Do you have any idea?</p> <p>9 A. I do not.</p> <p>10 Q. I believe you also touched on this</p> <p>11 earlier today, but remind me, what brands do</p> <p>12 you view as blu's primary competitors?</p> <p>13 A. JUUL, Vuse, NJOY.</p> <p>14 Q. Anyone else?</p> <p>15 A. Those are the primary competitors.</p> <p>16 Q. And those three brands, JUUL, Vuse,</p> <p>17 and NJOY, are all of those closed system</p> <p>18 vaping brands?</p> <p>19 A. Yes.</p> <p>20 Q. Why didn't you list any open system</p> <p>21 vaping products as any of blu's primary</p> <p>22 competitors?</p> <p>23 A. Because our products are closed</p> <p>24 systems.</p> <p>25 Q. Does ITG track the market shares for</p>	<p style="text-align: right;">Page 172</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes.</p> <p>3 MR. KATERBERG: Objection to form.</p> <p>4 Q. Focusing on the last sentence in</p> <p>5 paragraph 25 that reads, "Based on information</p> <p>6 from wholesalers and retailers, my</p> <p>7 understanding is that all pod based</p> <p>8 e-cigarettes experience some issues with</p> <p>9 leaking." Do you see that sentence?</p> <p>10 A. Yes, I do.</p> <p>11 Q. I know that you and Mr. Katerberg</p> <p>12 just discussed that a few minutes ago. Just</p> <p>13 to clarify, I believe you testified that</p> <p>14 information from wholesalers and retailers</p> <p>15 referred to conversations. Is that accurate?</p> <p>16 A. Yes. There was not documentation</p> <p>17 that I'm aware of.</p> <p>18 Q. And your understanding from those</p> <p>19 conversations was that all pod-based</p> <p>20 e-cigarettes experienced some issues with</p> <p>21 leaking?</p> <p>22 A. Yes.</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 171</p> <p>1 J. ELDRIDGE</p> <p>2 the brands you just listed, JUUL, Vuse, and</p> <p>3 NJOY?</p> <p>4 A. Yes.</p> <p>5 Q. Did ITG track market shares for any</p> <p>6 open systems brands?</p> <p>7 A. Not that I am aware of.</p> <p>8 Q. Does ITG track prices for JUUL and</p> <p>9 NJOY products?</p> <p>10 A. Yes.</p> <p>11 Q. Does ITG track prices for any open</p> <p>12 systems brands?</p> <p>13 A. Not that I know of.</p> <p>14 Q. If JUUL look at paragraph 25, still</p> <p>15 on Exhibit 1, which is your declaration, the</p> <p>16 second to last sentence in that paragraph</p> <p>17 reads, "Altria's MarkTen product, consisting</p> <p>18 of MarkTen Cigalike and MarkTen Elite</p> <p>19 pod-based products, were also competitors to</p> <p>20 blu prior to Altria discontinuing them."</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes.</p> <p>23 Q. When the MarkTen products were still</p> <p>24 on the market, was the MarkTen brand also one</p> <p>25 of blu's primary competitors, in your view?</p>	<p style="text-align: right;">Page 173</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 Q. Fair enough. Moving on to paragraph</p> <p>16 26, which reads, "JUUL's rapid growth after</p> <p>17 the last several years lead to significant</p> <p>18 shifts in market shares, with JUUL gaining</p> <p>19 share to become the market leader and</p> <p>20 competing brands losing share."</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes, I do.</p> <p>23 Q. When did JUUL start to grow rapidly?</p> <p>24 A. It was pretty rapid upon</p> <p>25 introduction into the marketplace. They</p>



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<p style="text-align: right;">Page 174</p> <p>1 J. ELDRIDGE</p> <p>2 quickly evolved to 40, 45 percent of the</p> <p>3 market. As far as pinpointing when it</p> <p>4 actually started, I can't give you an actual</p> <p>5 date.</p> <p>6 Q. How did ITG react when JUUL started</p> <p>7 growing rapidly?</p> <p>8 A. Could you rephrase that?</p> <p>9 Q. Sure. In response to JUUL growing</p> <p>10 rapidly in the market, do you know if ITG, for</p> <p>11 instance, increased its spend on research and</p> <p>12 development for e-vapor products?</p> <p>13 A. I wouldn't be able to say that. I</p> <p>14 mean, I certainly can say that it was an eye</p> <p>15 opener, and the fact that they were nic salts</p> <p>16 made a big difference in the introduction of</p> <p>17 myblu Intense.</p> <p>18 Q. Starting with this myblu, did ITG</p> <p>19 introduce the myblu pods in response to JUUL's</p> <p>20 growth?</p> <p>21 A. I don't know the answer to that.</p> <p>22 Q. Did ITG introduce the myblu Intense</p> <p>23 pods in response to JUUL's growth?</p> <p>24 A. More so, yes. Pod-based systems</p> <p>25 were popular. That's why we went to myblu</p>	<p style="text-align: right;">Page 176</p> <p>1 J. ELDRIDGE</p> <p>2 that are available, and that's really based on</p> <p>3 my experience over the years.</p> <p>4 Q. Had you seen Altria grow products in</p> <p>5 the past?</p> <p>6 A. Yes.</p> <p>7 MR. KATERBERG: Objection. Form.</p> <p>8 Q. I'm sorry. You said yes, correct?</p> <p>9 A. I did.</p> <p>10 Q. Okay. What products had you seen</p> <p>11 Altria grow in the past?</p> <p>12 A. The Marlboro franchise.</p> <p>13 Q. And what did you observe Altria</p> <p>14 doing in the market to grow that franchise?</p> <p>15 A. Investment in the brand.</p> <p>16 Q. When you say investment in the</p> <p>17 brand, what do you mean by that?</p> <p>18 A. Promotions, discounts.</p> <p>19 Q. And based on your experience in the</p> <p>20 tobacco industry, what steps can a company</p> <p>21 take to grow out a tobacco or nicotine</p> <p>22 product?</p> <p>23 A. It's securing visible space and</p> <p>24 promoting, to be competitive.</p> <p>25 Q. When you say securing visible space,</p>
<p style="text-align: right;">Page 175</p> <p>1 J. ELDRIDGE</p> <p>2 type device, because of the pod systems.</p> <p>3 Q. And in your view, do you think JUUL</p> <p>4 was responsible for the popularity of pod</p> <p>5 systems?</p> <p>6 A. In my view, yes.</p> <p>7 Q. Moving on to paragraph 28.</p> <p>8 A. Okay.</p> <p>9 Q. Which reads, "as mentioned above,</p> <p>10 Altria competed in the e-vapor category with</p> <p>11 its MarkTen cigalike product and its MarkTen</p> <p>12 Elite pod-based product. Altria introduced</p> <p>13 MarkTen Elite in the first half of 2018.</p> <p>14 Given Altria's resources as the largest</p> <p>15 tobacco company in the U.S., my view was that</p> <p>16 they would have been able to grow MarkTen</p> <p>17 Elite if they had kept it on the market."</p> <p>18 Do you see the language I just read?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is the basis for your view that</p> <p>21 Altria would have been able to grow MarkTen</p> <p>22 Elite if they had kept it on the market?</p> <p>23 A. Just because of the sheer marketing</p> <p>24 power that they have, having roughly</p> <p>25 50 percent of the business and the resources</p>	<p style="text-align: right;">Page 177</p> <p>1 J. ELDRIDGE</p> <p>2 what do you mean by that?</p> <p>3 A. That's the back bar space that we</p> <p>4 referred to earlier as the primary venue.</p> <p>5 Q. And is having visible space on the</p> <p>6 back bar important in enabling a brand to</p> <p>7 grow?</p> <p>8 A. Yes.</p> <p>9 Q. Why is that?</p> <p>10 A. If the consumer can't see the</p> <p>11 product, they're not likely to buy it.</p> <p>12 Q. Do you recall if Altria was taking</p> <p>13 any steps to grow MarkTen Elite in 2018?</p> <p>14 MR. KATERBERG: Objection.</p> <p>15 Foundation.</p> <p>16 MS. LEVERT: I'll rephrase.</p> <p>17 Q. Do you recall, based on your</p> <p>18 experience in the marketplace, observing</p> <p>19 whether Altria was taking any steps to grow</p> <p>20 MarkTen Elite in 2018?</p> <p>21 A. Not specifically.</p> <p>22 Q. Do you recall generally?</p> <p>23 A. Primary observations were securing</p> <p>24 space on shelf.</p> <p>25 Q. Do you recall what Altria was doing</p>

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<p style="text-align: right;">Page 178</p> <p>1 J. ELDRIDGE</p> <p>2 to secure space on the shelf for MarkTen</p> <p>3 Elite?</p> <p>4 A. Selling the product, and asking for</p> <p>5 the primary space at the top of the fixture.</p> <p>6 Q. In your view, would having the</p> <p>7 primary space at the top of the fixture help</p> <p>8 to grow the brand?</p> <p>9 A. Yes.</p> <p>10 Q. And why is that?</p> <p>11 A. It's the most highly visible space</p> <p>12 on the back bar fixture.</p> <p>13 Q. And does that help customers to</p> <p>14 notice the product?</p> <p>15 A. Yes.</p> <p>16 Q. What was your view of the MarkTen</p> <p>17 Elite product?</p> <p>18 A. I didn't have a specific view. I</p> <p>19 heard it was a good product, but beyond that,</p> <p>20 I didn't have a specific view because I'm not</p> <p>21 a consumer.</p> <p>22 Q. Who did you hear it was a good</p> <p>23 product from?</p> <p>24 A. As indicated earlier, just from</p> <p>25 listening in the marketplace that it was a</p>	<p style="text-align: right;">Page 180</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Do you recall roughly when Altria</p> <p>3 announced that it was pulling MarkTen Elite</p> <p>4 off the market?</p> <p>5 A. October of '18, I believe it was.</p> <p>6 Excuse me, '19, I'm sorry.</p> <p>7 Q. I'm sorry. Did you say 2019?</p> <p>8 A. Yes.</p> <p>9 Q. Are you looking at something to get</p> <p>10 that date?</p> <p>11 A. No. I was trying to glance to see</p> <p>12 if I put it in the declaration as reference.</p> <p>13 Q. I don't have a document in front of</p> <p>14 you, but I can represent to you it was October</p> <p>15 2018.</p> <p>16 A. Yes, I noted in my declaration</p> <p>17 December 2018. The announcement was actually</p> <p>18 in October, and I believe December was the</p> <p>19 actual effective date. It was announced in</p> <p>20 October.</p> <p>21 Q. What was your reaction when you</p> <p>22 found out that Altria was pulling MarkTen off</p> <p>23 the market?</p> <p>24 A. As I stated, I was surprised.</p> <p>25 Q. Why were you surprised?</p>
<p style="text-align: right;">Page 179</p> <p>1 J. ELDRIDGE</p> <p>2 decent product.</p> <p>3 Q. And by listening in the marketplace,</p> <p>4 do you mean talking to retailers and</p> <p>5 wholesalers?</p> <p>6 A. Retailers, wholesalers, hearsay from</p> <p>7 consumers.</p> <p>8 Q. Do you recall ITG's salespeople</p> <p>9 telling you anything about the MarkTen Elite</p> <p>10 product?</p> <p>11 A. Not specifically, no.</p> <p>12 Q. Do you remember generally?</p> <p>13 A. Same dialogue that I mentioned</p> <p>14 earlier.</p> <p>15 Q. That it was a good product?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Was that a yes?</p> <p>18 A. Yes, yes.</p> <p>19 Q. And looking at the last sentence in</p> <p>20 paragraph 28, which reads, "I was surprised</p> <p>21 when Altria announced that it was pulling</p> <p>22 MarkTen Elite off the market because the</p> <p>23 product had not been on the market very long."</p> <p>24 Do you see that sentence?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">Page 181</p> <p>1 J. ELDRIDGE</p> <p>2 A. Once again, because I felt that -- I</p> <p>3 heard it was a good product and felt that they</p> <p>4 had marketing power to drive the business in</p> <p>5 that space. And when I say "space," I meant</p> <p>6 the e-cigarette space.</p> <p>7 Q. Do you know if MarkTen Elite sales</p> <p>8 volumes were growing in 2018?</p> <p>9 A. Not specifically, no.</p> <p>10 Q. Based on your experience in the</p> <p>11 industry, did you think it was unusual for</p> <p>12 Altria to introduce a product and then</p> <p>13 announce they were pulling it off the market</p> <p>14 less than a year later?</p> <p>15 MR. KATERBERG: Objection. Form.</p> <p>16 MR. ORMAND: Join.</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall any instance where ITG</p> <p>19 had introduced a product in the U.S. and then</p> <p>20 pull today off the market less than a year</p> <p>21 later?</p> <p>22 A. A vapor product?</p> <p>23 Q. Yes.</p> <p>24 A. That Salt of the Earth was a quick</p> <p>25 introduction that was referenced earlier.</p>

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1 J. ELDRIDGE

2 Q. And why was Salt of the Earth taken

3 off the market? If you know.

4 A. I do not know specifically.

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. Do you have a sense for how the

14 price of a closed system pod device compares

15 to the cost of an open system device?

16 A. I do not.

17 Q. Are you familiar with the term oral

18 nicotine products?

19 A. Yes.

20 Q. What are oral nicotine products?

21 A. Another form of nicotine delivery

22 beyond smoking.

23 Q. Would nicotine pouches be oral

24 nicotine products?

25 A. Yes.

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1 J. ELDRIDGE

2 Q. Does ITG sell any oral nicotine

3 products in the U.S.?

4 A. No, we do not.

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 Q. Are you familiar with the term

20 "heat, not burn"?

21 A. Yes.

22 Q. What does that mean?

23 A. Tobacco is heated versus burnt,

24 hence the name. Supposed to be -- it is

25 assumed, I guess, if you will, that it's less

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1 J. ELDRIDGE

2 harmful because the combustible product is

3 burning.

4 Q. Are there any heat not burned

5 products on the market in the U.S. today?

6 A. Yes.

7 Q. What products?

8 A. IQOS.

9 Q. Any others?

10 A. I believe there to be, but I'm

11 not -- I can't give you the specifics on the

12 brands.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 J. ELDRIDGE

2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. If you could turn to paragraph 31.

21 A. Okay. I'm there.

22 Q. Okay. Starting with the second

23 sentence, which reads, "Starting in the summer

24 of 2018, in exchange for getting the number

25 one IE top space in convenience stores

<p style="text-align: right;">Page 186</p> <p>1 J. ELDRIDGE</p> <p>2 e-cigarette section on the back bar, Altria</p> <p>3 paid retailers 6 cents per carton of Altria</p> <p>4 cigarettes sold, which is a large amount given</p> <p>5 Altria's share of cigarette sales."</p> <p>6 Do you see the sentence that I just</p> <p>7 read?</p> <p>8 A. I do.</p> <p>9 Q. How did you know about this?</p> <p>10 A. Observation of actual contracts.</p> <p>11 Q. And how would it come about that you</p> <p>12 would see the contracts?</p> <p>13 A. We collect information in order for</p> <p>14 us to, just like pricing, we collect</p> <p>15 information on contracts in the marketplace.</p> <p>16 Q. Is that information from retailers?</p> <p>17 A. Yes.</p> <p>18 Q. And ITG's salespeople collect that</p> <p>19 information?</p> <p>20 A. Yes.</p> <p>21 Q. And was Altria successful at getting</p> <p>22 retailers to give it the top space on the</p> <p>23 e-cigarette section because of this offer</p> <p>24 described in this paragraph?</p> <p>25 MR. KATERBERG: Objection. Form.</p>	<p style="text-align: right;">Page 188</p> <p>1 J. ELDRIDGE</p> <p>2 taking over a 35 percent stake, they started</p> <p>3 adding JUUL to the space.</p> <p>4 Q. In your view, did Altria continuing</p> <p>5 to hold premium e-vapor space and then</p> <p>6 authorizing retailer to put JUUL in that space</p> <p>7 have any impact on blu?</p> <p>8 A. Certainly.</p> <p>9 Q. What impact did it have?</p> <p>10 A. By having that extra -- that highly</p> <p>11 visible space on the top of the fixture that I</p> <p>12 mentioned before.</p> <p>13 Q. And how did that impact the blu</p> <p>14 brand?</p> <p>15 A. It kept a spot lower on the fixture,</p> <p>16 which is where we ended up, where we continue</p> <p>17 to be.</p> <p>18 Q. Did that have any impact on blu's</p> <p>19 ability to grow its sales?</p> <p>20 MR. KATERBERG: Objection. Form.</p> <p>21 A. Only from a visibility standpoint.</p> <p>22 Q. Do you think blu would have more</p> <p>23 sales if it was more visible on the shelf?</p> <p>24 A. Yes.</p> <p>25 Q. If you could turn to paragraph 35.</p>
<p style="text-align: right;">Page 187</p> <p>1 J. ELDRIDGE</p> <p>2 A. I would say yes.</p> <p>3 Q. What products was Altria putting in</p> <p>4 that top e-cigarette space in the back bar?</p> <p>5 A. When the contract was consummated,</p> <p>6 it was MarkTen.</p> <p>7 Q. And by MarkTen, you mean MarkTen</p> <p>8 Elite or elite and cigalike?</p> <p>9 A. It started with cigalike, and then</p> <p>10 when elite came, they put that in the space as</p> <p>11 well.</p> <p>12 Q. Then moving onto the next sentence</p> <p>13 still in paragraph 31, it reads, "Even after</p> <p>14 Altria's December 2018 announcement that it</p> <p>15 was discontinuing its MarkTen and green smoke</p> <p>16 e-cigarette brands, Altria continued to hold</p> <p>17 its premium space on the e-vapor display and</p> <p>18 then authorized retailers to put JUUL in that</p> <p>19 space."</p> <p>20 Do you see that sentence?</p> <p>21 A. Yes.</p> <p>22 Q. How did you know this?</p> <p>23 A. Same procurements of documentation.</p> <p>24 The contract was not cancelled, and then</p> <p>25 looking at retail, after the announcement of</p>	<p style="text-align: right;">Page 189</p> <p>1 J. ELDRIDGE</p> <p>2 A. Okay.</p> <p>3 Q. The first sentence of that paragraph</p> <p>4 reads, "Even though we have lost market share</p> <p>5 in e-vapor over the last several years, I</p> <p>6 believe ITG is committed to competing in the</p> <p>7 e-vapor category with its blu products and</p> <p>8 that ITG would not consider exiting the</p> <p>9 e-vapor category."</p> <p>10 Do you see that sentence?</p> <p>11 A. Yes, I do.</p> <p>12 Q. What is the basis for your belief</p> <p>13 that ITG is committed to competing in the</p> <p>14 e-vapor market?</p> <p>15 A. There's been numerous documents that</p> <p>16 I don't have my hand on that stated that we</p> <p>17 were committed to the e-vape space because it</p> <p>18 was an opportunity for growth.</p> <p>19 Q. What is the basis for your belief</p> <p>20 that ITG would not consider exiting the</p> <p>21 e-vapor category?</p> <p>22 A. Because of that opportunity.</p> <p>23 Q. All right. I think you can put the</p> <p>24 declaration aside.</p> <p>25 MS. LEVERT: Do you need a break,</p>

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<p style="text-align: right;">Page 190</p> <p>1 J. ELDRIDGE</p> <p>2 Mr. Eldridge?</p> <p>3 THE WITNESS: If we could take ten</p> <p>4 minutes, that would be great.</p> <p>5 MS. LEVERT: Sure. We'll go off the</p> <p>6 record.</p> <p>7 (Recess was taken.)</p> <p>8 BY MS. LEVERT:</p> <p>9 Q. Mr. Eldridge, if you could pull back</p> <p>10 out what has been marked as Exhibit 11.</p> <p>11 A. Okay. Just for reference, it says,</p> <p>12 "Portfolio Review and Rationalization," dated</p> <p>13 August 2018?</p> <p>14 Q. Perfect. Yes. That is the</p> <p>15 document. If you could turn to slide 14.</p> <p>16 A. Okay.</p> <p>17 Q. And the top of that slide reads,</p> <p>18 "Retail Product Mix By Manufacturer." Do you</p> <p>19 see that?</p> <p>20 A. I do.</p> <p>21 Q. And if you look on the right-hand</p> <p>22 side of the page, the third sentence down</p> <p>23 reads, "blu, JUUL, and Altria are best</p> <p>24 positioned for growth with products in the pod</p> <p>25 segment. The introduction of Vuse Alto will</p>	<p style="text-align: right;">Page 192</p> <p>1 J. ELDRIDGE</p> <p>2 asked you about this slide earlier today?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And this page shows a number of</p> <p>5 different pictures of pod products; is that</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. Which of these pod products are you</p> <p>9 familiar with?</p> <p>10 A. Let me clearly say this is hard to</p> <p>11 read.</p> <p>12 Q. It is. I agree.</p> <p>13 A. Certainly blu. I can't make out</p> <p>14 more of these. My apologies. I think I see</p> <p>15 JUUL on here, lower left-hand. I don't know</p> <p>16 if that's a JUUL device or not. I really</p> <p>17 can't -- these are very hard to read.</p> <p>18 Q. They are. I agree. On the</p> <p>19 left-hand side of the page, do you see where</p> <p>20 it says, "There are at least 20 competitive</p> <p>21 brands within the pod device subcategory"?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware of 20 brands that are</p> <p>24 currently in the pod device subcategory?</p> <p>25 A. Not specifically, but there are</p>
<p style="text-align: right;">Page 191</p> <p>1 J. ELDRIDGE</p> <p>2 help better position RJR."</p> <p>3 Do you see what I just read?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Just to confirm, in August of 2018,</p> <p>6 the product that Altria had in the pod segment</p> <p>7 was MarkTen Elite; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. As of this point in time,</p> <p>10 August 2018, did you expect that Altria would</p> <p>11 continue to be in the pod segment with its</p> <p>12 MarkTen Elite product?</p> <p>13 A. Yes, I did.</p> <p>14 Q. And did you expect Altria to be one</p> <p>15 of the major competitors going forward in the</p> <p>16 pod segment with its MarkTen Elite product?</p> <p>17 MR. KATERBERG: Objection. Form.</p> <p>18 A. Yes, I did.</p> <p>19 Q. If you could turn now to page 55.</p> <p>20 A. Okay.</p> <p>21 Q. This is a slide that says,</p> <p>22 "Competitive Landscape of Pod Devices." Do</p> <p>23 you see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Do you recall that Mr. Katerberg</p>	<p style="text-align: right;">Page 193</p> <p>1 J. ELDRIDGE</p> <p>2 many.</p> <p>3 Q. Do you know what the -- excluding</p> <p>4 the brands you have listed previously today as</p> <p>5 blu's primary competitors, which were JUUL,</p> <p>6 NJOY, and Reynolds Vuse; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Excluding those brands, do you know</p> <p>9 the market shares of any other pod device</p> <p>10 brands?</p> <p>11 A. I do not. Can I clarify something</p> <p>12 on this page?</p> <p>13 Q. Absolutely.</p> <p>14 A. It says right on the bottom of it,</p> <p>15 "This is intended for design only." It's not</p> <p>16 intended to show specific focus on certain</p> <p>17 competitors.</p> <p>18 Q. And where are you seeing that?</p> <p>19 A. Right at the very bottom of the</p> <p>20 dotted --</p> <p>21 Q. Oh, okay.</p> <p>22 A. These pictures present differences</p> <p>23 in design only, not to describe all the</p> <p>24 devices.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 194</p> <p>1 J. ELDRIDGE</p> <p>2 A. I did not create this document.</p> <p>3 Q. Understood. Other than the brands</p> <p>4 you've identified as blu's primary</p> <p>5 competitors -- which, again, were Reynolds</p> <p>6 Vuse brand, NJOY, and JUUL -- are there any</p> <p>7 other pod brands that you consider to be</p> <p>8 meaningful competitors to blu?</p> <p>9 A. Not that I recall.</p> <p>10 Q. If you could turn to page 57.</p> <p>11 A. Okay.</p> <p>12 Q. This is a slide with the words</p> <p>13 "myblu Competitors and Retail" at the top. Do</p> <p>14 you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. The graph on this page is entitled</p> <p>17 Kit Turn Rate. What do you understand that to</p> <p>18 mean?</p> <p>19 A. Turn rate typically means</p> <p>20 repurchase.</p> <p>21 Q. And when you say repurchase, what do</p> <p>22 you mean by that?</p> <p>23 A. More than once.</p> <p>24 Q. So I guess in the context of this</p> <p>25 graph, what do you understand this to show?</p>	<p style="text-align: right;">Page 196</p> <p>1 J. ELDRIDGE</p> <p>2 Q. Do you remember generally that</p> <p>3 something like this happened?</p> <p>4 A. It's a competitive world. It</p> <p>5 changes all the time.</p> <p>6 Q. You can set that document aside. I</p> <p>7 am attempting to add a document to the shared</p> <p>8 folder. I've just added a document to the</p> <p>9 shared folder that has been pre-marked as</p> <p>10 PX 3018. Do you see that, Mr. Eldridge?</p> <p>11 A. Yes, I do.</p> <p>12 Q. If you could open that --</p> <p>13 A. Give me a minute to print it.</p> <p>14 Q. Yes. That's what I was going to say</p> <p>15 next. Absolutely.</p> <p>16 A. It's a big document.</p> <p>17 Q. Did it download okay?</p> <p>18 A. Yes. It's printing.</p> <p>19 Yes. I have it in its entirety.</p> <p>20 Q. Okay. Great. I'm just going to ask</p> <p>21 you about a few pages in it, which I will</p> <p>22 obviously point you to before I ask about</p> <p>23 them.</p> <p>24 A. Okay.</p> <p>25 Q. Just for the record, PX 3018 is an</p>
<p style="text-align: right;">Page 195</p> <p>1 J. ELDRIDGE</p> <p>2 A. I don't really know. Once again,</p> <p>3 it's not my document.</p> <p>4 Q. Fair enough. Looking at the text</p> <p>5 under the graph, it reads, "Kit promotions</p> <p>6 have helped blu and MarkTen increase trial</p> <p>7 over the past three months. This is putting</p> <p>8 competitive pressures on JUUL kit purchases.</p> <p>9 JUUL has responded with a kit promotion on</p> <p>10 both their starter kit and battery."</p> <p>11 Do you see that language?</p> <p>12 A. I do.</p> <p>13 Q. Do you know what this is referring</p> <p>14 to?</p> <p>15 A. I do not specifically.</p> <p>16 Q. Do you know generally?</p> <p>17 A. Well, it's certainly saying, you</p> <p>18 know, what it's saying. Trial offers for the</p> <p>19 past three months for MarkTen, putting</p> <p>20 competitive pressure, and just stating the</p> <p>21 obvious, that JUUL is responding.</p> <p>22 Q. And do you recall this happening</p> <p>23 around the time of this document in August</p> <p>24 2018?</p> <p>25 A. Not specifically, no.</p>	<p style="text-align: right;">Page 197</p> <p>1 J. ELDRIDGE</p> <p>2 e-mail from Fred Paternostro dated November 1,</p> <p>3 2018, to Alexander Mueller, copying several</p> <p>4 people, including Mr. Eldridge, with the</p> <p>5 subject of Strategic Meeting Slides.</p> <p>6 Mr. Eldridge, who is Fred</p> <p>7 Paternostro?</p> <p>8 A. He was my former boss.</p> <p>9 Q. What was his title?</p> <p>10 A. Vice president of sales, national</p> <p>11 sales.</p> <p>12 Q. And if you look at the page ending</p> <p>13 in 003, and when I'm referring to these</p> <p>14 numbers, I'm referring to the pre-stamped</p> <p>15 numbers that start with PX 3018 and then end</p> <p>16 in three digits after that on the bottom-right</p> <p>17 of each page.</p> <p>18 A. PX 3018-003?</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. Does this appear to be the document</p> <p>22 that Mr. Paternostro attached to this e-mail?</p> <p>23 A. Yes.</p> <p>24 Q. Does this appear to be the document?</p> <p>25 A. Yes. It's quite dated, but I</p>

<p style="text-align: right;">Page 198</p> <p>1 J. ELDRIDGE</p> <p>2 remember the document.</p> <p>3 Q. Would you have reviewed the document</p> <p>4 after you received it?</p> <p>5 A. Yes.</p> <p>6 Q. If you'll turn two pages forward to</p> <p>7 the page ending in 005.</p> <p>8 A. Okay.</p> <p>9 Q. The top of that page reads,</p> <p>10 "Significant challenges faced during FY 2018."</p> <p>11 A. I see that.</p> <p>12 Q. If you look under the heading "blu,"</p> <p>13 the first bullet point reads, "PM and RAI</p> <p>14 pushing for a dedicated space on the fixture</p> <p>15 for NGP products at the expense of</p> <p>16 cigarettes." Do you see that bullet point?</p> <p>17 A. Yeah. I see it.</p> <p>18 Q. Is PM a reference to Philip Morris</p> <p>19 USA?</p> <p>20 A. Yes.</p> <p>21 Q. And you understand that that's part</p> <p>22 of Altria?</p> <p>23 A. Yes.</p> <p>24 Q. Is RAI reference to Reynolds?</p> <p>25 A. Yes, it is.</p>	<p style="text-align: right;">Page 200</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 199</p> <p>1 J. ELDRIDGE</p> <p>2 Q. What do you understand this sentence</p> <p>3 to be referring to?</p> <p>4 A. At the time, there was a push to</p> <p>5 shift cigarette space to next generation</p> <p>6 products. Exactly what it states. And I</p> <p>7 recall that.</p> <p>8 Q. And what products was Altria pushing</p> <p>9 for dedicated NG space for?</p> <p>10 MR. KATERBERG: Objection. Form.</p> <p>11 A. Yeah. At this time it would have</p> <p>12 been MarkTen.</p> <p>13 Q. Do you recall what actions Altria</p> <p>14 was taking to try to get dedicated space on</p> <p>15 the fixture for next generation products?</p> <p>16 A. Other than the contractual</p> <p>17 information that we reviewed earlier, I don't</p> <p>18 have any additional information.</p> <p>19 Q. I believe you testified earlier that</p> <p>20 Altria was successful getting dedicated space</p> <p>21 on the fixture for their next generation</p> <p>22 products; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. [REDACTED]</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 201</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



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<p style="text-align: right;">Page 202</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>3 Q. If you'll turn to the page ending in</p> <p>4 009.</p> <p>5 A. Okay.</p> <p>6 Q. At the top of that slide, it reads,</p> <p>7 "Results: You fought off aggressive</p> <p>8 competition and increased our footprint." Do</p> <p>9 you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you know what aggressive</p> <p>12 competition is referring to here?</p> <p>13 A. All contractual agreements in the</p> <p>14 marketplace, which would primarily be Reynolds</p> <p>15 and Altria. And JUUL, excuse me.</p> <p>16 Q. And then at the bottom of the page,</p> <p>17 do you see the red box inside of which it</p> <p>18 says, "Total new plans, plus 14,621." Do you</p> <p>19 see that?</p> <p>20 A. Yes. I see that.</p> <p>21 Q. Do you know what that's referring</p> <p>22 to?</p> <p>23 A. That's our merchandising plan, which</p> <p>24 is very similar to the space requirements. We</p> <p>25 gain 14,621 additional plans.</p>	<p style="text-align: right;">Page 204</p> <p>1 J. ELDRIDGE</p> <p>2 case we go back to it, which exhibit it is?</p> <p>3 Q. Yes, absolutely.</p> <p>4 A. Which exhibit number was this? I</p> <p>5 apologize.</p> <p>6 Q. Well, we've pre-marked it as</p> <p>7 PX 3018. I don't know if the court reporter</p> <p>8 put it in as something different.</p> <p>9 (Eldridge Exhibit 23, Email with</p> <p>10 attached native file, marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Mr. Eldridge, are you familiar at</p> <p>13 all with how ITG categorizes its costs between</p> <p>14 fixed and variable costs?</p> <p>15 A. No, not specifically.</p> <p>16 Q. Are you familiar with that generally?</p> <p>17 A. Only by name, fixed versus variable.</p> <p>18 Q. Okay.</p> <p>19 A. Variable is they change, and fixed</p> <p>20 costs are stagnant.</p> <p>21 Q. So for instance, you wouldn't be</p> <p>22 able to say whether ITG categorizes, for</p> <p>23 instance, R&amp;D costs as fixed versus variable?</p> <p>24 A. Correct.</p> <p>25 Q. I believe I just added an exhibit to</p>
<p style="text-align: right;">Page 203</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 Q. We can set that document aside.</p> <p>25 A. Can I just make a note of this, in</p>	<p style="text-align: right;">Page 205</p> <p>1 J. ELDRIDGE</p> <p>2 the shared folder. It's again pre-marked as</p> <p>3 PX 3005.</p> <p>4 (Eldridge Exhibit 24, Pricing Update</p> <p>5 slide deck, marked for identification, as</p> <p>6 of this date.)</p> <p>7 Q. Do you see that? Has it shown up</p> <p>8 yet, Mr. Eldridge?</p> <p>9 A. I'm scrolling to the bottom.</p> <p>10 PX 3005, yes.</p> <p>11 Q. If you would like to print that,</p> <p>12 please feel free to do so.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see that the first page of</p> <p>15 this document, which is PX 3005 and also is</p> <p>16 now marked as Exhibit 24 of your deposition,</p> <p>17 do you see that that page says, "This</p> <p>18 document, Pricing Recommendations 12/18/2018</p> <p>19 PowerPoint, is being produced as native"?</p> <p>20 A. Yes, I do.</p> <p>21 Q. I'll represent to you that ITG</p> <p>22 produced this document.</p> <p>23 If you turn to the next page ending</p> <p>24 in 002, do you see that this is a deck</p> <p>25 entitled Pricing Update?</p>



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<p style="text-align: right;">Page 206</p> <p>1 J. ELDRIDGE</p> <p>2 A. Yes.</p> <p>3 Q. Do you recognize this document?</p> <p>4 A. Not in detail. There appears to be</p> <p>5 some slides that are equivalent to one that</p> <p>6 was previously submitted in terms of frame</p> <p>7 representation. My reference is only to slide</p> <p>8 3005-005, where you can see some different</p> <p>9 competitive brands. But it does seem to</p> <p>10 include Leap, and I do not recall the detail</p> <p>11 of this document.</p> <p>12 Q. You just mentioned Leap, and I know</p> <p>13 it came up earlier today. What is Leap?</p> <p>14 A. It's a competitive brand in the</p> <p>15 marketplace based --</p> <p>16 Q. Do you have a sense for what Leap's</p> <p>17 market share is?</p> <p>18 A. I do not.</p> <p>19 Q. Do you consider Leap to be a major</p> <p>20 competitor to blu?</p> <p>21 A. Not a major competitor.</p> <p>22 Q. If you'll turn to slide 6, that's</p> <p>23 probably the easiest way to refer to it.</p> <p>24 A. Okay.</p> <p>25 Q. The heading of that slide reads,</p>	<p style="text-align: right;">Page 208</p> <p>1 J. ELDRIDGE</p> <p>2 contain nicotine salts; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. In the statement that I just read,</p> <p>5 do you recall whether MarkTen or myblu were</p> <p>6 the only leading competitors offering freebase</p> <p>7 pods?</p> <p>8 A. I don't recall specifically.</p> <p>9 Q. Do you agree with this statement</p> <p>10 that the competitive price pressure from myblu</p> <p>11 freebase was reduced when MarkTen left the</p> <p>12 market?</p> <p>13 MR. KATERBERG: Objection. Form.</p> <p>14 A. Yes. I agree with that.</p> <p>15 Q. Did ITG increase the price of myblu</p> <p>16 freebase pods after MarkTen was removed from</p> <p>17 the market?</p> <p>18 A. I don't believe so.</p> <p>19 Q. ITG still sells myblu freebase pods,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And ITG has submitted PMTAs for the</p> <p>23 myblu freebase pods, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Mr. Eldridge, when one of the</p>
<p style="text-align: right;">Page 207</p> <p>1 J. ELDRIDGE</p> <p>2 "Freebase competitive risk decreased with the</p> <p>3 exit of MarkTen." Do you see that?</p> <p>4 A. At the very top?</p> <p>5 Q. Yes. I'm on slide 6, but the page</p> <p>6 ends in -- it's PX 3005-007.</p> <p>7 A. Oh, okay.</p> <p>8 Q. Sorry. I know it's a little</p> <p>9 confusing.</p> <p>10 A. That explains it.</p> <p>11 Q. Okay. I will reread that now that</p> <p>12 we're on the same page.</p> <p>13 This slide heading says, "Freebase</p> <p>14 competitive risk decreased with the exit of</p> <p>15 MarkTen." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. In the box with the dotted line on</p> <p>18 the right half of the page, the third sentence</p> <p>19 down reads, "Now that myblu is the only</p> <p>20 leading competitor offering freebase pod</p> <p>21 packs, competitive price pressure has been</p> <p>22 reduced." Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. I believe you testified earlier</p> <p>25 today that freebase pods are pods that do not</p>	<p style="text-align: right;">Page 209</p> <p>1 J. ELDRIDGE</p> <p>2 companies you identified as being one of blu's</p> <p>3 primary competitors comes out with a new</p> <p>4 closed system e-vapor product, does ITG</p> <p>5 typically track the sales of that product?</p> <p>6 A. Yes. We identify the introduction</p> <p>7 and then monitor the sales.</p> <p>8 Q. And would ITG also typically track</p> <p>9 the price of the new product?</p> <p>10 A. Yes.</p> <p>11 Q. And would ITG typically conduct</p> <p>12 consumer research to see how consumers are</p> <p>13 reacting to the new product?</p> <p>14 A. I don't know the answer to that.</p> <p>15 Q. Do you know if ITG would study the</p> <p>16 new product's design?</p> <p>17 A. I don't know that either.</p> <p>18 MS. LEVERT: Mr. Eldridge, I think</p> <p>19 that is all the questions I have for you</p> <p>20 right now. Thank you for your time. I</p> <p>21 don't know if Rob will have anything else.</p> <p>22 We can go off the record briefly if we</p> <p>23 need to.</p> <p>24 MR. KATERBERG: Let's go off the</p> <p>25 record briefly.</p>

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<p style="text-align: right;">Page 210</p> <p>1 J. ELDRIDGE</p> <p>2 (Recess was taken.)</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MR. KATERBERG:</p> <p>5 Q. We're back on the record,</p> <p>6 Mr. Eldridge, after which is hopefully our</p> <p>7 last break of the day. I just have a few more</p> <p>8 questions for you, sir. Thank you for your</p> <p>9 patience.</p> <p>10 I'd like to bring you back to the</p> <p>11 document you were looking at with Ms. Levert,</p> <p>12 which is Exhibit 24. If you could go back to</p> <p>13 that one, please.</p> <p>14 A. Okay.</p> <p>15 Q. This is the slide deck entitled</p> <p>16 Pricing Update. Do you know anything about</p> <p>17 who wrote this particular document,</p> <p>18 Mr. Eldridge?</p> <p>19 A. I do not.</p> <p>20 Q. It wasn't you?</p> <p>21 A. It was not.</p> <p>22 Q. And do you recall ever seeing this</p> <p>23 before in the ordinary course of business?</p> <p>24 A. No, I do not.</p> <p>25 Q. If you turn to slide 3, and that's</p>	<p style="text-align: right;">Page 212</p> <p>1 J. ELDRIDGE</p> <p>2 was viewed as a competitor of myblu?</p> <p>3 A. I would say so.</p> <p>4 Q. And the same thing for ACE, is that</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. And ACE is the NJOY ACE, right?</p> <p>8 A. Yes, it is.</p> <p>9 Q. I know you said that Leap is not a</p> <p>10 major competitor; but nevertheless, it's also</p> <p>11 listed there as a competitor of myblu, right?</p> <p>12 A. Yes.</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 211</p> <p>1 J. ELDRIDGE</p> <p>2 the page that's marked in the lower right-hand</p> <p>3 corner PX 3005-004, where it says "Competitor</p> <p>4 Product Comparison." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So we've been through the</p> <p>7 document already. Is it fair to say that this</p> <p>8 slide deck compares multiple competitors of</p> <p>9 myblu?</p> <p>10 A. Yes.</p> <p>11 Q. And if we turn to the next page,</p> <p>12 where there's the table, one of those is JUUL,</p> <p>13 correct?</p> <p>14 A. We're talking slide 4, correct?</p> <p>15 Q. Yes. Slide 4, the page marked 005</p> <p>16 on the bottom right-hand corner.</p> <p>17 A. Yes.</p> <p>18 Q. Do you see where JUUL is listed</p> <p>19 there as a competitor of myblu, right?</p> <p>20 A. Yes.</p> <p>21 Q. That's the significance of JUUL</p> <p>22 being shown in that table?</p> <p>23 A. I would say so, yes.</p> <p>24 Q. Would the same go for Vuse Alto?</p> <p>25 Vuse Alto was listed in that table because it</p>	<p style="text-align: right;">Page 213</p> <p>1 J. ELDRIDGE</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 Q. You can set that one aside.</p> <p>6 You were asked some questions</p> <p>7 earlier about shelf space. Do you remember</p> <p>8 that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And so do you recall that the Altria</p> <p>11 transaction with JUUL that we're here to</p> <p>12 discuss today, that transaction was in</p> <p>13 December 2018?</p> <p>14 A. Yes.</p> <p>15 Q. Now, earlier in your testimony, I</p> <p>16 believe you said that JUUL grew rapidly upon</p> <p>17 introduction and was quickly able to achieve a</p> <p>18 45 percent market share. Do you remember</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Was that prior to December 2018, to</p> <p>22 your recollection?</p> <p>23 A. Yes.</p> <p>24 Q. And was JUUL affiliated with a major</p> <p>25 tobacco manufacturer prior to striking the</p>

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<p style="text-align: right;">Page 214</p> <p>1 J. ELDRIDGE</p> <p>2 deal with Altria in December 2018?</p> <p>3 A. No.</p> <p>4 Q. So is it correct that JUUL was able</p> <p>5 to achieve that record growth in '17 and '18</p> <p>6 without an affiliation with a combustible</p> <p>7 cigarette company that would have access to</p> <p>8 special shelf space?</p> <p>9 A. They were on the shelf.</p> <p>10 Q. Right. And they didn't have a</p> <p>11 connection with a major tobacco company, a</p> <p>12 combustible cigarette company at the time when</p> <p>13 they achieved that initial growth, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. NJOY is another competitor you've</p> <p>16 referred to today. Is NJOY, to your</p> <p>17 knowledge, affiliated with a major tobacco</p> <p>18 manufacturer?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. And we looked at some documents</p> <p>21 earlier. You might remember the one that</p> <p>22 showed that during one period they had more</p> <p>23 unit sales in the last 13 weeks than you guys,</p> <p>24 Reynolds, and Logic combined. At the time</p> <p>25 when they were able to achieve that growth,</p>	<p style="text-align: right;">Page 216</p> <p>1 J. ELDRIDGE</p> <p>2 A. Documents that we collect.</p> <p>3 Q. I want to be very specific about</p> <p>4 this because I want to make sure we get this</p> <p>5 right. If you could turn back to your</p> <p>6 declaration --</p> <p>7 A. Yes.</p> <p>8 Q. -- which is Exhibit 1. And I want</p> <p>9 to turn your attention to paragraph 31,</p> <p>10 please.</p> <p>11 A. Okay.</p> <p>12 Q. So the second sentence, where it</p> <p>13 says, "Starting in the summer of 2018, in</p> <p>14 exchange for getting the number one, i.e. top</p> <p>15 space, in convenience stores' e-cigarette</p> <p>16 section on the back bar, Altria paid retailers</p> <p>17 6 cents per carton of Altria cigarettes sold,</p> <p>18 which is a large amount given Altria's share</p> <p>19 of cigarette sales."</p> <p>20 Your testimony is that was accurate</p> <p>21 at the time, but as of June of 2020, what you</p> <p>22 described there in that sentence is no longer</p> <p>23 taking place?</p> <p>24 A. What I described in this sentence</p> <p>25 here for June of 2020 was specific to your</p>
<p style="text-align: right;">Page 215</p> <p>1 J. ELDRIDGE</p> <p>2 were they affiliated with a major tobacco</p> <p>3 manufacturer that had special access to shelf</p> <p>4 space?</p> <p>5 A. None to my knowledge.</p> <p>6 Q. Now, Mr. Eldridge, are you aware</p> <p>7 that since March of 2020, there's no linkage</p> <p>8 between Altria's shelf space and access for</p> <p>9 JUUL because Altria and JUUL amended the terms</p> <p>10 of their transaction?</p> <p>11 MR. ORMAND: Objection to form.</p> <p>12 A. Yes. I'm aware it was amended.</p> <p>13 Q. Okay. And so, to your knowledge,</p> <p>14 Altria's not currently paying any kind of</p> <p>15 rebate on its cigarettes in exchange for a</p> <p>16 retailer agreeing to carry JUUL or any other</p> <p>17 e-vapor product for that manner in any</p> <p>18 particular space on the back bar?</p> <p>19 A. To my knowledge, that is correct.</p> <p>20 Q. And it's been that way since March</p> <p>21 2020, as far as you know?</p> <p>22 A. My recollection is it was actually</p> <p>23 June.</p> <p>24 Q. Oh, your recollection is June.</p> <p>25 Okay. Where does that come from?</p>	<p style="text-align: right;">Page 217</p> <p>1 J. ELDRIDGE</p> <p>2 question about when the contract was</p> <p>3 cancelled.</p> <p>4 Q. Got it. I just want to make sure</p> <p>5 we're on the same page. What you're</p> <p>6 describing in this sentence is no longer --</p> <p>7 you signed this declaration in April,</p> <p>8 April 2020. Starting in June 2020, what you</p> <p>9 describe in this sentence is no longer taking</p> <p>10 place?</p> <p>11 A. It started in June 2019.</p> <p>12 Q. Okay. So your recollection is that</p> <p>13 in/around June 2019, Altria stopped paying</p> <p>14 retailers 6 cents per carton of Altria</p> <p>15 cigarettes sold to hold the premium e-vapor</p> <p>16 space?</p> <p>17 A. They cancelled the contract, to my</p> <p>18 knowledge, in June of 2019.</p> <p>19 Q. Okay. Thank you for clarifying</p> <p>20 that. I see that now there, the last</p> <p>21 sentence.</p> <p>22 Now, Mr. Eldridge, are you aware,</p> <p>23 though, that Altria is still selling other</p> <p>24 next generation products other than e-vapor</p> <p>25 products in shelf space on the back bar, such</p>

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<p style="text-align: right;">Page 218</p> <p>1 J. ELDRIDGE</p> <p>2 as IQOS oral nicotine delivery products, that</p> <p>3 sort of thing?</p> <p>4 MS. LEVERT: Object to form.</p> <p>5 A. Yes.</p> <p>6 Q. And just so we're clear, whether to</p> <p>7 enter into these contracts is always up to the</p> <p>8 retailer, right? The retailer can't be forced</p> <p>9 to do anything. The retailer can look at the</p> <p>10 options that are available to them and decide</p> <p>11 what's the best option for their business.</p> <p>12 You would agree with that?</p> <p>13 A. You're correct, yes.</p> <p>14 Q. Ultimately, the retailer is the one</p> <p>15 who decides what products to stock on their</p> <p>16 shelves?</p> <p>17 A. Yes.</p> <p>18 Q. Altria doesn't own the retailers'</p> <p>19 shelf space. What Altria does is offer</p> <p>20 incentives up to a certain amount of products</p> <p>21 to be displayed?</p> <p>22 A. Yes.</p> <p>23 Q. One thing you wrote in your</p> <p>24 declaration is that Altria authorized</p> <p>25 retailers to put JUUL in its shelf space, and</p>	<p style="text-align: right;">Page 220</p> <p>1 J. ELDRIDGE</p> <p>2 right?</p> <p>3 A. Yes. I've never tried the product,</p> <p>4 so I couldn't give a personal testimony to</p> <p>5 that.</p> <p>6 Q. Are you someone who personally</p> <p>7 partakes in e-vapor products?</p> <p>8 A. No, I am not.</p> <p>9 MR. ORMAND: Objection.</p> <p>10 Q. And do you have access to any</p> <p>11 consumer research that would show how</p> <p>12 consumers, adult vapers, how they were</p> <p>13 reacting to the product, whether they enjoyed</p> <p>14 the product, or whether they would stick to</p> <p>15 the MarkTen Elite product?</p> <p>16 A. I don't have access to that.</p> <p>17 Q. Did you have access to any</p> <p>18 scientific information about the MarkTen Elite</p> <p>19 product, such as whether it would provide</p> <p>20 nicotine satisfaction that would make it</p> <p>21 effective in converting adult smokers?</p> <p>22 MS. LEVERT: Object to the form.</p> <p>23 A. Nothing specifically, no.</p> <p>24 Q. Or generally, did you have access</p> <p>25 generally to any scientific information about</p>
<p style="text-align: right;">Page 219</p> <p>1 J. ELDRIDGE</p> <p>2 I'm referring to that same paragraph 31, about</p> <p>3 four lines up from the bottom.</p> <p>4 Just to be clear -- I think we're</p> <p>5 understanding each other -- when you say</p> <p>6 authorized retailers to put JUUL on the shelf</p> <p>7 space, it's not that the retailers needed to</p> <p>8 get Altria's permission. It's that Altria was</p> <p>9 saying if you want to continue to get these</p> <p>10 incentives, then you need to put this product</p> <p>11 in the shelf space; is that right?</p> <p>12 MR. ORMAND: Object to form.</p> <p>13 A. Yes.</p> <p>14 Q. And you were asked some questions</p> <p>15 earlier about your view of the MarkTen Elite</p> <p>16 product. Do you recall answering some</p> <p>17 questions from Ms. Levert about that subject?</p> <p>18 A. Yes, sir.</p> <p>19 Q. I just want to be very clear, I</p> <p>20 think you said you had a view that it was a</p> <p>21 good product and it could achieve success in</p> <p>22 the future. I want to be very clear what</p> <p>23 that's based on or what that's not based on.</p> <p>24 I think you said you heard stuff to that</p> <p>25 effect from people in the trade; is that</p>	<p style="text-align: right;">Page 221</p> <p>1 J. ELDRIDGE</p> <p>2 the nicotine satisfaction that MarkTen Elite</p> <p>3 could or could not provide?</p> <p>4 A. No, I do not.</p> <p>5 Q. Did you have any information about</p> <p>6 the regulatory obstacles that MarkTen Elite</p> <p>7 would have faced in the PMTA authorization</p> <p>8 process?</p> <p>9 MS. LEVERT: Object to form and</p> <p>10 foundation.</p> <p>11 A. No.</p> <p>12 Q. And did you have any information</p> <p>13 about the amount of money that Altria and</p> <p>14 Newmark had to spend for promotional</p> <p>15 incentives to retailers in order to garner</p> <p>16 sales in the initial period?</p> <p>17 MS. LEVERT: Object to form.</p> <p>18 A. No. I did not have access to that.</p> <p>19 MR. KATERBERG: Thank you, sir.</p> <p>20 Really appreciate it. This has been very</p> <p>21 helpful, and we're grateful for your</p> <p>22 participation and your cooperation.</p> <p>23 (Time noted: 3:17 p.m. Eastern)</p> <p>24</p> <p>25</p>

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<p>1</p> <p>2                   A C K N O W L E D G M E N T</p> <p>3</p> <p>4           STATE OF NEW YORK     )</p> <p>5                                     ):SS</p> <p>6           COUNTY OF             )</p> <p>7                   I, JEFF ELDRIDGE, hereby certify</p> <p>8           that I have read the transcript of my</p> <p>9           testimony taken under oath in my deposition of</p> <p>10           December 14, 2020; that the transcript is a</p> <p>11           true, complete and correct record of my</p> <p>12           testimony, and that the answers on the record</p> <p>13           as given by me are true and correct.</p> <p>14</p> <p>15</p> <p>16</p> <p>17                                     _____   JEFF ELDRIDGE</p> <p>18</p> <p>19</p> <p>20           Signed and subscribed to before</p> <p>21           me, this                    day</p> <p>22           of                                 , 20__.</p> <p>23</p> <p>24                                     _____   Notary Public, State of New York</p> <p>25</p>	<p>1                                     E R R A T A   S H E E T</p> <p>2           I, JEFF ELDRIDGE, do hereby certify that I</p> <p>3           have read the foregoing transcript of my testimony, and</p> <p>4           further certify that it is a true and accurate record</p> <p>5           of my testimony (with the exception of the corrections</p> <p>6           listed below).</p> <p>7           PAGE    LINE                                     CORRECTION</p> <p>8           ____  ____  _____</p> <p>9           ____  ____  _____</p> <p>10           ____  ____  _____</p> <p>11           ____  ____  _____</p> <p>12           ____  ____  _____</p> <p>13           ____  ____  _____</p> <p>14           ____  ____  _____</p> <p>15           ____  ____  _____</p> <p>16           ____  ____  _____</p> <p>17           ____  ____  _____</p> <p>18           ____  ____  _____</p> <p>19           ____  ____  _____</p> <p>20           ____  ____  _____</p> <p>21           ____  ____  _____</p> <p>22           ____  ____  _____</p> <p>23           ____  ____  _____</p> <p>24</p> <p>25           Date   _____   JEFF ELDRIDGE</p>
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<p>1</p> <p>2                                     C E R T I F I C A T E</p> <p>3</p> <p>4           STATE OF NEW YORK     )</p> <p>5                                     ) SS.:</p> <p>6           COUNTY OF SUFFOLK     )</p> <p>7</p> <p>8                   I, KRISTI CRUZ, a Notary Public</p> <p>9           within and for the State of New York, do</p> <p>10           hereby certify:</p> <p>11                   That JEFF ELDRIDGE, the witness</p> <p>12           whose deposition is hereinbefore set</p> <p>13           forth, was duly sworn by me and that</p> <p>14           such deposition is a true record of the</p> <p>15           testimony given by such witness.</p> <p>16                   I further certify that I am not</p> <p>17           related to any of the parties to this</p> <p>18           action by blood or marriage; and that I</p> <p>19           am in no way interested in the outcome</p> <p>20           of this matter.</p> <p>21                   IN WITNESS WHEREOF, I have</p> <p>22           hereunto set my hand this 15th day of</p> <p>23           December 2020.</p> <p>24                                     <i>Kristi Cruz</i>   _____   KRISTI CRUZ</p> <p>25</p>	

### Errata Sheet

I, Jeff Eldridge, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below).

Page	Line	Correction
19	9	“was consummated” should be “is constituted”
19	10	“Company” should be “Group”
27	18	“ITG Brands” should be “Lorillard”
34	16	“Yes” should be “Yes, except that blu was included in the divestiture, not Fontem.”
35	24	“Justin” should be “Jason”
55	18	“Carol” should be “Carole”
55	20	“Carol” should be “Carole”
115	20	“was” should be “has”
129	9	“period” should be “POD”
153	18	“Newmark” should be “Nu Mark”
155	12	“None” should be “No one”
155	17	“all based” should be “pod-based”
156	9	“thing I recall seeing” should be “time I recall hearing”
160	6	“Newmark” should be “Nu Mark”
160	13	“elite” should be “Elite”
160	17	“elite” should be “Elite”
161	19	“hurtles” should be “hurdles”
166	20	“make shelves” should be “vape stores”
187	8	“elite” should be “Elite”

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187	10	“elite” should be “Elite”
187	15	“green smoke” should be “Green Smoke”
221	14	“Newmark” should be “Nu Mark”

Dated: January 15, 2021

  
\_\_\_\_\_  
Jeff Eldridge



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December 14, 2020

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**EXHIBIT BB**  
**Exhibit No. PX8010**

## DECLARATION OF CAROLE FOLMAR

I, Carole Folmar, declare as follows:

### **Background**

1. I am Senior Director of Product Integrity and Compliance and Associate General Counsel at ITG Brands, LLC (“ITG”), which is a U.S. subsidiary of British-based tobacco company Imperial Brands PLC (“Imperial Brands”). I have been in my current position since October 2019. From July 2015 to September 2019, I was Director of Regulatory and Scientific Affairs and Associate General Counsel at ITG. From February 2014 to July 2015, I was Manager for Regulatory Affairs at Lorillard Tobacco Company. From 2008 to December 2013, I was Regulatory Counsel for Alternative Brands, Inc., a small manufacturer of cigars and cigarettes that is no longer in business. Prior to 2008, I did not work in the tobacco industry.
2. ITG is the third largest tobacco company in the United States. ITG sells cigarettes, cigars, and blu® e-vapor products. The blu products consist of the *myblu*™ pod device and *myblu* Liquidpods, the blu Plus+ reusable cigalike device and blu Plus+ Tanks™, and single-use e-cigarettes called blu Disposables.
3. As Senior Director of Product Integrity and Compliance, since October 2019, I have been responsible for overseeing the preparation of the premarket tobacco applications (“PMTAs”) for the blu e-vapor products. I oversee, review, and approve the scientific work and regulatory submissions completed by scientists who work-full time on preparing regulatory applications across ITG’s entire portfolio of tobacco and nicotine products, including the PMTAs for blu. ITG is working with its sister company, Fontem U.S. LLC (“Fontem”), whose ultimate parent entity is also Imperial Brands, on preparing the PMTAs for blu products. The PMTA submissions for blu will be made under Fontem’s name.
4. According to United States Food and Drug Administration (“FDA”) and the Family Smoking and Tobacco Prevention Control Act of 2009, the standard for evaluating a PMTA is whether the scientific data presented demonstrates the product is appropriate for the protection of public health. FDA guidance indicates that PMTA submissions should contain, among other things, full reports on ingredients and product chemistry, information about how the product is manufactured, clinical and non-clinical studies, data about health risks, studies about consumer behavior and use of the product, and studies about initiation of use among nonsmokers. To meet the PMTA requirements, both non-clinical (not on human subjects) and clinical (involving human subjects) studies are necessary.
5. For each device (*i.e.*, *myblu* pod device, the blu Plus+ cigalike, and blu® Disposable), each different flavor and each different nicotine strength of that flavor constitutes a separate product (or SKU) for PMTA purposes. Manufacturers can submit a single,



bundled PMTA that covers multiple SKUs, but the FDA will split out and evaluate each SKU separately.

6. ITG plans to prepare PMTAs covering 45 total blu product SKUs. Fontem plans to submit these PMTAs in four bundles: one for myblu SKUs that contain nicotine salts; one for myblu SKUs that contain nicotine liquid; one for blu Plus+ SKUs; and one for blu Disposables SKUs. Such PMTA submissions will include the myblu and blu Plus+ SKUs that were removed from the market in February 2020 when the FDA began enforcement against flavored pods and cartridges on the market without FDA premarket approval. Fontem's PMTA submissions will cover 22 myblu SKUs, 18 blu Plus+ SKUs, and 5 blu Disposables SKUs. Fontem plans to submit the PMTAs covering the myblu products in early May 2020, and to submit the PMTAs covering the blu Plus+ products and blu Disposables by the May 12, 2020 deadline.



8. Fontem is not currently planning on submitting PMTAs for any other products besides the 45 blu product SKUs referenced above. Based on my experience, it would take at least 18 months to 2 years to prepare a PMTA for a new product.

This declaration contains trade secrets or commercial or financial information, and I hereby request that my identity, my company's identity, and the contents of this declaration be kept confidential and be exempt from public disclosure as provided by applicable law.

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

  
Carole Folmar

Signed this 1 day of April, 2020.



**EXHIBIT CC**  
**Exhibit No. PX8011**

**DECLARATION OF JEFF ELDRIDGE**

I, Jeff Eldridge, declare as follows:

**Background**

1. I am Vice President Area Central at ITG Brands, LLC ("ITG"). I am responsible for managing ITG's sales force, retail programs, product promotions, and distribution for 13 Midwest states. I have been in this role at ITG since July 2015, although my title recently changed from Area Vice President Midwest States to Vice President Area Central.
2. ITG is the third-largest tobacco company in the United States. ITG sells cigarettes, cigars, and e-vapor products. Cigarette brands sold by ITG are Winston, Kool, Salem, Maverick, Montclair, Rave, Sonoma, Crowns, Fortuna, and USA Gold. Cigar brands sold by ITG include Dutch Masters, Backwoods, and Phillies. ITG sells blu e-vapor products. ITG sells its products through distributors to retail stores.
3. ITG is a U.S. subsidiary of British-based tobacco company Imperial Brands PLC ("Imperial Brands"). Imperial Brands entered the U.S. market in 2007 with its acquisition of Kentucky-based cigarette manufacturer Commonwealth Brands. In 2008, Imperial Brands acquired Altadis, a Spanish manufacturer of cigarettes and cigars. In 2011, Commonwealth Brands and Altadis' U.S. division combined to form Commonwealth-Altadis, which was based in Florida. In 2015, Imperial Brands acquired several U.S. brands and assets in a divestiture stemming from the merger between Reynolds American ("Reynolds") and Lorillard Tobacco ("Lorillard"), then the second and third largest tobacco companies in the U.S., respectively. ITG was created in 2015 when these newly acquired brands and assets (including Reynolds' cigarette brands Winston, Kool, and Salem, and Lorillard's cigarette brand Maverick and e-cigarette brand blu) were combined with the existing U.S. Commonwealth-Altadis business.
4. ITG shares responsibility for blu e-vapor products in the U.S. with its sister company, Fontem U.S. LLC ("Fontem"), whose ultimate parent entity is Imperial Brands. ITG is responsible for selling blu e-vapor products in the U.S., including handling retail relationships and negotiating shelf space. Fontem also produced a line of e-liquids called Salt of the Earth, which ITG was responsible for selling in the U.S.
5. From 1987 to July 2015, I worked for Lorillard, which is now owned by Reynolds. From 1998 to July 2015, I was a Regional Sales Manager at Lorillard for a region comprised of northern Florida, South Carolina, and part of Georgia. Prior to that, I was a Marketing Services Manager for about a year, and prior to that I held a series of positions in sales and sales management for Lorillard.




### Combustible Cigarettes

6. Within the traditional combustible cigarette category in the U.S., the top three competitors' market shares have remained stable from year to year, with only small fluctuations. According to data from Management Science Associates, Inc. ("MSAi"), which tracks wholesale distributor shipments to retailers, ITG's market share for combustible cigarettes was 8.8% at the end of fiscal year 2019 (ending September 30, 2019). ITG's top brands Winston (2.2% share), Kool (1.9%), and Maverick (1.8%) account for most of our share. At the end of fiscal year 2019, Altria, the largest tobacco company in the U.S., had a 47.7% share in the combustible cigarette category, with its Marlboro brand (41.5% share) and its L&M brand (3.8% share) accounting for most of its share. Reynolds' market share at the end of fiscal year 2019 was 31%, with its Newport (14.2%), Camel (8.1%), and Pall Mall (6.95%) brands accounting for most of its share. The fourth-largest U.S. tobacco company, Liggett, had a 4.2% share at the end of fiscal year 2019 with a portfolio of discount brands including Eagle 20's (2.4%) and Pyramid (1.2%).
7. According to MSAi data, cigarette sales volumes declined by 5.6% in fiscal year 2019, which is a higher rate of decline than prior years. From 2015 through 2017, the annual rate of decline in cigarette sales volumes was around 2 or 3%, and it increased to over 4% in 2018. The substantial growth in vaping coincided with the higher rates of decline in cigarette sales volumes, and I believe that the accelerated rate of decline in cigarette sales volumes is in part due to consumers using new generation products such as e-cigarettes.
8. Although sales volumes for combustible cigarettes are decreasing, ITG's sales revenues for combustible cigarettes have been increasing due to price increases in the category. Historically, there have been two price increases annually in the combustible cigarette category, one in the spring and one in the fall. Altria usually increases its prices first, and Reynolds and ITG then follow with price increases. Typically, the price increases are for similar amounts, usually between 60 cents and \$1.10 for a carton of cigarettes. (A carton of cigarettes contains 10 packs of 20 cigarettes each.) In 2019, there were three industry-wide price increases on combustible cigarettes, instead of the usual two. For the last three or four industry price increases, ITG has increased prices for its combustible brands, with the exception of deep discount brands Crowns, Montclair, and Sonoma.
9. Today, the convenience store channel is the predominant retail channel for sales of traditional cigarettes. Cigarette sales are important for driving foot traffic to convenience stores, and it is important for convenience stores to have a competitive price on the popular premium brands. Because they make the most popular brands, Altria and Reynolds have the leverage to get retailers to participate in their promotional programs, which, as explained below, impose requirements on retailers in exchange for buydowns that allow the retailers to offer lower prices on Altria and Reynolds' leading brands. Buydowns are when a manufacturer provides funds to a retailer, and requires the retailer to use those funds to lower the price of certain of its brands.



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10. Nationwide, about two-thirds of convenience stores participate in Reynolds' Every Day Low Price ("EDLP") program. The EDLP program requires participating retailers to set the price of Reynolds' Pall Mall brand equal to or below the price of every other brand in the store. In return, Reynolds provides incremental funds to the retailers in the form of buydowns to lower the price of Reynolds' premium brands Camel and Newport. In other words, the EDLP program serves to protect Pall Mall by restricting the ability of participating stores to sell other discount brands at a lower price. Reynolds' EDLP program limits ITG's ability to grow its discount brand Maverick, since retailers that participate in EDLP cannot offer Maverick at a lower price than Pall Mall. For retailers that participate in EDLP, ITG buydowns for Maverick are limited only to amount that allows retailers to match, but not go below, the Pall Mall price. In addition, at EDLP participating stores, ITG's deep discount brands (Montclair, Sonoma, Rave, Crowns, and Fortuna) cannot be priced lower than Pall Mall. There has been some growth in the deep discount cigarette segment over the past several years, but most of that growth has occurred at retailers that do not participate in EDLP.
- 

12. In addition to MLP, Altria runs promotional programs through some large retail chains' loyalty card programs. For instance, Altria has a contract with some large retailers whereby for 32 weeks of the year, the stores' loyalty card members will be offered discounts exclusively on Altria products. That leaves the remaining 20 weeks of the year for other cigarette manufacturers to offer discounts to those loyalty card members.

#### **Combustible Cigarette Shelf Space**

13. Convenience stores typically display tobacco products on dedicated shelves behind the cash register, also referred to as the fixture or the back bar. It is important for cigarette manufacturers to have their brands displayed on the back bar, in a visible location, and with signage, to communicate their products' price points. Due to federal and local restrictions on cigarette advertising, this back bar space, along with in-store signage, is the primary way to communicate with customers. The retail battle is fought and won on the back bar set.
14. Almost all retailers that sell cigarettes have contracts with Altria and Reynolds. The terms of the Altria and Reynolds contracts result in retailers devoting most—and sometimes all—of their visible shelf space for Altria's and Reynolds' brands. Altria's contracts require that retailers give Altria the top position in the cigarette fixture, as well as a share of the total display equal to Altria's combustible cigarette market share in the zip code or share at the store (whichever is greater, up to 65%). Altria's contracts also require retailers to give it the signage above and adjacent to the back bar, and that Altria

be given one piece of off-fixtured signage. Reynolds' contracts require retailers to put Reynolds' cigarettes in the shelf space immediately below Altria's brands. Reynolds' contracts also require that Reynolds' share of the fixture be proportional to the market share of its cigarette brands in the retailer's location or local area, whichever is greater, subject to the requirement that retailers provide a minimum of 8 square feet of space for Reynolds cigarettes (which, depending on the size of the back bar, is sometimes more than Reynolds would get based on market share). Reynolds' contracts require retailers to provide cigarette signage equal to Reynolds' market share of the cigarette category.

[REDACTED]

[REDACTED]

[REDACTED]

#### ITG's E-Vapor Products

18. An e-cigarette, also known as an e-vapor device, is an electronic device that heats a liquid that contains flavoring and nicotine (called an e-liquid), resulting in a vapor that is inhaled by the user. Most e-cigarettes include a battery, a heating mechanism, storage for the e-liquid, and a mouthpiece. E-vapor devices can be either closed or open system. Closed system devices can only be used with sealed, prefilled cartridges, tanks, or pods that are compatible with the device. In contrast, open system e-vapor devices have a removable mouthpiece and the consumer manually fills and refills the device with e-liquid. ITG does not sell any open system e-vapor devices in the United States.
19. ITG sells three types of e-vapor devices, all under its blu brand: the myblu pod device, the blu Plus+ reusable cigalike device, and single-use e-cigarettes called blu Disposables.



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The *myblu* device is a battery-powered, reusable, rechargeable device designed to be used with *myblu* Liquidpods, which are pre-filled pods that click into the *myblu* device. ITG introduced the *myblu* device and *myblu* pods in 2017. The *blu Plus+* device is a battery-powered, reusable, rechargeable cigalike device that is designed to be used with *blu Plus+* Tanks, which are pre-filled e-liquid cartridges that screw into the device. *blu Disposables* are single-use, pre-filled e-cigarettes designed to be discarded.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
22. In a February 6, 2020 guidance, the FDA indicated that it would view enforcement against flavored cartridge-based products, except for those that are menthol and tobacco flavored, as a priority. The FDA's enforcement prioritization has been regarded by the ITG sales force and the industry generally as an effective "flavor ban." This flavor ban does not apply to single-use, disposable e-cigarettes such as *blu Disposables*, but it does apply to *myblu* Liquidpods and *blu Plus+* tanks. A flavored pod or cartridge subject to the February 2020 ban can only be re-introduced on the market if the manufacturer applies for and receives premarket tobacco authorization from the FDA for that flavor.
23. Prior to February 6, 2020, *myblu* Liquidpods were available in 13 flavors. Now, *myblu* Liquidpods are available only in four flavors, each of which is a tobacco or menthol flavor: Tobacco Chill Intense, Tobacco Intense, Gold Leaf, and Menthol. These *myblu* pod flavors are available at varying nicotine strengths. The Tobacco Chill Intense and Tobacco Intense pods have nicotine salts in them. Prior to the February 6, 2020 flavor ban, the *blu Plus+* tanks came in a variety of flavors as well. Today, the only *blu Plus+* tanks sold are Magnificent Menthol and Classic Tobacco, all at a 2.4% nicotine strength. The *blu Disposables*, to which the flavor ban does not apply, come in Vivid Vanilla, Cherry Crush, Classic Tobacco, Magnificent Menthol, and Polar Mint flavors, all at a 2.4% nicotine strength.
24. Although I am not involved in preparing the premarket tobacco applications ("PMTAs") for submission to the FDA, I am aware that ITG plans to submit PMTAs on behalf of Fontem for all of its *myblu* pod, *blu Plus+* tank, and *blu Disposables* flavors currently on the market, as well as those that were removed from the market due to the FDA's February 2020 Guidance on enforcement against certain flavored electronic nicotine delivery system ("ENDS") products.

E-Vapor Competition

25. The other closed system vaping brands with which blu primarily competes in the U.S. are Juul, Reynolds' Vuse, NJOY, and JTI's Logic. Juul only offers pod-based products, whereas Reynolds' Vuse and NJOY have both pod-based products and cigalikes. Prior to the emergence of Juul, most e-cigarettes were cigalikes, but now pod-based e-cigarettes dominate the market. Altria's MarkTen products—consisting of MarkTen cigalikes and MarkTen Elite pod-based products—were also competitors to blu prior to Altria discontinuing them. Based on information from wholesalers and retailers, my understanding is that all pod-based e-cigarettes experience some issues with leaking.
26. Juul's rapid growth over the last several years led to significant shifts in market shares, with Juul gaining share to become the market leader, and competing brands losing share. blu's market share has decreased every year since 2016, but blu's sales volume in units has increased every year since 2016. It was because of Juul's explosive growth that blu was growing volume, but losing share.
27. In November 2018, Juul pulled all of its flavors other than tobacco, menthol, and mint from retail stores (although it left them available online). Juul's market share continued to grow after November 2018. In November 2019, Juul removed its mint flavor from stores. ITG, Reynolds, and NJOY kept their flavored pods on the market until the flavor ban in February 2020, however. It is too soon to tell what the impact of the recent FDA flavor ban will be on ITG and on the e-cigarette category as a whole.
28. As mentioned above, Altria competed in the e-vapor category with its MarkTen cigalike product and its MarkTen Elite pod-based product. Altria introduced MarkTen Elite in the first half of 2018. Given Altria's resources as the largest tobacco company in the U.S., my view was that they would have been able to grow MarkTen Elite if they had kept it on the market. I was surprised when Altria announced that it was pulling MarkTen Elite off the market, because the product had not been on the market very long.

[REDACTED]



**E-Vapor Shelf Space**

31. Over the last several years, most convenience stores have increased the section of their back bar space devoted to e-vapor, while decreasing the space on the back bar devoted to combustible cigarettes. Starting in the summer of 2018, in exchange for getting the number one (i.e., top) space in convenience stores' e-cigarette section on the back bar, Altria paid retailers 6 cents per carton of Altria cigarettes sold, which is a large amount given Altria's share of cigarette sales. Even after Altria's December 2018 announcement that it was discontinuing its MarkTen and Greensmoke e-cigarette brands, Altria continued to hold its premium space on the e-vapor display, and then authorized retailers to put Juul in that space. Based on information from retailers, my understanding is that, until around June 2019, Altria continued to pay retailers 6 cents per carton of Altria cigarettes sold to hold the premium e-vapor space.
32. Similar to Altria's approach to e-vapor shelf space for its MarkTen products, Reynolds also pays retailers a rebate on sales of Reynolds cigarettes in exchange for retailers providing shelf space for Reynolds' Vuse e-vapor products. For example, if a retailer devotes between 3 and 3.99 feet of space to Vuse products, Reynolds will pay the retailer a rebate of 20 cents per carton for Newport and Camel sales, and 10 cents per carton for Pall Mall sales. Reynolds' contracts also require that retailers place Vuse products in the second-best position on the shelf (i.e., that Vuse is the second brand from the top of the e-vapor fixture).

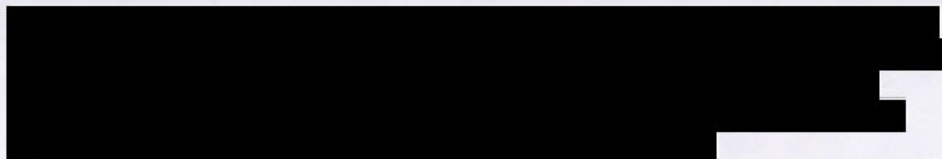
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[REDACTED]

**Commitment to E-Vapor Category**

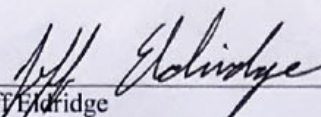
[REDACTED]





This declaration contains trade secrets or commercial or financial information, and I hereby request that my identity, my company's identity, and the contents of this declaration be kept confidential and be exempt from public disclosure as provided by applicable law.

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

  
Jeff Eldridge

Signed this 1st day of April, 2020.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on May 6, 2021, I caused a true and correct copy of the foregoing Motion to Seek *In Camera* Treatment to be served via electronic mail to:

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